

DATE: June 18, 2013
STAFF: Wanda Nelson

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

6

SUBJECT

Consideration and Approval of the Minutes of the May 21, 2013 Regular Meeting.

May 21, 2013

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, May 21, 2013, 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: Horak, Cunniff, Overbeck, Campana, Troxell and Weitkunat.

(Councilmember Poppaw arrived at 9:26 p.m.)

Staff Members Present: Atteberry, Nelson, Roy.

Mayor Weitkunat recognized the participants in the Cityworks 101 class.

Agenda Review

City Manager Atteberry stated Item No. 10, *First Reading of Ordinance No. 076, 2013, Appropriating General Fund Reserves for the Platte River Power Authority Transmission Line Relocation Project Located on the Woodward Property*, needs to be removed from the Consent Calendar for separate consideration as the Ordinance has been revised to adjust the source for the appropriated funds.

City Manager Atteberry stated Council will consider different options relating to Item No. 27, *Second Reading of Ordinance No. 057, 2013 Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted Under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC and Exempting Such Operations from the Prohibitions Contained in Section 12-135 of the City Code*, and will need to consider the Resolution relating to this item prior to the Ordinance.

Citizen Participation

Eric Sutherland, 3520 Golden Currant, discussed tax increment financing and stated the methodology used by the County Assessor does not provide accurate assessments of increment versus base.

Stacy Lynne, 305 West Magnolia, asked that Council read an update on her son's custody case. She opposed new fees at Northside Atzlan Center.

Diane Smith, Senior Advisory Boardmember, supported the North Front Range Transit Vision Feasibility Study.

John Anderson, Larimer County resident, opposed money spent toward consumerism and opposed the definition of the triple bottom line in Fort Collins.

Per Hogestad, 1601 Sheeley Drive, expressed concern regarding the City's planning process and requested that a new planner be assigned to the project in his neighborhood.

Jack Applin, 1608 Sheeley Drive, expressed concern regarding consistency in the Land Use Code.

Rick Hoffman, 1804 Wallenberg Drive, stated he had hoped the West Central Neighborhood Plan would offer more protection to existing neighborhoods. He requested additional examination of the Plan in the development review process.

Vida Hogestad, 1601 Sheeley Drive, asked why the newly-hired Neighborhood Development Review Liaison has not been a resource for her neighborhood.

TJ McManus, 1605 Sheeley Drive, stated the City planner for the development proposal in this neighborhood has considered his home and the surrounding homes to be 2-story homes in order to be more compatible with the proposed development. He argued the homes are single-story ranch homes and are considered so by several entities.

Reuel Rolston, 1612 Sheeley Drive, stated the development team has not solicited input from the neighborhood or allowed a neighborhood meeting process for the proposed development in his neighborhood.

Ruth Hufbauer, 1609 Sheely Drive, expressed concern regarding the planning process.

Jana Brandes, 1600 Sheeley Drive, requested development be done in an intelligent, compatible way.

Deb Applin, 1608 Sheeley Drive, expressed concern that historic designation does not apply to the rear of the house with regard to future development. She suggested the development go before the Landmark Preservation Commission for suggestions.

Mike Pruznick, 636 Castle Ridge Court, expressed concern regarding the processes relating to boards and commissions and Council.

Ray Martinez, 4121 Stoneridge Court, expressed concern regarding the amount of liquor licenses in North Fort Collins.

Sandy Lemburg, 300 Remington, announced a March Against Monsanto on Saturday at Library Park.

Matthew Martinez, Fort Collins resident, thanked Council and staff for hard work regarding Frack Free Fort Collins.

Citizen Participation Follow-up

Mayor Weitkunat stated an application has been filed for development review regarding the development in the Sheeley neighborhood; therefore, Council cannot participate in the discussion. She stated planning staff will take into consideration the issues and respond appropriately.

Councilmember Cunniff stated he has expressed concern regarding the planning process and encouraged additional work on ease of citizen input.

Councilmember Overbeck requested follow-up regarding a petition mentioned by one of the citizens. City Manager Atteberry stated the issue of potentially fraudulent acquisition of petition signatures was presented to Police Chief Hutto and Council will receive follow-up information.

Councilmember Campana stated staff has made considerable improvements on the planning process, including the development of the Neighborhood Development Review Liaison position, and noted more of this type of dialogue will occur as more infill and redevelopment projects occur.

Councilmember Cunniff requested a report on the fee structure for the Northside Atzlan Center.

Councilmember Campana noted some background research may already exist regarding the saturation of liquor licenses.

Councilmember Troxell requested additional information related to the Northside Atzlan Center fees.

CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the April 29 Adjourned Meeting.
7. Second Reading of Ordinance No. 066, 2013, Appropriating Prior Year Reserves and Unanticipated Revenue in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and the Fort Collins Convention and Visitors Bureau.

This Ordinance, unanimously adopted on First Reading on May 7, 2013, appropriates \$139,465, of which \$57,571 is for 2013 Cultural Development and Programming Activities (Fort Fund), \$9,842 for 2013 Tourism Programming (Fort Fund), and \$72,052 for 2013 Fort Collins Convention and Visitors Bureau (CVB) from Unanticipated Revenue (Lodging Tax) and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves. Lodging Taxes for 2012 were estimated at \$815,000; actual Lodging Tax revenues collected equaled \$1,011,840 (\$196,840 over estimate). In 2013, the Fort Collins CVB is due to receive \$740,552 based on 2012 Lodging tax collections and prior year reserves. However, the CVB has already received \$65,736 of the unanticipated \$137,788 Lodging tax revenue in 2012 so only \$72,052 is needed to be appropriated to the Fort Collins CVB.

8. Second Reading of Ordinance No. 067, 2013 Amending Resolution 2013-001, Ordinance No. 006, 2013, and Ordinance No. 007, 2013, to Correct an Error in the Naming of the

Annexation as “Hansen Annexation” by Renaming the Annexation “Hansen Farm Annexation.”

In January and February of this year, the City Council adopted Resolution 2013-001, Ordinance No. 006, 2013 and Ordinance No. 007, 2013, all pertaining to the what was called the “Hansen Annexation.” This reference to the “Hansen Annexation” was in error because the reference should have been to “Hansen Farm” Annexation. The purpose of this Ordinance, unanimously adopted on First Reading on May 7, 2013, is to correct that error.

9. First Reading of Ordinance No. 069, 2013, Appropriating Prior Year Reserves in the Keep Fort Collins Great Fund to Support the Landmark Rehabilitation Loan Program for 2013.

This is a request for an appropriation of \$33,000 to support the City’s Landmark Rehabilitation Loan Program from prior years in the Keep Fort Collins Great Fund (KFCG). The Landmark Rehabilitation Loan Program is a highly successful financial incentive program for encouraging the sustainable revitalization of historic residential and commercial structures. The Program was funded with Keep Fort Collins Great funds in the amount of \$25,000 each year for 2013-2014. However, this year alone, the popular program received over \$65,000 in loan funding requests from 12 applicants for 24 projects costing over \$206,200 in materials and services. Without Rehabilitation Loan Program funding, many of these projects could not proceed.

The request is for the use of KFCG Other Community Priority prior year reserves created by the 2012 unspent Design Assistance Program (DAP) budget. Both the Loan Program and the DAP were funded in 2012 from KFCG - Other Community Priorities. These two incentive programs are closely linked sub-programs of the Historic Preservation Program, and provide a continuum of financial support for qualified historic preservation projects.

10. First Reading of Ordinance No. 076, 2013, Appropriating General Fund Reserves for the Platte River Power Authority Transmission Line Relocation Project Located on the Woodward Property.

Council approved the Woodward incentive package in April 2013. As a part of that agreement, Woodward agreed to advance funds to support the relocation of the Platte River Power Authority (PRPA) Transmission Line. This Ordinance appropriates \$1,297,080 from the General Fund Reserves for the relocation of the PRPA transmission line. Immediate appropriation is needed to allow the transmission line relocation to move forward so that Woodward's building site plans may remain on schedule. Delay in authorizing the appropriation may necessitate the need for PRPA to construct and remove a temporary transmission line as well as design and construct the relocated permanent transmission line. This effort would require that PRPA incur additional costs.

11. First Reading of Ordinance No. 070, 2013, Amending Section 4-196 of the City Code so as to Change the Violation of Interference with Animal Control Officers from a Civil Infraction to a Criminal Misdemeanor Offense.

On February 19, 2013, City Council adopted Ordinance No. 021, 2013, amending Chapter 4 of the City Code decriminalizing certain offenses related to the care and keeping of

animals. This change was intended to include all animal offenses that constitute neighborhood nuisances. After further deliberation, Animal Control recommends keeping the section pertaining to interference with an animal control officer as a criminal misdemeanor. Staff recommends changing this Code section from a civil infraction to a criminal misdemeanor.

