

DATE: March 20, 2012
STAFF: Jon Haukaas, Ken Sampley
Lindsay Kuntz

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

9

SUBJECT

Second Reading of Ordinance No. 020, 2012, Authorizing the Conveyance of City Property to PS Poudre River, LLC.

EXECUTIVE SUMMARY

In 2005, the City constructed the Oxbow Levee on the Cache la Poudre River to reduce flooding risk and damage to a section of the City north and east of the River. The City has been pursuing inclusion of the Levee into the United States Army Corps of Engineers (USACE) levee maintenance program. As part of its review of the Levee, the USACE has determined that the City should acquire an access and maintenance easement for the benefit of the Levee from the adjacent property owner, PS Poudre River, LLC. During discussions regarding the needed easement, PS Poudre River, LLC voiced concerns regarding granting the maintenance and access easement since this reduces the developable portion of its property. In an effort to reach a mutually satisfactory solution, the property owner proposed the City grant a small remnant parcel located adjacent to and east of the Oxbow Levee in exchange for the needed access and maintenance easement. The Stormwater Master Planning and Floodplain Administration Division has identified that the proposed remnant parcel is no longer needed for flood control purposes. The property owner has agreed to a provision that the City remnant parcel property will be conveyed subject to a deed restriction limiting the property to natural landscape or trail uses only. This Ordinance, unanimously adopted on First Reading on March 6, 2012, authorizes the conveyance of a .224 acre parcel of City-owned land that is adjacent to PS Poudre River, LLC's land, and in exchange it will grant the access and maintenance easement to the City and pay the City \$2,500.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - March 6, 2012
(w/o attachments)

DATE: March 6, 2012
STAFF: Jon Haukaas, Ken Sampley,
Lindsay Kuntz

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

12

SUBJECT

First Reading of Ordinance No. 020, 2012, Authorizing the Conveyance of City Property to PS Poudre River, LLC.

EXECUTIVE SUMMARY

In 2005, the City constructed the Oxbow Levee on the Cache La Poudre River to reduce flooding risk and damages to a section of the City of Fort Collins located north and east of the river known as the Buckingham neighborhood. The Oxbow Levee is located between Linden Street and Lincoln Avenue. The City of Fort Collins Stormwater Master Planning and Floodplain Administration Division completed (in conjunction with its engineering consultants) and submitted a levee certification analysis to the Federal Emergency Management Agency (FEMA). FEMA determined that the levee certification documentation was in order and accredited the levee and associated flood insurance rate maps that depict the floodplain areas as protected from the base regulatory (100-Year) flood.

The City then pursued inclusion of the levee into the United States Army Corps of Engineers (USACE) levee maintenance program. The benefits of inclusion in this program are:

1. the USACE can assist with flood fighting efforts during flood events; and,
2. qualifying damages will be repaired by the federal government at 80 percent federal / 20 percent local cost share.

The levee has been reviewed by the USACE and it has been determined that additional land in the form of an access and maintenance easement is needed from the adjacent property owner PS Poudre River, LLC. During discussions regarding the needed easement, PS Poudre River, LLC voiced concerns regarding granting the maintenance and access easement since this reduces the developable portion of its property. In an effort to reach a mutually satisfactory solution, the property owner proposed the City grant a small remnant parcel located adjacent to and east of the Oxbow Levee in exchange for the needed access and maintenance easement. The Stormwater Master Planning and Floodplain Administration Division has identified that the proposed remnant parcel is no longer needed for flood control purposes. The property owner has agreed to a provision that the City remnant parcel property will be conveyed subject to a deed restriction limiting the property to natural landscape or trail uses only.

BACKGROUND / DISCUSSION

During construction of the levee, excess fill material was placed on the landward side of the levee on adjacent privately-owned property to provide additional contouring of the slopes. This material extended away from the design toe of the levee and outside of the City easement. Meeting notes reflect conversations between the City, the City's consultants, BHA Design, and the adjacent property owner relating to the placement of the fill. Based on these notes, the additional fill was considered, at the time, a positive for both parties.

