

October 2, 2012

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Regular Meeting - 6:00 p.m.**

A regular meeting of the Council of the City of Fort Collins was held on Tuesday, October 2, 2012, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll call was answered by the following Councilmembers: Horak, Kottwitz, Manvel, Ohlson, Poppaw, Troxell and Weitkunat.

(Secretary's note: Councilmember Kottwitz arrived at 7:06 p.m.)

Staff Members Present: Atteberry, Nelson, Roy.

**Agenda Review**

City Manager Atteberry stated that Item No. 22, *Resolution 2012-093, Adopting "The Parking Plan: Downtown and Surrounding Neighborhoods" as an Element of the City's Comprehensive Plan and Adopting Relating Changes to the Transportation Master Plan*, is being postponed to a later date in order to allow time for community input.

**Citizen Participation**

James Owiny, Human Relations Commission member, announced an Elder Abuse Forum to be held October 22, 2012, at the Senior Center.

Liz Prusner, Fort Collins resident, expressed concern regarding the potential financial impacts of the proposed on-campus stadium and opposed any funding by the City of Fort Collins.

Lynn Hall, Fort Collins resident, announced October as Arts and Humanities Month and supported the arts community in Fort Collins.

Wes Kenney, Fort Collins Symphony Musical Director, thanked Council for its support of performing arts and the Symphony and announced the upcoming Symphony season.

Catherine Douras, Fort Collins Women's Commission member, supported the Day of the Girl proclamation.

Gary Peterson, Fort Collins resident, supported ballot question 301 and state ballot issue 64, the medical marijuana items.

**Citizen Participation Follow-up**

Councilmember Troxell noted there is no consideration in the current budget for support of the on-campus stadium and suggested the possibility of Council considering Resolutions regarding any type of City costs for infrastructure related to the stadium. He stated information provided by Poudre School District was cited with regard to ballot issue 301.

**CONSENT CALENDAR**

6. Second Reading of Ordinance No. 099, 2012, Amending the City Code and Adopting the First Amendment to the City of Fort Collins General Employees' Retirement Plan as Amended and Restated January 1, 2012, to Change the Make-up of the General Employees Retirement Committee.

The existing structure of the General Employees' Retirement Committee (GERC) has 6 positions and must include at least 3 active employee members and only 1 retiree receiving a benefit. This Ordinance, unanimously adopted on First Reading on September 18, 2012, changes those 4 positions to be any of the following: an active employee, a former employee that is vested but not yet receiving a benefit, or a retiree receiving a benefit.

7. Second Reading of Ordinance No. 100, 2012, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the State Fiscal Year 2012-2013 Safe Routes to School Program.

The City of Fort Collins Transportation Planning Office has received a \$27,500 federal grant through the Colorado Department of Transportation for the FY 2012-13 Safe Routes to School program. This Ordinance, unanimously adopted on First Reading on September 18, 2012, appropriates the funding. The grant allows the City's Safe Routes to School Program, administered and staffed by Transportation Planning, to enhance its pedestrian and bicycle safety education programs.

8. Second Reading of Ordinance No. 101, 2012, Adjusting the Terms of the Youth Advisory Board to Coincide with the School Year.

At the request of the Youth Advisory Board, and at the direction of Council, this Ordinance, unanimously adopted on First Reading on September 18, 2012, amends the terms of members of the Youth Advisory Board so that terms begin June 1 and expire May 31. This change will allow newly appointed members to include Youth Advisory Board meetings and activities when planning for the upcoming school year. The Youth Advisory Board does not meet during the summer months.

The terms of all City boards and commissions expire on December 31 as required by Ordinance No. 070, 2000. This Ordinance provides that the next time the Boards and Commissions Manual is updated, the term expiration dates of the City Boards and Commissions will be addressed in the Manual.

9. Second Reading of Ordinance No. 102, 2012, Authorizing and Approving the Execution and Delivery by the City of a Site and Improvement Lease and a Lease Purchase Agreement and

Related Documents, Concerning the Leasing by the City of Open Space and Natural Areas, a Deicing Materials Storage Facility and a Centralized Police Services Building, to Refinance the City's 2004 Lease Agreement at a Lower Interest Rate; Ratifying Action Previously Taken; and Providing Other Matters Related Thereto.

This Ordinance, unanimously adopted on First Reading on September 18, 2012, authorizes the refinance of the 2004 Certificates of Participation (COPs). Bank of America has proposed terms for the new debt that result in a net present value savings of \$4.8 million and equates to 13.4% of the refunded principal. The 2012 debt will mature in the same time frames as before: Police through 2026, Natural Areas through 2019, and Transportation through 2024.

10. First Reading of Ordinance No. 103, 2012, Appropriating Prior Year Reserves and Unanticipated Revenue in Various City Funds.

The annual Clean-up Ordinance allows for the appropriation of expenses related to unanticipated revenue, grants and unforeseen costs that had not previously been budgeted. The details of these clean-up requests were reviewed by the Council Finance Committee on September 17, 2012. At that meeting it was requested that all use of prior year reserves be highlighted, as well as any changes not seen by the Committee. A table with the use of prior year reserves appears at the end of the Agenda Item Summary. The only items included in this Clean-up Ordinance that were not reviewed by the Council Finance Committee is a request for \$28,277 of unanticipated revenue in Forestry and \$200,000 for a tandem dump truck in the Water Fund.

The purpose of this annual Clean-Up Ordinance is to combine dedicated revenues or reserves that need to be appropriated before the end of the year to cover the related expenses that were not anticipated and, therefore, not included in the 2012 budget appropriation. The unanticipated revenue is primarily from fees, charges, rents, contributions and grants that have been paid to City departments to offset specific expenses. Prior year reserves are primarily being appropriated for unanticipated operation expenses from reserves that are set aside for that purpose. This Ordinance appropriates prior year reserves and unanticipated revenue in various City funds. The City Charter permits the City Council to provide by ordinance for payment of any expense from prior year reserves. The Charter also permits the City Council to appropriate unanticipated revenue received as a result of rate or fee increases or new revenue sources. If these appropriations are not approved, the City will have to reduce expenditures even though revenue and reimbursements have been received to cover those expenditures.

11. First Reading of Ordinance No. 104, 2012, Authorizing the Purchasing Agent to Enter into an Agreement for the Financing by Lease-Purchase of Equipment.

The City of Fort Collins is lease-purchasing desktop computers and laptops for various City departments. The cost of the items to be lease-purchased is \$294,000. Payments at the 2.28% interest rate will not exceed \$15,596 in 2013. Money for 2013 lease-purchase payments is included in the 2013 budget requests. The effect of the debt position for the purpose of financial rating of the City will be to raise the total City debt by 0.21%. A competitive process was used to select Pinnacle Public Finance for this lease. Staff believes acceptance of this lease rate is in the City's best interest.

12. First Reading of Ordinance No. 105, 2012, Amending Chapter 7 of the City Code Relating to Redistricting.

This Ordinance will amend Section 7-87(b) of the City Code to enact language that is consistent with the original intent that the City Clerk, within 18 months after the decennial publication of the U.S. Census, recommend district boundary changes necessary to ensure that, to the extent reasonably possible, there is no more than a 10% deviation between the most populous and the least populous Council district.

13. First Reading of Ordinance No. 106, 2012, Vacating the City's Interest in the Streets Known as Daisy Street and Columbine Street.