12. First Reading of Ordinance No. 071, 2013, Amending Section 19-65 of the City Code Related to the Service of a Civil Citation.

In an effort to correct an inadvertent change that occurred with a previous Code change, this amendment will provide the ability for a civil citation to be issued immediately for repeated civil infractions. This will apply to a second or subsequent violation within a twelve (12) month period for the same violation. This process already applies for Land Use Code Section 3.8.16 pertaining to occupancy limits, so this change would make the process consistent for civil infractions. Additionally, this Code change specifies that a civil citation may be issued immediately for animal code violations.

13. First Reading of Ordinance No. 072, 2013, Amending Sections 19-36 and 19-41 of the City Code Pertaining to Municipal Court Referees.

This Ordinance makes two minor changes to the Code provisions relating to Municipal Court Referees. First, it removes the residency requirement for such Referees from Section 19-36 so that the Assistant Municipal Judges, who lives outside the City limits, can serve as a back-up Referee, especially on animal infraction cases. Second, it revises Section 19-41 so that all Referees have the same authority to reduce or waive penalties and assessments when appropriate. It removes the previous distinction between the authority of the Parking Referee and the Civil Infraction Referee, which was creating some confusion.

14. First Reading of Ordinance No. 073, 2013, Amending the City Code to Grant Revocable Permits to Non-City Utilities in Annexed Areas and Correct Internal References.

This Ordinance eliminates the requirement that a non-City utility provider apply for a permit to continue providing electric service to properties annexed into the city. A revocable permit would automatically be granted at annexation and revoked upon transfer of service.

The second proposed Code change would allow the Utilities Executive Director to adopt minor technical revisions that clarify an existing standard or improve conformity toward best engineering practices.

15. First Reading of Ordinance No. 074, 2013, Amending the City Code to Authorize Administrative Adoption of Minor Rule Revisions, Clarifications, and Interconnection Project Standards.

This item grants the Utilities Executive Director authority to approve temporary exemptions or technical modifications to the City's various electric utility regulations for the purpose of supporting City-managed special pilot projects, equipment testing or research partnerships.

This authority will not be extended to allow exemptions of such regulations and standards to on going operations or services provided to Utility customers not participating in testing or research projects.

16. First Reading of Ordinance No. 075, 2013, Authorizing the Purchasing Agent to Enter into Standard Power Purchase Program Agreements with Solar Photovoltaic System Owners for up to 20 Years.

Fort Collins Utilities' Solar Power Purchase Program (FCSP3) encourages the installation of new local solar systems on behalf of all Utilities customers in support of Fort Collins renewable energy commitments under the Colorado Renewable Energy Standard (RES). The basis of the FCSP3 is a fixed-price, 20-year Power Purchase Agreement (PPA) between Fort Collins Utilities and photovoltaic system owners for solar energy generation. Program funding was approved through the budget process. This action is necessary to authorize the required long-term (20 year) purchase power agreements.

17. Resolution 2013-046 Making Findings of Fact and Conclusions Regarding the Appeal of the February 25, 2013 Administrative Hearing Officer Approval of the 621 South Meldrum Street Project Development Plan.

On February 13, 2013, an Administrative Hearing was held to consider approval of the 621 South Meldrum Street Project Development Plan and Modification of Standard to Section 3.2.2(J). The Hearing Officer issued a written decision on February 25, 2013 to approve the proposed Project Development Plan and Modification of Standard, with two conditions. On March 19, 2013, an Amended Notice of Appeal was filed by Alan, Eric and Walter Skowron.

On May 7, 2013, City Council voted 7 - 0 to uphold the decision of the Hearing Officer, concluding that the evidence presented did not indicate the Hearing Officer failed to conduct a fair hearing either by considering evidence relevant to the Hearing Officer's findings which was substantially false or grossly misleading or by failing to receive all relevant evidence offered by the Appellants.

In order to complete the record regarding this appeal, Council should adopt a Resolution making findings of fact and finalizing its decision on the Appeal.

18. Resolution 2013-047 Adopting the Recommendations of the Cultural Resources Board Regarding Fort Fund Disbursements.

The Cultural Development and Programming and Tourism Programming accounts (Fort Fund) provide grants to fund community events. This Resolution will adopt the recommendations from the Cultural Resources Board to disburse these funds.

19. Resolution 2013-048 Authorizing the Lease of City-owned Property at 906 East Stuart Street to Fort Collins Waldorf Education Association, Inc. for up to Two Years.

Since August 2006, the City has leased 906 East Stuart to Fort Collins Waldorf Education Association, Inc., known as River Song Waldorf School. River Song Waldorf School continues to meet the national Community Development Block Grant Funding ("CDBG")

criteria by serving a majority (51% or more) of low-moderate income clients below 80% of the Area Median Income. This Resolution authorizes the lease of the property to River Song Waldorf School for an additional two years.

20. Resolution 2013-049 Authorizing the Execution of the First Amendment to the Intergovernmental Agreement Establishing the Boxelder Basin Regional Stormwater Authority.

The Boxelder Basin Regional Stormwater Authority (BBRSA) was established by an intergovernmental agreement (IGA) between the City of Fort Collins, Larimer County and the Town of Timnath to fund and implement regional stormwater improvements.

Staff recommends approval of the first amendment to the IGA in order to:

- Obtain approval of the member governments for the BBRSA to accept a loan from the Colorado Water Conservation Board (CWCB) to fund the design and construction of the remaining projects;
- Authorize the BBRSA to determine and make minor revisions to properties within the Service Area of the BBRSA by designating areas as “non-tributary areas”, and to grant fee credits to other areas within the Service Area; and
- Establish a sunset provision such that upon completion of the Projects, payment of all debt incurred by the Authority for the construction of the Projects, and agreement among the Members as to any continuing obligation for operation and maintenance of any Authority projects, the BBRSA can be terminated.

21. Resolution 2013-050 Nominating Mayor Karen Weitkunat as a Candidate for Re-election to the Executive Board of the Colorado Municipal League.

This Resolution formally endorses the nomination of Mayor Karen Weitkunat as a candidate to the Executive Board of the Colorado Municipal League. Mayor Weitkunat is an active participant and continues to represent the City well as a member of the Colorado Municipal League Executive Board.

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

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

7. Second Reading of Ordinance No. 066, 2013, Appropriating Prior Year Reserves and Unanticipated Revenue in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and the Fort Collins Convention and Visitors Bureau.
8. Second Reading of Ordinance No. 067, 2013 Amending Resolution 2013-001, Ordinance No. 006, 2013, and Ordinance No. 007, 2013, to Correct an Error in the Naming of the Annexation as “Hansen Annexation” by Renaming the Annexation “Hansen Farm Annexation.”

27. Second Reading of Ordinance No. 057, 2013 Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC and Exempting Such Operations from the Prohibitions Contained in Section 12-135 of the City Code.

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

9. First Reading of Ordinance No. 069, 2013, Appropriating Prior Year Reserves in the Keep Fort Collins Great Fund to Support the Landmark Rehabilitation Loan Program for 2013.
10. First Reading of Ordinance No. 076, 2013, Appropriating General Fund Reserves for the Platte River Power Authority Transmission Line Relocation Project Located on the Woodward Property.
11. First Reading of Ordinance No. 070, 2013, Amending Section 4-196 of the City Code so as to Change the Violation of Interference with Animal Control Officers from a Civil Infraction to a Criminal Misdemeanor Offense.
12. First Reading of Ordinance No. 071, 2013, Amending Section 19-65 of the City Code Related to the Service of a Civil Citation.
13. First Reading of Ordinance No. 072, 2013, Amending Sections 19-36 and 19-41 of the City Code Pertaining to Municipal Court Referees.
14. First Reading of Ordinance No. 073, 2013, Amending the City Code to Grant Revocable Permits to Non-City Utilities in Annexed Areas and Correct Internal References.
15. First Reading of Ordinance No. 074, 2013, Amending the City Code to Authorize Administrative Adoption of Minor Rule Revisions, Clarifications, and Interconnection Project Standards.
16. First Reading of Ordinance No. 075, 2013, Authorizing the Purchasing Agent to Enter into Standard Power Purchase Program Agreements with Solar Photovoltaic System Owners for up to 20 Years.

Councilmember Overbeck withdrew Item No. 20, *Resolution 2013-049 Authorizing the Execution of the First Amendment to the Intergovernmental Agreement Establishing the Boxelder Basin Regional Stormwater Authority*, from the Consent Calendar.

Councilmember Cunniff withdrew Item No. 16, *First Reading of Ordinance No. 075, 2013, Authorizing the Purchasing Agent to Enter into Standard Power Purchase Program Agreements with Solar Photovoltaic System Owners for up to 20 Years*, from the Consent Calendar.

Councilmember Campana withdrew Item No. 19, *Resolution 2013-048 Authorizing the Lease of City-owned Property at 906 East Stuart Street to Fort Collins Waldorf Education Association, Inc. for up to Two Years*, from the Consent Calendar.

