

DATE: April 17, 2012
STAFF: Daylan Figgs
Justin Scharton

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

12

SUBJECT

Second Reading of Ordinance No. 031, 2012, Authorizing Amendments to a Conservation Easement Held by the City on the Hansen Property.

EXECUTIVE SUMMARY

In July 2011, the First National Bank of Omaha foreclosed on Parcel II (south parcel) of the Hansen Ranch property, on which the City of Fort Collins Natural Areas Department (NAD) holds a conservation easement (CE). NAD also holds a conservation easement on Parcel I (north parcel). Once the Bank took possession of Parcel II, Ric and Myrna Hansen, who reside on Parcel I, denied the Bank access through the existing driveway that bisects their parcel and serves as the only access to Parcel II. This Ordinance, unanimously adopted on First Reading on April 3, 2012, authorizes an amendment to the easement to grant permission for a driveway to be constructed to access Parcel II, while allowing the NAD to make needed corrections and updates to the easement deed. In return, the development right for a secondary residence on the Parcel II will be extinguished. The City will also take this opportunity to amend language in the CE to increase its oversight and enforcement capability on the CE and update some of the terms of the CE.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - April 3, 2012
(w/o attachments)

DATE: April 3, 2012
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AGENDA ITEM SUMMARY
 FORT COLLINS CITY COUNCIL

14

SUBJECT

First Reading of Ordinance No. 031, 2012, Authorizing Amendments to a Conservation Easement Held by the City on the Hansen Property.

EXECUTIVE SUMMARY

In July 2011, the First National Bank of Omaha foreclosed on Parcel II (south parcel) of the Hansen Ranch property, on which the City of Fort Collins Natural Areas Department (NAD) holds a conservation easement (CE). NAD also holds a conservation easement on Parcel I (north parcel). Once the Bank took possession of Parcel II, Ric and Myrna Hansen, who reside on Parcel I, denied the Bank access through the existing driveway that bisects their parcel and serves as the only access to Parcel II. This amendment to the easement grants permission for a driveway to be constructed to access Parcel II, while allowing the NAD to make needed corrections and updates to the easement deed. In return, the development right for a secondary residence on the Parcel II will be extinguished. The City will also take this opportunity to amend language in the CE to increase its oversight and enforcement capability on the CE and update some of the terms of the CE.

BACKGROUND / DISCUSSION

The City of Fort Collins placed a CE on the Hansen Ranch property, owned by Myrna Hansen, in 2004 as part of efforts to conserve land in the Timnath Community Separator area. The Hansen CE, along with the contiguous North and South Cribari CEs, also conserved by the City, are within the Town of Timnath's Growth Management Area.

In July 2011, the First National Bank of Omaha foreclosed on the south parcel (referred to as Parcel II) of the Hansen property. Following the foreclosure, the Hansens denied the Bank access to Parcel II via the driveway from County Road 42 through Parcel I. A temporary agreement was reached between the Hansens and the Bank that allows the Bank to access Parcel II until May 31, 2012. However, the Hansens are not interested in a long-term agreement and plan to restore the driveway to a two-track farm road in 2012.

The Bank contacted the City to determine what steps were necessary to construct a new driveway to Parcel II. Upon review of the CE deed, NAD staff determined that the CE permitted construction of a new driveway for access to Parcel II, but only as part of the construction of a second residence on Parcel II, which the Bank was not planning to do. Therefore, an amendment to the CE would be necessary to allow a new driveway to be constructed. As such, NAD staff has worked collaboratively with the Bank and Hansens to create a package of amendments that would restore access to Parcel II, protect the Conservation Values of the Property, create a net conservation gain to the City, reflect separate ownership of the Parcels, and comply with the NAD *Conservation Easement Amendment Policy and Procedure* document.

The main components of the amendment include:

- The maintenance of one conservation easement that reflects separate ownership of the two parcels, allowing for independent management and enforcement of Parcel I and Parcel II
- Removal of the development right for a secondary residence with a 1,000 square foot footprint on Parcel II
- Granting permission to construct a new driveway approximately 2,200 feet in length on Parcel II with strict requirements as to the location, design, and construction materials to be used
- Requiring Hansen's to restore approximately 1,000 linear feet of existing driveway across Parcel I to a two-track "farm road" by 2013
- Addition of language that allows City to enter either Parcel without notice should staff have reason to believe a violation has taken place or is occurring
- Addition of City oversight and approval authority with regard to oil and gas development on the Parcels
- Strengthening Weed Control language

- Addition of City oversight and approval authority for granting Utility Easements and Roads on the Parcels
- Addition of language to clarify easement deed position on Public Roads and Improvements on Parcels
- Other minor clarifications and clean-up items, including legal description correction
- Update Management Plan for both Parcels

While the Hansen CE contains contemporary language for the time period it was written, standard conservation easement language has evolved and is more comprehensive in CEs written today. In addition, every CE contains language that has been negotiated between the City and the individual landowner, inherently making each CE unique. The Hansen CE is representative of other older CEs in the City's portfolio that may have older language that may not be in line with contemporary standards.

With any opportunity to amend a CE, NAD staff will make every effort to negotiate with a willing landowner to update easement language to current form and standards.

FINANCIAL / ECONOMIC IMPACTS

There will be no economic impact to the City with approval of the amended conservation easement.

ENVIRONMENTAL IMPACTS

While there will be approximately 0.4 mile of new gravel driveway built on Parcel II, the impact to the environment is minimal as the route is within an agricultural pasture and the existing vegetation is primarily non-native smooth brome grass. This minor impact is mitigated by extinguishing the development right on Parcel II and by requiring the Hansen's to restore the existing driveway on Parcel I to a two-track "farm road".