Daisy Street and Columbine Street have existed since 1956. The City has not found any record that would indicate that the street right-of-way has been dedicated to the City by plat or separate document, but the City believes that under the doctrine of "common law dedication" it is the legitimate owner of the streets. The roads are improved with curb, sidewalk and asphalt and have been maintained by the City. All lots adjacent to these two short street stubs have been included within the District at Campus West development proposal that was approved by administrative hearing on May 7, 2012 and upheld on July 17, 2012 after an appeal to overturn the approval of the administrative hearing of said project was heard at City Council. The property owner of the adjacent lots (the District at Campus West developer) has requested that Daisy Street and Columbine Streets be vacated to allow the parcels and the streets to be replatted to accommodate the multifamily development.

Vacations of public right-of-way are governed by City Code Section 23-115, which provides for an application and review process prior to submission to the City Council for formal consideration. The process includes review by potentially affected utility agencies, City staff, emergency service providers, and affected property owners in the vicinity of the right-of-way proposed to be vacated. This review process was followed in connection with this proposal, and based on comments received; the City Engineer has recommended that the vacation be approved.

All public and private utilities have been notified of the proposed vacation and they report no objections to the vacation.

14. Routine Easement.

Easement for construction and maintenance of public utilities from S. Edward and Phyllis Stoner, to install a telecommunication equipment for water meter readings for the Advanced meter Fort Collins Project.

**\*\*\*END CONSENT\*\*\***

Ordinances on Second Reading were read by title by City Clerk Nelson.

6. Second Reading of Ordinance No. 099, 2012, Amending the City Code and Adopting the First Amendment to the City of Fort Collins General Employees' Retirement Plan as

Amended and Restated January 1, 2012, to Change the Make-up of the General Employees Retirement Committee.

7. Second Reading of Ordinance No. 100, 2012, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the State Fiscal Year 2012-2013 Safe Routes to School Program.
8. Second Reading of Ordinance No. 101, 2012, Adjusting the Terms of the Youth Advisory Board to Coincide with the School Year.
9. Second Reading of Ordinance No. 102, 2012, Authorizing and Approving the Execution and Delivery by the City of a Site and Improvement Lease and a Lease Purchase Agreement and Related Documents, Concerning the Leasing by the City of Open Space and Natural Areas, a Deicing Materials Storage Facility and a Centralized Police Services Building, to Refinance the City's 2004 Lease Agreement at a Lower Interest Rate; Ratifying Action Previously Taken; and Providing Other Matters Related Thereto.
19. Second Reading of Ordinance No. 078, 2012, Amending Article XII of Chapter 23 of the City Code relating to Art in Public Places.

Ordinances on First Reading were read by title by City Clerk Nelson.

10. First Reading of Ordinance No. 103, 2012, Appropriating Prior Year Reserves and Unanticipated Revenue in Various City Funds.
11. First Reading of Ordinance No. 104, 2012, Authorizing the Purchasing Agent to Enter into an Agreement for the Financing by Lease-Purchase of Equipment.
12. First Reading of Ordinance No. 105, 2012, Amending Chapter 7 of the City Code Relating to Redistricting.
13. First Reading of Ordinance No. 106, 2012, Vacating the City's Interest in the Streets Known as Daisy Street and Columbine Street.

Councilmember Manvel made a motion, seconded by Councilmember Poppaw, to adopt all items on the Consent Calendar. Yeas: Weitkumat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

### **Staff Reports**

City Attorney Roy announced some letters were included this evening in the record relating to Council's consideration of an appeal of the Planning and Zoning Board's July 19, 2012 decision to approve Regency Lakeview Addition of a Permitted Use for Multi-Family Dwellings at Christ Center Community Church and Project Development Plan.

**Councilmember Reports**

Mayor Weitkunat announced the extension of the deadline for board and commission applications to October 17, 2012.

Councilmember Horak reported on the Platte River Power Authority meeting and discussed water leases and policies relating to those leases.

**Ordinance No. 078, 2012,  
Amending Article XII of Chapter 23 of the City Code  
Relating to Art in Public Places, Adopted on Second Reading**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*This Ordinance was unanimously adopted on First Reading on August 21, 2012. At that time, Council provided direction to staff and the Art in Public Places (APP) Board to reexamine the modification included in the Ordinance that caps the total annual contribution to APP from each Utility Fund (Water, Waste Water, Stormwater, and Light & Power) at \$100,000. A revised Ordinance is being presented for Second Reading that includes a revised cap option for Council consideration and approval.*

***BACKGROUND / DISCUSSION***

*On First Reading of this Ordinance, Council provided direction to staff and the Art in Public Places (APP) Board to reexamine the modification to the APP program that caps the total annual contribution to APP from each Utility Fund (Water, Waste Water, Stormwater, and Light & Power) at \$100,000. APP, Utility staff and the APP Board reviewed different options for the cap and are presenting for Council consideration on Second Reading a revised method of calculating the Utility cap.*

***APP UTILITY CAP REVISION FOR SECOND READING***

*Art in Public Places continues as a 1% program, meaning City capital projects with a budget over \$250,000 designate 1% of their project budget for art. The revised Ordinance for Second Reading includes the following APP cap for Utility projects:*

*The APP Utility contribution cap would be set as .5% of each Utility's annual budgeted Operating Revenue.*

- Operating Revenue is made up of the payments received from the rate payer.*
- Each Utility's revenue from the rate payer varies in accordance with the size of that Utility; therefore the cap would vary and be right-sized for each Utility fund.*
- This option specifically limits the maximum impact to the rate payer to no more than .5% of the Operating Revenue per Utility.*
- Using a percentage allows the cap amount to potentially change over time, if Operating Revenue increases or decreases, but never impact the rate payer more than .5%.*

- The cap limits contributions from the largest Utility projects. For example, the Mulberry Water Reclamation Project was budgeted at \$25,650,000 in 2009. The uncapped APP contribution was \$265,500. A cap calculated at .5% of Wastewater Operating Revenue would have been \$90,803 (.5% of \$18,160,570 Operating Revenue in 2009). Therefore the Wastewater APP contribution would have been capped at \$90,803, a reduction of \$165,967. Other large projects that would have been or will be capped under this scenario are the Spring Creek and Fossil Creek Basins; Canal Importation; Drake Water Reclamation Project; Halligan improvements; or service center improvements.

The Average Cap at .5% of Operating Revenue, based on 2008-2012 actuals, would be:

Light & Power:	\$461,813*
Water:	\$130,425
Wastewater:	\$90,491
Stormwater:	\$68,348

\*Because the Light & Power Operating Revenue is the highest of the four Utility Funds, averaging over \$90 million annually, the .5% cap is also the highest cap. A lower percentage cap on Light & Power could be considered. At .25%, the average cap on Light & Power would be \$230,906. Although still above the average Light & Power APP contribution amount of approximately \$73,836, the .25% cap would further limit potential Light & Power contributions to APP.

In 2012, the total Utility Budget is \$180,401,672 with Operating Revenues of \$164,341,682. Art in Public Places actual contributions were \$100,266 or .019% of the total Utility Budget. Below are two tables showing the Utility Rate Payer Typical Customer Bill for 2012 and 2013. The tables illustrate the relationship between APP and the rate payer bill, based on actual and projected APP budgets and show the maximum impact to the rate payer if the .5% or .25% of Operating Revenues caps is reached.

