

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 19

DATE: March 4, 2008

STAFF: Craig Foreman  
Patrick Rowe

### SUBJECT

First Reading of Ordinance No. 029, 2008, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary for the Construction of Trail Improvements.

### RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

### FINANCIAL IMPACT

Real Estate Services staff estimates the value of the property to be \$1,140. This valuation was derived from the negotiated price of the immediately adjacent property purchased on December 22, 2006.

The authorization of eminent domain will greatly reduce staff and legal costs associated with resolving the unusual ownership complications of this parcel.

### EXECUTIVE SUMMARY

In assembling property interests for the south-west segment of the Fossil Creek Trail, the City has encountered a property with a significantly complicated and ambiguous ownership. Due to the degree of complication and the property's keystone importance, staff proposes condemnation as the most cost effective and efficient approach to acquire the City's desired purchase of 1,064 square feet. The City has contacted the personal representative of the only surviving original owner, and the representative was agreeable to the condemnation approach.

### BACKGROUND

As part of expanding and furthering the connectivity of the City's master trail system, the City is working to extend the Fossil Creek Trail south from Fossil Canyon Park to CR 38E (West Harmony extended). The majority of the necessary property interests for this 1,291 linear feet connection was purchased approximately a year ago, and a linear span of only 24 feet remains.

Situated between the previously acquired trail easement and CR 38E, the City has encountered an unusual property. The parcel is approximately 1/4 of an acre in size (11,165 sq ft) and is shaped like a wedge which tapers to the east. The property sits between and separates two 10-acre residential lots from CR38-E (see attached map).

According to title research, the parcel was purchased at the county tax lien sale in 1946. Two owners of record are shown in the tax sale deed as tenants-in-common. One of the two owners died in 1963, and unfortunately left no will, deed, or other evidence of a legal title transfer. These situations are typically resolved by the courts, relying on inheritance laws. However, due to low property value and the exceedingly high number of possible benefactors (children and grandchildren) this owner initiated process seems unlikely and cost prohibitive.

The second owner currently resides in Wyoming, but due to illness, a Wyoming Court appointed the second owner's nephew as guardian and conservator of her affairs. The City has contacted the nephew and discussed its desire to purchase the second owner's ownership interest in the property, and the nephew was agreeable to this proposition. However, the nephew's conservatorship was granted in Wyoming and in order to be effective in Colorado, a separate expensive legal action will be required for the nephew to act on the property owner's behalf in Colorado.

The City has experienced great difficulty in purchasing a small portion of this parcel which is needed to extend the trail to CR38-E and beyond. The desired portion of the parcel is approximately 1,064 square feet in size and the City's Real Estate Department has valued the portion at \$1,140 (utilizing the negotiated price for the adjacent trail purchase).

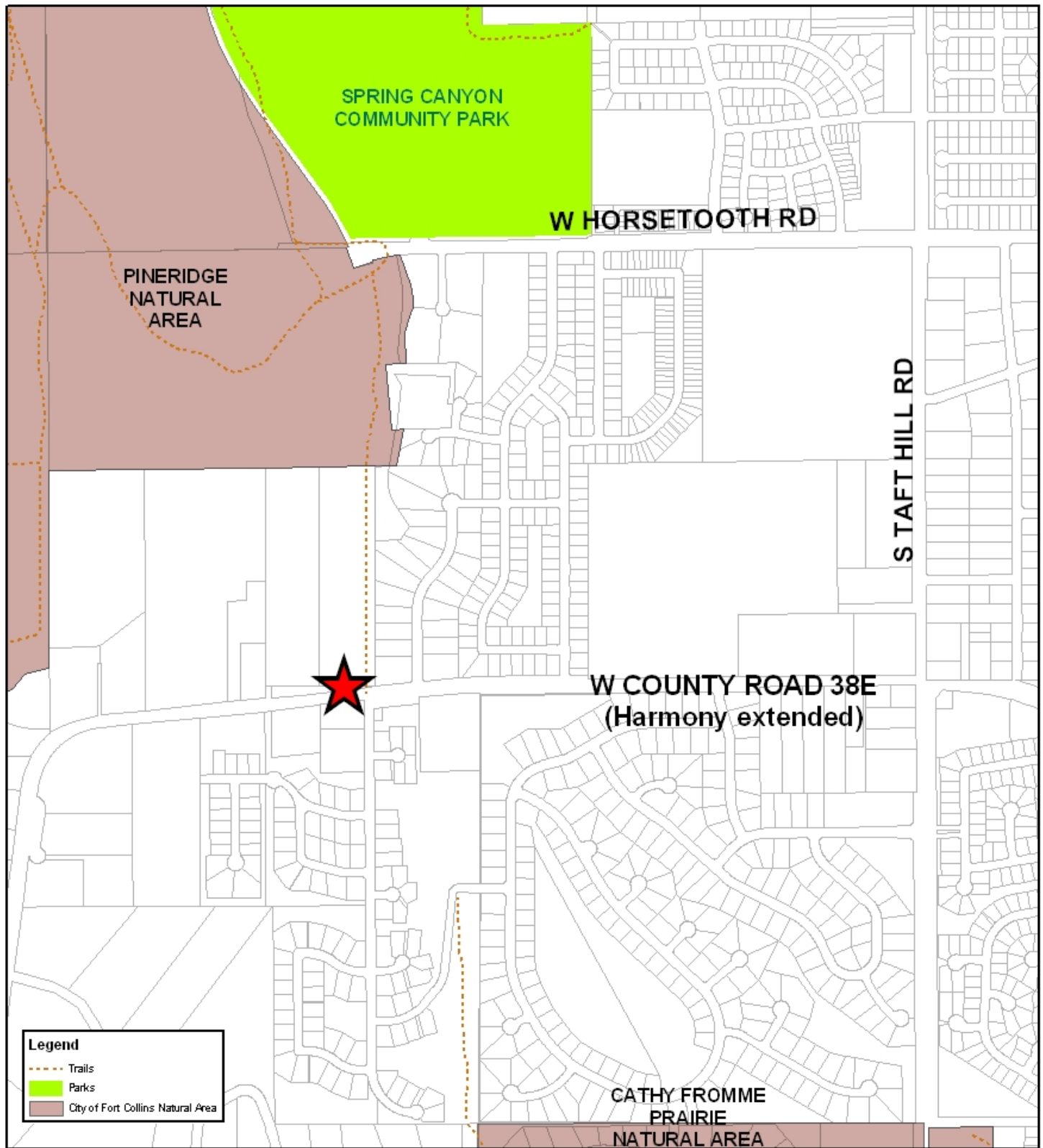
In light of the highly complicated inheritance issues, the lengthy and expensive legal action necessary to establish the nephew's administrative rights, and because of the minimal value attributed to the real estate, staff recommends and seeks from Council authorization to pursue eminent domain, as the most efficient and practical approach to acquire the necessary real estate.