Gary Wockner, 516 North Grant, withdrew Item No. 20, *Resolution 2013-049 Authorizing the Execution of the First Amendment to the Intergovernmental Agreement Establishing the Boxelder Basin Regional Stormwater Authority*, from the Consent Calendar.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt all items not withdrawn from the Consent Calendar. Yeas: Campana, Horak, Weitkunat, Cunniff, Troxell and Overbeck. Nays: none.

THE MOTION CARRIED.

Staff Reports

Poudre Fire Authority Chief Tom DeMint stated the wildland fire situation has improved dramatically over the last couple months.

Captain Kelly Close provided additional details regarding the wildland fire forecast.

Councilmember Reports

Mayor Weitkunat reported on a Colorado Municipal League luncheon hosted by Fort Collins and other Northern Colorado cities. She also reported the Airport Steering Committee is continuing work on finding an airline provider for the Airport.

Ordinance No. 076, 2013,

Appropriating General Fund Reserves for the Platte River Power Authority Transmission Line Relocation Project Located on the Woodward Property, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Council approved the Woodward incentive package in April 2013. As a part of that agreement, Woodward agreed to advance funds to support the relocation of the Platte River Power Authority (PRPA) Transmission Line. This Ordinance appropriates \$1,297,080 from the General Fund Reserves for the relocation of the PRPA transmission line. Immediate appropriation is needed to allow the transmission line relocation to move forward so that Woodward's building site plans may remain on schedule. Delay in authorizing the appropriation may necessitate the need for PRPA to construct and remove a temporary transmission line as well as design and construct the relocated permanent transmission line. This effort would require that PRPA incur additional costs.

BACKGROUND / DISCUSSION

On April 2, 2013, Council adopted Ordinance No. 056, 2013, Appropriating General Fund Reserves to Fund a Reimbursement Reserve Fund in Connection with an Agreement between the City, Downtown Development Authority (DDA) and Woodward, Inc., Regarding the Link-N-Green Development. Ordinance No. 056, 2013, provided that Woodward would advance up to \$6.05 million to the City, to be repaid by Pledged Tax Increment Revenues (“TIF”) to fund certain public improvements, including right-of-way improvements and open space restoration, as well as the

relocation of a power transmission line. Furthermore, in Ordinance No. 056, 2013, the City agreed to appropriate \$2.272 million for a reimbursement to the reserve fund to ensure the adequate support for construction of the Improvements. Because the Woodward advance funds are not yet available, City staff is requesting the immediate appropriation of \$1,297,080 from City reserves in order to allow the relocation of the transmission line to begin. The City funds will be reimbursed by the Woodward advance.

*On April 15, 2013, the City entered into an Intergovernmental Agreement (“IGA”) with PRPA, which provided that the City of Fort Collins will pay for the relocation and installation of the 230/115kV transmission line that currently crosses the Woodward property (**Attachment 1**).*

Design plans resulted in placing one new transmission tower in the Williams Natural Area just south of the Mulberry/Lemay Avenue intersection and the removal of three transmission towers northwest of Mulberry; two in the Springer Natural Area and one at the Water Reclamation natural area. Ordinance No. 063, 2013, authorizing the necessary easements from the City, was adopted on second reading on May 7, 2013.

*Specifically, one pole will be added in the Williams Natural Area (reference pole #6, yellow line, **Attachment 2**). The general size of the pole will be approximately 100 to 125 feet tall and 3 to 5 feet in circumference at the base, depending upon the distance from pole #5. Placement will be approximately 150 feet south of the existing bike trail and approximately 60 feet west of the sidewalk that parallels south bound Lemay Avenue. Contingency placement will be known once the following items are specified:*

- *Signal light/pole on the northwest corner of Mulberry and Lemay for the westbound traffic on Mulberry*
- *Proposed restaurant placement at the southeast end of the Woodward Property*
- *New bike trail route across Lemay.*

FINANCIAL / ECONOMIC IMPACTS

The transmission line relocation is a critical path component of the redevelopment of the new Woodward site. Commitment from the City to PRPA is needed immediately so materials can be secured to complete the project and avoid the need and cost of temporary transmission lines. Staff is requesting an appropriation for \$1,297,080 from the General Fund Reserve. Additional appropriations will be forthcoming for the other portions of the project described above.”

Mike Beckstead, Chief Financial Officer, stated the change in this item is the source of funding for the appropriation, which should be identified as unanticipated revenue per the contract between the City and Woodward.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 076, 2013, as amended, on First Reading.

City Attorney Roy read the Ordinance amendments.

Councilmember Cunniff asked if any type of contingency is built in if the cost goes over the estimate. Beckstead replied in the affirmative and noted any additional dollars would belong to the City, not PRPA.

The vote on the motion was as follows: Yeas: Horak, Weitkunat, Cunniff, Troxell, Overbeck and Campana. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 075, 2013,
Authorizing the Purchasing Agent to Enter into Standard Power Purchase
Program Agreements with Solar Photovoltaic System Owners for
up to 20 Years, Adopted on First Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Fort Collins Utilities’ Solar Power Purchase Program (FCSP3) encourages the installation of new local solar systems on behalf of all Utilities customers in support of Fort Collins renewable energy commitments under the Colorado Renewable Energy Standard (RES). The basis of the FCSP3 is a fixed-price, 20-year Power Purchase Agreement (PPA) between Fort Collins Utilities and photovoltaic system owners for solar energy generation. Program funding was approved through the budget process. This action is necessary to authorize the required long-term (20 year) purchase power agreements.

BACKGROUND / DISCUSSION

The basis of the FCSP3 is a fixed-price, 20-year Power Purchase Agreement (PPA) between Fort Collins Utilities and photovoltaic system owners for solar energy generation. This arrangement is commonly known within the solar industry as a “feed-in-tariff model.” The customer may enter agreements with solar developers for the installation of the system, which also may include financing, lease-purchase and rooftop property leasing.

The energy output of the solar system goes directly to Fort Collins Utilities’ electric grid and customers are paid based on the metered output of the system, according to the PPA. The agreement does not alter the customer’s electric bill. This approach is sometimes referred to as “in front of the meter”, implying that the interconnection with the grid is on the utility side of the customer’s billing meter. The PPAs also convey the Renewable Energy Credits (RECs)—the right to claim the renewable energy attributes of a project—to Utilities to be used toward compliance with the Colorado RES.

Expanding customer-sited solar renewable energy supports the community’s Climate Action Plan and Energy Policy greenhouse gas reduction goals while supporting local investment.

Key Issues

Two key issues were discussed at length to arrive at the proposed program, (1) incentive pricing approach and, (2) “in front of” vs. “behind” the meter. For the first issue, a competitive bidding

approach to set offer prices was considered. After tracking the limited success of several other utility programs that used a bidding approach, staff concluded that a standard price approach was recommended. The recommendations related to the second key issue are based on balancing benefits to all rate paying customers, participating customers and the solar industry. Customers understand, and some have asked for the net metered approach because it provides for a “hedge” against future utility price increases. While attractive to the participating customer, the “hedge” is an uncertain financial element which is borne by all other ratepayers. The FCSP3 offers benefits to all rate payers by obtaining renewable energy at a price competitive with other paths to RES commitments. The FIT approach (“in front of the meter”) makes the offer simple and well defined for all parties and limits uncertainty related to future electricity rates. The stable contract price provides financial certainty for all parties and encourages partnerships between solar developers, host customer sites and sources of financing.

The FCSP3 fact sheet is included as **Attachment 1**. Page three lists key attributes of the proposed program along with the purpose and benefits of each attribute.

Renewable Energy Standard

The Colorado Renewable Energy Standard (RES) was originally established by voters as Amendment 37, and has been modified by the Colorado legislature. Fort Collins’ commitments are a minimum of 3% through 2014, 6% in 2015 and 10% in 2020.

Year	Minimum	Actual	Electricity Amount (megawatt-hours)
2012	3.0%	3.4%	53,000
2015	6.0%	TBD	90,000
2020	10.0%	TBD	150,000

Utilities current renewable energy commitments are met through a mix of wind energy projects, renewable energy credits and local solar installations. Faced with making new investments in renewable energy, Utilities proposed to meet a portion of its commitment through a program that focuses on the installation of solar systems on local customers’ premises. Similar successful programs are in place in a number of locations throughout the country and world.

It is important to note that voluntary renewable energy purchases through Utilities’ Green Energy Program do not count towards the overall renewable energy commitments under the RES.

The 2015 renewable energy target corresponds to an increase from current renewable energy levels of approximately 40,000 megawatt-hours (MWh). There are several ways Utilities could meet the increased requirements, including:

1. Purchase of qualified renewable energy credits.
2. Wind energy, through development or participation in new utility-scale projects.
3. Solar energy, through development or participation in new utility-scale projects.
4. Solar energy, through a program which supports the installation of systems located locally on customer premises (e.g., on Utilities’ electric distribution system).

