

August 18, 2015

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

Staff Present: Atteberry, Daggett, Winkelmann

● AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated the hearing on a ballot language protest filed by Eric Sutherland will be held at the beginning of Item No. 25, *Items Relating to the Special Municipal Election to be Held in Conjunction with the November 3, 2015, Larimer County Coordinated Election, Including a Public Hearing to Consider Any Timely Filed Protest Under Code Section 7-156 to Challenge the Ballot Title or Submission Clause Proposed in Resolution 2015-078.*

● CITIZEN PARTICIPATION

Christine Hayes, Human Relations Commission, presented a summation of the Commission's work regarding mental health issues. Additionally, she stated the Commission is taking award nominations until October 15.

Mike Pruznick shared his perspective on the triple bottom line and requested that Council reconsider its position on the triple bottom line.

Eloise Emery, Affordable Housing Board, discussed how development water fees affect affordable housing and requested Council support uniform development water fees.

Betsy Pruznick opposed unclear advertising regarding MAX service on Sundays for special events.

Aria Khoscavi discussed moving his hookah business and meeting City standards for its certificate of occupancy. He requested an amendment to the smoking ordinance to allow indoor smoking at retail tobacco stores.

Rebecca Sorber discussed the City's meeting regarding destructive behavior in the downtown area. She expressed concern regarding the survey presented at the meeting, as any of the presented solutions will negatively affect the homeless community more than any other.

Avery Franklin stated all individuals deserve a chance to exist throughout the city. He also discussed the importance of climate justice.

Lynn Thompson, Fort Collins Homeless Coalition, expressed concern regarding the City's approach to disruptive behaviors in the downtown area. She opposed the shared public spaces ordinance. She stated criminalization is not a solution to homelessness.

Sandy Lemburg expressed concern regarding the City's approach to disruptive behaviors in the downtown area.

Cheryl Distaso, Fort Collins Community Action Network, opposed the movement toward a sit-lie ordinance and requested the City completely disregard the survey.

Brittany Hoaglund opposed the City's public indecency ordinance stating it is discriminatory.

John Mark expressed disappointment in the dysfunctional relationship the City and Council have with the city's homeless population.

William Montgomery opposed the three-unrelated ordinance and the City's approach to the homeless community.

Zach Humbert advocated for the homeless population and opposed the City's approach to the homeless community.

Kendra Humbert advocated for the homeless population and opposed the sit-lie ordinance.

David Montgomery opposed the three-unrelated ordinance and the City's approach to the homeless community.

Joe Rowan stated the City is exacerbating problems regarding the downtown area.

Marlo Owens opposed allowing toplessness in the city.

Damien Diaz opposed allowing toplessness in the city.

Chastity (no last name given) opposed allowing toplessness in the city.

Thomas Edwards, Fort Collins Bicycle Coalition, discussed the increase in poor behavior by cyclists and discussed the need for additional law enforcement.

Samantha Six supported allowing topless equality in the city.

Michael Cugales opposed the sit-lie ordinance.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Councilmember Martinez asked about the \$71,000 fines mentioned by Mr. Montgomery. City Manager Atteberry stated Mr. Montgomery could meet with Deputy City Manager Mihelich to discuss his issue.

Councilmember Stephens stated the meeting regarding disruptive behaviors in the downtown area provided an opportunity for community members to discuss their thoughts relating to proposed solutions. None of the options have been decided upon but Council and staff are committed to working on the issue.

Councilmember Overbeck suggested Mr. Montgomery be directed toward the Special Agency Court. Additionally, the City is working through a process regarding the homelessness and harassment issues.

Councilmember Cunniff requested additional follow-up regarding Mr. Rowan's comments about costs for survey preference choices.

Councilmember Campana discussed the importance of the homelessness issue, as well as issues relating to aggressive behavior in the downtown area, to both Council and staff.

Mayor Pro Tem Horak noted Council directed staff to look into the development water fees as mentioned by Ms. Emery.

Mayor Troxell thanked the speakers and stated Council is listening to citizen input.

Councilmember Martinez requested information regarding Mr. Khoscavi's comments. Mayor Pro Tem Horak replied this issue will be taken care of with Agenda Item No. 14, *First Reading of Ordinance No. 098, 2015, Amending Article III of Chapter 12 of the Code of the City of Fort Collins Pertaining to Smoking in Public Areas.*

● **CONSENT CALENDAR**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt and approve all items on the Consent Calendar.

RESULT:	CONSENT CALENDAR ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Gino Campana, District 3
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

1. **Consideration and Approval of the Minutes of the July 7 and July 21, 2015 Regular Council Meetings and the July 14 and July 28, 2015 Adjourned Council Meetings. (Adopted)**

The purpose of this item is to approve the minutes from the July 7 and July 21, 2015 Regular Council meetings and the July 14 and July 28 Adjourned Council meetings.

2. **Second Reading of Ordinance No. 084, 2015, Appropriating Prior Year Reserves in the Capital Projects Fund to Award Landscaping Contracts for the Building on Basics (BOB) Intersection Improvements Project, Specifically for the Horsetooth Road and Timberline Road Intersection and the Vine Drive and Shields Street Intersection, and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 21, 2015, appropriates \$700,000 of available Building on Basics funds into the Building on Basics Intersection Improvements Project to award landscaping and irrigation contracts for the Horsetooth/Timberline and Vine/Shields Intersection Improvements Projects. Initial project budgets for these two intersections were established in 2012. Both of these intersections are currently under construction. Between conceptual planning in 2012 and construction in 2015, landscaping and irrigation construction prices have risen between 30% and 50%. This appropriation will allow staff to make the projects whole by awarding and constructing the landscape and irrigation packages for both intersections.

