

Debra Unger

From: Debra Unger on behalf of Darin Atteberry
Sent: Tuesday, January 21, 2014 12:22 PM
To: 'Gary Wockner'
Cc: City Leaders; Darin Atteberry; Diane Jones; Tawnya Ernst; Helen Matson; Ken Mannon; Wendy Williams; Jon Haukaas; Matt Fater; Ken Sampley; Brian Janonis; John Stokes; Marty Heffernan; Ingrid Decker; Steve Roy; Carrie Daggett
Subject: Agenda Item #10 RE: Imminent Domain for stormwater project (Council SAR #24678)

Gary,

Thank you for your email regarding Item #10 on tonight's Council agenda. Please see the following response provided by Tawnya Ernst, Real Estate Specialist III, on behalf of the City leaders:

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This project encompasses cooperation among the landowners, Utilities, Parks, and Natural Areas. We have been working for over a year with the property owners west of Shields Street and south of the river to purchase property that allows us to restore the flow path of the West Vine basin back to the Poudre River. This flow path was cut off by the railroad, the Arthur Ditch, the construction of Shields Street and other development. We have reached an agreement on purchase price and replatting of the properties with all owners involved.

Unfortunately, the lenders for the property owners involved have been slow in their response to our requests or the property owners' requests to sign off on this property transfer and replat. We have no assurances at this point that they will approve our requests, or they may require conditions for approval that the owners of the properties don't like. This project has already been significantly delayed due to these issues. Staff hopes to complete the project without condemnation. However, in order to keep the project on a timely schedule, it was determined that staff should seek Council approval to use eminent domain by the City. Should the lienholders choose not to cooperate in this complex transaction so that the City can get clear title to the property it needs, or should the lienholders want concessions from the property owners that the property owners don't like (such as changing the terms of their mortgages), staff would like to have the option to pursue eminent domain proceedings, if it becomes necessary, in order to secure the necessary permanent property interests for the project in a timely way. This option was discussed with the property owners involved and they agree to and support this approach. The property owners have also given the City legal access and control rights to the property in the interim so that we can proceed with the project.

The project has a critical construction timeline because several aspects of the project need to be complete prior to irrigation season, spring runoff, and summer use of the Poudre River trail.

All local partners are in support of this project. This is a legal means that does not allow unresponsive out-of-state lenders to unnecessarily delay a local flood mitigation and safety project.

In addition, staff intend for this project to address several other city-wide initiatives, including conservation. Staff has been working with the landowners to place portions of their property into a permanent conservation easement so it cannot be developed in the future. (Please note: the eminent domain request does not include the conservation easement or other Natural Areas interests in the project, only the interests the City needs to complete the stormwater project.) Utilities staff are working with Natural Areas to integrate the outfall structure with other Poudre River improvement work. We believe this restoration will carry a base flow to help with the volume of flows in the Poudre River.

Trail easements are also part of the project. We are working with the Parks Department to incorporate planned trail connectors through the area.

Finally, we are in discussions with the neighboring water Districts on how to dual purpose this outfall to bring storage flows back to the Poudre River and mitigate future bank stabilization impacts.

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Regards,

Debra Unger

Executive Administrative Assistant
City Manager's Office
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-----Original Message-----

From: Gary Wockner [<mailto:garywockner@comcast.net>]
Sent: Monday, January 20, 2014 6:18 PM
To: Darin Atteberry
Cc: City Leaders
Subject: Imminent Domain for stormwater project

Hi Darin,

Concerning Item #10 on Tuesday night's agenda, I am very concerned about the use of imminent domain in an attempt to pound through stormwater projects. The items does not clearly identify the problems with the lenders and lienholders. Any issue surrounding the Poudre River is of significant concern to the people of Fort Collins. I suggest this item be put on hold until it can be handled in a legal way that does not involve condemnation, which sets a powerful precedent for subsidizing growth and development projects, many of which start with stormwater engineering.

Thank you,

Gary

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Gary Wockner, PhD, Director
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