	2012 Rates Typical Cost/Month	2012 APP Actual per Rate Payer	APP Maximum .5% of bill	APP Cap .25% of bill
Electric	\$ 59.68	\$ 0.01	\$ 0.30	\$ 0.15
Water	\$ 33.66	\$ 0.06	\$ 0.17	\$ 0.08
Wastewater	\$ 30.26	\$ 0.04	\$ 0.15	\$ 0.08
Stormwater	\$ 14.26	\$ 0.01	\$ 0.07	\$ 0.04
Monthly Total	\$ 137.85	\$ 0.12	\$ 0.69	\$ 0.34
Annual Total	\$ 1,654.23	\$ 1.41	\$ 8.27	\$ 4.14

- (1) Electric total of 8075 kWh over 12 months (2010 monthly average use)
- (2) Water total of 98213 gallons over 12 months (2010 monthly average use)
- (3) Wastewater 4600 Gallons Winter Quarter Water Use
- (4) 8600 sq ft lot with light run off

	2013 Est. Rates Typical Cost/Month	2013 APP Actual per Rate Payer	APP Maximum .5% of bill	APP Maximum .25% of bill
Electric	\$ 62.26	\$ 0.01	\$ 0.31	\$ 0.16
Water	\$ 35.01	\$ 0.07	\$ 0.18	\$ 0.09
Wastewater	\$ 30.26	\$ 0.05	\$ 0.15	\$ 0.08
Stormwater	\$ 14.26	\$ 0.02	\$ 0.07	\$ 0.04

Monthly Total	\$ 141.79	\$0.15	\$ 0.71	\$0.35
Annual Total	\$ 1,701.48	\$1.79	\$ 8.51	\$4.25

Average Increases for 2013: Electric 4.33%; Water 4.%; Wastewater 0%; Stormwater 0%

The revised Ordinance on Second Reading includes the .5% of Operating Revenue cap option. The following two tables detail the past five years and next five years of Utility total budgets, Operating Revenue, actual or projected APP contributions from capital projects, and both the .5% and .25% cap options with impacts to APP for comparison.

<b>APP Utility Cap as .5% or .25% of Operating Revenue 2008-2012</b>						
	2008	2009	2010	2011	2012	Total
<b>Light &amp; Power</b>						
Total Budget	100,843,892	95,792,694	107,246,097	106,977,193	112,752,791	523,612,667
Operating Revenue	83,752,596	86,957,098	91,213,692	95,892,159	103,997,211	461,812,756
Actual contribution to APP	138,815	49,256	142,835	16,950	21,326	369,182
APP as % of Total Budget	.138%	.051%	.133%	.016%	.019%	0.071%
APP as % of Op Rev	.166%	.057%	.157%	.018%	.021%	0.080%
Cap at .5% of Op Rev	418,763	434,785	456,068	479,461	519,986	N/A
Reduction to APP w Cap	0	0	0	0	0	0
Cap at .25% of Op Rev	209,381	217,393	228,034	239,730	259,993	N/A
Reduction to APP w Cap	0	0	0	0	0	0
<b>Wastewater</b>						
Total Budget	31,681,336	50,588,597	23,115,680	22,431,628	21,235,473	149,052,714
Operating Revenue	16,305,707	18,160,570	17,622,768	18,713,219	19,688,506	90,490,770
Actual contribution to APP	89,000	256,500	28,750	38,050	24,450	437,750
APP as % of Total Budget	0.281%	0.507%	0.124%	0.170%	0.120%	0.294%
APP as % of Op Rev	0.546%	1.412%	0.163%	0.203%	0.129%	0.484%
Cap at .5% of Op Rev	81,529	90,803	88,114	93,566	98,443	N/A
Reduction to APP w Cap	7,471	165,697	0	0	0	173,169
Cap at .25% of Op Rev	40,764	45,401	44,057	46,783	49,221	N/A
Reduction to APP w Cap	48,236	211,099	0	0	0	259,334
<b>Water</b>						
Total Budget	30,618,969	40,031,414	32,851,744	30,370,924	32,063,681	165,936,732
Operating Revenue	26,789,947	25,430,648	26,448,689	25,008,022	26,748,036	130,425,342
Actual contribution to APP	35,850	123,550	72,400	40,600	47,000	319,400
APP as % of Total Budget	0.117%	0.309%	0.220%	0.134%	0.147%	0.192%
APP as % of Op Rev	0.134%	0.486%	0.274%	0.162%	0.176%	0.245%
Cap at .5% of Op Rev	133,950	127,153	132,243	125,040	133,740	N/A
Reduction to APP w Cap	0	0	0	0	0	0
Cap at .25% of Op Rev	66,975	63,577	66,122	62,520	66,870	N/A
Reduction to APP w Cap	0	59,973	6,278	0	0	66,252
<b>Stormwater</b>						
Total Budget	17,470,888	16,644,536	15,723,422	14,229,352	14,349,727	78,417,925
Operating Revenue	13,328,099	13,588,955	13,724,845	13,798,078	13,907,929	68,347,906
Actual contribution to APP	73,650	66,650	37,100	32,100	7,400	216,900
APP as % of Total Budget	0.422%	0.400%	0.236%	0.226%	0.052%	0.277%
APP as % of Op Rev	0.553%	0.490%	0.270%	0.233%	0.053%	0.317%



Cap at .5% of Op Rev	66,640	67,945	68,624	68,990	69,540	N/A
Reduction to APP w Cap	7,010	0	0	0	0	7,010
Cap at .25% of Op Rev	33,320	33,972	34,312	34,495	34,770	N/A
Reduction to APP w Cap	40,330	32,678	2,788	0	0	75,795

**APP Utility Cap as .5% or .25% of Operating Revenue 2013-2017**

	2013	2014	2015	2016	2017	Total
<b>Light &amp; Power</b>						
Total Budget	119,604,695	124,868,020	123,447,384	126,631,643	135,807,745	630,359,487
Operating Revenue	109,235,769	113,794,095	117,217,900	122,872,600	127,804,700	590,925,064
Projected contribution to APP	13,075	13,337	12,642	12,894	86,402	138,350
APP as % of Total Budget	0.011%	0.011%	0.010%	0.010%	0.064%	0.022%
APP as % of Op Rev	0.012%	0.012%	0.011%	0.010%	0.068%	0.023%
Cap at .5% of Op Rev	546,179	568,970	586,090	614,363	639,024	N/A
Reduction to APP w Cap	0	0	0	0	0	0
Cap at .25% of Op Rev	273,089	284,485	293,045	307,182	319,512	N/A
Reduction to APP w Cap	0	0	0	0	0	0
<b>Wastewater</b>						
Total Budget	22,471,641	21,190,275	22,078,143	22,350,465	20,529,664	108,620,188
Operating Revenue	19,450,506	19,524,904	20,110,651	20,713,971	21,335,391	101,135,423
Projected contribution to APP	33,563	39,864	50,000	50,000	30,000	203,427
APP as % of Total Budget	0.149%	0.188%	0.226%	0.224%	0.146%	0.187%
App as % of Op Rev	0.173%	0.204%	0.249%	0.241%	0.141%	0.201%
Cap at .5% of Op Rev	97,253	97,625	100,553	103,570	106,677	N/A
Reduction to APP w Cap	0	0	0	0	0	0
Cap at .25% of Op Rev	48,626	48,812	50,277	51,785	53,338	N/A
Reduction to APP w Cap	0	0	0	0	0	0
<b>Water</b>						
Total Budget	32,836,906	34,588,260	32,025,578	32,524,130	32,476,435	164,451,309
Operating Revenue	26,553,614	27,569,551	28,692,805	29,840,397	30,737,475	143,393,842
Projected contribution to APP	50,037	74,789	50,000	50,000	50,000	274,826
APP as % of Total Budget	0.152%	0.216%	0.156%	0.154%	0.154%	0.167%
APP as % of Op Rev	0.188%	0.271%	0.174%	0.168%	0.163%	0.192%
Cap at .5% of Op Rev	132,768	137,848	143,464	149,202	153,687	N/A
Reduction to APP w Cap	0	0	0	0	0	0
Cap at .25% of Op Rev	66,384	68,924	71,732	74,601	76,844	N/A
Reduction to APP w Cap	0	5,865	0	0	0	5,865
<b>Stormwater</b>						
Total Budget	13,857,411	14,046,997	12,343,383	13,553,945	12,971,959	66,773,695
Operating Revenue	13,853,000	13,974,000	14,043,870	14,114,089	14,184,659	70,169,618
Projected contribution to APP	23,129	25,040	26,857	27,394	27,942	130,361
APP as % of Total Budget	0.167%	0.178%	0.218%	0.202%	0.215%	0.195%
APP as % of Op Rev	0.167%	0.179%	0.191%	0.194%	0.197%	0.186%