The RES includes the option to use “multipliers” that provide additional benefits based on renewable energy technology and location. The RES multiplier for locally based solar energy is 3X, meaning that solar energy produced counts three times towards the RES obligation. The multiplier was designed to make solar energy investments competitive with wind energy investments.

The solar projects from this program are expected to generate approximately 7,500 megawatt-hours annually. Utilizing the 3x multiplier, this amount will meet approximately 25 percent of the overall renewable energy commitment for 2015 (50% of the additional 2015 gap). Additional resources will still be required to meet the total 2015 commitment, and are expected to be met via additional purchases from Platte River Power Authority.

Next Steps

Utilities will develop the application materials in order to open an initial application period in July 2013. A second application period will occur in the first quarter of 2014. All solar systems need to be installed by July 2015 in order to meet the RES commitments.

Other Solar Options

Utilities also offers small-scale solar rebates with net metering and voluntary green energy purchase options. Customers can visit fcgov.com/solar to view current programs that support solar installations.

FINANCIAL / ECONOMIC IMPACTS

PPA purchases under the FCSP3 are to be capped at \$1million per year funded by a 1/2% electric rate increase in each of years 2013 and 2014. Funding commitments for these power purchases will persist for the 20 year term of the agreements. At the end of the agreement term, Utilities will consider the option to establish new agreements based on continuing needs for community renewable energy.

The installation of approximately five megawatts of new solar energy within Fort Collins is also expected to provide local economic benefits through the purchase and installation of the solar systems. The distribution amongst local companies of on-going power purchase payments (\$1million annually) will depend upon the structure of agreements between customers, solar developers and financial partners.

Under the preferential treatment by the Colorado RES of locally deployed solar electric generation, these green power purchases are competitive with other alternatives (wind power) available currently.

ENVIRONMENTAL IMPACTS

The solar projects from this program are expected to generate approximately 7,500 megawatt-hours of electricity. Using current conversion factors, this will result in avoiding over 6,000 metric tons of carbon emissions. The program will also greatly expand local generation, helping to support the transition to a dynamic and distributed smart grid system. Successful program results may also provide the groundwork for continued program expansion in future years.

BOARD / COMMISSION RECOMMENDATION

*Staff presented information about the program to the Energy Board at its regular meeting on May 2. The Board completed a memo (**Attachment 2**) which noted that, "The Energy Board has reviewed the pilot program with staff and supports the overall objectives and proposed attributes. Therefore, the Board requests City Council approve the Purchasing Manager be granted authority to energy into 20 year agreements for the Fort Collins Solar Power Purchase Program."*

PUBLIC OUTREACH

*Utilities began seeking feedback from business customers and solar industry stakeholders in January. In addition to one-on-one meetings with key account customers, Utilities initiated an on-line survey of business customers in April with 112 responses. Survey results indicated strong interest in the program and general agreement with the overall goals (**Attachment 3**). Roughly half of respondents indicate interest to participate.*

The survey results and additional feedback were discussed at a public open house April 23rd, attended by 28 people. Four key questions were:

- *direct to grid program proposal versus benefits of net metering*
- *whether property tax will be assessed against the PV installations*
- *how businesses as building tenants might be able to participate*
- *how these systems will be treated at the head of the 20-year PPA term.*

Solar industry feedback was solicited through the Colorado Solar Energy Industries Association (COSEIA). Specific solar industry stakeholders also participated in the survey and open house."

Lisa Rosintosky, Utilities Customer Connections Manager, introduced a presentation and noted this item is related to the fixed-price 20-year power purchase agreement.

John Phelan, Energy Services Manager, stated the purpose of the program is to procure new locally-installed solar capacity on behalf of all rate payers to help meet the community's renewable energy commitments to the Colorado Renewable Energy Standard (RES). He stated the specific action before Council will authorize the purchasing agent to enter into 20-year agreements.

Eric Sutherland, 3520 Golden Currant, asked who sets the rates for this program and stated the item should mention time of use.

Mike Pruznick, 636 Castle Ridge Court, questioned moving forward at this time and expressed concern this may not be consistent with the upcoming PRPA 20-year plan.

Councilmember Cunniff asked whether the first come-first served method was considered versus other methods which may be more beneficial and asked if there may be a way to structure this so as to allow potential dovetailing with a beneficial PRPA program. Phelan stated the plan is to have an application window and a lottery type of system will be used if there be more than enough qualifying projects.

Councilmember Cunniff asked about the criteria for the projects. Phelan replied criteria are currently being developed based on other successful programs around the country.

Councilmember Cunniff asked about metering design considerations. Phelan replied these projects will have a different set of interconnection requirements than the current small-scale systems.

Councilmember Cunniff asked about the 20-year term. Phelan replied there is a time limit to take advantage of the multipliers embedded in the original Amendment 37 and subsequent legislation for the Colorado RES and this is only a small piece of an overall renewable energy program.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 075, 2013, on First Reading.

Councilmember Cunniff supported the concept but requested staff responses to questions prior to Second Reading.

Councilmember Troxell stated this item contributes to additional distributed energy resources. He supported a time of use approach.

Mayor Pro Tem Horak noted the Energy Board strongly recommended this item for approval.

The vote on the motion was as follows: Yeas: Weitkumat, Campana, Overbeck, Cunniff, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Resolution 2013-048

Authorizing the Lease of City-owned Property at 906 East Stuart Street to Fort Collins Waldorf Education Association, Inc. for up to Two Years, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Since August 2006, the City has leased 906 East Stuart to Fort Collins Waldorf Education Association, Inc., known as River Song Waldorf School. River Song Waldorf School continues to meet the national Community Development Block Grant Funding (“CDBG”) criteria by serving a majority (51% or more) of low-moderate income clients below 80% of the Area Median Income. This Resolution authorizes the lease of the property to River Song Waldorf School for an additional two years.

BACKGROUND / DISCUSSION

The property at 906 East Stuart was acquired by the City in 1985 for use as a child care facility. CDBG funding was used to purchase the property. City properties purchased with CDBG funding are restricted to a nominal rental rate and must be used by non-profit organizations that meet the CDBG criteria.

906 East Stuart was a private residence at the time of purchase. The building contains a total of 2,071 square feet. The ground floor contains 1,687 square feet and is the main area of use for the school. The second floor, containing 384 square feet, is only accessible from an outside stairway

entrance and is used for its office area and storage. The lot size is 0.3 acres. The condition of this facility is fair.

River Song Waldorf School has been leasing the property since August 2006. It operates a year-round early childhood program, and other associated uses, for pre-kindergarten children.

Due to the requirements from CDBG, the rent for this facility is \$5 per year. The market rent would be \$1,200 to \$1,350 per month if this property was rented as a private residence. The tenant is responsible for utilities, maintenance, and improvements. The City is not responsible for any maintenance expense during the lease. River Song Waldorf School has been a good tenant and has taken good care of the property. In addition to its routine maintenance expenses, it has also replaced the furnace and painted the exterior at its cost.

FINANCIAL / ECONOMIC IMPACTS

The Tenant is responsible for all maintenance, repair, and necessary upgrades, including, but not limited to, all landscaping maintenance and upkeep (including trees), snow removal, interior and exterior painting, appliances, building systems upkeep, etc. The Tenant pays all utility costs. The Tenant pays \$5 per year to the City for leasing the property.”

Councilmember Campana withdrew from the discussion of this item due to a conflict of interest.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Resolution 2013-048. Yeas: Cunniff, Troxell, Overbeck, Horak and Weitkunat. Nays: none.

THE MOTION CARRIED.

Resolution 2013-049

Authorizing the Execution of the First Amendment to the Intergovernmental Agreement Establishing the Boxelder Basin Regional Stormwater Authority, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The Boxelder Basin Regional Stormwater Authority (BBRSA) was established by an intergovernmental agreement (IGA) between the City of Fort Collins, Larimer County and the Town of Timnath to fund and implement regional stormwater improvements.

Staff recommends approval of the first amendment to the IGA in order to:

Obtain approval of the member governments for the BBRSA to accept a loan from the Colorado Water Conservation Board (CWCB) to fund the design and construction of the remaining projects;

- 1. Authorize the BBRSA to determine and make minor revisions to properties within the Service Area of the BBRSA by designating areas as “non-tributary areas”, and to grant fee credits to other areas within the Service Area; and*

- *Establish a sunset provision such that upon completion of the Projects, payment of all debt incurred by the Authority for the construction of the Projects, and agreement among the Members as to any continuing obligation for operation and maintenance of any Authority projects, the BBRSA can be terminated.*

BACKGROUND / DISCUSSION

On August 20, 2008, the City of Fort Collins, Larimer County and the Town of Wellington entered into an intergovernmental agreement (IGA) to establish the Boxelder Basin Regional Stormwater Authority (BBRSA). The BBRSA was established to fund and implement the regional stormwater improvements outlined in the Boxelder Regional Stormwater Master Plan. The stormwater improvements benefit the citizens of Fort Collins through protection of the health, property, safety and welfare of the city and by enhancing the ecological health of Boxelder Creek.