As a result of Hurricane Katrina, both FEMA and the USACE began taking a much closer look at levee design and new regulations and criteria were established. When the application to the USACE began (and as the Bohemian Foundation developed design plans for a future development for their property), it was necessary for the City to gain clear guidance on key issues:

1. what was considered to be part of the levee by both FEMA and the USACE;
2. what additional information was needed in order to be accepted into the USACE levee maintenance program; and
3. the regulations and review process that would apply to any future development behind the levee on the Bohemian Foundation property.

The as-built topography included as part of the Letter of Map Revision (LOMR) submitted to the Federal Emergency Management Agency (FEMA) reflects the additional fill material. Unfortunately, the excess fill material is considered by FEMA to be part of the levee and development is not allowed on the area. As a result, the non-developable area extends on to the adjacent private property where the additional fill material was placed.

Numerous meetings were held between the City and PS Poudre River, LLC (managed by the Bohemian Foundation) to develop a joint recommendation on what should be considered part of the levee. Northern Engineering, a consultant for PS Poudre River, LLC prepared a map to show the recommended "toe of slope" for the levee. On June 29, 2010, representatives of the City, FEMA and the USACE met at the site, followed by a separate meeting with PS Poudre River, LLC. The City successfully obtained FEMA and the USACE approval to recognize the visual grade break in the slope as the toe of the levee instead of the toe of the fill. A 15 foot wide area for maintenance and access was needed outside of the grade break. In order to provide this area, a maintenance and access easement is needed on the landward side of the levee from Poudre River, LLC. In order for FEMA to recognize the newly agreed upon toe of the levee, a new LOMR would be needed. FEMA agreed that this LOMR could be based on only updated information and waived the \$7,150 application fee. The City agreed to fund the necessary engineering documentation (\$11,600) in order to submit the updated LOMR to FEMA.

During discussions regarding the needed easement, PS Poudre River, LLC voiced concerns regarding granting the maintenance and access easement since this reduces the developable portion of its property. In an effort to reach a mutually satisfactory solution, the property owner proposed the City grant a small remnant parcel located adjacent to and east of the Oxbow Levee in exchange for the needed access and maintenance easement. The Stormwater Master Planning and Floodplain Administration Division has identified that the proposed remnant parcel is no longer needed for flood control purposes. This 0.224 acre parcel was originally purchased in 2004 as part of a larger parcel to construct the levee. The area is currently vacant land. The property owner has agreed to a provision that the City remnant parcel property will be conveyed subject to a deed restriction limiting the property to natural landscape or trail uses only.

FINANCIAL / ECONOMIC IMPACTS

The Bohemian Foundation has agreed to compensate the City of Fort Collins \$2,500 for the remnant parcel of land subject to a deed restriction limiting its use to natural landscaping and trail use purposes only. Bohemian has also agreed to convey to the City at no cost the needed access easement along the boundary of its property for the purposes of accessing and maintaining the Oxbow Levee improvements as required by FEMA and the USACE.

SUSTAINABILITY: ECONOMIC, ENVIRONMENTAL AND SOCIAL IMPACTS

Conveyance of the remnant parcel of land will satisfy the FEMA requirements in order for the adjacent levee to be accepted into the USACE maintenance program. PS Poudre River, LLC plans to maintain the remnant parcel as a natural landscaped area when the property develops in the future.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BOARD / COMMISSION RECOMMENDATION

City staff presented the proposal to the Water Board on January 20, 2011. With the exception of three board members, the Board voted to recommend the authorization to convey the remnant to PS Poudre River, LLC. The three boardmembers who voted against the recommendation noted concerns regarding the initial conveyance amount of \$1,120. This value was based on data obtained by the Real Estate Services staff for similar property sales. Real Estate Services staff completed additional research on the valuation of the property and subsequently negotiated a purchase price of \$2,500 with PS Poudre River, LLC.