3. **Second Reading of Ordinance No. 085, 2015, Authorizing the Transfer of Previously Appropriated Funds in the Wastewater Fund from the Collection System Replacement Project to the Water Reclamation Replacement Project. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 21, 2015, transfers \$350,000 in the Wastewater Fund from the Collection System Replacement Project to the Water Reclamation Replacement Project. This transfer would be used for unanticipated equipment replacement at the Drake Water Reclamation Facility.

4. **Second Reading of Ordinance No. 086, 2015, Amending Chapters 17 and 23 of the Code of the City of Fort Collins to Create an Exception for the Possession and Discharge of Firearms for a City-Managed Pronghorn Hunting Program on Soapstone Prairie Natural Area. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 21, 2015, amends City Code to facilitate a limited pronghorn hunting season at Soapstone Prairie Natural Area (SPNA). The Soapstone Prairie Natural Area Management Plan (2007) identified pronghorn hunting as a potential recreation activity at SPNA. Over the last few years, Natural Areas has worked in collaboration with Colorado Parks and Wildlife (CPW) and Larimer County's Natural Resources Department to explore and develop a potential approach to pronghorn hunting on Soapstone Prairie Natural Area (SPNA) and the County's Red Mountain Open Space (RMOS) that could begin in 2016. Hunting access to SPNA and RMOS would provide an additional recreation opportunity to the community, assist CPW in maintaining pronghorn population objectives, and support the respective management plans of the properties. Changes to City Code are necessary to allow for the carry and discharge of firearms when participating in the hunting season on City-owned property. The specific program parameters will be adopted administratively by the Natural Areas Department.

5. **Second Reading of Ordinance No. 087, 2015, Vacating Right of Way as Dedicated on the Timbervine Plat. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 21, 2015, vacates right-of-way that was dedicated on the Timberline plat located west of Timberline Road and north of International Boulevard. Lager Street, Lambic Street, Bock Street, Macinac Street, Saison Street, Stout Street, Dunkel Street, and Mexico Way right-of-way is no longer necessary or desirable to retain for street purposes. The property is proposed to be replatted as Timbervine Second Filing, which was approved through an Administrative Hearing on June 18, 2015.

6. **Second Reading of Ordinance No. 088, 2015, Designating the Ault/Thode Property, 714 West Mountain Avenue, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 21, 2015, authorizes landmark designation for the Ault/Thode Property at 714 West Mountain Avenue. The owner of the property, Henry Thode III, is initiating this request

7. **First Reading of Ordinance No. 091, 2015, Appropriating Unanticipated Grant Revenue into the Recreation Fund for the Aging Mastery Program at the Fort Collins Senior Center. (Adopted)**

The purpose of this item is to appropriate grant funds in the amount of \$7,500 received from the National Council on Aging to support a yearlong Aging Mastery Program at the Fort Collins Senior Center. The Aging Mastery Program has been designed by the National Council on Aging and empowers older adults to make and maintain small but impactful changes in their behaviors. The Program consists of two components, the Aging Mastery Academy and AMP Clubs, both of which will be planned and programmed at the Fort Collins Senior Center.

8. **First Reading of Ordinance No. 092, 2015, Appropriating Prior Year Reserves and Unanticipated Revenue in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and the Fort Collins Convention and Visitors Bureau. (Adopted)**

The purpose of this item is to appropriate \$392,184 of which \$123,448 is for 2015 Cultural Development and Programming Activities (Fort Fund), \$38,007 is for 2015 Tourism Programming (Fort Fund), and \$230,729 is for 2015 Fort Collins Convention and Visitors Bureau (CVB) activities from Unanticipated Revenue (Lodging Tax) and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves. Lodging Taxes for 2014 were estimated at \$975,000 and actual Lodging Tax revenues collected equaled \$1,304,612.

9. **First Reading of Ordinance No. 094, 2015 Appropriating Unanticipated Grant Revenue in the General Fund and Appropriating Funds From the Community Development and Neighborhood Services Operating Budget for the Restorative Justice Program. (Adopted)**

The purpose of this item is to appropriate grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$56,192 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) for all other offenses.

10. **First Reading of Ordinance No. 095, 2015, Appropriating Grant Revenue into the Light and Power Fund for the Integrated Utility Services (IUS) Project. (Adopted)**

The purpose of this item is to appropriate \$125,000 in grant revenues from the American Public Power Association into Fort Collins Utilities Light and Power Operations fund to pilot an enhanced delivery structure for energy efficiency and renewable energy projects. The project will be implemented through the Efficiency Works Home program in collaboration with Platte River Power Authority. Matching funds will come from existing appropriations in Resource Conservation and incorporate an additional \$25,000 from Platte River.