It is in Fort Collins' best interests to participate in the BBRSA in order to:

- *Make already cost effective improvements more economical by sharing costs;*
- *Reduce substantial public infrastructure costs for road crossings;*
- *Equitably share the cost between participating agencies;*
- *Provide economic benefits by removing undeveloped lands from the 100-Year floodplain;*
and
- *Provide a cooperative approach that initiates solutions to stormwater problems in Fort Collin's Growth Management Area (GMA).*

The BBRSA has completed the design and construction of the Coal Creek Flood Mitigation Project and has preliminarily designed the two remaining regional stormwater projects which consist of the East Side Detention Facility (also known as the Gray Lakes Project) and the Larimer/Weld Canal Crossing Structure. Timnath (in conjunction with its TDA) has entered into an Intergovernmental Authority with the BBRSA to participate in the funding of the remaining projects.

The BBRSA investigated potential funding scenarios (i.e., pay-as-you-go, bonding, loan) and initially recommended in 2011 to the member entities that a bonding approach be pursued. After additional research, the BBRSA determined the most cost efficient method of funding the regional stormwater projects is by obtaining a loan through the Colorado Water Conservation Board ("CWCB"). According to Section 2.05 (f) of the IGA, all member entities must agree to the issuance of debt by the BBRSA.

On January 17, 2013, representatives from Fort Collins, Larimer, Wellington and Timnath as well as the BBRSA Board of Directors met to discuss the latest estimated regional stormwater project cost estimates, the funding approach, a potential sunset provision, the BBRSA stormwater fee structure, and potential revisions to the BBRSA service area boundary. As a result of those discussions, the BBRSA developed a draft amendment to the IGA that will:

- *Allow the BBRSA to accept a loan from the CWCB to fund the design and construction of the remaining projects; and*
- *Authorize the BBRSA to determine and make minor revisions to properties within the Service Area of the BBRSA by designating areas as "non-tributary areas", and to grant fee credits to other areas within the Service Area; and*

- *Establish a sunset provision such that upon completion of the Projects, payment of all debt incurred by the Authority for the construction of the Projects, and agreement among the Members as to any continuing obligation for operation and maintenance of any Authority projects, the BBRSA can be terminated.*

FINANCIAL / ECONOMIC IMPACTS

The BBRSA has preliminarily designed the East Side Detention Facility (Gray Lakes Project) and the Larimer/Weld County Crossing Structure. These are the two remaining projects needed to meet the goals of the Boxelder Regional Stormwater Master Plan. Through preliminary design, the total cost of the two projects is estimated to be approximately \$9.9 million. The most cost efficient method of funding the projects (and lowest interest rate) is by obtaining a loan through the CWCB. The anticipated interest rate of 2.75% for the CWCB loan is significantly lower than an estimated interest rate of 4.0% for issuance of bonds. The BBRSA will obtain a 20-year loan; however, it may be possible to pay it off in a shorter time period (16-17 years). The loan requires a 10% local match, which will be the responsibility of the BBRSA.

In addition to the revenue generated by stormwater fees within the BBRSA service area boundary, the BBRSA has also obtained funding from Timnath. The BBRSA entered into an intergovernmental agreement (Boxelder/Timnath IGA, dated November 15, 2012) with Timnath and its TDA which provides that the TDA shall participate in the funding of the projects. Pursuant to the Boxelder/Timnath IGA, the TDA has transferred \$500,000 to the BBRSA for use in the design of the remaining projects. In addition, the TDA will reimburse the BBRSA for 25% of the total costs of the remaining projects. The financial participation by Timnath results in a decrease in the amount of revenue required to be collected by the BBRSA.

The combination of annual stormwater service fee revenue collected by the BBRSA and the financial contribution from Timnath provides sufficient funding to cover the on-going costs of the BBRSA and the CWCB loan payment.

ENVIRONMENTAL IMPACTS

The IGA contains language that ensures a holistic approach toward stormwater quality best management practices, stream stability, and habitat enhancement. Through reconfiguration of the master plan improvements, most notably increased detention storage at the Gray Lakes Detention Project, the BBRSA is able to eliminate the majority of Middle Basin improvements proposed in the original Boxelder Regional Stormwater Master Plan. As a result, the need to grade or alter the majority of Boxelder Creek south of County Road 50 has been eliminated, thereby protecting the existing stream corridor.

Ken Sampley, Stormwater/Floodplain Program Manager, provided an overview of the Boxelder Basin Regional Stormwater Authority. He provided information regarding the benefit-cost scenario for the project.

Gary Wockner, 516 North Grant, stated this taxing Authority was narrowly approved after a contentious discussion and argued this would subsidize housing development in the area of Fort Collins that is proposed to undergo hydraulic fracturing. He requested that Councilmember Campana recuse himself from the vote if he owns any property in the area.

Councilmember Overbeck stated this storm line would go through the UDA area near the Budweiser plant, which is an area of contention.

Councilmember Overbeck requested additional details regarding the financing package. Sampley replied the loan package is at approximately a 2.5% interest rate. The financing rate structure is lower than it would be through a bond sale so it is beneficial for the government sponsors and for those paying the fees. He stated it is a 20-year loan commitment, though that will hopefully be paid off sooner.

Councilmember Overbeck asked what kinds of rates could be attained in the private bond market. Sampley replied it would likely be around 4%.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Resolution 2013-049.

Mayor Weitkunat commented that this is a cooperative effort to bring forward a solution to stormwater and flooding issues on the eastern side of I-25.

Councilmember Campana commented that he does not own property in this area.

Councilmember Overbeck stated this project has some positive aspect in terms of environmental safety; however, he stated he would oppose this item as the project could be financed in the private bond market rather than using taxpayer funding.

Councilmember Cunniff stated oil and gas development in this area would be in direct conflict with any development.

Councilmember Troxell stated he would support the motion as the item addresses stormwater issues within the City.

The vote on the motion was as follows: Yeas: Troxell, Campana, Horak and Weitkunat. Nays: Overbeck and Cunniff.

THE MOTION CARRIED.

**Consideration of an Appeal of the Planning and Zoning Board's March 21, 2013
Decision to Approve the Carriage House Apartments, Project
Development Plan, Planning and Zoning Board Decision Upheld**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

On March 21, 2013, the Planning and Zoning Board considered and unanimously approved the application for the Carriage House Apartments, Project Development Plan. The application consisted of a request to demolish two existing single family homes at 1305 and 1319 South Shields Street and in their place, construct five, three story multi-family buildings, with a total of 57 units divided among one, two and three-bedroom apartments for a total of 97 bedrooms. The project is

located in the Neighborhood Conservation Buffer (N-C-B) Zone District and is within the Transit-Oriented Development (TOD) Overlay District.

On April 4, 2013, Joel Rovnak (Appellant) filed a Notice of Appeal, alleging that the Planning and Zoning Board failed to conduct a fair hearing because it allegedly considered evidence that was substantially false and grossly misleading when approving the Project Development Plan application.

BACKGROUND / DISCUSSION

The Applicant submitted a traffic impact study as part of the Carriage House Apartments Project Development Plan application and the traffic impact study was accepted by the City Traffic Engineer. The traffic impact study was provided to the Planning and Zoning Board as an attachment to the staff report for consideration.

The staff report to the Board included analysis of how the Project Development Plan complied with the Land Use Code's transportation Level of Service requirements (Staff Report, pg. 10).

Under the appeals procedure contained in the City Code, the appeal is required to be considered upon the record, the relevant provisions of the Code and Charter, the grounds for appeal cited in the notice of appeal and the arguments made by parties-in-interest at the hearing on the appeal, provided the arguments raised by parties-in-interest were raised in the notice of appeal.

The City Code allows for new evidence to be considered when offered by City staff or parties-in-interest in response to questions presented by Councilmembers at the hearing. Staff is prepared to answer questions regarding the allegations on appeal, if asked by Councilmembers.

ACTION OF THE PLANNING AND ZONING BOARD

After testimony from the Applicant, affected property owners, the public and staff, the Planning and Zoning Board voted 6 - 0 to approve the Carriage House Apartments Project Development Plan application with conditions.

In support of its motion to approve the Carriage House Apartments Project Development Plan, the Board adopted the findings of fact and conclusions as contained on page 13 of the staff report.

QUESTIONS FOR COUNCIL CONSIDERATION

Did the Planning and Zoning Board fail to hold a fair hearing by considering evidence relevant to its findings which were substantially false or grossly misleading?

ALLEGATIONS ON APPEAL

- 1. The traffic impact study falsely attributes data to the Institute of Transportation Engineers (ITE) Trip Generation Manual.**

The Appellant maintains that the Planning and Zoning Board considered the traffic impact study which contained information relating to estimated trip generation which was substantially false and grossly misleading.

