

DATE: July 20, 2010
STAFF: Helen Matson
Ron Kechter

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

29

SUBJECT

Second Reading of Ordinance No. 088, 2010, Exempting the Fort Collins Discovery Museum Project from the Requirement of Section 2.2.3(C)(3)(a) of the Land Use Code.

EXECUTIVE SUMMARY

The location of the planned Discovery Museum is on a portion of City-owned property known as Martinez Park. The project team has been moving forward with its design for quite some time. As part of this process, City staff ordered a title commitment to show that the City is the owner of the Facility site. During the title research process, the title company discovered a small area of land had not been included in any of the property conveyances since 1879. This Ordinance, adopted on First Reading on July 6, 2010 by a vote of 4-2 (Nays: Kottwitz, Troxell) will exempt the parcel from the Land Use Code requirement that all owners of recorded fee interests in the Facility property sign the plat so that the project can continue upon its planned schedule and avoid negative impacts to the project budget. The Ordinance authorizes the City Manager and the City Attorney to respectively sign and certify the Facility plat on behalf of the City as owner of the property shown on the plat, including the parcel. Staff will proceed with the quiet title action (based on adverse possession) to obtain record ownership of the parcel.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - July 6, 2010
(w/o attachments)

DATE: July 6, 2010
STAFF: Helen Matson
 Ron Kechter

AGENDA ITEM SUMMARY
 FORT COLLINS CITY COUNCIL

21

SUBJECT

First Reading of Ordinance No. 088, 2010, Exempting the Fort Collins Discovery Museum Project from the Requirement of Section 2.2.3(C)(3)(a) of the Land Use Code.

EXECUTIVE SUMMARY

The location of the planned Discovery Museum is on a portion of City-owned property known as Martinez Park. The project team has been moving forward with its design for quite some time. As part of this process, City staff ordered a title commitment to show that the City is the owner of the Facility site. During the title research process, the title company discovered a small area of land had not been included in any of the property conveyances since 1879. In order for the project to continue upon its planned schedule and to avoid negative impacts to the project budget, staff is requesting that Council, through this Ordinance, exempt the parcel from the Land Use Code requirement that all owners of recorded fee interests in the Facility property sign the plat; and authorize the City Manager and the City Attorney to respectively sign and certify the Facility plat on behalf of the City as owner of the property shown on the plat, including the parcel.

BACKGROUND / DISCUSSION

The City is the owner of multiple parcels of land at the east end of Lee Martinez Park located between Cherry Street on the south and the Poudre River on the north. This site was selected as the location of the new Discovery Museum facility ("Facility"). The City is building the Facility in accordance with the Operating Agreement between the City and the Discovery Science Center, dated March 11, 2008 ("Agreement"). The Agreement states that upon completion of the Facility, and in accordance with Ordinance No. 013, 2008, the City will convey the Facility site to the City and the Discovery Science Center as tenants in common.

In recent months, the City, as present owner and developer of the Facility, has been taking the Facility project through the City's standard development review process in accordance with the City's Land Use Code. When the plat and plans for the Facility are completed and approved, the City as owner and developer will have to certify on the plat that the plat has been signed by all current owners of any recorded fee interest in the land shown on the plat.

In preparing the plans and plat for the Facility, City staff mapped out all the various parcels of land making up the Facility site and discovered a small tract of land, approximately .217 acres in size, for which record ownership is not clear (the "Parcel"). In 1877, the owner of the property that included the Parcel conveyed some rights in the Parcel to the Colorado Central Railroad for a railway line. That owner then excluded the Parcel from a later conveyance of his property. The Railroad never built a rail line through the Parcel and eventually abandoned or vacated its rights in the Parcel, creating some question as to who now has record ownership of the Parcel.