Cap at .5% of Op Rev	69,265	69,870	70,219	70,570	70,923	N/A
Reduction to APP w Cap	0	0	0	0	0	0
Cap at .25% of Op Rev	34,633	34,935	35,110	35,285	35,085	N/A
Reduction to APP w Cap	0	0	0	0	0	0

### **UPDATES TO “ACCOUNTS ESTABLISHED” FOR SECOND READING**

APP worked with Finance to address the non-lapsing status of APP projects to improve accountability and transparency. This change was primarily addressed through an administrative policy change; however, in making the changes as requested, Finance is recommending some updates to the APP Code to accurately reflect the accounting process, update terminology, and make section titles clearer and more easily understood.

The updates recommended for consideration on Second Reading are as follows:

- *23-302 Definitions: remove the “APP reserve account” definition and add the new defined term “cost center” to accurately describe the fund for APP. Also remove the wording “reserve account” throughout the Ordinance.*
- *23-303 Accounts Established: retitle this section to “Accounting Methods” and revise language in the Code to explain where the money is going, use current terminology, and reflect the administrative change of budgets for works of art as non-lapsing. Administration and maintenance budgets will remain as lapsing. Utility funds will still be held separately, but the wording is updated.*
- *Change the headings for Sections 23-304, 23-305, 23-306 to more accurately reflect the three program levels of APP.*

### **FINANCIAL / ECONOMIC IMPACTS**

Implementing a cap on APP contributions from each Utility Fund (Water, Waste Water, Stormwater, Light and Power) as a calculation of .5% of the budgeted Operating Revenues in each fund will reduce the contributions from Utility Capital Projects to APP. If the .5% of Operating Revenue cap were in place from 2008-2012, \$180,179 would not have been contributed to the APP program from Utility capital projects, a reduction of 13%.

Compared to the \$100,000 cap proposed on First Reading, had it been in place for the same time period, \$261,700 would not have been contributed to APP from Utility capital projects.

Looking ahead (2013-2017) at the projected Utility capital projects, if the .5% of Operating Revenue cap is in place, APP Utility budgets will fall well below the projected cap amount, unless new projects are added.

### **BOARD / COMMISSION RECOMMENDATION**

The APP Board reviewed the revised Cap option at its September 19, 2012 meeting. The APP Board supports the .5% of Operating Revenue Cap as presented in the revised Ordinance.”

Jill Stilwell, Cultural Services and Facilities Director, introduced the Second Reading of the Ordinance.

Ellen Martin, Visual Arts Administrator, discussed the modifications approved by Council on First Reading. She stated staff is recommending capping utility contributions to the Art in Public Places (APP) program at 0.5% of each utility's annual budgeted operating revenue.

Stilwell stated utility capital projects over \$250,000 would continue to contribute 1% of their budgets to Art in Public Places. The proposed cap is a separate calculation based on the rate payers' payments into each utility. The cap limits the impact to the utility rate payers to a maximum of \$0.71 per month; however, the anticipated impact is expected to be \$0.15 per month. At this point, the anticipated Art in Public Places projects for the year should be funded in full, despite the cap.

York, Art in Public Places Board Chairman, stated the Board supports the proposed cap as a reasonable compromise.

Harry Rose, 504 Edwards Street, opposed a cap on funding for Art in Public Places and urged a flexible cap rather than a hard cap.

Carole Hossan, 504 Edwards Street, opposed a cap on funding for Art in Public Places.

Nancy York, 130 South Whitcomb, supported the subsidy of arts in the community and opposed changing the funding for Art in Public Places.

Beth Flowers, 200 West Mountain, Beet Street Executive Director, opposed a cap on funding for Art in Public Places.

Councilmember Manvel asked about the discontinuity regarding the Light and Power budget contribution. Marty Heffernan, Community Services Director, replied the operating budget for Light and Power is far greater than that of the other utilities; therefore, the 0.5% cap is quite a large number coming from that utility. The number of capital projects for Light and Power, and the other utilities, is quite modest over the next five years. The impact of the cap will be somewhat muted until a large capital project occurs. Over the past five years, given the number of capital projects, the impact of the cap would have been to cut about 13% of the Art in Public Places budget.

Councilmember Troxell asked about the meaning of non-lapsing. Stilwell replied non-lapsing accounts do not end at the end of a year.

Mayor Weitkunat stated she does not understand the rationale in using the operating revenues as the cap. Stilwell replied the operating revenues were used in order to limit the potential impact to rate payers.

Mayor Weitkunat stated it seems illogical to impose a cap that will never be achieved. Heffernan replied the cap, had it been in place over the last five years, would have had an impact. The overall capital projects for utilities over the next five years are fairly modest at this point; therefore, the cap would not apply.

Mayor Weitkunat noted there was never intent to end the Art in Public Places program; however, the funding being attached to utilities was never publically considered. She expressed concern regarding the large build-up of reserves with no projects to fund. Heffernan stated any large capital project will have the effect of having significant reductions on the APP budget.

Councilmember Horak made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 078, 2012, on Second Reading.

Councilmember Manvel noted there are several changes since First Reading.

City Attorney Roy clarified the Second Reading includes several changes, including the 0.5% cap.

City Manager Atteberry noted the Executive Summary of this item erroneously states the item was adopted unanimously on First Reading. Councilmembers Ohlson and Poppaw voted against adoption of the Ordinance on First Reading.

Councilmember Horak supported the compromise.

Councilmember Poppaw stated she would prefer no cap, but expressed appreciation for the compromise.

Councilmember Manvel thanked staff for work on the item and stated he would support the motion.

Councilmember Troxell stated he would support the motion and its compromise.

Mayor Weitkunat expressed appreciation for the compromise and stated she would support the motion despite her concerns regarding the extensive levels of reserves resulting from the program.