11. **First Reading of Ordinance No. 096, 2015 Amending to Ordinance No. 090, 2010 Relating to the City of Fort Collins Downtown Development Authority Taxable Tax Increment Revenue Bonds, Series 2010A, and Tax-Exempt Tax Increment Revenue Bonds, Series 2010B, to Reduce the Respective Interest Rates on Such Bonds. (Adopted)**

The purpose of this item is to amend the Downtown Development Authority's (DDA) 2010 bond series reducing the spread on the rate adjustment date. The DDA's 2010 bond series is set for a rate adjustment at the 5-year mark in 2015. Great Western Bank, the bond series purchaser, has offered a rate reduction resulting in an estimated savings of \$143,000 in interest expense over the remaining 5-year life of the bonds. This adjustment would be executed through an amendatory ordinance encompassing each bond, Series 2010A (Taxable Tax Increment Revenue Bonds) and Series 2010B (Tax-Exempt Tax Increment Revenue Bonds). Currently these bonds are to reset at 4.5% over the 5 year U.S. Treasuries, the amendments would reduce the spread on the two series to 3.5% over the 5 year U.S. Treasuries on Series 2010A and 4.25% on Series 2010B.

12. **First Reading of Ordinance No. 090, 2015, Amending Chapter 23 of the Code of the City of Fort Collins with Regards to Facility and Property Naming Policies. (Adopted)**

The purpose of this item is to consider amendments to the policy for naming City-owned facilities. Proposed amendments seek to clarify opportunities for public input and the process for selecting facility names. Staff recommendations include adding a preference for using natural feature names for City natural areas, removing the City Council ad hoc naming committee and the ability to name facilities for living people other than donors. In place of a City Council committee, staff recommends that the department responsible for managing the property or facility to be named conduct a public input process and that each site receive a historical review to help solicit possible names.

13. **First Reading of Ordinance No. 097, 2015, Amending Provisions in Articles III and IV of City Code Chapter 25 Concerning the Exemption of Charitable Organizations from the City's Sales and Use Tax and Lodging Tax. (Adopted)**

The purpose of this item is amend the definition of "charitable organization" as used in the City Code's sales and use tax and lodging tax provisions in order to mitigate the impact of current Colorado case law on a substantial number of the City's current tax exempt charitable organizations. Colorado case law was recently discovered to have a substantial impact on staff's interpretation of the charitable organization definition. Code changes related to the City's sales and use taxes were discussed with the Council Finance Committee on June 23, 2015, and the Committee concurred with the recommendation and supported staff bringing an ordinance to Council.

14. **First Reading of Ordinance No. 098, 2015, Amending Article III of Chapter 12 of the Code of the City of Fort Collins Pertaining to Smoking in Public Areas. (Adopted)**

The purpose of this item is to revise the current Smoking in Public Places Ordinance to include exemptions for retail tobacco establishments within the Downtown Smoke-Free Zone and for City facility users who smoke on City premises in a fully enclosed, privately-owned vehicle, as well as clarification on the City-owned or maintained sidewalks that are intended to be covered by the provisions in the Ordinance.

15. **Items Relating to Traffic Code Amendments Regarding Accommodation of Low-speed Electric Vehicles and Parking Regulations. (Adopted)**

- A. First Reading of Ordinance No. 103, 2015, Amending Section 1410.1 of the Fort Collins Traffic Code Allowing Low-Speed Electric Vehicles.
- B. First Reading of Ordinance No. 104, 2015, Amending Section 1205 and 1205.5 of the Fort Collins Traffic Code Amending Parking Restrictions.

The purpose of this item is to amend several sections of the Fort Collins Traffic Code. The amendment to Section 1410.1 will permit low speed electric vehicles on certain City streets. Section 1205 is proposed to be amended to permit parking configurations that will accommodate the potential for parking-protected bike lanes and back-in angle parking.

16. **Items Relating to the Kechter Farm Second Filing Annexation and Zoning (Adopted)**

- A. Resolution 2015-073 Setting Forth Findings of Fact and Determinations Regarding the Kechter Farm Second Filing Annexation.
- B. Hearing and First Reading of Ordinance No. 099, 2015, Annexing Property Known as the Kechter Farm Second Filing Annexation to the City of Fort Collins.
- C. Hearing and First Reading of Ordinance No. 100, 2015, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Kechter Farm Second Filing Annexation to the City of Fort Collins.

The purpose of this item is to annex and zone 78.58 acres platted and approved in Larimer County as Kechter Farm Second Filing. The Initiating Resolution was adopted on July 7, 2015. There are three parcels all located on the west side of Ziegler Road, south of Kechter Road and north of Fossil Creek Reservoir. Trilby Road bisects the site. The requested zoning for this annexation is L-M-N, Low Density Mixed-Use Neighborhood (37.48 acres) on Parcels One and Two, and U-E, Urban Estate (41.1 acres) on Parcel Three. The property is located within the Fossil Creek Reservoir Area Plan. In accordance with the Intergovernmental Agreement for the Fort Collins Growth Management Area with Larimer County, adopted in 1999, properties within this sub-area are to receive their land use approval in the County and are then to be annexed prior to the issuance of building permits.

17. **First Reading of Ordinance No. 101, 2015, Amending Ordinance No. 081, 2003, to Rename the Wiggins House and Garage at 1009 West Mountain Avenue, Fort Collins, Colorado, as the Wiggins/Taylor Property Pursuant to Chapter 14 of the Code of the City of Fort Collins. (Adopted)**

The purpose of this item is to rename the Landmark property at 1009 West Mountain Avenue, currently known as the Wiggins House and Garage, to the Wiggins/Taylor Property, in recognition of long-time owner Patricia Taylor.

