

DATE: July 2, 2013
STAFF: Wanda Nelson

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

6

SUBJECT

Consideration and Approval of the Minutes of the June 4 and June 18, 2013 Regular Meetings and the June 11, 2013 Adjourned Meeting.

June 4, 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, June 4, 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: Campana, Cunniff, Horak, Overbeck, Poppaw, Troxell and Weitkunat.

Staff Members Present: Atteberry, Nelson, Roy.

Agenda Review

City Manager Atteberry stated there were no changes to the published agenda.

Citizen Participation

Chris Eikenberg, formerly of 1245 East Lincoln, discussed the fire at Buffalo Run Apartments and expressed concern regarding management of the complex. She stated all apartments should be required to have a fire extinguisher on site and requested Council pass legislation related to “slum” landlords.

Vivian Armendariz, 820 Merganser Drive, expressed concern regarding management at Bull Run Apartments and expressed concern regarding upcoming changes to Dial-a-Ride services.

Eric Sutherland, 3520 Golden Currant, questioned the affordability of the junk bonds for the Foothills Mall project.

Matthew Martinez, Fort Collins resident, thanked staff and Council for work on the hydraulic fracturing issue and stated Citizens for a Healthy Fort Collins has set forth a proposal to place a moratorium on fracking for five years.

Kelly Giddens, Citizens for a Healthy Fort Collins campaign organizer, stated the citizens of Fort Collins should be able to make a decision regarding fracking and suggested a five year moratorium would allow time to garner information from health studies.

Cindy Peck, 212 West Myrtle owner, expressed concern regarding parking requirements for rental properties.

Citizen Participation Follow-up

Councilmember Poppaw requested additional information regarding the property management company at Buffalo Run and Bull Run Apartments. City Manager Atteberry replied staff will meet with Ms. Eikenberg and Ms. Armendariz.

Councilmember Cunniff stated the bond funding for the Foothills Mall project was the best possible deal.

CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the May 7, 2013 Regular Meeting and the May 14, 2013 Adjourned Meeting.

7. Second 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 Ordinance, unanimously adopted on First Reading on May 21, 2013, 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.

8. Second 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.

This Ordinance, unanimously adopted on First Reading on May 21, 2013, changes City Code Section 4-196 from a civil infraction to a criminal misdemeanor. 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.

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

This Ordinance, unanimously adopted on First Reading on May 21, 2013, is 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.

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

This Ordinance, unanimously adopted on First Reading on May 21, 2013, 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 Judge, 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.

11. Second 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, unanimously adopted on First Reading on May 21, 2013, 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.

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

This Ordinance, unanimously adopted on First Reading on May 21, 2013, 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 ongoing operations or services provided to Utility customers not participating in testing or research projects.

13. Second Reading of Ordinance No. 076, 2013, Appropriating Unanticipated Revenue in the General Fund 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, unanimously adopted on First Reading on May 21, 2013, 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.

14. First Reading of Ordinance No. 077, 2013 Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved by the Waste Innovation Program.

This Ordinance shifts \$135,560 that has accumulated in the Waste Innovation Program's reserve account into the City's General Fund account so that the money can be used for the purposes intended. Revenues are paid into the Waste Innovation Program by City departments that "self haul" trash from municipal operations for disposal in the Larimer County Landfill. The fund is designated to pay for projects that enhance these same departments' ability to divert more waste away from the landfill. Unspent funds from several previous years had been moved into a "reserve" account; this action moves the funds back into the General Fund.

15. First Reading of Ordinance No. 078, 2013 Appropriating Unanticipated Grant Revenue into the Stormwater Fund, and Authorizing the Transfer of Existing Appropriations from the Flood Mapping/Stream Gaging Capital Project to the Post Fire Flood Warning Grant Project for Early Flood Warning Capabilities.

The Stormwater Utility has received a grant from the State of Colorado totaling \$17,881. The grant funds will be used to enhance early flash flood warning capabilities due to the increased risk of flooding caused by the High Park Fire. Existing appropriations will be used for the match of \$5,960.

16. First Reading of Ordinance No. 079, 2013, Authorizing the Use of the Noonan Tract and the Bowes Homestead Tract as Match for a Neotropical Migratory Bird Conservation Act Grant Administered by the U.S. Fish and Wildlife Service.