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BOARD / COMMISSION RECOMMENDATION

At its March 14, 2012 meeting, the Land Conservation and Stewardship Board voted unanimously to recommend approval of the amended conservation easement.

ATTACHMENTS

1. Location Map
2. Property Map
3. Land Conservation and Stewardship Board minutes, March 14, 2012

ORDINANCE NO. 031, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING AMENDMENTS TO A CONSERVATION EASEMENT
HELD BY THE CITY ON THE HANSEN PROPERTY

WHEREAS, on July 21, 2004, Myrna Hansen granted the City a conservation easement (the "Conservation Easement") on two parcels of farm land that she owned in the Timnath Community Separator area, as described on Exhibit A, attached and incorporated herein by reference ("Parcel I" and "Parcel II"); and

WHEREAS, the Conservation Easement is managed by the City's Natural Areas Department; and

WHEREAS, at the time Mrs. Hansen granted the Conservation Easement, Parcel II was encumbered by a Deed of Trust held by First National Bank of Omaha (the "Bank"), and the Bank subordinated its Deed of Trust to the Conservation Easement; and

WHEREAS, in 2011 the Bank foreclosed on Parcel II and took title to it on July 13, 2011, through a Public Trustee's foreclosure sale; and

WHEREAS, after the Bank foreclosed on Parcel II, the Hansens did not want to permit the Bank to access Parcel II via an existing driveway on Parcel I; and

WHEREAS, under the terms of the Conservation Easement, the owner of Parcel II is allowed to construct another driveway on Parcel II to serve Parcel II, but only as part of the construction of a second residence on Parcel II, which the Bank was not planning to do; and

WHEREAS, the Bank asked the City's Natural Areas staff to amend the Conservation Easement to allow construction of the second driveway, and in exchange the Bank agreed to give up the right to build a second residence on Parcel II; and

WHEREAS, through a series of negotiations with the Bank and the Hansens, staff has developed an Amended and Restated Deed of Conservation Easement (the "Amended Conservation Easement"), a copy of which is on file in the office of the City Clerk and available for review; and

WHEREAS, the Amended Conservation Easement would address not only the second driveway and second residence on Parcel II, but would also update the terms of the original Conservation Easement to allow the two Parcels to be managed separately, and to strengthen the City's oversight and enforcement capability of matters including oil and gas development, weed control, and easements and road on the Parcels; and

WHEREAS, the City Council is being asked to approve the Amended Conservation Easement by ordinance because by changing the terms of the Conservation Easement, even though City staff expects a net benefit to the City from the proposed changes, the City is giving up some rights in real property that were previously granted to it; and

WHEREAS, under Section 23-111(a) 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 interests of the City; and

WHEREAS, at its regular meeting on March 14, 2012, the Land Conservation and Stewardship Board voted to recommend approval of the Amended Conservation Easement.

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 amendments to the Conservation Easement as provided herein are in the best interests of the City.

Section 2. That the Mayor is hereby authorized to execute an Amended Conservation Easement in substantially the form as is on file in the Office of the City Clerk, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Ordinance, including, but not limited to, any necessary changes to the legal description of the Parcels conserved by the Amended Conservation Easement, as long as such changes do not materially reduce the size or change the character of the property.

Introduced, considered favorably on first reading, and ordered published this 3rd day of April, A.D. 2012, and to be presented for final passage on the 17th day of April, A.D. 2012.

Mayor

ATTEST:

Interim City Clerk

Passed and adopted on final reading on the 17th day of April, A.D. 2012.

Mayor

ATTEST:

Interim City Clerk

EXHIBIT A
(Property Description)

Parcel I:

A parcel of land situate in the Southwest ¼ of Section 23 and in the Northeast ¼ of the Northwest ¼ of Section 26, all in Township 7 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, which, considering the South line of said Southwest ¼ as bearing S 88°56'31" E, and with all bearings contained herein relative thereto, is contained within the boundary lines which begin at a point which bears N 00°53'19" E 35.00 feet, and again S 88°56'31" E 1347.69 feet from the Southwest corner of said Section 23, and run thence S 88° 56'31" E 1287.77 feet; thence S 00° 46'03" W 35.00 feet to the North ¼ corner of said Section 26; thence along the East line of the Northwest ¼ of said Section 26, S 00°42'34" W 999.64 feet; thence S 78°00'18" W 1321.03 feet; thence N 00°45'05" E 1333.00 feet to the point of beginning.

Parcel II:

A parcel of land situate in the Southwest quarter of Section 23, and the Northwest quarter of Section 26. Township 7 North, Range 68 West, of the 6th P.M., County of Larimer, State of Colorado and being more particularly described as follows:

Considering the North line of said Northwest quarter of Section 26 as bearing North 88°56'31" West and with all bearings contained herein relative thereto:

Commencing at the Northwest corner of said Section 26, said point also being the TRUE POINT OF BEGINNING of this description; thence along the West line of said Southwest quarter of Section 23, North 00°53'19" East 35.00 feet; thence South 88°56'31" East 1347.69 feet; thence South 00°45'05" West 1333.00 feet; thence North 78°00'18" East 1321.03 feet to the East line of said Northwest quarter of Section 26; thence along said East line, South 00°42'34" West 1643.99 feet to the Center quarter corner of said Section 26; thence along the South line of said Northwest quarter of Section 26, North 89°04'50" West 1319.69 feet to the Center – West sixteenth corner; thence along the West line of the East half of said Northwest quarter of Section 26, North 00°45'05" East 2646.91 feet to the North line of said Northwest quarter of Section 26; thence along said North line, North 88°56'31" West 1317.77 feet to the true point of beginning. The above parcel contains 47.19 acres more or less, and is subject to all right-of-way, easements and restrictions now in use or on record.