The traffic impact study was included in the Planning and Zoning Board's packet for consideration in its decision making, although the Board did not discuss the specific details of the traffic impact study in connection with its decision to approve the Project Development Plan.

Staff has prepared information regarding the data contained in the traffic impact study and is able to answer questions regarding this allegation if asked by Council.

2. Traffic projections were further reduced for alternative modes of transportation.

In the notice of appeal, the Appellant asserts that the information contained in the traffic impact study was further skewed by a 25% reduction in trips to account for alternative modes of transportation.

The traffic impact study was included in the Planning and Zoning Board's packet for consideration in its decision making, although the Board did not discuss the 25% trip reduction contained in the study in connection with its decision to approve the Project Development Plan.

Staff has prepared information regarding the 25% trip reduction contained in the traffic impact study and is able to answer questions regarding this allegation if asked by Council.

3. Fort Collins Traffic Operations has established a policy that discriminates against student housing.

The Appellant asserts that the City and/or the traffic consultant used a recent study of student housing trip generation in Minnesota (Spack Memorandum) to estimate trips for the Carriage House Apartments.

The Spack Memorandum was provided to the Planning and Zoning Board at its hearing for consideration, although the Board did not discuss the details of the Spack Memorandum during the hearing or in connection with its decision to approve the Project Development Plan.

Staff has prepared information regarding the Spack Memorandum and is able to answer questions regarding this allegation if asked by Council.

4. City Council has established policies prohibiting discrimination in multi-family housing.

The Appellant asserts that the submitted traffic impact study was flawed because of the use of standards used in outside municipalities that relate to student oriented housing.

The traffic impact study and the Spack Memorandum were provided to the Planning and Zoning Board for consideration in its decision, however the Board did not discuss the Spack Memorandum or specifics of the Traffic Impact Study during the hearing or in connection with its decision to approve the Project Development Plan.

Staff has prepared information regarding the submitted traffic impact study and is able to answer questions regarding this allegation if asked by Council.

5. The negative impacts of artificially reduced traffic projections extend beyond a single proposal.

The Appellant asserts that the adjusted trip generation estimates used in traffic impact studies was also prevalent in other project approvals and have a negative impact. The Appellant also maintains that the flawed trip generation will negatively impact Street Oversizing fees collected.

The Planning and Zoning Board did not discuss the impact of trip generation rates contained in the submitted traffic impact study during the hearing or in connection with its decision to approve the Carriage House Apartments Project Development Plan.

Staff has prepared information regarding trip generation impacts and Street Oversizing fees and is able to answer questions regarding this allegation if asked by Council.

COUNCIL ACTION REQUESTED

Review the record and determine if the decision of the Planning and Zoning Board to approve the Carriage House Apartments Project Development Plan should be upheld, overturned, modified, or remanded to the Board for further consideration.”

Councilmember Campana withdrew from the discussion of this item as he was a member of the Planning and Zoning Board when the project came before that Board.

City Attorney Roy described the City’s appeal process.

Councilmember Overbeck stated he attended the site visit.

Councilmember Troxell stated he attended the site visit and asked the Traffic Engineer about the outcome of the traffic study which showed no need for a signalized intersection at Shields.

Councilmember Cunniff stated he attended the site visit and asked questions about the physical layout of the site.

Courtney Levingston, City Planner, stated the proposed project would demolish the existing single-family homes located at 1305 and 1319 South Shields Street and construct five multi-family buildings in their place. The 4.8 acre site is in the Neighborhood Conservation Buffer District and is within the Transit Oriented Development Overlay District. Levingston stated the project was approved by the Planning and Zoning Board on a 6-0 vote and she discussed the allegations of the appeal which were primarily related to the failure of the Board to appropriately discuss traffic study implications.

APPELLANT PRESENTATION

Joel Rovnak, 1308 Bennett Road, stated his appeal is based on the trip generation calculation of the project. He provided traffic counts for apartment buildings and extrapolated that data to the

proposed project. He stated the equation used in the traffic study used a much lower rate than it should have and the predicted trips were then reduced by 25% due to alternative modes. He requested that the item be remanded to the Planning and Zoning Board using trip generation rates that adhere to the Land Use Code.

OPPONENT PRESENTATION

Carolyn White, counsel for the opponents to the appeal, argued no misleading evidence was presented at the original hearing, with the exception of that presented by Mr. Rovnak, which was considered by the Board. She noted this project was compliant with the Land Use Code in all respects with no modifications sought and discussed the voluntary concessions made by the developer to aid in neighborhood concerns. She stated Mr. Rovnak's conclusions were flawed based on confusion between the use of bed versus dwelling units as the unit of measurement.

Matt Delich, Delich Associates, stated the traffic impact study (TIS) was prepared per City guidelines and was accepted by City staff. He stated the most accurate trip generation variable for student housing is beds, not dwelling units, and discussed the apparent confusion in Mr. Rovnak's analysis. Mr. Delich discussed the conservative nature of the traffic generation analysis in the traffic impact study.

Ms. White stated all of the allegations raised in the appeal are without merit and she requested that Council uphold the decision of the Planning and Zoning Board approving the project.

APPELLANT REBUTTAL

Mr. Rovnak assured Council his calculations did not confuse beds and dwelling units; he simply offered calculations using both units to illustrate they both yield low numbers of trip generation. He noted the letter to him from the City Traffic Engineer clearly indicates the use of consideration of student housing.

OPPONENT REBUTTAL

Ms. White stated the way Mr. Rovnak plugged the data into the equation was not correct.

Mr. Delich stated the oversizing fees discussed by Mr. Rovnak are calculated by a different City department and are not based on the traffic impact study.

COUNCIL DISCUSSION

Mayor Weitkunat requested staff input regarding the calculation based on beds versus dwelling units and the City's position on multi-family housing versus student housing. Joe Olson, City Traffic Engineer, replied he spoke before the Student Housing Action Plan committee to discuss trip generation, at which meeting the variable of dwelling units being used for student housing projects was discussed. He stated the committee had suggested the use of beds rather than dwelling units in order to garner more accurate data and added the correct variables were used with the correct equations in Mr. Delich's traffic impact study.

Mayor Weitkunat asked if any of the information provided this evening was presented at the Planning and Zoning Board hearing. Olson replied the traffic impact study was submitted at the hearing.

Councilmember Troxell asked about the level of experience of Delich Associates. Mr. Delich replied he has forty-five years of experience and his son, Joe, has thirteen years of experience and a Professional Engineering degree, which requires standards of excellence and due diligence. Additionally, he stated both he and his son are Professional Transportation Operation Engineers.

Councilmember Troxell asked why the state licenses engineers. Mr. Delich replied the licensing is necessary to provide responsibility for work completed.

Councilmember Troxell asked if Mr. Rovnak had involved a Professional Engineer in his analyses. Mr. Rovnak replied in the negative.

Councilmember Troxell noted the importance of the Professional Engineering certification in this instance.

Councilmember Cunniff asked if multiple traffic impact studies were received by the Planning and Zoning Board. Olson replied in the negative. Levingston replied the Traffic Impact Study prepared by Mr. Delich was part of the information received by the Board and additional information was provided at the hearing by Mr. Rovnak.

Mayor Weitkunat asked about the 25% reduction in trip generation for alternative modes and whether or not that is a general City policy. Olson replied there is an initial scoping session for any traffic impact study during which a discussion is held as to whether or not a project should receive a reduction in trip generation.

Mayor Pro Tem Horak asked about the specific 25% amount. Olson replied it is an estimate and is the typical amount used for multi-family housing near campus or other activity centers, although it is calculated on a case-by-case basis.

Councilmember Cunniff asked what part of campus is used when it is considered an activity center. Olson replied there is no set distance and estimates are used to gain approximate numbers of trip generation.

Mayor Pro Tem Horak asked about the impact of not using the 25% reduction. Olson replied not using that reduction would not have had much impact on the requirements for the project; the level of service at the affected intersection would have remained essentially the same.

Mayor Pro Tem Horak asked what the Planning and Zoning Board would be looking at differently should the item be remanded. Olson replied some of these issues that have caused confusion would be clarified.

Councilmember Troxell made a motion, seconded by Mayor Weitkunat, to uphold the Planning and Zoning Board's decision to approve the Carriage House Apartments Project Development Plan and that the Board conducted a fair hearing.

Councilmember Cunniff expressed concern that the process in general is not as straight forward as it should be, though he does not believe an unfair hearing occurred.

Mayor Weitkunat stated she is supportive of the motion based on the evidence heard and noted the issues raised at the Planning and Zoning Board hearing were generally focused on other aspects of the project.

Mayor Pro Tem Horak noted staff and the Planning and Zoning Board found the traffic impact study to be appropriate and properly calculated and there was no grossly misleading evidence considered at the hearing.