The City will use a recent acquisition of 280 acres at Soapstone Prairie Natural Area (Soapstone Prairie) as match towards the grant, as well as management funds currently obligated in the Natural Areas Department (NAD) budget. Using the funds already spent as match towards this grant is a great secondary benefit for the City. The \$200,000 grant will expand upon Rocky Mountain Bird Observatory's (RMBO) research and monitoring work to implement conservation strategies and management for 19 high priority grassland birds

that breed within the Laramie Foothills Mountains to Plains Project and 27 high priority species at wintering sites in the Chihuahua Desert of Mexico.

This will be the fifth such match authorized as the City, in partnership with RMBO, has been successful on four previous grant applications. The previous partnership efforts have resulted in a broader understanding of the grasslands bird species that nest on Soapstone Prairie and the contiguous Meadow Springs Ranch, and has contributed to the conservation of these species' winter ranges in Mexico.

17. Public Hearing and First Reading of Ordinance No. 080, 2013, Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement.

Since 1998, the City of Fort Collins has collected a fee-in-lieu of land dedication for both Poudre School District and Thompson School District. These fees allow a residential developer to pay a school site fee to the School Districts rather than dedicate a parcel of land to the District for development of future schools. The ability of the school districts to require land dedication is authorized under Colorado Law.

Fees are reviewed every two years and in 2011 the Poudre School District reduced fee amounts by 11 percent. This ordinance will increase the amount of the fees the district receives by 6.9 percent. The school district is requesting an increase in the fees collected because of an increase in land values and cost per acreage. This fee amount was reviewed and approved by the Poudre School Board in February 2013. Thompson School District will not be adjusting fees in 2013.

18. First Reading of Ordinance No. 081, 2013 Authorizing Dryland Farm Leases to Harry Sauer on Long View Farm Open Space, Prairie Ridge Natural Area, and Coyote Ridge Natural Area.

The City of Fort Collins Natural Areas Department is a minority owner in Long View Farm Open Space and Prairie Ridge Natural Area, and is the sole owner of the McKee parcel within Coyote Ridge Natural Area. The majority owners of Long View and Prairie Ridge are Larimer County and the City of Loveland respectively. All three properties are leased by Harry Sauer for dryland wheat production and have been since the time of purchase of the properties by the Cities and County. Intergovernmental Agreements state which agency has management authority and receives the lease revenues for each property. As current leases expire on the properties, all three entities have worked collaboratively to create leases with similar terms and have advertised the properties for lease via one Request for Proposals process. The new leases have a higher lease rate and more contemporary language. Restoration of the dryland wheat to native grasses on the McKee parcel will continue at the same pace as in the past and it will nearly be completely restored to native grasslands by the end of the lease term of five years.

19. Resolution 2013-051 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District.

This Resolution authorizes the City Attorney to file a petition in Larimer County District Court to exclude properties annexed into the City in 2012 from the Poudre Valley Fire

Protection District (the “District”) in accordance with state law. The properties will continue to receive fire protection services from the Poudre Fire Authority.

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

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

7. Second 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.
8. Second 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.
9. Second Reading of Ordinance No. 071, 2013, Amending Section 19-65 of the City Code Related to the Service of a Civil Citation.
10. Second Reading of Ordinance No. 072, 2013, Amending Sections 19-36 and 19-41 of the City Code Pertaining to Municipal Court Referees.
11. Second 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.
12. Second Reading of Ordinance No. 074, 2013, Amending the City Code to Authorize Administrative Adoption of Minor Rule Revisions, Clarifications, and Interconnection Project Standards.
13. Second Reading of Ordinance No. 076, 2013, Appropriating Unanticipated Revenue in the General Fund for the Platte River Power Authority Transmission Line Relocation Project Located on the Woodward Property.
24. Second 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.

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

14. First Reading of Ordinance No. 077, 2013 Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved by the Waste Innovation Program.
15. First Reading of Ordinance No. 078, 2013 Appropriating Unanticipated Grant Revenue into the Stormwater Fund, and Authorizing the Transfer of Existing Appropriations from the Flood Mapping/Stream Gaging Capital Project to the Post Fire Flood Warning Grant Project for Early Flood Warning Capabilities.