18. **First Reading of Ordinance No. 102, 2015, Designating the Schlichter/Akin/Smith Property, 1312 South College Avenue, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins. (Adopted)**

The owner of the property, MaOIPh LLC, is initiating this request for Fort Collins Landmark designation of the Schlichter/Akin/Smith Property at 1312 South College Avenue.

19. **Resolution 2015-074 Approving an Exception to the Use of a Competitive Purchasing Process for a Hydrostatic Tractor with Aerator Manufactured by Brown Bear Corporation for the Fort Collins Water Treatment Facility. (Adopted)**

The purpose of this item is to request an exception to the competitive purchasing process for a Brown Bear brand 400 Hydrostatic Tractor with Aerator for the Fort Collins Water Treatment Facility. This specialized equipment is required to process byproduct from the Water Treatment Facility and will replace a 28-year old machine that has reached the end of its useful life.

Exception to Competitive Bidding Rationale:

City Code Section 8-161(d)(1)(a) authorizes the City's Purchasing Agent to award a contract without competition, if there exists only one (1) responsible source.

20. **Resolution 2015-075 Authorizing the Execution of a Mineral Non-Development Lease at Soapstone Prairie Natural Area with the State Land Board. (Adopted)**

The purpose of this item is to authorize the Execution of a Mineral Non-Development Lease at Soapstone Prairie Natural Area with the State Land Board.

21. **Resolution 2015-079 Adopting an Updated Economic Health Policy. (Adopted)**

The purpose of this item is to approve an update to the Economic Health Policy. The Fort Collins City Council has adopted Financial Management Policies pursuant to the provisions of Article V, Section 12 of the City Charter, to guide the administration, management, deposit and investment of City funds. In addition, City Council and staff have committed to regularly review and update these Financial Management Policies. The current Economic Development financial policy was last updated in 1999. Staff presented revisions to Council Finance Committee on May 18 who approved the changes and recommended bringing the policy to the City Council. The bulk of the new policy comes from documents previously approved by City Council in recent years. The new financial policy will replace the existing policy in its entirety.

22. **Resolution 2015-076 Authorizing One or More Intergovernmental Agreements With Other Colorado Cities for Special Legal Counsel Services. (Adopted)**

The purpose of this item is to authorize an updated intergovernmental agreement with the Cities of Loveland and Greeley and the Town of Windsor for special legal services to be used in the event that a conflict of interest or other similar circumstance prevents the City Attorney or members of her office from representing the City in a particular matter. The Resolution also authorizes intergovernmental agreements in a similar form with other municipalities.

23. **Resolution 2015-077 Appointing Two Representatives to the Colorado Municipal League Policy Committee. (Adopted)**

The purpose of this item is to appoint Councilmember Ray Martinez and City Manager Darin Atteberry to represent the City of Fort Collins on the Colorado Municipal League Policy Committee.

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Cunniff thanked staff for work on Item No. 12, *First Reading of Ordinance No. 090, 2015, Amending Chapter 23 of the Code of the City of Fort Collins with Regards to Facility and Property Naming Policies*. Additionally, he requested additional discussion regarding how Council's policy agenda feeds into the Colorado Municipal League policy agenda regarding Item No. 23, *Resolution 2015-077 Appointing Two Representatives to the Colorado Municipal League Policy Committee*.

Councilmember Martinez requested a follow-up memo regarding Item No. 14, *First Reading of Ordinance No. 098, 2015, Amending Article III of Chapter 12 of the Code of the City of Fort Collins Pertaining to Smoking in Public Areas*.

City Manager Atteberry suggested he and Councilmember Martinez attend a Legislative Review Committee meeting in order to ensure they are in sync with the Committee in terms of the Colorado Municipal League Policy Committee.

● **STAFF REPORTS**

Kurt Friesen, Director of Park Planning and Development, provided an update regarding the City's paved trail construction and showed slides of current and recently completed trail projects. Repairs are planned for trail areas which have been affected by flooding. Friesen also discussed the newly completed and relocated English Ranch Community Garden.

Mayor Pro Tem Horak noted the TAP funds are from the North Front Range Transportation Air Quality Metropolitan Planning Organization. He asked about the height of the trail connection on the Mulberry bridge. Friesen replied that piece of trail remains under construction.

Councilmember Cunniff asked about the BNSF trail underpass. Friesen replied the underpass is the first priority; however, approval from the railroad is necessary prior to construction. The cost of that project will determine how much of the trail segment will be able to be completed.

City Manager Atteberry asked if an interim connection can be made for localized neighborhood pedestrian and bike traffic. Friesen replied those connections could be examined; however, those specific connections are not a priority.

Kevin Beach, Adams County IT Director and Colorado Government Association of Information Technology (CGAIT), presented an Exceptional Customer Service Award to the City's IT Department for its work order automation system.

City Manager Atteberry commended the efficiency and effectiveness of the City's IT department and Dan Coldiron's leadership.

● **CITY ATTORNEY DAGGETT'S RECOGNITION OF DEPUTY CITY ATTORNEY ECKMAN**

City Attorney Daggett stated this will be the final Council meeting for Deputy City Attorney Eckman who is retiring in September after 35 years of service to the City.

