

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

ITEM NUMBER: 6

DATE: January 20, 2009

STAFF: Wanda Krajicek

SUBJECT

Consideration and Approval of the Minutes of the January 6, 2009 Regular Meeting.

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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, January 6, 2009, 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: Hutchinson, Manvel, Ohlson, Poppaw, Roy, and Troxell.

(Councilmember Brown excused from Council meetings from October 28, 2008 through April 7, 2009, authorized by Resolution 2008-104.)

Staff Members Present: Atteberry, Krajicek, Roy.

Dr. Tony Frank, Interim President of Colorado State University, stated CSU valued its close, working relationship with the City and he expressed his desire that the relationship between CSU and the City would continue in a positive manner.

Patty Crow, Environmental Protection Agency, Denver, presented two Energy Star Awards to the City for the energy efficiencies in place in the buildings located at 215 North Mason and 281 North College.

Citizen Participation

Gerry Horak, 123 North Mack Street, stated his concerns with the proposed Pay Plan for City employees in the current economy.

Jeff Emmel, 543 Spindrift, supported banning the use of cell phones by City employees while on City business and using City transportation.

Katy Freudenthall, Director of Community Affairs, ASCSU, stated ASCSU has created a committee to monitor the City Council election this April.

Courtney Sullivan, Assistant Director of Community Affairs, ASCSU and Chair of the Community Elections Committee, stated the committee was formed to build a better relationship with Council and engage students in local affairs.

Eric Sutherland, 631 LaPorte Avenue, stated buying renewable energy credits is not allowed by the City Charter which prohibits City expenditure for any measures that are not directly related to supplying electricity to residents.

Al Bacilli, 520 Galaxy Court, stated his objections to the salaries provided to the City Manager, City Attorney and Municipal Judge. He did not support the creation of Glade Reservoir.

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Gail Zirtzlaff, Loveland resident, stated it is difficult for a citizen to complain about the Police Internal Affairs Department. She discussed her complaint against Internal Affairs with the Citizen Review Board and was told the Board could not handle that complaint. She was frustrated with the process and did not believe enough oversight was provided for Internal Affairs.

Mike Devereaux, 2150 Maid Marian Court, expressed his support for allowing power wheelchairs in bike lanes.

Cheryl Distaso, 135 South Sunset, stated the public information meeting that discussed the proposed Transfort route changes was held when CSU students had already left for their winter break. The deadline to submit public comments is set for January 17, before most students have returned. Students will be greatly affected by the proposed changes and should be allowed to have a say. She requested an extension on the public comment deadline and another public meeting. She asked for an update on staff's research on allowing power wheelchairs in bike lanes.

Citizen Participation Follow-up

Councilmember Roy asked that the deadline for public comments on the proposed Transfort route changes to be extended. City Manager Atteberry stated the deadline has been moved to mid-February.

Councilmember Roy asked for information regarding Mrs. Zirtzlaff's complaint against Internal Affairs. City Manager Atteberry stated a form to file a complaint can be obtained from the City Manager's Office any time a citizen has a complaint about Police Services. He has met with Mr. and Mrs. Zirtzlaff to discuss their complaint and will provide information to Council.

Councilmember Troxell stated water storage projects have historically been important to the development of Northern Colorado and the Glade Reservoir project is one that will supply water to many residents in south Fort Collins through the Fort Collins Water District.

Councilmember Poppaw stated Glade Reservoir would greatly harm the Poudre River and not benefit Fort Collins.

Councilmember Ohlson stated the City is committed to providing energy programs that provide exactly what citizens believe they are contributing towards with a voluntary investment. City Manager Atteberry stated more information will be provided to Council about energy program commitments made and fulfilled.

Councilmember Ohlson asked if another public meeting about the proposed changes to Transfort routes has been scheduled. City Manager Atteberry stated information about a new meeting will be provided to Council and the public through the City's website.

Councilmember Ohlson asked for clarification about the options a citizen has to complain about the actions of Police Internal Affairs. He opposed the creation of Glade Reservoir.

Agenda Review

City Manager Atteberry stated Item #20 *Resolution 2009-002 Adopting an Updated Energy Policy* has been revised to include an amended resolution and Policy.

Mickey Willis, 2969 Spring Harvest Lane, pulled Item #14 *Resolution 2009-001 Making Findings of Fact and Conclusions Pertaining to the Appeal of the Water Board's August 28, 2008 Denial of the Floodplain Variance for a School in the Poudre River 500-year Floodplain.*

Councilmember Ohlson pulled Item #15 *Resolution 2009-003 Accepting the Systems Level Study for the Interstate Highway 25 and Colorado State Highway 392 Interchange and Authorizing the City Manager to Present The Study to the Colorado Transportation Commission for Approval.*

CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the December 2 and December 16, 2008 Regular Meetings and the November 25 and December 9, 2008 Adjourned Meetings.
7. Second Reading of Ordinance No. 160, 2008, Amending Chapter 9 of the City Code and Adopting by Reference the 2006 International Fire Code, with Amendments.

The City of Fort Collins has historically adopted the Uniform Fire Code (UFC) as a model for the identification, correction and prevention of fire safety hazards. Currently, the City is administering the 1999 Edition. Ordinance No. 160, 2008, unanimously adopted on First Reading on December 16, 2008, adopts the 2006 International Fire Code by reference and will replace the now outdated 1999 UFC currently in use.