## **ATTACHMENTS**

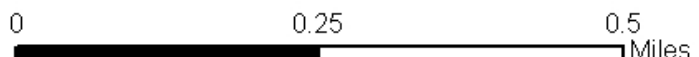
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1. Location map.

# Fossil Creek Trail Area Vicinity Map



Area of City interest



ORDINANCE NO. 029, 2008  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE ACQUISITION BY EMINENT DOMAIN  
PROCEEDINGS OF CERTAIN LANDS NECESSARY TO  
CONSTRUCT THE FOSSIL CREEK TRAIL

WHEREAS, the City is expanding and furthering the connectivity of the City's master trail system for use by the public in recreation and transportation; and

WHEREAS, the Fossil Creek Trail will be extended south from Fossil Canyon Park to CR-38E (the "Project"); and

WHEREAS, in order for the City to construct the Project it is necessary for the City to acquire certain property interests (the "Property") as described on Exhibit "A" attached and incorporated herein by this reference; and

WHEREAS, the acquisition of the Property is desirable and necessary for the construction of the Project and is in the City's best interest in order to promote public health, safety, and welfare; and

WHEREAS, the acquisition of the Property may, by law, be accomplished through eminent domain.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds and determines that it is necessary in the public interest to acquire the Property described on the Exhibit "A" for the purpose of constructing the Project.

Section 2. That the City Council hereby authorizes the City Attorney and other appropriate officials of the City to acquire the Property for the City by eminent domain.

Section 3. That the City Council finds, in the event that acquisition of the Property described in this Ordinance is commenced by eminent domain, that immediate possession is necessary for the public health, safety and welfare.

Introduced, considered favorably on first reading, and ordered published this 4th day of March, A.D. 2008, and to be presented for final passage on the 18th day of March, A.D. 2008.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading on the 18th day of March, A.D. 2008.

\_\_\_\_\_  
Mayor

ATTEST:

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

EXHIBIT A

A tract of land located in the southwest quarter of Section 33, Township 7 North, Range 69 West of the Sixth Principal Meridian, Larimer County, Colorado, being more particularly described as follows;

Considering the north line of the said southwest quarter of Section 33 as bearing South 89 degrees 43 minutes 00 seconds West between a 2.5" Aluminum Cap Monument, PLS 12374 at the center quarter corner of Section 33, and a 3.5" Brass Cap BLM Monument at the west quarter corner of Section 33 based upon GPS observation and City of Fort Collins coordinate base, and with all bearings contained herein relative thereto;

Commencing at the said center quarter corner of Section 33;

THENCE along the said north line of the southwest quarter of Section 33, South 89 degrees 43 minutes 00 seconds West for a distance of 639.85 feet to the southwest corner of the Plat of Springfield Subdivision, Fifth Filing, a plat of record with the Clerk and Recorder of the said Larimer County, and to the TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE continuing along the said north line of the southwest quarter, South 89 degrees 43 minutes 00 seconds West for a distance of 50.00 feet;

THENCE South 00 degrees 12 minutes 57 seconds West for a distance of 23.72 feet to the apparent north right of way of Larimer County Road 38E;

THENCE along the said apparent north right of way, North 84 degrees 43 minutes 00 seconds East for a distance of 50.23 feet to the southerly extension of the west line of the said Plat of Springfield Subdivision, Fifth Filing;

THENCE along the said extended line, North 00 degrees 12 minutes 57 seconds East for a distance of 19.34 feet to the point of beginning. Containing 1,076 square feet more or less.

The above described tract is subject to all easements and rights of ways now existing or of record.

I hereby state that the above description was prepared by me and is true and correct to the best of my professional knowledge, belief and opinion. The description is based upon previously recorded plats and deeds and not upon a actual field survey.

WALLACE C. MUSCOTT COLORADO P.L.S. 17497  
P.O. BOX 580 FORT COLLINS, CO 80522