The City has owned all the property surrounding the Parcel for at least 65 years, and previously no one on City staff had any reason to think that the Parcel was not part of the City-owned property. The City has managed and maintained the Parcel as Park property, and a portion of a City trail has cut across the Parcel for at least 25 years. Even the title company that reviewed title for the Facility project believed the City owned all the relevant property until the City's mapping showed otherwise.

Under the Land Use Code, construction of the Facility cannot begin until the Facility plat is approved and signed, and the plat cannot be finalized until the owners of all recorded fee interests in the subject property have signed. Staff is trying to determine who any possible record owners of the Parcel may be, with the goal of quieting title to the Parcel through a court proceeding, if necessary. However, a quiet title action will take months to complete, significantly delaying construction of the Facility. Staff considered the possibility of redesigning the Facility to avoid the Parcel, but without the Parcel the site is too constrained to make development of the Facility work in an acceptable way.

City staff believes that the City has already acquired title to an absolute fee interest in the Parcel through the legal doctrine of "adverse possession". The general test for adverse possession is that a party in possession of land could claim to have obtained title by adverse possession with proof that such possession was:

1. open and notorious (occupying property in a way that would put the owner on notice of one's claim),
2. hostile and under a claim of right (occupying property with the belief that it is one's own),
3. adverse (that is, not just a use permitted by the owner),
4. actual (using the property in a way that is similar to the typical use of the property),
5. exclusive (not sharing possession with the record owner), and
6. uninterrupted for the statutory period (in Colorado, eighteen years).

Adverse possession does not, however, give an owner ~~record~~ title to a property until title to the property is quieted through a court action, and the Land Use Code requires that a plat be signed by all record owners. For this reason, staff is asking the Council, through this ordinance, to exempt the Facility project from the Land Use Code requirement that all owners of recorded fee interests in the Facility property sign the plat, and to authorize the City Manager and the City Attorney to sign and certify the Facility plat and site plan on behalf of the City as owner of the property shown on the plat and site plan, including the Parcel. Staff will proceed with the quiet title action (based on adverse possession) to obtain record ownership of the Parcel.

FINANCIAL / ECONOMIC IMPACTS

Delay of this project will have significant financial impact, since the project could be delayed 4-6 months while awaiting the completion of the quiet title action. Since the Contractor has mobilized, we would be paying, as a minimum, their Home Office and Field Office Overheads, with a % fee tacked on. These costs could be in the range of \$500,000 - \$700,000. Additionally, delaying the start of the project would place the project in the wrong sequence with the seasons. Instead of starting in the summer and having the building closed-in before winter, the project would be started in the fall and closing the building during the winter. This would result in substantial inefficiencies and possible weather delays, depending upon how early cold weather actually happens. Because of this unpredictability, it would be hard to attach a cost, but it could be as much as another \$500,000. These are funds that are currently not available and would make additional fund raising necessary.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

ATTACHMENTS

1. Location map

COPY

COPY

ORDINANCE NO. 088, 2010
OF THE COUNCIL OF THE CITY OF FORT COLLINS
EXEMPTING THE FORT COLLINS DISCOVERY MUSEUM PROJECT FROM
THE REQUIREMENT OF SECTION 2.2.3(C)(3)(a) OF THE LAND USE CODE

WHEREAS, the City is the owner of certain parcels of real property located in Larimer County Colorado known as "Lee Martinez Park" (the "Park Property"); and

WHEREAS, a portion of the Park Property at the north end of Mason Street between Cherry Street and the Poudre River was chosen as the site for development of the new Fort Collins Discovery Museum facility (the "Facility"); and

WHEREAS, the Facility will be constructed by the City as per the terms of the Operating Agreement between the City and the Discovery Science Center dated March 11, 2008; and

WHEREAS, Section 1.2.4 of the City's Land Use Code states that the provisions of the Land Use Code apply to all development within the City, and that no development can be undertaken without prior and proper approval or authorization pursuant to the terms of the Land Use Code; and