8. Second Reading of Ordinance No. 161, 2008, Amending the City Code to Establish Marking Requirements.

This Ordinance, unanimously adopted on First Reading on December 16, 2008 requires the use of chalk-based paint in the Old Town Area and on decorative surfaces throughout the city, except under certain conditions. Markings are defined in the proposed ordinance to include any mark to show the location of underground facilities or to mark other design or construction-related specifications, features or limits. Markings made with water-based paint must be properly removed within 45 days of the request, except under certain conditions. In a situation that requires markings to be made utilizing water-based paint, the person making the request through the Colorado Notification Association will be responsible for their removal. If the person making the request is unknown, such as when an engineering company contracts directly with a locate company instead of through the Notification Association, then the person causing the marking to be made will be responsible for removing the marking.

The Ordinance has been revised on Second Reading to clarify the distinction between the markings requirements on decorative surfaces and in the Old Town Area, versus those made

elsewhere in the City. A few other changes were made to make the language more readable. Also, the definition of "Old Town Area" has been changed to include a slightly broader geographic area than that included in the definition on First Reading.

9. Items Relating to the Gateway Second and Third Annexations, Withdrawn from Consideration.

Gateway Second Annexation

- A. Resolution 2008-135 Rescinding Resolution 2008-112.
- B. Resolution 2008-136 Setting Forth Findings of Fact and Determinations Regarding the Gateway Second Annexation.
- C. Hearing and Second Reading of Ordinance No. 153, 2008, Annexing Property Known as the Gateway Second Annexation to the City of Fort Collins, Colorado.
- D. Hearing and Second Reading of Ordinance No. 154, 2008, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Gateway Second Annexation to the City of Fort Collins, Colorado.

Gateway Third Annexation

- A. Resolution 2008-137 Rescinding Resolution 2008-113.
- B. Resolution 2008-138 Setting Forth Findings of Fact and Determinations Regarding the Gateway Third Annexation.
- C. Hearing and Second Reading of Ordinance No. 155, 2008, Annexing Property Known as the Gateway Third Annexation to the City of Fort Collins, Colorado.
- D. Hearing and Second Reading of Ordinance No. 156, 2008, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Gateway Third Annexation to the City of Fort Collins, Colorado.

These Ordinances, which would annex certain portions of the I-25 right-of-way, were adopted unanimously on First Reading on December 2, 2008, together with ordinances commencing the Gateway First Annexation, which consists of property within the Arapaho Bends Natural Area and adjacent portions of Harmony Road. The Gateway First Annexation was unanimously adopted on Second Reading on December 16, 2008.

However, consideration of the Gateway Second and Third Annexations was continued from the December 16, 2008 meeting to allow additional time to determine whether the ongoing mediation between the City and the Town of Timnath, which is related to these annexations, would result in an agreement between the two parties. Such an agreement has been reached.

Therefore, staff is recommending that this item be withdrawn from the agenda and not further considered by the Council.

10. First Reading of Ordinance No. 001, 2009, Appropriating Unanticipated Grant Revenue in the General Fund for the Police Services Victim Services Team.

The Fort Collins Police Services Victim Services Team has been awarded a 12-month grant in the amount of \$34,000 for the period from January 1, 2009 through December 31, 2009, by the Eighth Judicial District Victims Assistance and Law Enforcement (V.A.L.E.) Board to help fund services provided by this team. The funds will be used for a part-time paid victim advocate who provides crisis intervention services during weekday hours and is housed in the Victim Services office. These funds will also pay for some of the operational expenses needed to provide 24-hour a day, 7-day a week services to victims of crime in the community.

11. First Reading of Ordinance No. 002, 2009, Appropriating Proceeds from the Issuance of City of Fort Collins, Colorado, Wastewater Utility Enterprise, Sewer Revenue Refunding Bonds, Series 2009, Scheduled to be Sold the Week of January 20, 2009, In the Maximum Aggregate Principal Amount of \$34,000,000 in the Wastewater Utility Fund.

Immediately following the January 6, 2009 regular Council meeting, the Board of the Wastewater Utility Enterprise will consider on Second Reading, an Ordinance which authorizes the issuance of City of Fort Collins Colorado, Wastewater Utility Enterprise, Sewer Revenue Bonds, Series 2009, in the Maximum Aggregate Principal Amount of \$34,000,000. The Bonds will be issued to pay for a major capital improvement project at the Mulberry Reclamation Facility.

The passage of the TABOR Amendment by the Colorado voters in 1992, required the City to form enterprises in order for its utilities to be able to issue municipal bonds without an election. Since that time, all utility bonds have been issued by the appropriate utility enterprise. However, the City Charter grants only the Council the power to appropriate the funds. Therefore, this action by the Council is necessary in order to appropriate the bond proceeds for the Wastewater Utility. Authorizing the issuance of the bonds and appropriating the proceeds are both necessary to complete the bond transaction. The final rates will be determined by selling the bonds at a competitive sale in January 2009.

12. First Reading of Ordinance No. 003, 2009, Amending Section 2-428 of the City Code Expanding the Functions of the Transportation Board to Include the Establishment of a "Bicycle Advisory Committee."

As recommended in the 2008 Bicycle Plan adopted by City Council on October 7, 2008, the City is implementing the formation of a Bicycle Advisory Committee. The Fort Collins Bicycle Advisory Committee (BAC) is proposed as a citizen advisory committee which reports to the City of Fort Collins Transportation Board. BAC members will have interest in or knowledge of bicycling related issues. The BAC's role will be to review issues related

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to bicycling in the areas of engineering, enforcement, education, encouragement, environment, community, and economy, as noted in the 2008 Bicycle Plan.

13. Postponement of Items Relating to the Eagle View Third Annexation Indefinitely.

The Eagle View Third Annexation was initiated on December 2, 2008 and the hearing on the Annexation was scheduled for January 6, 2009. In view of the pending negotiations and proposed agreement with the Town of Timnath, staff recommends that this item be postponed and brought back to the City Council for consideration after the Council has determined whether to approve that agreement.