Councilmember Martinez commended Deputy City Attorney Eckman and thanked him for his service to the City.

● **COUNCILMEMBER REPORTS**

Councilmember Overbeck reported on his tour of the new Woodward Governor site with Councilmember Stephens.

Councilmember Campana reported on a White House conference call regarding "It's On Us" which deals with reducing sexual assault at Universities. He discussed his interest in expanding the initiative communitywide and stated Fort Collins will become the first community in the United States to be an "It's On Us" community.

Mayor Troxell reported on the first meeting of the Northern Colorado Regional Airport Commission, which is a more functional organizational structure for the Fort Collins-Loveland Airport than the previous structure.

● **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

● **DISCUSSION ITEMS**

24. **Consideration of an Appeal Regarding the Decision of the Administrative Hearing Officer Decision to Approve the River Modern Project Development Plan. (Administrative Hearing Officer Decision was upheld, with conditions)**

The purpose of this item is to consider an Appeal of the Administrative Hearing Officer's July 10, 2015 Hearing Decision to Approve the River Modern Project Development Plan. On July 20, 2015, Max D. Oesterle et al., filed a Notice of Appeal on grounds that the Decision Maker made the following error:

- *Failure to properly interpret and apply relevant provisions of the Land Use Code ("LUC"), and particularly LUC Sections 3.4.1(E)(2)(a) and (c) and 3.5.1(B),(C), (D) and (E).*

Mayor Troxell discussed Council's role as a quasi-judicial body.

City Attorney Daggett stated this hearing is pursuant to Chapter 2 of the City Code and reviewed the process for the hearing.

Mayor Troxell reviewed the time allotments and procedures for the hearing.

Tom Leeson, Interim Director of Community Development and Neighborhood Services, stated this project was previously approved by the Hearing Officer and briefly discussed the project. He stated the appeal was filed based on the grounds the Hearing Officer failed to properly interpret relevant Land Use Code provisions. He detailed those provisions, four of which are related to building standards and compatibility and one of which is related to the placement of a detention pond within the buffer area.

Mayor Troxell noted Councilmember Martinez was asked by the appellants to recuse himself from this discussion. Councilmember Martinez stated he does not perceive a conflict of interest regarding this project and stated he has no memory of the conversation referenced in the request submitted by the appellants.

Mayor Troxell requested site visit attendees discuss observations made and discussions held at the site visit.

Councilmember Cunniff stated he examined the context of the project and held conversations regarding property lines and grading as well as restoration plans for the settling pond.

Councilmember Overbeck stated he inquired about the settling pond.

Councilmember Campana stated the visitors to the site visit examined property lines and existing fences and structures and discussed revegetation and water quality pond and connective trail locations.

Mayor Troxell stated he asked about the connectivity of the trail along Spring Creek. He noted no additional exhibits for this item were included in the Council agenda packet and asked if any parties-in-interest have procedural objections or questions.

Kendra Bartley stated she was at the site visit and noted the City Attorney distributed a reminder of procedures which precluded the applicant, appellants, or members of the public from speaking, asking questions, responding to questions, or otherwise provide input. She stated that was violated as several questions were asked of the developer.

Lucia Liley, attorney representing the applicant, stated responses to Council questions were referred by City staff to one of the applicant's team members. Additionally, her understanding is that all of the questions were of a factual nature and not related to the merits of the appeal.

Councilmember Cunniff recalled some questions of a factual nature which were answered by the applicant.

Max Oesterle stated he was present at the site visit and requested the rules of the site visit be read for the record. He stated questions were asked related to buffer zone and floodplain boundaries, the water quality pond and native plantings. He argued City staff did not follow the stated rules for conducting the site visit as the applicant was asked questions. Additionally, Mr. Oesterle stated Council was provided with biased information at the site visit and requested a new unbiased site visit be completed before the hearing is held.

Councilmember Martinez requested City Attorney Daggett address the site visit rules. City Attorney Daggett replied site visits have occasionally become opportunities for parties-in-interest to lobby Councilmembers or provide them with additional information; therefore, staff has begun advising site visit participants that interactions should be limited and the purpose of the site visit is for Councilmembers to view the site and ask specific questions related to the physical characteristics of the site.

Councilmember Campana suggested improvements could be made to the advisement language in the future; however, the intent of the site visit is to obtain visual facts. He noted every question and response thereto is in the public record.

Councilmember Cunniff asked the appellants if they could prove biased information was presented at the site visit. An unidentified appellant replied a bias existed because the developer was the only party allowed to answer all of the questions. The appellants and members of the public were told they were not allowed to speak.

Mayor Troxell recommended the appellants continue to address the issue during their presentation.

Mr. Oesterle objected to Mayor Troxell's recommendation and requested his objection be part of the record.

Councilmember Martinez requested the rules which were given to the site visit participants be read into the record. City Attorney Daggett read the rules which were distributed at the site visit, after which she expressed her agreement with Ms. Liley stating the purpose of the process is to avoid inappropriate conversations about the appeal. She stated the questions asked and answered at the site visit were not a violation of a City ordinance or statute.

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

Mayor Troxell noted Council has been provided with the language previously read by City Attorney Daggett.