The vote on the motion was as follows: Yeas: Weitkunat, Horak, Cunniff, Overbeck and Troxell. Nays: none.

THE MOTION CARRIED.

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

Items Relating to the Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC. (Continued from April 23, 2013), Adopted on Second Reading (Option 3)

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- A. *Resolution 2013-036 Approving an Amendment to the Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC (Options 1, 2 and 3).*
- B. *Second Reading of Ordinance No. 057, 2013 Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC and Exempting Such Operations from the Prohibitions Contained in Section 12-135 of the City Code (Options 1, 2 and 3).*

On March 19, 2013, Council approved an Operator's Agreement with Prospect Energy to conduct oil and gas operation in the city limits. The terms of the Agreement ensure stringent public health and safety measures are in place through Best Management Practices (BMPs), which generally exceed current requirements mandated by the Colorado Oil and Gas Conservation Commission (COGCC), and provide strict controls on the release of methane gases and other volatile organic compounds (VOCs). The Council also adopted on First Reading, Ordinance No. 057, 2013, by a vote of 5-1 (nays: Ohlson, absent: Poppaw), removing the Moratorium imposed by Ordinance No. 145, 2012, with respect to an Oil and Gas Operator Agreement with Prospect Energy.

- *Option #1- Amended Operator Agreement Resolution 2013-036*

Resolution 2013-036 will further amend the Operator's Agreement with Prospect Energy to clarify that (1) no new drilling will occur in any plugged or abandoned well in the Fort Collins Field and that (2) all Colorado Oil and Gas Conservation Commission rules to be effective August 1, 2013 will

apply to any exploration and drilling activities in the Undeveloped Acreage (UDA), and (3) along the west and southern boundaries of the UDA, a 1,000 foot set-back shall be required from any residential area in accordance with COGCC standards of measurement, and (4) the Amended Agreement must be approved by Council and in effect on or before June 1, 2013.

- Option #2 – Amended Operator Agreement Resolution 2013-036

Limit the Agreement to the Fort Collins Field by removing UDA from the Operator Agreement and prohibit re-entry into plugged and abandoned wells.

While the Whereas clauses for Options #1 and #2 have changed substantially, the substance of the Operator Agreement in Options #1 and #2 is the same, with the exception that the Agreement needs to be executed by June 1 instead of June 15.

- Option #3 – Amended Operator Agreement Resolution 2013-036

Resolution 2013-036 will further amend the Operator’s Agreement with Prospect Energy to include some options in Option #1 plus the following (1) certain portions of the Agreement apply to existing wells within the City limits of the Fort Collins Field, and that (2) will insure any wells drilled in the UDA from the initial drilling phase through completion will be required to have a \$10,000,000 per occurrence policy that covers Pollution and Cleanup, and General Liability, that (3) increased setbacks will be required in certain areas of the UDA, and that (4) the Amended Agreement must be approved by Council and take effect on or before June 1, 2013.

BACKGROUND / DISCUSSION

During Council discussion on March 19, 2013, questions arose regarding the inclusion of Undeveloped Acreage (UDA) in the Operator Agreement. Staff responded incorrectly as to when staff was aware of the UDA. The UDA was disclosed on March 1, 2013. Staff received the first Operator Agreement that included the UDA on March 7, 2013.

Council further inquired as to how development of the UDA may occur. Generally, Prospect Energy is limited to the terms and conditions contained in a confidential Surface Use Agreement (SUA) with Anheuser-Busch, Incorporated signed in April 2011. According to the Larimer County mineral lease notice (Attachment 4), the SUA is for a primary term of three years expiring March 2014. If, at the expiration of the Primary Term of the SUA, lands not then included within a producing or spacing unit are not engaged in drilling or reworking operations, then the lease expires. According to the notice, an option to extend the agreement for an additional three years is available if Prospect Energy makes an additional payment.

In addition to any requirements imposed by the SUA, any oil and gas development would be required to comply with the Council-approved Operator Agreement. A key aspect of the Agreement requires the following:

Conceptual Review – *No less than thirty (30) days prior to the submission of an Application for a Permit to Drill (APD) (note: APD is the Colorado Oil and Gas Conservation Commission (COGCC) permitting process), Prospect Energy will schedule a meeting with the City to review the proposed new well or drilling activity. The goal of this meeting would be for staff and the applicant to review the proposed oil and gas operation in a manner that ensures compliance with the operator*

agreement and applicable state and federal regulations. This pre-submittal meeting will also allow the applicant and staff to:

- explore site-specific concerns
- discuss project impacts and potential mitigation methods including field design and infrastructure construction to minimize impacts
- discuss coordination of field design with other existing or potential development and operators
- identify sampling and monitoring plans for air and water quality, and other elements of the operator agreement as contained in Exhibit A (Best Management Practices).

Option #3 Amendment Conditions

Staff was asked to further negotiate with Prospect Energy on the following conditions:

1. *Would Prospect Energy agree to adhere to the Best Management Practices (BMP) contained in the Operator Agreement for existing wells in the Fort Collins Field?*

Prospect Energy is willing to apply certain BMP's to the Fort Collins Field for wells contained in the City Limits provided that any existing wells in the Growth Management Area (GMA) are exempt. Prospect Energy has agreed in whole or in part to 22 of 48 sections of the BMPs; see Attachment 8 for details. 18 of the 48 sections of the BMPs do not apply so Prospect Energy has agreed to 22 of the 30 sections that apply to the existing field.

2. *Would Prospect Energy increase insurance provisions?*

Prospect Energy agrees to provide liability insurance that covers pollution, cleanup and general liability in the amount of \$10,000,000 per occurrence during the initial drilling of a New Well through completion. Following completion, Prospect Energy will provide ongoing pollution, cleanup and general liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate, and general liability umbrella coverage in the amount of \$5,000,000.

3. *Would Prospect Energy agree to increase the set-backs to 2000 feet rather than 1000 feet along the southern and western boundaries of the UDA?*

Prospect Energy agrees to increase set-backs for certain portions of the UDA as described in Exhibit C; 1500 feet from the proposed school lease line and 1000 feet from the lease lines where residential or building units exist (see Attachment 6).

4. *Would Prospect Energy agree to increased inspections by the City?*

The Agreement, Appendix A, Number 8 already provides the City with the right to inspect the Company's operations and sites during business hours, upon the giving of 24 hours advance written notice to the Company. Staff believes this is sufficient to allow for any inspection in addition to what COGCC may provide.

5. *Would Prospect Energy allow additional monitoring or alert systems to be placed within the Fort Collins Field or in the UDA?*

Prospect Energy is unable to commit to any property uses within the Fort Collins Field or the UDA as they are not the property owners. Staff believes that there would be other public or private property options available if Council wishes to consider this monitoring at a future date.

Prospect Energy has indicated that if Option #3 is not approved on May 21, 2013 they will withdraw the option.

Staff was also asked to respond to citizen questions by preparing a list of questions and answers, and then post them on the Oil and Gas Web-site (<http://www.fcgov.com/oilandgas/>) for easy access by the public. This was completed on May 7, 2013 and subsequently updated to include questions answered during the Oil and Gas Presentation held May 8, 2013.

Council asked staff to hold a community meeting specifically providing an opportunity for those residents who may be most affected by an Operator Agreement with Prospect Energy to an informational meeting. An invitation was extended to approximately 3,000 residents to attend such a meeting on May 8, 2013 at the Lincoln Center. At least 120 persons attended the event which included informational table displays with opportunities to ask questions of project team members, a presentation outlining the proposed agreement and possibility to exempt Prospect Energy from a City Moratorium prohibiting any new oil and gas development and ban from new drilling and operations conducted by Prospect Energy in the Fort Collins Field (city limits) and the UDA.”

Mayor Weitkumat noted Resolution 2013-036 will be considered first.

Laurie Kadrach, Community Development and Neighborhood Services Director, stated adoption of Ordinance No. 057, 2013 on Second Reading would remove Prospect Energy from a moratorium on new drilling and allow the company to use hydraulic fracturing in their operations. Given adoption of this Ordinance, Council will have the option to leave the current operator agreement in place or amend that agreement in one of three ways as presented by staff. Kadrach showed a map of the Fort Collins Field and the undeveloped area (UDA), for which Prospect Energy owns the drilling rights. The current agreement applies to any new well in the city limits of the Fort Collins Field or the UDA, and may apply in the Growth Management Area if the City and County reach agreement about that issue. Kadrach detailed the community outreach which has occurred prior to tonight’s meeting and outlined the choices for Council consideration. Option #1 would amend the agreement to include greater setback requirements on the southern and western boundaries of the UDA to 1,000 feet and would prohibit any reentry into the plugged and abandoned wells in the Fort Collins Field. Prospect Energy agrees to this option and the timeframe to act would be June 1, 2013. Option #2 would amend the agreement to remove the UDA from the agreement and disallow any reentry into plugged and abandoned wells in the Fort Collins Field. Prospect Energy will not enter into an amended agreement including only the Fort Collins Field. Option #3 would amend the agreement to include greater setback requirements in the UDA along the area that there may be a future school, would prohibit reentry into the plugged and abandoned wells in the Fort Collins Field, would add certain best management practices to the existing wells in the Fort Collins Field in the city limits, and would increase insurance provisions during the time of drilling for the UDA. Prospect Energy is willing to agree to this option if it is adopted this evening; however, they have indicated they will withdraw the option from future consideration.