14. Resolution 2009-001 Making Findings of Fact and Conclusions Pertaining to the Appeal of the Water Board's August 28, 2008 Denial of the Floodplain Variance for a School in the Poudre River 500-year Floodplain.

On September 30, 2008, an amended Notice of Appeal was filed seeking to overturn the August 28, 2008 decision of the Water Board denying a floodplain variance for a school in the Poudre River 500-year floodplain at 720-750 East Vine Drive.

On December 16, 2008, City Council voted to uphold the decision of the Water Board. In order to complete the record regarding this appeal, the Council should adopt a Resolution making findings of fact and finalizing its decision on the appeal.

15. Resolution 2009-003 Accepting the Systems Level Study for the Interstate Highway 25 and Colorado State Highway 392 Interchange and Authorizing the City Manager to Present The Study to the Colorado Transportation Commission for Approval.

City Council and the Windsor Town Board have held three joint work sessions to discuss the I-25 and State Highway 392 Interchange Improvements and System Level Study (1601 Process). The project team has worked to address questions and develop a System Level Study for this interchange that will meet the Colorado Department of Transportation (CDOT) requirements. This approval will allow the project to move into final design. The Resolution recommends that the I-25 and State Highway 392 System Level Study be presented to the Colorado Department of Transportation Commission on January 21, 2009.

16. Routine Easement.

Easement for construction and maintenance of public utilities from North Fort Collins Neighborhood Design and Development Group, LLC, to provide electric service in a newly annexed area, located at 719 Willox. Monetary consideration: \$10.

*****END CONSENT*****

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

7. Second Reading of Ordinance No. 160, 2008, Amending Chapter 9 of the City Code and Adopting by Reference the 2006 International Fire Code, with Amendments.

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8. Second Reading of Ordinance No. 161, 2008, Amending the City Code to Establish Marking Requirements.

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

10. First Reading of Ordinance No. 001, 2009, Appropriating Unanticipated Grant Revenue in the General Fund for the Police Services Victim Services Team.
11. First Reading of Ordinance No. 002, 2009, Appropriating Proceeds from the Issuance of City of Fort Collins, Colorado, Wastewater Utility Enterprise, Sewer Revenue Refunding Bonds, Series 2009, Scheduled to be Sold the Week of January 20, 2009, In the Maximum Aggregate Principal Amount of \$34,000,000 in the Wastewater Utility Fund.
12. First Reading of Ordinance No. 003, 2009, Amending Section 2-428 of the City Code Expanding the Functions of the Transportation Board to Include the Establishment of a "Bicycle Advisory Committee."

Councilmember Manvel made a motion, seconded by Councilmember Poppaw to adopt and approve all items not withdrawn from the Consent Calendar . Yeas: Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

Consent Calendar Follow-up

Councilmember Ohlson asked for data about enforcement of the bicycle dismount zone in the downtown area.

Councilmember Manvel noted Item #12 *First Reading of Ordinance No. 003, 2009, Amending Section 2-428 of the City Code Expanding the Functions of the Transportation Board to Include the Establishment of a "Bicycle Advisory Committee"* will form the Bicycle Advisory Committee and he asked that the process to choose committee members be expedited so the Committee would be active in time to present a bicycle-pedestrian proposal to the Metropolitan Planning Organization in March.

Resolution 2009-002 **Adopting an Updated Energy Policy, Adopted**

The following is staff's memorandum on this item.

"EXECUTIVE SUMMARY

This Resolution adopts the 2008 Energy Policy, replacing the 2003 Electric Energy Supply Policy. A draft of the Energy Policy was presented to City Council at the September 23, 2008 work session for discussion and comment. Council's comments have been incorporated and public outreach has been completed.

BACKGROUND

In 2003, City Council adopted the Electric Energy Supply Policy by Resolution 2003-038, providing direction and guidance in the areas of competitive rates, high system reliability, and the environment, specifically related to Demand-Side Management (DSM) or energy efficiency and renewable energy.

The Electric Board, together with Utilities staff, has drafted the 2008 Energy Policy for Council's consideration. This policy is intended to replace the 2003 Policy.

The Draft Policy updates the concepts and language of the original policy, while remaining true to the fundamentals of electric distribution system reliability and energy affordability for the community. Some of the changes include:

- *Updated metrics and calibration of the policy to align with industry best practices;*
- *Support for a shift in the language and framework to align with the City's carbon reduction goals (Climate Action Plan);*
- *Emphasis on the need to protect the reliability of the distribution system;*
- *Focus on the importance of the relationship with Platte River Power Authority; and*
- *Addition of an economic component with the "affordability" concept rather than a "lowest rates" target.*

The 2008 draft policy was presented to City Council for discussion at a work session on September 23, 2008. Council provided feedback for staff, including changes to wording and the addition of a goal related to Platte River Power Authority, the City's electricity provider.

Since September, staff has incorporated wording changes into the policy document and conducted public outreach. In addition to a public open house on November 17, the Policy has been presented to several community boards. A presentation was provided for commercial customers on November 10th. Comments have been compiled and attached.

The Air Quality Advisory Board met on November 17, 2008 and adopted the following motion:

"The Air Quality Advisory Board recommends that the City Council adopt the proposed energy policy revision. We note that steps taken in the energy policy are in alignment with the Climate Action Plan, which we also support."

In summary, the proposed 2008 Energy Policy updates and replaces the policy adopted by City Council in 2003. It provides strategic planning guidance in significant areas related to the provision of electric service to the City of Fort Collins and aligns development of energy efficiency and conservation programs with the City's Climate Goals. The 2008 Policy sets the targets for implementation planning and directs annual reporting mechanisms."