Councilmember Poppaw disagreed that the reserves were inappropriate.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

#### **Resolution 2012-092**

### **Supporting an Amendment to the United States Constitution That Would Limit Constitutional Rights to Natural Persons and Would State That Political Contributions and Expenditures Are Not Constitutionally Protected Speech, Adopted as Amended**

The following is staff's memorandum for this item.

#### ***“EXECUTIVE SUMMARY***

*City Council has directed staff to present a resolution urging the City's representatives in the U.S. Congress to propose an amendment to the U.S. Constitution stating that: (1) only human beings, not corporations, are entitled to constitutional rights; and (2) money is not speech, and therefore regulating political contributions and expenditures is not equivalent to limiting political speech. In*

a U.S. Supreme Court decision, *Citizens United v. Federal Election Commission*, the court held that those portions of the Bipartisan Campaign Reform Act of 2002 that prohibited expenditures on "electioneering communications" by corporations were an unconstitutional infringement on the First Amendment rights of corporations<sup>1</sup>. In response to the *Citizens United* decision, some cities, states and individual lawmakers have proposed amending the U.S. Constitution in the manner described above.

## **BACKGROUND / DISCUSSION**

The Bipartisan Campaign Reform Act of 2002 prohibited corporations and unions from using their general treasury to fund "electioneering communications" (broadcast advertisements mentioning a candidate) within 30 days before a primary or 60 days before a general election. The *Citizens United* decision held that portions of the Bipartisan Campaign Reform Act of 2002 that prohibited expenditures on electioneering communications by corporations were an unconstitutional infringement on the First Amendment rights of corporations. The *Citizens United* court held that the First Amendment does not permit restrictions on speech on the basis of the speaker's corporate identity. The court further held that the categorical ban on corporate political speech imposed by the applicable provisions of the Bipartisan Campaign Reform Act of 2002 could not be justified on the grounds that it was necessary to prevent quid pro quo corruption.

The *Citizens United* decision has resulted in several governmental entities and individual lawmakers proposing to amend the U.S. Constitution similar to or as described above. According to a website called "movetoamend.org", the list of local and state governments that have passed resolutions similar to the proposed resolution includes but is not limited to Boulder, CO, Seattle, WA, Telluride, CO, Albany, NY, Chicago, IL, and the State of Vermont."

Bruce Hendee, Chief Sustainability Officer, stated this Resolution is being brought forth at the request of Council.

Dan Weinheimer, Policy and Project Manager, noted this Resolution was brought forth by citizens and discussed the history of *Citizens United* and its case against the Federal Elections Commission. The information would likely go to the U.S. Congressional delegation if Council adopts the Resolution.

(Secretary's note: Councilmember Kottwitz arrived at this point in the meeting.)

City Attorney Roy stated the Resolution was slightly rewritten from the version presented by citizens.

Councilmember Horak noted this was not a citizen initiative, but was rather a suggestion for Council consideration. He stated he will support adding "and labor organizations" in two places in the Resolution.

Roger Dodds, 2102 Creekwood Court, thanked Council for its consideration of the item and thanked City Attorney Roy for his thoughtful changes to the Resolution. He supported the Resolution as written.

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<sup>1</sup> 558 U.S. 310 (January 21, 2010).

October 2, 2012

Cheryl Distaso, Fort Collins Community Action Network, supported the Resolution and thanked City Attorney Roy for his changes to the Resolution.

David Bell, Fort Collins resident, thanked Council for its consideration of the item. He supported the Resolution as written.

Eric Fried, 4255 Kingsbury Drive, stated corporations are not people and supported the Resolution as written. He discussed the differences between corporations and labor organizations.

Bob Overbeck, 302 Parker Street, supported the Resolution as written.

Nancy York, 130 South Whitcomb, supported the Resolution as written and discussed the idea that money is not speech.

Kevin Cross, 300 Peterson, supported the Resolution as written.

City Attorney Roy noted the version of the Resolution his office worked on was the product of a meeting held by Councilmember Horak and proponents of the item.

Councilmember Troxell asked how this impacts Fort Collins elections. City Attorney Roy stated the City does not regulate independent expenditures but does have a limit on direct contributions.

Councilmember Troxell asked how the City, as a municipality, relates to the Federal Election Commission. City Attorney Roy replied the City's elections are governed by the City Code as a home rule municipality.

Councilmember Troxell asked what other legal entities exist beyond corporations and labor unions. City Attorney Roy replied there are a number of legal entities including limited liability corporations, partnerships, and other kinds of associations. The Resolution only speaks to corporations and labor organizations because the portion of the federal act that was the subject of the case had to do only with those and with federal elections. The wording is such because the court's ruling was limited to invalidating that portion of the act and spoke to just those two types of entities. The implications of the ruling is likely to go beyond those two types of entities.

Councilmember Horak made a motion, seconded by Councilmember Manvel, to adopt Resolution 2012-092, with the addition of "labor organizations" in two places.

Councilmember Manvel expressed support for the Resolution and noted a change in the Constitution which would be supported by this Resolution would result in allowing Congressional representatives the ability to debate and decide the appropriate level for corporate contributions.

Councilmember Kottwitz stated this type of Resolution is not the role of city government and cautioned against its potential unintended consequences.

Councilmember Troxell stated this type of Resolution is not the role of city government and expressed concern regarding Council's consideration of non-binding issues.

Mayor Weitkunat stated she would not support the Resolution as it reflects the opinion of a citizen group and is not the appropriate role of local government.

Councilmember Horak stated local government does have the ability to affect change on a federal level.

The vote on the motion was as follows: Yeas: Manvel, Ohlson, Poppaw and Horak. Nays: Weitkunat, Kottwitz and Troxell.

THE MOTION CARRIED.

Mayor Weitkunat asked that the letter written to the U.S. Congressional delegation reflect the divided Council vote.

**Public Hearing on the 2013-2014 Recommended Biennial Budget for the City of Fort Collins, Hearing was Held**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*This is the second official public hearing on the City Manager's 2013-2014 Recommended Biennial Budget for the City of Fort Collins. The purpose of this public hearing is to gather public input on the 2013-2014 Budget. Public input will also be taken during the budget adoption meetings on Tuesday, October 16 and Tuesday, November 20, 2012 at 6:00 p.m. in the Council Chambers.*

*The City Manager's 2013-2014 Recommended Budget can be reviewed at the Main Library, the Harmony Branch Library, Council Tree Library, or the City Clerk's Office. The recommended budget can also be viewed online at [www.fcgov.com/budget](http://www.fcgov.com/budget).”*

Myles Crane, 4913 Langdale Court, supported the Senior Center expansion and requested the additional \$1 million in funding from Building Community Choices.

Irene Vernon, Poudre Canyon Road, supported funding for the Poudre School District after school programs.

Nancy York, 130 South Whitcomb, opposed the proposed funding for electric vehicle charging stations and supported additional funding for public transit.

Eric Sutherland, 3520 Golden Currant, opposed the budgeting process.

Cheryl Distaso, Fort Collins Community Action Network, supported funding for the Landscape to Xeriscape budget offer and more funding for Transfort and Dial-a-Ride services. She supported funding for the Poudre School District after school programs.

Bruce Henderson, Fort Collins resident, supported the Great Lawn budget offer.

Beth Flowers, 200 West Mountain, Beet Street Executive Director, supported the Great Lawn budget offer and supported funding for the Arts Incubator of the Rockies.