APPELLANT PRESENTATION

Kendra Bartley discussed the Spring Creek corridor and its wildlife and stated the area must be protected. She discussed the applicant's plan for a water quality pond, stating it is within the buffer zone of Spring Creek and this type of development is not allowed per the Land Use Code. She stated the Hearing Officer did not address the issue of digging and regrading within the buffer zone in his decision. She requested Council honor and apply the Land Use Code as written and intended.

Mr. Oesterle stated relevant law was not properly interpreted and applied with regard to privacy considerations. A four to six-foot fence and planned balconies will not minimize infringement on the privacy of adjoining land. No attempt has been made to step down the height of proposed buildings on the east and west sides and the proposed development lacks compatibility with the existing neighborhood.

Shen Gruber stated the overriding objection to this project is density and its resulting issues. The existing neighborhood's character is neither consistent nor compatible with the proposed development and cited various Land Use Code sections supporting his argument. Mr. Gruber showed slides of height comparisons of the proposed buildings to existing structures. He requested Council not allow the project to move forward until a comprehensive study establishing existing building heights has occurred and until a defensible determination can be established regarding the sensible height and massing of the proposed structures.

Mr. Oesterle stated the appellants did not speak at the site visit, though the applicants did. He stated thirty-six neighbors have signed a document in opposition to the project.

APPLICANT PRESENTATION

Ms. Liley stated the water quality basin will clean water prior to its entering Spring Creek. The basin will be approximately three feet deep with graded, natural looking slopes that will mimic a natural basin. The basin needs to be sited as close as possible to the Spring Creek channel in order to capture the maximum amount of water coming from the development and the buffer area itself. The Land Use Code allows exceptions for buffer area disturbances for several reasons and this project qualifies for two: a stormwater utility installation and in mitigation of development activities. Three other water quality basins have been approved within the vicinity of this project, all within the Spring Creek buffer. Ms. Liley noted the existing buffer is predominately non-native grasses and stated this project will utilize only native plantings.

Ms. Liley discussed allowed uses of the LMN zone district, which include single-family attached dwellings such as those in this project. Neighborhood meetings were not required for this project; however, the developer held two such meetings which resulted in various site plan changes. She detailed the appeal allegations and discussed the ways in which the project meets the Land Use Code requirements relating to outdoor space, building height and materials, and privacy.

Justin Larson, architect, stated the materials of the proposed development are varied and the site includes external circulation in order to bring the buildings to the interior of the site. He showed slides of the proposed development as it will interact with the existing neighborhood.

Becky Praamsma, Riversong Waldorf School Executive Director, discussed the history of the school in the neighborhood.

An unidentified audience member objected to the evidence being presented by Ms. Praamsma as not relevant to the Land Use Code.

Ms. Praamsma stated she is speaking in support of the project.

Ms. Liley stated Ms. Praamsma is a party-in-interest and noted the school will be part of the project.

Ms. Praamsma discussed the benefits to the school of its movement to the existing home on the River Modern property.

APPELLANT REBUTTAL

Kendra Bartley argued the Waldorf School evidence was new. The proposal has too much density which is causing the need to encroach into the buffer zone with the water quality basin.

Linda Vrooman expressed concern regarding parking and traffic impacts resulting from the proposed development. She opposed the development as proposed.

Mr. Gruber argued there is an established neighborhood character related to single-family uses and lower building heights than those proposed.

Mr. Oesterle stated photos shown by the applicants are not adjacent to the property.

Tammy Preston expressed concern regarding traffic in the area.

Kathleen Quinn stated the applicant's slides are misleading.

APPLICANT REBUTTAL

Ms. Liley stated the farther into the site the water quality basin is moved, the less water will be able to be treated from the development and the upper buffer area. Parking and traffic issues will not be discussed because those issues were not part of the appeal. In terms of architecture, Ms. Liley acknowledged there is established architecture; however, there is no consistent architecture and therefore nothing to mimic in terms of materials or height.

Mr. Larson stated the eclectic nature of the neighborhood provides an opportunity for unique architectural development per the Land Use Code.

Ms. Liley clarified the tallest building in the development will be 35 feet, 9 inches.

COUNCIL DISCUSSION

Mayor Troxell discussed the issues of the appeal and reminded the audience what Council can and cannot consider.

Councilmember Cunniff stated the site visit could possibly have been viewed as having involved ex parte contact with the developer. He asked what the cure for such a situation would be, should that have been the case. City Attorney Daggett replied there are two concerns relating to ex parte contacts: that certain parties were hearing the communication and other parties were not able to hear that same communication, and whether the information that is provided is entered into the record of the hearing and if that becomes a basis for Council's decision.

Councilmember Overbeck asked where the tallest building will be situated on the site. Mr. Larson replied it is in the interior of the site on the west side.

Councilmember Overbeck asked if additional trees could be planted to help mitigate the impact of the taller building. Roger Sherman, BHA Design, replied there is the need for a balance in terms of blocking sunlight and privacy. Ms. Liley stated the applicant would be willing to plant additional trees should that be desired by the neighbors.

Councilmember Overbeck asked about the height of the proposed school. Mr. Sherman replied it is a one and a half story building currently existing on the property and the height will not change.

Councilmember Cunniff asked about the building closest to the single-family homes and whether or not that interaction is a concern for the appellants. Mr. Gruber replied that building is a concern as are the heights of all the proposed buildings.