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Brian Janonis, Utilities Executive Director, stated energy in the 21st century will be an environmental issue affecting climate change, a national security issue and an economic issue. The Policy was drafted with much input from the Electric Board. Two versions of the Policy are presented for Council consideration.

Patty Bigner, Utilities Customer Relations Manager, stated the first Energy Policy was adopted in 2003. Since then, changes in technology, including metering, load management, distributive generation resources have developed that affect the Policy. There is more public interest now and new regulations to control greenhouse gas emissions that have been considered in the creation of the new Policy. Funding for big initiatives to help with transmission, distribution, load management and other aspects related to the electric industry was also considered in developing the Policy. Local programs to help citizens reduce greenhouse gas emissions and opportunities for new energy development were also considered.

John Phelan, Energy Services Engineer, stated major changes to the Policy include updated metrics that align better with utility best practices and allow the Utility to manage itself better and make comparisons to leading utilities around the country. The Policy has a broader economic focus that includes affordability and local economic health and the Utility's financial health. The Policy has incorporated public comment and Council feedback. The goals included in the Policy are to provide highly reliable electric service, support the community's carbon emission goals, enhance local economic health and a focus on Fort Collins' leadership position with Platte River Power Authority. The strategies contained in the Policy will provide dramatic energy and demand savings. The Policy aligns with the City's Climate Plan and will provide emission reductions by 2020 with energy efficiencies, advanced metering, smart grid, conservation, and renewable energy. The Climate Plan references the proposed Energy Policy and 25% of the estimated 2012 reductions will be provided through implementation of the Policy.

The efficiency goal of 1% per year as a percentage of the annual retail sales is included in the Policy. The optional Policy contains an efficiency goal of 1.5% per year. Specific implementation plans will be presented to Council later in the year. The cost of implementing the plans will be included in the budgeting process for 2010-2011. The Policy will provide continued high reliability for the electric system, modernization of the electric metering system, a focus on the long-term asset management requirements of the electric distribution system, reduction of greenhouse gas emissions, affordable electric bills, and local economic benefits.

Sue Radford, 2732 Wakonda, stated the revised Policy is a better alternative but more changes need to be made to reduce greenhouse gas emissions.

Steve Yurash, 2920 Waterstone Court, supported adoption of the Energy Policy.

Phil Friedman, 201 South Grant Avenue, stated the optional Energy Policy increases the electric reduction rate and is a better choice. A greater emphasis on locally implemented distributive energy is needed.

John Morris, 2825 Teal Eye, Electric Board Chairperson, thanked staff for the work done to develop the Energy Policy. The Board supported adoption of the Policy.

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Kevin Cross, 300 Peterson, supported the adoption of the optional Policy and the emphasis on affordability of bills versus low rates. This change will allow the Utility to invest more in providing incentives for energy efficiency measures, reducing customers' energy use and keep energy bills low. The Energy Policy should incorporate the 2012 greenhouse gas reduction goal that was adopted in the Climate Action Plan.

Tom Griggs, 520 North Sherwood Street, supported adoption of the optional Policy.

Eric Sutherland, 631 LaPorte Avenue, did not support adoption of the Energy Policy because it did not contain plans and funding to affect true change. The Policy does not clarify if funds spent for renewable energy will be spent within the community or for projects outside the state.

Dan Bihn, 421 South Howes, Electric Board member, supported adoption of the optional Policy because it uses a "systems" approach to make local investments in renewable energy.

Cheryl Distaso, 135 South Sunset, supported adoption of the optional Energy Policy because it focuses on keeping bills affordable rather than keeping rates low, which will encourage conservation.

Rick Cullen, Fort Collins resident, supported the optional version of the Energy Policy. Implementation will be a critical issue and many options are available for setting the rates.

Kenneth Thompson, Fort Collins student, stated using renewable energy will help protect the environment.

Councilmember Troxell objected to Council considering the optional version of the Energy Policy because the optional version was not received with enough time to study the proposed changes.

Mayor Hutchinson asked if staff had reviewed the proposed changes to the Policy. Janonis stated staff has determined the changes made in the optional version provide clarification of the intent of the Policy. The most substantial change is raising the efficiency goal from 1% per year to 1.5% per year.

Councilmember Roy asked for a definition of "smart grid." Steve Catanach, Light and Power Operations Manager, stated smart grid is the ability to have real-time information on the configuration, operation and status of equipment on the City's power system. The end goal is to provide the Utility with the tools necessary to monitor the health of the system and address issues before they occur to prevent outages. The Advanced Metering Infrastructure (AMI) system, a foundation for developing a smart grid, will provide a communication system to monitor meters and provide information to customers at the meter level. Janonis stated the AMI and smart grid system will help the Utility prepare for the use of more electric cars in the area.

Councilmember Troxell stated the Energy Policy needs flexibility for innovations, such as the smart grid. He asked for an explanation of the new bullet added to the option Policy that stated "adopt pricing policies that reflect short-term and long-term cost, both direct and indirect, of generating and delivering electricity." Janonis stated the statement gives the City the flexibility to examine long

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term costs of carbon regulation, carbon cap legislation and other costs that will be imposed in the future.

Councilmember Troxell stated it is important to provide for the innovation of the future but not build policy on “what ifs.” He stated adding the phrase “requiring highly energy efficient new and existing buildings” to the optional Policy was too restrictive and will increase costs.

Councilmember Manvel noted the words “and existing buildings” should not be in the optional Policy and the intent was to require efficiency in new buildings and promote efficiency in existing buildings.

Mayor Hutchinson stated much time has been spent developing this Policy and the Leadership Team determined the changes could be considered by Council with a short turn-around time and not delay adoption of the Policy.