Alex Blackmer, Atmosphere Conservancy Executive Director, supported FortZed funding.

Harry Rose, 504 Edwards Street, supported funding for the Great Lawn and the Arts Incubator of the Rockies.

Bruce Freestone, 701 Peak Street, expressed support for arts funding, specifically the Great Lawn project.

Carole Hossan, 504 Edwards Street, supported funding for the arts, specifically the Arts Incubator of the Rockies project.

Dulcie Willis, Bas Bleu Theatre Company Executive Director, supported funding for the Great Lawn project.

Rachel Vernon, 204 North Roosevelt, supported funding for the Poudre School District after school programs.

Frank Martinez, 3815 Celtic Lane, supported funding for the Poudre School District after school programs.

York, Fort Collins resident, supported funding for the Great Lawn project and the Poudre School District after school programs.

Rob Cagen, 1225 Buttonwood Drive, supported funding for the Great Lawn budget offer.

Jim Cambon, 3517 Canadian Parkway, supported funding for the ClimateWise program.

(Secretary's note: The Council took a brief recess at this point in the meeting.)

**Consideration of an Appeal of the Planning and Zoning Board's July 19, 2012 Decision to Approve Regency Lakeview Addition of a Permitted Use for Multi-family Dwellings at Christ Center Community Church and Project Development Plan, Postponed**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*In April 2012, Regency Residential Partners submitted a request for an Addition of a Permitted Use for Multi-Family Dwellings in the Low Density Residential (R-L) zone district and Project Development Plan for an 11-acre parcel located on the east side of the Christ Center Community Church. The parcel is located at the southeast corner of Drake Road and Lemay Avenue. As proposed, the project consists of 175 dwelling units divided among eight buildings plus a clubhouse.*

*On July 19, 2012, the Planning and Zoning Board conducted a public hearing regarding an application for an Addition of a Permitted Use and for approval of the Regency Lakeview P.D.P.*



*After receiving testimony from the applicant, the public and staff, and after deliberation, the Board voted 4 – 2 to approve the request for an Addition of a Permitted Use for Multi-Family Dwellings, and then voted 5 – 1 to approve the Regency Lakeview Project Development Plan. On August 2, 2012, Andrew Lewis et. al., filed a Notice of Appeal alleging that the Planning and Zoning Board (1.) failed to properly interpret and apply relevant provisions of the Land Use Code and (2.) failed to conduct a fair hearing.*

## **BACKGROUND / DISCUSSION**

*The project consists of two components because a request for an Addition of a Permitted Use must be accompanied by either an Overall Development Plan or a Project Development Plan.*

*As mentioned, the project would consist of 175 dwelling units divided among eight buildings plus a clubhouse. There would be a mix of one, two and three-bedroom units. There would be 292 parking spaces divided among attached garages, detached garages and surface parking, and 283 bike spaces. Amenities would include a clubhouse, pool and walkways. There are no four bedroom units. Leases would be by the unit, not the bedroom. The dwelling units are intended to be leased at the market rate and do not include any public subsidy for affordable housing purposes. The applicant has indicated that there is no specific targeting of any one particular demographic group.*

*The existing stormwater detention pond at the south end of the parcel would be enlarged and improved as a two-acre, private pocket park. There would be no new access drives from either Lemay Avenue or Drake Road. The parcel is presently used as an athletic field as part of the 25-acre Christ Center Community Church campus.*

## **ACTION OF THE PLANNING AND ZONING BOARD**

*The Board took two actions:*

- Voted 4 – 2 to allow Multi-Family Dwellings in the R-L zone on the subject parcel only and as specifically depicted on the Regency Lakeview P.D.P.*
- Voted 5 – 1 to approve the Regency Lakeview P.D.P.*

## **THE QUESTIONS COUNCIL NEEDS TO ANSWER**

- 1. Did the Planning and Zoning Board fail to properly interpret and apply relevant provisions of the Land Use Code?*
- 2. Did the Planning and Zoning Board fail to conduct a fair hearing in that the Board exceeded its authority or jurisdiction as contained in the Land Use Code or Charter?*
- 3. Did the Planning and Zoning Board fail to conduct a fair hearing in that the Board substantially ignored its previously established rules of procedure?*
- 4. Did the Planning and Zoning Board fail to conduct a fair hearing in that the Board considered evidence relevant to its findings which were substantially false or grossly misleading?*

**ALLEGATIONS ON APPEAL**

**A. Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code Specifically Section 1.3.4(A)(1).**

*Land Use Code Section 1.3.4(A)(1) reads as follows:*

*“Such use is appropriate in the zone district to which it is added.”*

*The appellants assert that Multi-Family Dwellings, as indicated by the Regency Lakeview P.D.P., are not appropriate within the R-L zone district because the R-L zone is for low density housing, not multi-family housing.*

*The Planning and Zoning Board not only considered the underlying zoning but also evaluated the context of the individual parcel and its relationship to the surrounding area. Given the site’s location within this existing urban context, the addition of Multi-Family Dwellings, at this particular location, was considered appropriate.*

*As noted in the transcript (page 59, lines 20 – 23), board member Schmidt commented:*

*“I was on the Board when the church came for the rezone several years ago, and I think at that time, I supported, actually, the rezoning. I thought the higher density housing was appropriate in this area because of the two arterials; the City’s commitment to the infill. ”*

*Also as noted in the transcript (page 61, lines 35 – 39), board member Smith commented:*

*“So, with that said, I still looked at this one as being, you’ve still got to fit the zone district. Is this... is it more appropriate for this to be rezoned or is it going to be acceptable and appropriate to go through the Addition of a Permitted Use process? And, so, looking at it line by line, it does seem that it does fit all the criteria that’s laid out to be accepted for an addition of a permitted use.”*

**B. Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code Specifically Section 1.3.4(A)(2).**

*Land Use Code Section 1.3.4(A)(2) reads as follows:*

*“Such use conforms to the basic characteristics of the zone district and the other permitted uses in the zone district to which it is added.”*

*The appellants state that adding Multi-Family Dwellings to the R-L zone does not conform to the basic characteristics of the zone and other permitted uses.*

*The Planning and Zoning Board discussed this standard. As noted in the transcript (page 61, lines 40 – 42 and page 62, lines 1 – 2) board member Schmidt commented:*

*"I just wanted to say quickly, too, I think I had a concern, too, whether the addition of a permitted use was the right way to go with this, and I think, again, because we're keeping it residential, which goes with the character of the neighborhood. You've got a project that has garages, so I think when people, you know, have cars, these are going to be the kinds of tenants who are going to want to stay and become a part of the neighborhood."*

*Also as noted in the transcript (page 62, lines 10 – 14), board member Smith commented:*

*"...by and large, the zone districts in the city expect a high degree of mixed-use, every one of them essentially. And so, when I got into the purpose statement of the RL, which, again, it is one sentence. And it talks about predominant single-family residential areas, located throughout the city which were existing at the time of adoption of the Land Use Code. This is clearly a hold-over in order to be able to accommodate some large swaths of land that were going through the process."*

**C. Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code Specifically Section 1.3.4(A)(3).**

*Land Use Code Section 1.3.4(A)(3) reads as follows:*

*"Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the zone district to which it is added."*