WHEREAS, Section 2.2.3(C)(3)(a) of the Land Use Code requires that all final plats submitted to the City be signed by all current owners of any recorded fee interest in the land described on the plat; and

WHEREAS, City policy also requires that the lawful owner of real property described on a site plan certify the site plan; and

WHEREAS, in preparing the plat and plans for the Facility, City staff mapped all the parcels of land that make up the Facility site and discovered a small parcel of land (the "Parcel") for which record ownership is unclear; and

WHEREAS, the Parcel is shown and described on Exhibit "A", attached and incorporated herein; and

WHEREAS, the City has owned all the Park Property surrounding the Parcel for at least 65 years, and has managed and maintained the Parcel as part of the Park Property, and a portion of a City trail has cut across the Parcel, for at least 25 years; and

WHEREAS, City staff intends to obtain record title to the Parcel through a quiet title action in the District Court, but until that process is completed, the City is unable to certify on the Facility plat that all record owners of the property shown on such plat have signed the plat; and

WHEREAS, a delay in finalizing the plat would also significantly delay construction of the Facility, increasing the cost of the construction project; and

WHEREAS, the City Council has the power to exempt the City from the requirements of a City ordinance through enactment of a new ordinance; and

WHEREAS, it is likely that the City has already obtained fee title to the Parcel under the theory of adverse possession; and

WHEREAS, the general test for adverse possession in Colorado is that a party must have possessed a property with proof that such possession was: (a) open and notorious; (b) hostile and under a claim of right; (c) actual; (d) exclusive; and (e) uninterrupted for the statutory period of eighteen years; and

WHEREAS, the City has been occupying, managing and maintaining the Parcel as part of the City's Park Property on an ongoing basis for more than eighteen years, using the Parcel in the same way the City has used the surrounding Park Property (including putting a public trail on the Parcel), under a good-faith belief that the City owned the Parcel; and

WHEREAS, the City's possession of the Parcel has been exclusive, that is, not shared with any owner of record, and adverse to any owner of record;

WHERE, to staff's knowledge, no party other than the City claims ownership of the Parcel; and

WHEREAS, for the foregoing reasons, City staff is asking that the Council, with respect to the Facility project, waive Section 2.2.3(C)(3)(a) of the Land Use Code, which requires that the Facility plat be signed by all current owners of any recorded fee interest, and that the Council authorize the City Attorney's office and the City Manager to certify and sign the plat and site plan on behalf of the City as owner of the property described on the plat and site plan, including the Parcel.

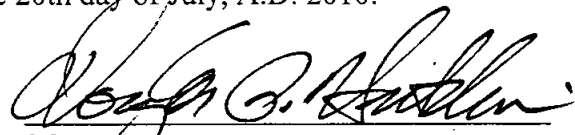
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby waives for the Fort Collins Discovery Museum project the requirement of Section 2.2.3(C)(3)(a) of the Land Use Code that the plat be signed by all current owners of any recorded fee interest in the surface of the land described on the plat.

Section 2. That, based upon the City's historic possession and use of the Parcel as described above, the City Council hereby authorizes the City Manager and the City Attorney to sign and certify the Fort Collins Discovery Museum plat and site plan on behalf of the City as current owner of the fee interest in the surface of the land described on the plat and as lawful owner of the real property described on the site plan, including the Parcel.

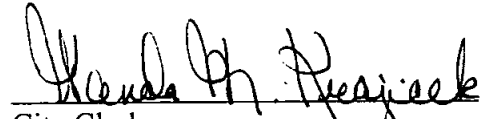
Section 3. That the City Attorney's office is hereby directed to commence a quiet title action to establish record ownership of the Parcel.

Introduced, considered favorably on first reading, and ordered published this 6th day of July, A.D. 2010, and to be presented for final passage on the 20th day of July, A.D. 2010.



Mayor

ATTEST:



City Clerk

Passed and adopted on final reading on the 20th day of July, A.D. 2010.

Mayor

ATTEST:

City Clerk