Councilmember Manvel read the changes made in the optional Policy. The phrase “the entire City government” was added to the purpose statement because an energy policy does not involve only the Utility. Changes to the 2050 vision clarify that the city government may not be providing all the electricity to its customers but will ensure electric service. The addition “to adopt the pricing policies that reflect short term and long term costs, both direct and indirect, of generating and delivering electricity” will focus on the costs of future generation and not on keeping the kilowatts cheap. Changing the efficiency goal from 1% to 1.5% is a substantive change. The optional Policy now requires new buildings to be efficient and encourages increased efficiencies for existing buildings. Goal Three has been edited to read “local economic health” to align with the terminology used by the City. Goal Three has been changed to emphasize that competitive rates need to be supported by energy efficiency and conservation to result in low and sustainable energy bills to enhance economic health and to state that the City will strive to invest climate improvement monies locally. Goal Four was changed to ensure Platte River Power Authority works with the City to make the other Goals function well.

Councilmember Ohlson asked why the Policy is an “Energy Policy” and not an “Electric Policy.” Janonis stated the Policy is primarily concerned with electric service, but the Policy is intended to be broader to incorporate the use of electric vehicles to help reduce the carbon footprint and transportation.

Councilmember Ohlson asked why graphs were included in the Policy. Phelan stated the graphs add some clarity to the Policy but could be removed.

Councilmember Ohlson asked when Council would formally consider changing the Electric Board to an Energy Board. Janonis stated the Electric Board has expressed concerns that changing to an Energy Board would dilute the Electric Board and broaden the responsibilities of the Board which would require greater staff input.

City Manager Atteberry stated the optional Policy provides clarification for implementation and staff supports the changes. The graphs will be removed from the final version.

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

Councilmember Troxell asked for clarification of Goal Four and using the word "lead" and not "encourage." Janonis stated the intent is for the City to adopt more of a leadership role with the member cities.

Councilmember Manvel stated the change was intended to emphasize that Fort Collins, with the other member cities, are in charge and will direct Platte River.

Councilmember Poppaw stated the member cities own Platte River and the changing the wording was to convey the idea that the member cities lead and not just request Platte River comply with the Policy. It is important for Fort Collins to work with the member cities to craft a direction for Platte River. The Policy is flexible and will be reviewed after five years.

Councilmember Manvel made a motion, seconded by Councilmember Poppaw, to adopt Resolution 2009-002, the optional version of the Energy Policy, with revisions. The wording in the 2050 Vision should be changed from "affordable" to "competitive," "and existing buildings" is to be removed from bullet 5 in Goal Two, remove "a" from the first paragraph of Goal Three. The proposed wording from staff "Platte River provides a strong means for furthering the..." should be used in the first paragraph of Goal Four. The word "lead" in the second and sixth bullet of Goal Four should be changed to "provide policy guidance to." The graphs should not be included.

City Attorney Roy suggested having one bullet in Goal Four contain the language "develop closer working relationships with other Platte River cities" and one bullet stating "with other member cities provide policy guidance to Platte River to:" and list the actions to be accomplished. Council agreed to list the bullets in Goal Four in the suggested manner.

Councilmember Troxell asked for the reason to change "affordable" to "competitive" in the 2050 vision.

Councilmember Manvel stated affordable did not have any meaning in the context it was written but competitive would be compared to other cities' rates and give a measure to gauge the City's rates. Janonis stated a competitive rate survey is presented to Council each year at the time proposed new rates are presented.

Mayor Hutchinson stated the competitiveness of the Utility's rates and reliability of service has drawn major employers to the City.

Councilmember Roy asked if meetings with the member cities have been arranged to discuss the ideas put forth in the Policy. City Manager Atteberry stated two meetings of the Platte River Manager, city managers and utility directors of the member cities have occurred to discuss Fort Collins' focus of reliability, affordability and environmental stewardship and more meetings will occur.

Councilmember Poppaw stated the Policy sets the framework to move Fort Collins to the forefront of the new energy economy.

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Councilmember Troxell stated his support for the Energy Policy but the last minute changes made the process of reviewing the Policy harder.

Councilmember Manvel stated the Policy has been crafted through hours of work of staff, community members and Council and the revisions made provide clarification to the intent of the Policy.

Mayor Hutchinson stated the changes have been adequately discussed and the Policy should now be adopted.

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

THE MOTION CARRIED.

Resolution 2009-001
Making Findings of Fact and Conclusions Pertaining to the Appeal
of the Water Board's August 28, 2008 Denial of the Floodplain Variance for
a School in the Poudre River 500-year Floodplain, Defeated

The following is staff's memorandum on this item.

“EXECUTIVE SUMMARY

On September 30, 2008, an amended Notice of Appeal was filed seeking to overturn the August 28, 2008 decision of the Water Board denying a floodplain variance for a school in the Poudre River 500-year floodplain at 720-750 East Vine Drive.

On December 16, 2008, City Council voted to uphold the decision of the Water Board. In order to complete the record regarding this appeal, the Council should adopt a Resolution making findings of fact and finalizing its decision on the appeal.

BACKGROUND

The Appellant's amended notice of appeal was based on the allegations that:

- *The Water Board failed to conduct a fair hearing in that evidence presented by staff was substantially false and grossly misleading.*
- *The Water Board failed to properly interpret and apply relevant portions of the City Code as set forth in Section 2-48(b)(1).*

At the December 16, 2008 hearing on this matter, Council considered the testimony of City staff and the Appellant. In subsequent discussion at this hearing, Council determined that the Water Board did hold a fair hearing and properly interpreted and applied relevant portions of the City Code.

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Therefore, the City Council voted to uphold the decision of the Water Board. Adoption of this Resolution will finalize Council's decision on the appeal."