*The appellants state that the addition of Multi-Family Dwellings as indicated by the Regency Lakeview P.D.P. would create more adverse impacts than the amount normally resulting from the other permitted uses in the R-L zone.*

*The Planning and Zoning Board evaluated this criterion. For example, as noted in the transcript (page 61, lines 7 – 23), board member Smith commented:*

*"And so, holding that up against what the criteria for Additions of a Permitted Use are, I went through each one. I've looked at each one of them. Clearly, it's not a medical marijuana dispensary, or cultivation facility, not specifically listed as a permitted use. Went through each one of them, and I think what it boiled down to me for was that, ultimately, you get into some of these tangible effects, how a property performs as it's proposed, to whether it's going to, you know...relative to what would be otherwise approved, if it were to be specifically allowed and permitted by the Code. Does it create more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences, and there's a litany of these, and I think everybody in the room has gone through and seen what these all are. And, then I think about...as I think the applicant had said that, you know, the way that this is set up is that you actually invite that analysis of being able to look at the*

*project as proposed, relative to something that were to be just explicitly allowed by the Code, and whether or not it would be excessive as it performs in the neighborhood beyond what is... a project that would just, by right, approved. I could not come up...I could not be convinced that this project would be creating any more adverse effects than, say, if the church were to go and fully develop out a campus, for instance, that had a lot of different uses, including a school."*

*In summary, the Board found that the request for Multi-Family Dwellings, as proposed on the subject parcel and the accompanying P.D.P., complies with the applicable criteria related to adverse impacts. The Board found that the project would not create any more offensive or adverse impacts or any other objectionable influences than the amount normally resulting from the other permitted uses listed in the R-L zone.*

**D. Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code Specifically Section 1.3.4(B).**

*Land Use Code Section 1.3.4(B) reads as follows:*

*"The Planning and Zoning Board may add a proposed use if the Board specifically finds that such use would not be detrimental to the public good."*

*The appellants assert that by using the Addition of a Permitted Use process is improper because it is in effect a rezoning.*

*The Planning and Zoning Board evaluated this criterion. For example, as noted in the transcript (page 60, lines 7 – 9), board member Carpenter commented:*

*"I guess when I look at this, I...on the question of whether this is detrimental to the public good, I just cannot see that it is. It's city-wide, it fits City Plan, it is what we wanted to do with City Plan, so I really can't see that it is detrimental to the public good."*

*Also as noted in the transcript (page 59, lines 20 – 28), board member Schmidt commented:*

*"I was on the Board when the church came for the rezone several years ago, and I think at that time, I supported actually, the rezoning. The members of the Board, I'll speak for some of them that aren't here anymore, I think had a concern that if you just rezone, it makes things more unpredictable for the neighborhood, and you could get commercial, you could get different things. And, so, our direction to the church at the time was, we'd like to see a specific project and then the neighbors could weigh in and see how compatible that is. So, I think the church has taken that direction and tried to move forward with something to actually present and use the Addition of a Permitted Use process to do that."*

**E. Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code Specifically Section 1.3.4(A)(4) and 1.3.4(B).**

*Land Use Code Section 1.3.4(A)(4) reads as follows:*

*"Such use is compatible with the other listed permitted uses in the zone district to which it is added."*

*Land Use Code Section 1.3.4(B) reads as follows:*

*"The Planning and Zoning Board may add a proposed use if the Board specifically finds that such use would be in compliance with the requirements and criteria contained in Section 3.5.1."*

*Section 3.5.1 of the Land Use Code addresses issues related to project compatibility with the surrounding area. It is considered in conjunction with the definition of compatibility which is as follows:*

*"Compatibility shall mean the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals in maintaining the character of existing development."*

*The appellants assert that Multi-Family Dwellings are not compatible with the existing single family detached homes by virtue of the fact that the two uses are incongruent. Further, the assertion is made that Section 3.5.1 only addresses physical and operational characteristics of buildings and cannot be used in a compatibility analysis.*

*The Board evaluated these two criteria. As noted in the transcript (page 60, lines 2 – 5), board member Schmidt stated:*

*"So I can see that in all the design work that they've put into this project, they've tried to make it as compatible as possible to the neighborhood, and have the least impact on the surrounding neighbors, and I really appreciate that."*

*Also as noted in the transcript (page 60, lines 20 – 22), board member Campana commented:*

*"And, frankly, I think that the design is very good. I think you've done...as I put on my designer hat, I think you've done about everything you can to transition, buffer, mitigate an existing neighborhood."*

*In summary, the Board evaluated the proposed use not in isolation but in conjunction with the various characteristics as found in the aforementioned definition. Considerable testimony was provided to the Board regarding how the project would be compatible with the surrounding neighborhood. For example, the project is designed with a specific objective to buffer the existing neighborhood to the east with landscaping, building setbacks, one-story garages, architectural detail and varying building heights. To the south, buffering is achieved by virtue of open space gained by the stormwater detention pond, approximately two acres in size, which would be upgraded*

to a pocket park. Finally, the traffic impact on surrounding streets was evaluated and determined to comply with the adopted level of service standards.

**F. The Board Failed To Conduct a Fair Hearing By Considering Evidence Relevant To Its Findings Which Was Substantially False Or Grossly Misleading – Section 3.6.4.**

Land Use Code Section 3.6.4 reads as follows:

*“All development plans shall adequately provide vehicular, pedestrian and bicycle facilities necessary to maintain the adopted transportation Level of Service standards contained in Part II of the City of Fort Collins Multi-modal Transportation Level of Service Manual for the following modes of travel: motor vehicle, bicycle and pedestrian. The Transit LOS standards contained in Part II of the Multi-modal Transportation Manual will not be applied for the purposes of this Section.”*

*This assertion relates to the motion to approve the PDP. The appellants assert that the pedestrian level of service cannot be achieved because there are no medians in either arterial street which would act as pedestrian refuge islands. Further, the assertion continues that, as stated by the applicant’s traffic engineering consultant, since the existing sidewalks along both arterials would not be deconstructed and then reconstructed to feature detached sidewalks separated by parkways, the pedestrian level of service cannot be achieved. It is asserted that new medians and sidewalks can indeed be installed as there appears to be sufficient land area in which to retrofit these improvements.*

*In addition, the allegation is that traffic information provided to the board did not properly assess the potential traffic patterns across the existing church parking lot in order to gain access to Lemay Avenue. Evidence was presented to the Board by the applicant’s traffic engineering consultant that the north access (which aligns with Scotch Pines shopping center) would be used more frequently than the southern access (which aligns with Strachan Drive) and yet there is no basis for this assumption. Traffic using the using the southern access will impact the neighbors to the south.*

*Finally, the allegation is that the traffic delay analysis of traffic leaving the church or neighborhood onto Lemay Avenue was not properly considered.*

*With regard to the pedestrian level of service, the applicant’s traffic engineering consultant addressed the Board. This testimony is on page 48, lines 1 - 11 of the transcript.*

*In addition, on page 54, lines 35 – 38 of the transcript, there was this exchange:*

*“Boardmember Kirkpatrick: Just to confirm, where there are no plans to put medians on Lemay are there?”*

*“Mr. Stanford (City of Fort Collins Traffic Engineer): None that I am aware of. I think it would be difficult just to find the room to do it with the current build-out characteristic.”*

*With regard to the existing attached sidewalks on Drake Road and Lemay Avenue, the following testimony was provided to the Board by the applicant's traffic engineering consultant (transcript page 48, lines 1 – 5):*

