

April 29, 2013

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting - 6:00 p.m.

An adjourned meeting of the Council of the City of Fort Collins was held on Monday, April 29, 2013, 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: Campana, Cunniff, Horak, Overbeck, Poppaw, Troxell, and Weitkunat.

Staff Members Present: Atteberry, Nelson, Roy.

Continuance of Items Relating to the Foothills Mall to May 7, 2013.

The following is the staff memorandum for these items.

“EXECUTIVE SUMMARY

Staff has proposed that the Midtown Urban Renewal Plan be amended to authorize the use of tax increment financing in the Foothills Mall area of the Plan, in connection with the furtherance of a proposed redevelopment of the Foothills Mall for the eradication of blight under the Plan. As required in connection with such an amendment, notice of a public hearing on the Plan amendment for April 29, 2013 was provided to all property owners, residents, and owners of business concerns in the Urban Renewal Area, and to Larimer County, and was published in the Fort Collins Coloradoan.

In addition, amendments to the Service Plan of the Foothills Metropolitan District related to the redevelopment of Foothills Mall have also been proposed. Notice of a public hearing for April 29, 2013 on the proposed amendments was published and mailed, as required by City policy.

Staff is requesting that each of the two public hearings described in the notices and consideration of the related items be continued to May 7, 2013, to allow further time for development of the details of a related redevelopment and reimbursement agreement, as well as a related preliminary agreement with Larimer County.

BACKGROUND / DISCUSSION

Urban Renewal Plan Amendment

The Midtown Urban Renewal Plan (Plan) was adopted by the Urban Renewal Authority (URA) Board in September 2011, and ratified and reaffirmed February 2013. The purpose of the Plan is to provide the URA the opportunity to use tax increment financing (TIF) to remediate blighted

conditions through development and redevelopment. In July 2012, Walton Foothills Holdings IV, LLC (Owner), purchased Foothills Mall and adjacent property with the intent to complete a significant redevelopment.

An Agreement to Negotiate was executed between the Owner and the URA in November 2012, and discussions with regard to the public financing package have been occurring since; one component of the package being TIF via the URA. In order to utilize TIF, City Council must first amend the existing Plan and create a TIF District. Once a TIF District is created, the URA is permitted to collect incremental tax revenue for a period of up to 25 years.

Notice was mailed to all property owners, residents, and owners of business concerns in the Urban Renewal Area on March 29, 2013, and published in the Fort Collins Coloradoan on March 29, 2013, that a public hearing would be held by the City Council on April 29, 2013, for the purpose of amending the Plan to authorize the use of tax increment financing in the Foothills Mall area of the Plan, as well as other undertakings and activities in accordance with the Colorado Urban Renewal Law, Sections 31-25-101, et seq., C.R.S. In addition, required notice and an estimation of fiscal impacts was provided to Larimer County on January 25, 2013.

Foothills Metropolitan District Service Plan Amendment

In addition, to allow the use of the Foothills Metropolitan District (District) to raise revenues and incur debt in connection with the Redevelopment and Reimbursement Agreement currently being prepared for City Council consideration on May 7, 2013, amendments to the Service Plan for the District are required. An initial Service Plan for the District was approved by the City Council on September 4, 2012, and the District was subsequently formed after approval by the voters in the District area. The initial Service Plan did not authorize the District to move forward to fund, build or finance improvements, with the expectation that approval of amendments would be proposed for Council consideration to the extent required to carry out the purposes of the District, in light of the specific redevelopment project plans and the related financing terms.

Procedures for approval and amendment of metropolitan district service plans are set out in the City's metropolitan district policy (adopted by the Council on July 15, 2008). In addition to published notice of a required public hearing, the City's policy also requires that notice be mailed to all owners of property within the District service area. Notice of a public hearing on a proposed amendment to the District Service Plan scheduled for April 29, 2013, was published, and notices have been mailed to all owners of property within the District area as required in the City policy.

Staff is requesting that each of the two public hearings described in the notices, and consideration of the related items, be continued to May 7, 2013, in order to allow further time for development of the details of a related redevelopment and reimbursement agreement, as well as a related preliminary agreement with Larimer County.

FINANCIAL / ECONOMIC IMPACTS

Continuation of the Public Hearings has no direct financial/economic.

ENVIRONMENTAL IMPACTS

Continuation of the Public Hearings has no direct environmental impacts."

Mayor Weitkunat withdrew from the discussion of this item due to a conflict of interest.