Mickey Willis, 2969 Spring Harvest Lane, stated Council did not hear all of the facts at the appeal hearing of December 16, 2008. Staff provided extra information to Council that the applicants did not have the opportunity to refute and had ex parte contact with Council. The Downtown Development Authority has submitted a letter to the Poudre School District, stating it will not provide any funding to the School if the District does not support the School. The record Council based its decision on was incomplete and he requested Council not vote on the Resolution but give the applicants an opportunity to review memos from Deputy City Attorney Daggett that have been marked confidential, but should not be confidential.

Councilmember Ohlson asked if there were any legal requirements to adopt the Resolution at this time. City Attorney Roy stated the Code requires Council, after the conclusion of the hearing, to adopt a resolution making findings in support of its decision. Council can choose to reopen the hearing and reconsider its decision and defer the date of adoption of the findings resolution. If Council does not choose to reconsider its decision or reopen the hearing, the resolution must be adopted at this meeting.

Mayor Hutchinson asked if the allegations put forward by Mr. Willis provided justification for reopening the hearing. City Attorney Roy stated Council must determine if the items Mr. Willis referred to deprived him of a fair hearing at the Council and base its decision to reopen the hearing on that determination. Council could ask Mr. Willis for a continuation of the matter until determination can be made of the validity of his allegations that documents exist that deprived him of a fair hearing.

Mayor Hutchinson noted one option Council had at the December 16 hearing was to remand the matter to the Water Board if Council believed a fair hearing had not been conducted. City Attorney Roy stated that option would be exercised if Council believed the Water Board had not conducted a fair hearing. The issue before Council now is whether Council failed to provide a fair hearing. Another option available to Council is to remand the matter to the Water Board to consider issues raised on appeal. If Council reconsiders its decision and takes other action such as remanding the matter to the Water Board, the hearing should be rescheduled and notice provided again to the parties-in-interest.

Councilmember Roy noted he asked questions of staff before the hearing, but staff did not provide the information until the time of the hearing.

Councilmember Ohlson noted the letter from the Downtown Development Authority was not provided to Council for the hearing. City Attorney Roy stated Council could ask Mr. Willis for a copy of the letter, if it believes the information contained in the letter is important to its decision making process. The letter was provided to the Poudre School District and not to Council or staff.

Mayor asked for the options now available to Council on this issue. City Attorney Roy stated Council could close the matter tonight by adopting the Resolution. Council could postpone its decision on the Resolution, if Mr. Willis consents, and view the additional information he has

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provided. If, as a result of Council reviewing the information, it decides to grant a new hearing, notice should be given to the parties-in-interest. At a time specified in the notice, Council could decide to adopt the Resolution or to hear input from other parties that may be affected or from staff, to determine if a rehearing is warranted. Council then would decide whether to reopen the hearing to consider taking different action or adopt the Resolution. Another option for Council is to vote to go into executive session to obtain legal advice related to this matter.

Councilmember Ohlson stated a fair hearing was held on December 16 and he did not want to reopen the hearing.

Mr. Willis stated Council did not hold a fair hearing because it did not have all the information necessary to make a fully informed decision.

Mayor Hutchinson stated his willingness to review other information because of the allegations that information was not provided to Council.

Councilmember Roy made a motion, seconded by Councilmember Poppaw, to adopt Resolution 2009-001.

Councilmember Ohlson asked if the Resolution was just a statement of the decision made by Council at the December 16 hearing. City Attorney Roy stated if Council is satisfied that the hearing has been concluded and should not be reopened, the vote on the Resolution confirms the outcome of the December 16 hearing and the reasons behind the decision.

Councilmember Manvel asked if defeating the motion would require Council to take other action. City Attorney Roy answered in the affirmative.

Councilmember Ohlson stated remanding the matter to the Water Board is the proper solution to this matter and he did not support the motion.

Mayor Hutchinson stated the matter should be remanded to the Water Board with direction to the Board to consider mitigation issues and find ways to allow the variance.

The vote on the motion was as follows: Yeas: Poppaw, Roy. Nays: Hutchinson, Manvel, Ohlson, and Troxell.

THE MOTION FAILED.

City Attorney Roy noted Council must take action on the issue. Council could choose to consider postponing the matter to gather more information from Mr. Willis about the documents he believes were prejudicial and the evidence he was not entitled to submit. Mr. Willis is not officially the appellant and clarification must be given that he is authorized to waive any objection, if the Council does decide to postpone.

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Mr. Willis was willing to postpone Council decision so it can review other information, including an emergency management plan.

City Attorney Roy asked if Mr. Willis had any objections if Council chooses to set the matter over to the next regular meeting to make a decision based upon the information Mr. Willis has provided as to whether to reopen the hearing. Council may or may not ultimately decide to reopen the hearing. Mr. Willis did not have any objections.

Councilmember Ohlson asked if Council could make a motion to remand the matter to the Water Board without reopening the hearing. City Attorney Roy stated clarification is needed whether Mr. Willis is authorized to act on behalf of the appellant, who was listed on the appeal as Judy Sherpelz. Council should give staff an opportunity to speak before it makes its decision. If Council decides it does not need more information about the allegations and chooses to consider remanding the matter to the Water Board, it must make a motion to reconsider and, if that motion passes, make another motion to remand the matter to the Water Board. If the motion to remand fails, a decision to close the matter must be made.

Mr. Willis stated the Nature School was the appellant. He and Ms. Sherpelz were on the Board of Directors and Ms. Sherpelz signed the appeal. He is authorized to speak on Ms. Sherpelz's behalf.