Councilmember Cunniff asked if the balcony on this particular building is a necessary design

component. Mr. Larson replied the goal of the project is to provide multiple outdoor spaces. He stated this unit is unlike any other in the development; therefore, removing the balcony would not necessarily be a detriment.

Councilmember Cunniff stated the issue related to the water quality basin seems to be rather straightforward in terms of its compatibility with the Land Use Code. He noted Council is required to interpret the Code as written, not as Councilmembers may wish it were written. Additionally, he agreed flexibility regarding building materials is allowable. He expressed concern regarding privacy and suggested the possibility of a modification to remove the balcony previously discussed.

Councilmember Campana agreed with Councilmember Cunniff's modification suggestion, stating the compromise seems to be amenable to both sides.

Mayor Pro Tem Horak asked what else could be done relating to buffering and privacy. Mr. Larson replied the applicant has offered to meet with neighbors regarding the look of the fencing and would also be willing to have discussions relating to vegetation and plantings.

Councilmember Campana suggested requiring the applicant to exceed the tree standard by a certain percentage.

Councilmember Cunniff suggested the language regarding fencing be used to address landscaping as well.

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

Mayor Troxell requested staff input regarding typical language for landscaping requirements. Cameron Gloss, Planning Manager, replied staff suggests a 25% increase in the number of columnar trees on the east and west property lines.

Councilmember Cunniff asked if such a requirement would be acceptable by the applicant. Ms. Liley replied in the affirmative.

City Attorney Daggett read a suggested motion: to uphold the decision of the Hearing Officer to approve the project with the modification to improve compliance with the privacy considerations of Land Use Code Section 3.5.1(d) to require, in addition to the conditions required by the Hearing Officer, removal of the high balcony on the west side of building number one, and that the applicant work with staff to enhance the landscaping plan for the project to increase the number of columnar trees along the east and west property boundaries by 25%, and further that, except as so stated, based on the evidence in the record and presented at this hearing, this appeal is hereby found to be without merit and denied.

Mayor Pro Tem Horak suggested the language should include "the applicant will work with staff to enhance the landscaping."

Councilmember Cunniff made a motion, seconded by Councilmember Campana, to uphold the decision of the Hearing Officer to approve the project with the modification, to improve compliance with the privacy considerations of Land Use Code Section 3.5.1(d), to require, in addition to the conditions required by the Hearing Officer, removal of the high balcony on the west side of building number one, and that the applicant, working with staff, enhances the

landscaping plan for the project to increase the number of columnar trees along the east and west property boundaries by 25%, and I further move that, except as so stated, based on the evidence in the record and presented at this hearing, this appeal is hereby found to be without merit and denied.

Councilmember Cunniff requested clarification regarding the 25% figure. Gloss replied that would be a 25% increase over the number of trees provided on the approved Project Development Plan.

Councilmembers Cunniff and Campana added to the motion language relating to the 25% being in excess of the number of trees provided on the approved plans.

Mayor Pro Tem Horak noted any speakers who spoke previously were allowed to speak; however, he noted Council only considers information relevant to the appeal itself.

RESULT:	HEARING OFFICER DECISION UPHELD, WITH CONDITIONS [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Gino Campana, District 3
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

25. Items Relating to the Special Municipal Election to be Held in Conjunction with the November 3, 2015, Larimer County Coordinated Election, Including a Public Hearing to Consider Any Timely Filed Protest Under Code Section 7-156 to Challenge the Ballot Title or Submission Clause Proposed in Resolution 2015-078. (Adopted on Second Reading)

- A. *Second Reading of Ordinance No. 089, 2015, Calling a Special Municipal Election to Be Held in Conjunction with the November 3, 2015 Larimer County Coordinated Election.*
- B. *Resolution 2015-078 Submitting to the Registered Electors of the City A Ballot Title and Submission Clause for a City-Initiated Question Authorizing the City to Provide Directly, and/or Indirectly with Public and/or Private Sector Partners, High-Speed Internet Services, Telecommunication Services, and/or Cable Television Services Within the City Of Fort Collin's Growth Management Area, as Permitted by Title 29, Article 27 of the Colorado Revised Statutes (SB05-152), to be Presented at the November 3, 2015 Larimer County Coordinated Election.*

Ordinance No. 089, 2015, unanimously adopted on First Reading on July 21, 2015, calls a Special Municipal Election to be held in conjunction with the November 3, 2015 Larimer County Coordinated Election, and preserves the opportunity for Council to place initiated or referred issues on the November ballot. If Council does not take action by ordinance or resolution before the statutory deadline (September 4) to certify ballot language to Larimer County, the election will be cancelled and the provisions of this Ordinance will be of no further force and effect.

Resolution 2015-078 seeks voter authorization to permit the City to provide high-speed internet services, telecommunication services and/or cable television services within the City's growth management area, pursuant to §§ 29-27-101 to 304, C.R.S. (SB05-152)

Mayor Troxell stated Council's rules of procedure allow for a special process to be set in the case of a protest of a ballot question and stated Council will first take comment on the protest of the ballot language will then take public input generally regarding the Ordinance and the Resolution.

Mayor Troxell opened the hearing on the protest filed August 17, 2015 by Eric Sutherland related to the form on the ballot language proposed for adoption in Resolution 2015-078.

City Attorney Daggett explained the protest process and stated the Code language requires that Council hear and consider the protest prior to adoption of the Resolution setting the ballot language.