Mayor Pro Tem Horak stated this continuance will provide additional time for community input and allow staff to develop a complete package of responses to questions.

Eric Sutherland, 3520 Golden Currant, suggested the continuance to May 7 does not allow enough time for community input. He opposed the business assistance package for the mall as a poor economic choice.

Thomas Edwards, Fort Collins Bicycle Coalition, suggested having a bicycle valet in the Midtown area.

Councilmember Poppaw made a motion, seconded by Councilmember Campana, to continue the Public Hearing and Consideration of Amendments to the Midtown Urban Renewal Plan to Authorize the Use of Tax Increment Financing in the Foothills Mall Area of the Plan to May 7, 2013.

Councilmember Cunniff stated this is the minimum amount of delay needed.

Councilmember Poppaw encouraged staff to explore a date even further out. City Manager Atteberry replied staff has worked with the applicant who has indicated any date later than May 7 is problematic in terms of meeting commitments. Per feedback from Council, a great deal of information has been placed on the City's web page and public outreach has begun in force.

Councilmember Poppaw stated she has received comments from constituents indicating confusion with some of the language falsely suggesting District 2 is going to be taxed. She noted the issue is complicated and that this type of extreme misunderstanding is occurring with residents. She expressed concern regarding the fact that Council should be aiding citizens rather than meeting a timeline of a developer.

City Manager Atteberry stated the replay of the Foothills Mall Work Session has run on Channel 14 more often than usual and reiterated that May 7 is as long as this item can be postponed.

Mayor Pro Tem Horak suggested citizen misconceptions be directly addressed by staff at the May 7 hearing.

Councilmember Cunniff expressed concern that not all of the citizen concerns can be resolved by May 7 and stated he would have difficulty supporting the project should that be the case.

The vote on the motion was as follows: Yeas: Poppaw, Horak, Overbeck, Troxell, Cunniff and Campana. Nays: none.

THE MOTION CARRIED.

Councilmember Poppaw made a motion, seconded by Councilmember Troxell, to continue the Public Hearing and Consideration of Amendments to the Foothills Metropolitan District Service Plan Relating to the Foothills Mall to May 7, 2013.

Mayor Pro Tem Horak stated the City would like to engage the County in discussions regarding working together on this Urban Renewal Authority project.

The vote on the motion was as follows: Yeas: Horak, Overbeck, Troxell, Cunniff, Campana and Poppaw. Nays: none.

THE MOTION CARRIED.

**Ordinance No.068, 2013, Authorizing the
Conveyance of a Non-Exclusive Utility Easement to
Public Service Company of Colorado, Adopted on First Reading**

The following is the staff memorandum for these items.

“EXECUTIVE SUMMARY

This Ordinance conveys a Non-Exclusive Utility Easement to Public Service Company of Colorado (“PSCo”).

The City of Fort Collins staff worked with PSCo over the past several months to determine the alignment of and mitigate the impacts for a new 16-inch high pressure gas transmission line within city limits. The project is designed and construction is expected to start in May 2013. Most of the City issues were addressed, and City Council approved easements in Natural Areas and adopted Resolution 2013-022 on March 19, 2013, directing the use of the payments from PSCo be used for natural areas and trails.

There was continuing concern, however, about the proposed location of the pipeline in private property at the northwest corner of Harmony Road and Shields Street. Although this was primarily an issue of concern between the property owner and PSCo, the City expressed concern over the impacts on future commercial development at the site. At its March 19 meeting, City Council directed the City Manager to follow up with PSCo on this issue. Following several conversations with senior PSCo executives and project staff, they agreed in principle to relocate the pipeline within the Shields Street right-of-way if the City agreed to pay for any relocation of the approximately 2,000 feet of line adjacent to the property that may be necessary in the next fifteen years.

This is a low-risk option, given the location of the pipeline in the Shields Street right of way. PSCo is redesigning the pipeline within the Shields Street right-of way. In order to document this agreement between the City and PSCo, staff recommends a Non-Exclusive Pipeline Easement within the Shields Street right-of-way.

BACKGROUND / DISCUSSION

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting easements within the Shields Street right-of-way to construct, operate, and maintain a high pressure gas

pipeline. The proposed project is part of the larger West Main Natural Gas Pipeline Replacement Project (West Main Project) that encompasses Larimer, Weld, and Boulder Counties. The project will replace an existing eight-inch gas pipeline that is 83 years old and at the end of service life, with a 16-inch high pressure gas pipeline. The proposed project will traverse the city north to south and will impact the road surface and traffic along Shields Street, Horsetooth Road, McClelland Drive, Drake Road, and Timberline Road.