Councilmember Manvel made a motion, seconded by Councilmember Ohlson, to reconsider the Council decision made at the hearing held December 16, 2008.

Mayor Hutchinson stated remanding the matter to the Water Board seemed to be the proper decision. The Water Board needs the opportunity to determine if there are ways to mitigate problems.

Councilmember Ohlson stated Council is instructing the Water Board to consider any mitigation options to resolve the issue but it is not telling the Water Board what decision it should reach.

Councilmember Troxell asked if the appellant and staff will have equal opportunity to present to the Board if the matter is remanded. City Attorney Roy stated the process starts over if the matter is remanded. Council needs to provide direction to the Board as to the issues raised on appeal that the Board needs to consider. The outcome of the Water Board hearing can be appealed.

The vote on the motion was as follows: Yeas: Hutchinson, Manvel, Ohlson, and Troxell. Nays: Poppaw, Roy.

THE MOTION CARRIED.

Councilmember Manvel made a motion, seconded by Councilmember Ohlson, to remand the appeal of the Water Board decision concerning the Nature School floodplain variance request to the Water Board with the conditions cited in the motion brought at the original hearing.

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Councilmember Troxell asked if additional information from staff and Mr. Willis would now be presented. City Attorney Roy stated opportunity should be given for staff to state its opinion on the advisability of remanding the matter.

Mayor Hutchinson asked for a friendly amendment that asks staff to examine the significance of the additional information from Mr. Willis. City Attorney Roy clarified that Mr. Willis felt one reason he was deprived of a fair hearing by Council was that two confidential memos were provided to the Water Board and Council. Those memos were marked "confidential" to protect attorney-client privilege and were withheld from Mr. Willis' request under the "Freedom of Information Act". The two memos will not be provided to Mr. Willis unless Council chooses to waive the attorney-client privilege. Council can ask the Water Board to consider any other information or issues Council believes the Board should consider. City Manager Atteberry stated staff's recommendation on the matter will not change and staff will not support authorizing the floodplain variance.

Mayor Hutchinson stated the Water Board can consider creative ways that may exist for mitigation that would change staff's recommendation.

Councilmember Poppaw asked what other information would be needed to help staff change its recommendation. Bob Smith, Water Planning and Development Manager, stated staff will not change its recommendation because no capital project is proposed that would remove the subject property from the floodplain. The Master Plans that have been adopted and provide direction for Stormwater Utility do not contain any improvements that would remove the area from the floodplain. City Manager Atteberry noted the Water Board could reach a different decision from staff.

Marsha Hilmes-Robinson, Floodplains Administrator, stated staff has examined an extensive list of alternative mitigation measures and does not feel comfortable recommending any of the mitigation measures to remove the risk from the property. Evacuation issues would still be associated with locating a school in the floodplain.

City Attorney Roy advised Council to add to the motion, that upon remanding, the Board should look at all of the issues that were addressed to them in the previous motion, plus consider the communications, emails, information Mr. Willis may have to offer, with the understanding that, unless Council decides to waive the attorney-client privilege, that information will not include those documents withheld from inspection.

Councilmembers Manvel and Ohlson accepted the language as a friendly amendment.

Mr. Willis asked if the attorney-client privilege should exist when Council is acting in quasi-judicial manner. City Attorney Roy stated the attorney-client privilege exists even in the context of a quasi-judicial proceeding when the Council is acting in that capacity.

Councilmember Manvel stated other information has been introduced that the Water Board needs to consider. Council will not overrule the Water Board's final decision.

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Councilmember Troxell asked for clarification of the information the Water Board was to consider. City Attorney Roy stated Council is not finding that the Water Board did not hold a fair hearing and is asking the Board to consider the information provided by Mr. Willis and the questions about possible mitigation. The Water Board will then make a new decision that could be appealed to Council.

Councilmember Roy stated at the December 16 hearing, Council did find the Water Board held a fair hearing and he asked if adopting the current motion would be inconsistent with the decision made at the hearing. City Attorney Roy stated Council did not adopt a finding at the hearing and there is a distinction between concluding the hearing with a motion and formalizing the findings through the adoption of a resolution. Council has stopped short of that final step and has instead decided to reconsider its earlier motion to conclude the hearing differently. Council should not change the motion adopted at the December 16 hearing that the Water Board did not deny the applicant a fair hearing. In lieu of the motion that the Board properly interpreted and applied the Code, Council would instead remand the matter to the Water Board to reconsider. The motion to remand would take the place of the second motion adopted at the December 16 hearing.

Councilmember Manvel stated Council did not want to change its decision that the Water Board did not deny the applicant a fair hearing. The current motion remands the matter to the Water Board for reconsideration.

The vote on the motion was as follows: Yeas: Hutchinson, Manvel, Ohlson, and Troxell. Nays: Poppaw, Roy.

THE MOTION CARRIED.

Resolution 2009-003

Accepting the Systems Level Study for the Interstate Highway 25 and Colorado State Highway 392 Interchange and Authorizing the City Manager to Present the Study to the Colorado Transportation Commission for Approval, Adopted

The following is staff's memorandum on this item.

“FINANCIAL IMPACT

The Transportation Commission approval will allow the project to be designed and ready for implementation. Design funding in the amount of \$1.9 million is available from CDOT, subsequent to the Transportation Commission approval of the System Level Study. The preliminary cost of the interchange project is an additional \$22.7 million (not including right-of-way).

EXECUTIVE SUMMARY

City Council and the Windsor Town Board have held three joint work sessions to discuss the I-25 and State Highway 392 Interchange Improvements and System Level Study (1601 Process). The project team has worked to address questions and develop a System Level Study for this interchange

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that will meet the Colorado Department of Transportation (CDOT) requirements. This approval will allow the project to move into final design. The Resolution recommends that the I-25 and State Highway 392 System Level Study be presented to the Colorado Department of Transportation Commission on January 21, 2009.