*“In the traffic study, we talked about the fact that under the pedestrian level of service criteria, that some criteria could not be met. On site, all of the criteria would be met, but off site, since this is an older area of Fort Collins, standard streets and sidewalks and so on were built under previous standards, not the Larimer County Urban Street Standards. The fact of the matter is you can't meet them.”*

*The Board had no follow-up discussion regarding this matter.*

*With regard to traffic patterns across the existing church parking lot, the fundamental design objective is to minimize traffic from the apartments from traveling along the length of the southern property line which is separated from the back yards of the existing houses by a six foot high solid privacy fence. Residents along this shared property line indicated at the neighborhood meetings a preference for this traffic to be directed away from their back yards. In response, the site plan was revised such that Regency Lakeview traffic heading west to Lemay Avenue would be directed as far to the north as possible in order to prioritize the north access (which aligns with Scotch Pines shopping center).*

*Consequently westbound drivers will traverse the parking lot at the north edge of the parking lot away from the houses. While it may be possible for these drivers to decide to exit at the southern driveway (which aligns with Strachan Drive on the west side of Lemay Avenue), instead of the north driveway (which aligns with the shopping center drive), for the most part, this traverse is north of the existing houses. Diverting this traffic pattern thus accomplishes the essence of the design intent which is to minimize the impact along the southern property line.*

*Regarding the church south access, and traffic delay, the City's traffic engineer, Ward Stanford, states on page 53, lines 12 – 20:*

*“The development has done efforts to try and move the traffic to the north access, which we applaud. And, the south access is expected much lower quantities of traffic. We also don't have an existing accident history there for that characteristic. So, I'm assuming that the motorists are pretty cognitive of it, and will continue to be able to drive adequately to use it appropriately. At this point, we don't have a concern with that characteristic. Will it possibly cause a little delay to somebody exiting when they're trying to consider what the other person may be doing? Yes, they certainly can. Is it going to be a common, frequent activity? We don't believe so. If it does become something of an accident quantity, it's also an aspect that we have a responsibility to address, and at that time, that we will do so.”*

*Regarding the church north access, the City's traffic engineer, Ward Stanford, states on page 54, lines 5 – 12:*

*“Let's see, in ...the north access to the church on Lemay, or...which will be their access also (Regency Lakeview), we don't see it as being an exit or entrance problem, basically, just to the geometric layout, the left turns don't conflict with each*

*other. And, we do expect...it was at my direction, the basically, the distribution of traffic. And, we expect that most of the traffic that's going towards Lemay from the side (site), or using Lemay from the side (site), will either be going north, towards the higher business area, or to the west, to the also higher business area. And, so, with that, the right turn out there is the higher movement anyway than the left turn." (Parentheticals added for clarity.)*

**G     *The Board Failed To Conduct a Fair Hearing By Exceeding Its Authority and Ignoring Its Previously Established Rules of Procedure***

*This assertion relates to the motion to approve the PDP. The appellants contend that the Planning and Zoning Board failed to conduct a fair hearing primarily because they failed to consider that the level of service for pedestrians falls below the required minimum.*

*This is the same assertion as in the previous section and is repeated but under a different ground for appeal. As stated in the preceding section:*

*With regard to the existing attached sidewalks on Drake Road and Lemay Avenue, the following testimony was provided to the Board by the applicant's traffic engineering consultant (transcript page 48, lines 1 – 5):*

*"In the traffic study, we talked about the fact that under the pedestrian level of service criteria, that some criteria could not be met. On site, all of the criteria would be met, but off site, since this is an older area of Fort Collins, standard streets and sidewalks and so on were built under previous standards, not the Larimer County Urban Street Standards. The fact of the matter is you can't meet them."*

*The Board had no follow-up discussion regarding this matter."*

City Attorney Roy provided a brief explanation of the appeal process and noted only parties-in-interest are allowed to speak at this appeal hearing. He stated there were some letters that had been submitted to the Planning and Zoning Board prior to its hearing that were initially omitted from the Council packet. Those letters were provided to Council today and made available to certain parties-in-interest earlier today. Those letters were also made available earlier this evening for meeting attendees.

Mayor Pro Tem Ohlson asked about the time limits. City Attorney Roy replied the initial presentations are usually twenty minutes with a ten minute rebuttal time. However, the Code allows the Mayor to establish those time limits.

Kathryn Dubiel, 2936 Eindborough Drive, stated the additional letters were not provided to Council until this afternoon and suggested their late receipt violates the rules of procedure for the record of appeal. She also stated there was a misclassification of some documents received by Council and stated there were parties-in-interest who did not receive notice of the appeal hearing.

Mayor Weitkunat asked if any Councilmembers needed additional time to read the letters in question.



Laurie Kadrich, Community Development and Neighborhood Services Director, stated she was unaware of the notification issue. City Clerk Nelson stated she would need to do additional research regarding the notification issue.

Councilmember Horak asked what redress Ms. Dubiel would like. Ms. Dubiel replied that responsibility should not be placed with her.

Paul Patterson, 2936 Eindborough Drive, stated the Planning and Zoning Board did not receive the same PowerPoint presentation as did Council and opposed the order of questions as presented in a document summarizing the Council site visit.

Ted Shepard, Chief Planner, stated the font was enlarged for the street names on some of the slides. He stated he was asked by the City Attorney's Office and the members of Council who attended the site visit to write a summary of that visit.

Lucia Liley, attorney for the applicant, stated the record should be corrected; however, the applicant does not have any procedural issues.

City Attorney Roy stated Council could vote to continue the item due to the irregularities.

Councilmember Horak made a motion, seconded by Councilmember Poppaw, to postpone the appeal hearing in order to allow time for the correction of procedural issues and accurate re-notification.

Mayor Pro Tem Ohlson suggested the possibility of holding the hearing on a different night given Council's full schedule.

Mr. Lewis, appellant, stated he supported postponement.

Ms. Liley stated the postponement would negatively affect the applicant; however, the applicant would like to participate in a fair hearing and would not have any objection to a postponement, if necessary.

The vote on the motion was as follows: Yeas: Kottwitz, Horak, Troxell, Poppaw, Manvel, Ohlson and Weitkunat. Nays: none.

THE MOTION CARRIED.

City Attorney Roy noted the appeal hearing should be heard within 75 days of the filing of the appeal. He asked if there is any objection to going beyond that timeframe.

Ms. Liley stated the applicant would be willing to waive any objection to that timeframe as long as the re-hearing is scheduled as expeditiously as possible.

City Manager Atteberry stated the October 16 agenda is full.


Ms. Liley asked if the City would provide re-notification and asked about the timeframe for that notice. City Clerk Nelson stated re-notification would occur.

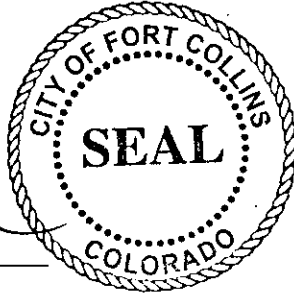
October 2, 2012

Mayor Weitkunat stated the appeal hearing will be postponed until a date agreeable to all parties is agreed upon.

**Adjournment**

The meeting adjourned at 9:30 p.m.

  
\_\_\_\_\_  
Mayor



ATTEST:

  
\_\_\_\_\_  
City Clerk