ATTACHMENTS

1. Location Map
2. Location Photos
3. Water Board minutes, January 20, 2011

COPY

COPY

COPY

COPY

ORDINANCE NO. 020, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF CITY PROPERTY
TO PS POUUDRE RIVER, LLC

WHEREAS, in 2005 the City constructed the Oxbow Levee (the “Levee”) on the Cache la Poudre River to reduce flooding risk and damage to a section of the City north and east of the river; and

WHEREAS, the City has been pursuing inclusion of the Levee into the United States Army Corps of Engineers (USACE) levee maintenance program; and

WHEREAS, as part of its review of the Levee, the USACE has determined that the City should acquire an access and maintenance easement for the benefit of the Levee from the adjacent property owner, PS Poudre River, LLC (PSPR); and

WHEREAS, when approached by City staff about granting the necessary easement to the City, PSPR was concerned about reducing the developable portion of its property; and

WHEREAS, to address this concern, PSPR has asked the City to convey to it a .224 acre parcel of City-owned land that is also adjacent to PSPR’s land, and in exchange PSPR would grant the access and maintenance easement to the City and pay the City \$2,500; and

WHEREAS, the land that PSPR would like the City to convey to it is described on Exhibit “A”, attached and incorporated herein by reference (the “Property”); and

WHEREAS, the City purchased the Property in 2004 as part of a larger parcel used to construct the Levee; and

WHEREAS, the Property is currently vacant land and is no longer needed for flood control purposes; and

WHEREAS, PSPR has agreed that it would take title to the Property subject to a deed restriction limiting the use of the Property to natural landscape or trail uses only; and

WHEREAS, at its regular meeting on January 20, 2011, the City’s Water Board voted to recommend that the City Council authorize the conveyance of the Property to PSPR; and

WHEREAS, under Section 23-111 of the City Code, the City Council is authorized to sell, convey or otherwise dispose of any and all interests in real property owned in the name of the City, provided that the City Council first finds, by ordinance, that such sale or other disposition is in the best interest of the City and, with respect to real property which is a part of the City’s water or utility systems, that the disposition will not materially impair the viability of the particular utility system as a whole and that it will be for the benefit of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT

COLLINS as follows:

Section 1. That the City Council hereby finds that the conveyance of the Property as provided herein is in the best interest of the City, will not materially impair the viability of the City's stormwater system as a whole, and will be for the benefit of the citizens of the City.

Section 2. That the Mayor is hereby authorized to execute such documents as are necessary to convey the Property to PSPR on terms consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or effectuate the purposes of this Ordinance, including, but not limited to, any necessary changes to the legal description of the property to be conveyed, as long as such changes do not materially increase the size or change the character of the property.

Introduced, considered favorably on first reading, and ordered published this 6th day of March, A.D. 2012, and to be presented for final passage on the 20th day of March, A.D. 2012.

Mayor

ATTEST:

Interim City Clerk

Passed and adopted on final reading on the 20th day of March, A.D. 2012.

Mayor

ATTEST:

Interim City Clerk

Exhibit "A"

Page 1 of 2



NORTHERN
ENGINEERING

ADDRESS:
2015 College Ave. Suite 101
Fort Collins, CO 98584

PHONE: 970.221.4158
FAX: 970.221.4159

WEBSITE:
www.northerneng.com

EXHIBIT

A tract of land being a portion of the Northwest Quarter of Section 12, Township 7 North, Range 69 West of the 6th Principal Meridian, City of Fort Collins, County of Larimer, State of Colorado being more particularly described as follows:

Considering the Southeasterly right-of-way line of Linden Street as bearing North 41°19'11" East, and with all bearings contained herein relative thereto:

BEGINNING at a point on the southeasterly right-of-way line of Linden Street which bears North 41°19'11" East (recorded as North 41°10'00" East), 488.16 feet from the most Northerly corner of Block 1, City of Fort Collins; thence along the westerly property line of a tract of land described at Reception No. 2005-0017087, South 34°59'48" East, 70.54 feet; thence, South 30°48'28" East, 107.74 feet; thence, South 19°25'07" East, 52.84 feet; thence departing said westerly property line, North 29°10'11" West, 26.22 feet; thence, North 47°01'43" West, 69.49 feet; thence, North 65°44'16" West, 128.66 feet to a point on said southeasterly right-of-way line of Linden Street; thence along said southeasterly line, North 41°19'11" East, 102.56 feet to the Point of Beginning.

The above described tract contains 9,759 square feet or 0.224 acres more or less and is subject to all easements and rights-of-way now on record or existing.

September 19, 2010

LMS

S:\Survey Jobs\224-001\Descriptions\224-001 Lot Exhibit Description 9-19-10.doc