BACKGROUND

The I-25 and State Highway 392 Interchange is an integral, yet poorly functioning part of the state transportation network. In March 2006, the City of Fort Collins (City) and the Town of Windsor (Town) entered into an Intergovernmental Agreement (IGA) to develop a plan for the improvement of the interchange, including implementation strategies.

A plan was prepared and presented to both the City and Town, and affected interests. A joint task force (staff from the Town, City, and a potential Developer) was formed to focus on the specific financing tools to use for funding scenarios of the interchange improvements. The System Level Study includes three possible funding scenarios.

The two-year process to develop the I-25/SH 392 Interchange Improvement Plan was completed in early 2008. The study established a foundation for implementing improvements needed and financing tools available to the Town of Windsor and the City of Fort Collins.

The next step was to undertake CDOT's 1601 Interchange Approval Process. The City and Town have chosen to move forward with the System Level Study. A System Level Study is a CDOT mechanism for seeking approval from the Federal Highway Administration (FHWA) to reconstruct or modify an interchange on the Interstate Highway System. The study includes design, environmental clearance, and a financial package. Staff representatives from Fort Collins and Windsor have been working in collaboration with a consultant team to complete the requirements of CDOT and FHWA. Completion of these requirements allows the project to be designed and ready for implementation when construction funding is available. This process has been initiated to incorporate much needed safety enhancements and improved traffic flow with the construction of a new interchange

The City of Fort Collins and the Town of Windsor have decided to proceed with an environmental clearance process for the SH 392/I-25 interchange improvements. The process underway is referred to as the System Level Study including environmental clearance under a National Environmental Policy Act (NEPA) "Categorical Exclusion" designation. In order to accelerate the construction of this much needed interchange, this process utilizes CDOT's North I-25 DEIS environmental document project as the basis for all technical data and analysis. The preferred alternative from that study is a "tight-diamond" interchange design. Fort Collins and Windsor staff members along with a consultant team have completed the System Level Study to meet the requirements of CDOT and FHWA. The Transportation Commission approval of the System Level Study will allow the project to be designed and constructed. Design funding in the amount of \$1.9 million is available from CDOT, approval of the System Level Study to be considered for approval at the Commission's meeting in January 2009. This funding is provided as a federal earmark for the interchange and must be used as soon as possible or the funding may be reappropriated."

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Councilmember Ohlson stated regional cooperation has been important in the 1601 process. He asked for a summary of the differences between the December 11, 2008 and January 5, 2009 drafts of the Study. He asked to be informed when the Windsor Town Board adopts a resolution that clarifies the entire interchange will meet environmental standards. City Manager Atteberry stated Windsor has sent the City a memo stating it will adopt that clarification.

Councilmember Ohlson asked if retaining walls were to be included in the design of the interchange. Rick Richter, Engineering and Capital Projects Manager, stated an option to use retaining walls exists but the preliminary and final design will address the retaining walls and reduce the impacts to the wetlands.

Mayor Hutchinson noted the 1601 submission to CDOT allows much flexibility to address issues such as retaining walls.

Councilmember Ohlson asked if alternatives would be presented for the placement of the frontage road. Richter stated staff is aware of the sensitive nature of the natural area located near the frontage road and has looked at alternatives that would bring the frontage road closer to the interchange. CDOT has requested that any decision on the frontage road be postponed until the preliminary and final design phase is completed.

Councilmember Ohlson asked if the 1601 process was circumventing the full environmental investigation being done along I-25. Mark Jackson, Transportation Director, stated the project has been through the complete National Environmental Policy Act (NEPA) clearance and the Systems Level Study uses the full environmental analysis performed as part of the North I-25 draft Environmental Impact Statement, which is a very thorough analysis. The Systems Level Study has been processed to take advantage of some funds that are available and was not an attempt to skirt any environmental analysis or compliance.

Councilmember Manvel asked if this project might receive any of the stimulus funding the state might be receiving from the federal government for road projects. Jackson stated an opportunity exists for this project to receive some funding but adoption of the intergovernmental agreement between the City and the Town of Windsor needs to be brought for consideration ahead of the current schedule. City Manager Atteberry noted spending money now on the design phase of the interchange will be prudent because the design will not be tied to a deadline to be built.

Councilmember Roy made a motion, seconded by Councilmember Manvel, to adopt Resolution 2009-003. Yeas: Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

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Other Business

Councilmember Ohlson made a motion, seconded by Councilmember Manvel, to adjourn the meeting to the end of the meeting of the Wastewater Utility Enterprise Board so Council can then consider going into executive session. Yeas: Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

(**Secretary's note: The Council adjourned at this point in the meeting and reconvened at 10:05 p.m.)

Executive Session Authorized

Councilmember Ohlson made a motion, seconded by Councilmember Manvel, to go into executive session for the purpose of meeting with the City Attorney, City Manager and other affected members of City staff to discuss potential litigation and related legal issues as permitted under Section 2-31(a)(2) of the City Code. Yeas: Hutchinson, Manvel, Ohlson, Poppaw, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

(** Secretary's note: Councilmember Poppaw left the meeting at 10:15 p.m.)

Adjournment

Councilmember Ohlson made a motion, seconded by Councilmember Roy, to adjourn the meeting to Tuesday, January 13, 2009 at 6:00 p.m. for the purpose of considering additional business of the Council. Yeas: Hutchinson, Manvel, Ohlson, Roy and Troxell. Nays: none.

THE MOTION CARRIED.

The meeting adjourned at 11:05 p.m.

Mayor

ATTEST:

City Clerk