Danny Hesser, 2133 Ford Lane, expressed concern regarding potential health risks of drilling and supported a ban on operations.

Maya Hesser, 2133 Ford Lane, stated mineral rights should not take precedent over health and safety of citizens.

Matthew Martinez, Fort Collins resident, expressed concern regarding potential health risks of oil and gas operations.

Dian Sparling, 324 Jackson, expressed concern regarding endocrine disruptors which result from spills at oil and gas wells. She requested protection for the health of citizens until studies are complete regarding the dangers of drilling.

Kelly (no last name provided), stated no health studies will be complete until 2020 and expressed concern regarding potential health risks of drilling and fracking. She requested Council enforce the ban on Prospect Energy.

Andrew Stewart, 2503 Maple Hill, stated best management practices need to be adopted and stated air and water can be treated to be safe.

Brigitte Schmidt, 932 Inverness, requested Council receive an agreement from the operator that they will work with the County to complete an operator agreement within the growth management area.

Nick Armstrong, 2238 Ballard Lane, stated Prospect Energy will basically be self-regulating.

Kevin Cross, Fort Collins Sustainability Group, supported a continued ban on all fracking, and supported Option #2.

John Gascoyne, 718 West Mountain, stated citizens should be protected and should not fear litigation.

Cheryl Distaso, Fort Collins Community Action Network, supported Option #2 and questioned the process regarding the late revised agenda.

Kamana Hesser, 2133 Ford Lane, expressed concern regarding the health risks of drilling.

Dolores Williams, 415 Mason Court, expressed concern about Prospect Energy making litigation threats and opposed the use of fracking until it is proven safe.

Chris Gabar, Fort Collins resident, stated France has banned fracking and requested protection from fracking for Fort Collins.

James Sack, Fort Collins resident, expressed concern about Prospect Energy making litigation threats.

Karen Snyder, Fort Collins resident, supported the most strict, protective option and the continuance of the ban on fracking.

Shawntae Cerda, Food and Water Watch, opposed the use of fracking in Fort Collins.

Greg Hirschi, 2626 Thoreau Drive, asked that Council carefully consider its options and noted his property is on the border of the 1000 foot setback for the UDA.

Michael O'Keefe, Loveland resident, supported continuing the moratorium on fracking.

Lia Pace, Fort Collins resident, supported continuing the ban on fracking.

Lauren Swain, Sierra Club, supported continuing the ban on fracking.

Sweede Anderson, Fort Collins resident, urged Council to pause and ensure enough insurance is available before moving ahead with fracking.

Linda Vrooman, Fort Collins resident, opposed fracking based on its use of water.

Will Walters, 1701 Tanglewood, opposed fracking based on health risks until it is proven safe.

Ron Harper, 3532 Hearthfire, supported Prospect Energy and its efforts to operate safely.

Jerry Dauth, 1925 Serramonte, supported increased setback requirements.

Gary Wockner, Clean Water Action, supported continuing the full ban on fracking and questioned the City's dealings with Prospect Energy.

Josh Joswick, Bayfield resident, supported the power of local government to ensure the safety of citizens.

Rico Moore, 721 West Myrtle, supported maintaining the ban on fracking.

Rob Willis, counsel representing Prospect Energy, supported adoption of the operator agreement.

Rudy Zitti, Fort Collins resident, supported adoption of the operator agreement.

Shane Davis, Fort Collins resident, supported a drilling ban citing failure rates of wells.

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

Councilmember Cunniff asked if the existing agreement with the operator would take effect on August 1, 2013, should Council lift the moratorium. Kadrich replied Council would need to act on Second Reading. City Attorney Roy replied the effective date of the Ordinance, which has been passed on First Reading, is to occur no later than August 1st, or the agreement is off. Adoption on Second Reading could occur at any time prior to ten days before August 1st.

Councilmember Cunniff commended staff and Prospect Energy for their work on the agreement.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Resolution 2013-036, Option #3.

Mayor Weitkunat requested additional explanation of this Option. Kadrich replied this Option includes enacting early any Colorado Oil and Gas Conservation rules that would take effect on August 1st, not allowing any reentry to the plugged and abandoned wells in the Fort Collins Field, the extension of new setbacks in the UDA for its northwestern and southeastern boundaries, application of best management practices to the existing wells in the Fort Collins Field, and increases the insurance during the drilling activity in the UDA to \$10 million.

City Attorney Roy noted the Ordinance for Option #3 is the same as that for Option #1 and he noted changes to that Ordinance since First Reading are shown with redline and strike-outs.

Councilmember Troxell stated this Option addresses input from Council and guarantees protections above and beyond by the operator.

Councilmember Overbeck argued citizens want sound science over an agreement and want to be protected.

Councilmember Cunniff stated the late presentation of this option is poor process and stated he could not support the motion, as the option misses some of the best management practices. He added he would support a five-to-seven year moratorium to allow consideration of the results of a state health study.

Mayor Pro Tem Horak asked Councilmember Overbeck to elaborate on his opposition. Councilmember Overbeck replied this agreement does not provide protection for citizens and the vast majority of citizens support a ban on fracking. He stated he would also support a continued moratorium to allow time for a health study.

Mayor Pro Tem Horak expressed concern about losing a potential lawsuit. Councilmember Overbeck replied citizens want to take a stand.

Councilmember Poppaw asked Mayor Pro Tem Horak for his opinion on a timeline. Mayor Pro Tem Horak replied litigation could ultimately lead to the City losing a great deal of money and would result in Prospect Energy operating under state regulations rather than the more stringent regulations in the operator agreement.

Mayor Weitkunat noted the moratorium passed in June exempted Prospect Energy. She stated the agreement addresses the concerns of citizens while also protecting the City from costly litigation.

Councilmember Overbeck stated this agreement does not protect property values in terms of Prospect Energy's liability insurance and reiterated his concerns regarding health and safety concerns.

Councilmember Troxell stated this agreement allows the City to be proactive.

Councilmember Campana stated he would prefer to be on the offensive in terms of Colorado oil and gas regulation.

Councilmember Overbeck supported proceeding cautiously and placing the importance of health and safety above that of a lawsuit.

City Attorney Roy read into the record the changes to the Resolution.

Mayor Pro Tem Horak asked about Councilmember Cunniff's suggested moratorium and its applicability to Prospect Energy. Councilmember Cunniff replied he would propose no exemptions for the moratorium, and believes that would be defensible in court.

The vote on the motion was as follows: Yeas: Campana, Horak, Weitkunat and Troxell. Nays: Poppaw, Cunniff and Overbeck.

THE MOTION CARRIED.

Councilmember Troxell made a motion, seconded by Mayor Pro Tem Horak, to adopt Ordinance No. 057, 2013, Option #3, on Second Reading.

Mayor Pro Tem Horak opposed the accusation that he colluded with Prospect Energy regarding the agreement. He argued Council has a fiduciary responsibility to the citizens and stated opposing this agreement would not be good for Fort Collins.

Councilmember Cunniff agreed there would likely be litigation should the moratorium not be lifted and the agreement not be adopted; however, he disagreed that the City does not have a defensible position.

Councilmember Campana agreed with Councilmember Cunniff but stated the resources and time could be spent on protecting citizens using real-time monitoring rather than in court.

Councilmember Cunniff noted he is of the opinion there was no collusion on the part of any Councilmembers.

Councilmember Overbeck argued a health study should be completed first in order to protect the safety and health of citizens.

Mayor Weitkunat argued Prospect Energy has shown concern for the health and safety of citizens.

The vote on the motion was as follows: Yeas: Campana, Horak, Weitkunat and Troxell. Nays: Poppaw, Cunniff and Overbeck.

THE MOTION CARRIED.

Other Business

Councilmember Troxell asked about the possibility of moving forward with Land Use Code amendments addressing reciprocal setbacks and requirements to identify plugged and abandoned wells prior to development, and the continuance of land use development regulations now that the ban is in place.

Councilmember Cunniff and other Councilmembers agreed those items should be investigated. He requested the consideration of an extended five to seven year moratorium on all oil and gas extraction within the City limits with the purpose of determining the outcome of the State's long-

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term health study. He stated he would like Council to be able to consider the item before the existing moratorium terminates.

Councilmembers Poppaw and Overbeck agreed with Councilmember Cunniff to provide that direction to staff.

Adjournment

The meeting adjourned at 11:32 p.m.

Mayor

ATTEST:

City Clerk