PSCo is authorized in Section 6 of the City Code to construct, operate and maintain gas facilities within the public right-of-way. Much of this project's pipeline will be located in the right-of-way. PSCo company policy encourages the use of undeveloped property if it is available, so they designed the line to veer west across Shields and into private property at the northwest corner of Harmony and Shields. The owners of that property strongly objected and PSCo initiated eminent domain action to acquire an easement on the property. This action is primarily between PSCo and the property owners, but the City has an interest in the implementation of its Structure Plan, and the expected commercial development of the property.

At the City's request, PSCo agreed to amend the design to move the line away from the private property and into the right-of-way in this 2,000-foot stretch. However, PSCo asked that the City guarantee they will not have to relocate the line for fifteen years, with an extension of five years if the private property is not yet developed. This is an extremely low-risk possibility because of the location and depth of the line. That is the intent of this easement.

FINANCIAL / ECONOMIC IMPACTS

The approval of the easement will eliminate the impacts of the gas transmission line on future commercial development at the site on the northwest corner of Harmony Road and Shields Street (designated as a neighborhood shopping center). If the City requires the pipeline within the easement to be relocated within 15 years of installation, the relocation would be at the City's expense.

ENVIRONMENTAL IMPACTS

The proposed re-alignment for the project will avoid impacts to the private property and place the pipeline in the public right-of-way.

PUBLIC OUTREACH

Three open houses were held in Larimer County to share the overall plan with the public. A total of 3,409 property owners within 750 feet of the preferred and alternate pipeline routes within Fort Collins were notified of the meetings.

Open houses were held as follows:

- February 29, 2012 at the Walt Clark Middle School in Loveland from 4 to 7 pm.
- March 8, 2012 at the Fort Collins Marriott in Fort Collins from 4 to 7 pm.
- October 25, 2012 at the Lincoln Center in Fort Collins from 4 to 7 pm.

In addition, a West Main project website (www.xcelenergywestmainpipeline.com) was created to provide updated information on the project and related open houses."

Rick Richter, City Engineer, stated this item relates to a utility easement for Public Service Company within the Shields Street right-of-way. This easement will allow staff to resolve a question about the location of a new transmission line needed to replace an aging pipeline. Richter detailed the location of the new transmission line throughout the city and noted this easement is a fifteen year easement and it differs from other locations in the right-of-way in that, should the City request the relocation of that line within that fifteen years, it would be at the City's cost.

Karen Cumbo, Planning, Development, and Transportation Director, stated Public Service Company has been pursuing acquisition of the easement on the private property at the northwest corner of Harmony and Shields via eminent domain and a hearing has been scheduled for May 14. She thanked Council for considering the item in order to allow resolution prior to that date.

Councilmember Cunniff noted the Environmental Impacts section of the staff report does not address actual environmental impacts.

Councilmember Troxell stated there have been a number of discussions relating to environmental impacts regarding this project and stated Xcel has given over \$2 million to the City's Natural Areas program in addition to the mitigation. Richter confirmed that information and added this shift to the right-of-way would eliminate surface damage if it is bored within the roadway.

Councilmember Troxell expressed support for the item, particularly in light of the eminent domain issue. He commended the City Manager and staff for addressing the item with Xcel.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 068, 2013, on First Reading.

Mayor Pro Tem Horak thanked Councilmember Troxell for bringing this issue forward and commended staff for work on the item.

Councilmember Cunniff agreed this is a better solution.

The vote on the motion was as follows: Yeas: Weitkunat, Overbeck, Troxell, Cunniff, Campana, Poppaw and Horak. Nays: none.

THE MOTION CARRIED.

Executive Session Authorized

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, that the Council go into Executive Session for the purpose of meeting with the City Attorney, City Manager, and other affected members of the City staff to discuss potential litigation and related legal issues as permitted under Section 2-31(A)(2) of the City Code.

Councilmember Cunniff asked if public comment could be entertained regarding this item. City Attorney Roy replied the rules indicate each agenda item allows one opportunity for citizen input.

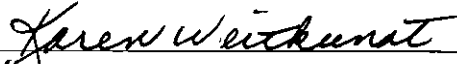
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The vote on the motion was as follows: Yeas: Overbeck, Troxell, Cunniff, Campana, Poppaw, Horak and Weitkunat. Nays: none.

THE MOTION CARRIED.


Adjournment

The meeting adjourned at 8:05 p.m.



Mayor

ATTEST:



City Clerk