City Clerk Winkelmann stated a single protest by Mr. Sutherland has been filed related to the proposed Resolution. The protest alleges that, because the City's home rule authority already permits it to offer telecommunication services, regardless of the provisions of Senate Bill 05-152 which require a vote, submission of the ballot question is misleading and causes public confusion. The proposed ballot measure fails to comply with the municipal election code CRS 31-11-111-3, which is the applicable standard for this measure based on the assertion that there is no provision of the State Constitution, City Charter, Ordinance of Council or uniform election code that deals with the form or content of the ballot question in a manner that conflicts with the municipal election code, CRS 31-11-111-3.

Mr. Sutherland stated state law has been misinterpreted in terms of its applicability to a home rule municipality, and misinterpreted in terms of what the statute says and what it requires even if it was determined applicable. This ballot question purports to declare or create rights to provide telecommunication services that Fort Collins already enjoys and purports to be expressly permitted by Senate Bill 152, though no language in that statute would give that interpretation; rather, Senate Bill 05-152 requires voter approval of certain conditions of services and even then, the City is required to secure mandates to provide services in particular market segments. He argued the ballot question is unnecessary and the language is broad and creates general rights that already exist. Mr. Sutherland stated Council has a responsibility to ensure this ballot question and its title are not confusing.

Mayor Troxell closed the protest hearing.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, that Council find and determine after having heard and considered the evidence and arguments presented at the protest hearing that the form of the ballot language proposed in Resolution 2015-078 unambiguously states the principal of the revisions sought to be added and otherwise complies with any applicable legal requirements.

Councilmember Cunniff' asked if this item is referred to the ballot and approved by voters, whether or not an additional election will occur prior to broadband services being provided. City Attorney Daggett replied in the affirmative stating if the City itself would chose to form a utility to provide broadband service, a Charter change and voter approval would be required.

Councilmember Cunniff stated this ballot question should be viewed in terms of Council's ability to bring any desired question to the voters.

RESULT:	MOTION DENYING PROTEST OF BALLOT LANGUAGE ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ray Martinez, District 2
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

SeonAh Kendall, Economic Policy and Project Manager, stated SB 152 prohibits local governments from having any direct or indirect involvement in providing telecommunication services. If the ballot measure is successful, staff will continue background research. An independent citizen group has formed to advocate for passage of the measure.

Tim Tillson, Citizens Group in Favor of Community Broadband, stated his group currently has nine members and he spoke in favor of the ballot language.

Eric Sutherland spoke against the City involving itself in providing broadband service and opposed the ballot language and the necessity of the vote itself.

Councilmember Stephens asked about the legality of Holly Carroll, Poudre Valley Library District, participating in the citizens group. City Manager Atteberry stated he would discuss the issue with Carroll and report back to Council.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 089, 2015, on Second Reading.

RESULT:	ORDINANCE NO. 089, 2015 ADOPTED ON SECOND READING [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Resolution 2015-078.

RESULT:	RESOLUTION 2015-078 ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

26. **Second Reading of Ordinance No. 083, 2015, Adopting a Policy Related to Initiation of Ordinances and Resolutions and Making Related Clarifying Amendments to Section 2-32(d) of the Code of the City of Fort Collins. (Adopted as Amended on Second Reading)**

This Ordinance, adopted on First Reading by a vote of 4-3 (nays: Cunniff, Overbeck, Stephens) adopts a policy relating to Council or Councilmember action initiating ordinances and resolutions and make related clarifying amendments to Section 2.32(d) of the City Code. On First Reading, a second option was presented that required the support of only three Councilmembers to direct initiation of resolutions and ordinances under Subsection 1.d of the Ordinance. Leadership Planning Team has requested that the language be provided for Council's convenience on Second Reading.

The following is an updated alternate version for Subsection 1.d (presented on First Reading as Option B):

- d. Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by City staff, as described above, by each expressing his or her desire that such efforts move forward during related discussion of a specifically identified agenda item or under the "Other Business" portion of the meeting agenda at a regular or special Council meeting.

Kevin Cross supported including option B, which would allow three individual Councilmembers rather than four, to direct staff to work on an ordinance or a resolution for consideration by Council, citing the Resolution which led to the climate task force.

Eric Sutherland stated Council's powers, as defined by the City Charter, include the ability to bring an ordinance or resolution forward at any meeting and opposed the Ordinance.

Mayor Pro Tem Horak requested input from City Attorney Daggett. City Attorney Daggett replied two options were provided at First Reading and she discussed the option which was adopted at that point, which requires a majority of Councilmembers to be in agreement prior to directing staff to create an ordinance or resolution for consideration by all of Council.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 083, 2015, with the amendment of Subsection 1.d to allow three or more individual Councilmembers to direct staff to initiate and move forward with the development and preparation of ordinances and resolutions.

Mayor Pro Tem Horak noted all Council actions are transparent and occur in a public forum at regular meetings.

Mayor Pro Tem Horak cited Council's work to prioritize issues and noted this will allow complete transparency.

RESULT:	ORDINANCE NO. 083, 2015, ADOPTED AS AMENDED ON SECOND READING [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

August 18, 2015

● **ADJOURNMENT**

The meeting adjourned at 10:45 PM.


Mayor

ATTEST:

Wanda Winkelmann
City Clerk