16. First Reading of Ordinance No. 079, 2013, Authorizing the Use of the Noonan Tract and the Bowes Homestead Tract as Match for a Neotropical Migratory Bird Conservation Act Grant Administered by the U.S. Fish and Wildlife Service.
17. Public Hearing and First Reading of Ordinance No. 080, 2013, Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement.
18. First Reading of Ordinance No. 081, 2013 Authorizing Dryland Farm Leases to Harry Sauer on Long View Farm Open Space, Prairie Ridge Natural Area, and Coyote Ridge Natural Area.
26. First Reading of Ordinance No. 083, 2013, Designating the Johnson Farm Property, 2608 East Drake Road as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.
28. First Reading of Ordinance No. 084, 2013 Authorizing the Conveyance of Four Easements, a Temporary Construction Easement and a Revocable Permit on City Right-of-Way and City-Owned Property to Linden Bridges LLC for the Encompass-River District Block One Mixed Use Development.

Councilmember Overbeck withdrew Item No. 18, *First Reading of Ordinance No. 081, 2013 Authorizing Dryland Farm Leases to Harry Sauer on Long View Farm Open Space, Prairie Ridge Natural Area, and Coyote Ridge Natural Area*, from the Consent Calendar.

Councilmember Cunniff withdrew Item No. 17, *Public Hearing and First Reading of Ordinance No. 080, 2013, Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement*, from the Consent Calendar.

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

THE MOTION CARRIED.

Staff Reports

Rick Richter, City Engineer, discussed highlights of the Mason Street Corridor MAX project. He noted the Prospect Road closure was not as long as expected and discussed the schedule for station construction and upcoming closures.

Mark Jackson, Planning, Development, and Transportation Deputy Director, reported on a VIP reception held on April 25th, that provided tours and updates regarding the MAX project.

Mayor Weitkunat asked about the frequency of east-west road closures. Richter replied the closures along Mason are primarily at the railroad and arterial crossings and are related to utility installation. The Harmony Road closure was not related to this project, but rather to some safety improvements that were needed for the railroad crossing.

Councilmember Cunniff asked about the configuration of the railroad ballasts. Richter replied the railroad's preference is to have the ballasts level with the ties, which will ultimately occur.

Mayor Pro Tem Horak requested a status report regarding the project's budget. Richter replied the project is tracking very close to the budget.

Mayor Pro Tem Horak requested information regarding the bridge to Whole Foods. Richter replied construction on that overpass will begin within a few weeks, with a bridge being set in September.

Councilmember Reports

Mayor Pro Tem Horak reported on the strategic planning process at Poudre Fire Authority, which will include planning regarding ambulance service. He also reported on the Platte River Power Authority strategic planning process and stated preliminary estimates will place a rate increase in 2014 at less than 3%.

Ordinance No. 080, 2013

Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Since 1998, the City of Fort Collins has collected a fee-in-lieu of land dedication for both Poudre School District and Thompson School District. These fees allow a residential developer to pay a school site fee to the School Districts rather than dedicate a parcel of land to the District for development of future schools. The ability of the school districts to require land dedication is authorized under Colorado Law.

Fees are reviewed every two years and in 2011 the Poudre School District reduced fee amounts by 11 percent. This ordinance will increase the amount of the fees the district receives by 6.9 percent. The school district is requesting an increase in the fees collected because of an increase in land values and cost per acreage. This fee amount was reviewed and approved by the Poudre School Board in February 2013. Thompson School District will not be adjusting fees in 2013.

BACKGROUND / DISCUSSION

In April 1998, the City of Fort Collins and Thompson and Poudre School Districts entered into Intergovernmental Agreements regarding land dedication for new developments, including a provision for fees-in-lieu of land dedication. Poudre School District has asked that the amount of the fees be increased to reflect the current cost of acquiring school sites. Thompson School District has not requested a change.

The City's Intergovernmental Agreement (IGA) with Poudre School District allows for periodic updates to the fees and land dedication requirements. Since adoption of the IGA, fees have been adjusted in 2001, 2006, and 2011.

Fees are based on a number of factors including school site size, student population projections, enrollment capacities of each type of school (elementary, junior high and high schools), and the cost of developed land within the school district. Site sizes and enrollment capacities are set by School District policy.

School Districts in Colorado are allowed by State law to either require school site dedications from residential developers or collect a fee-in-lieu of such land dedication. The calculation of this fee must be closely tied to the cost of land to be dedicated, as well as the factors listed above.

This fee increase is at the request of PSD and is based on a land value analysis performed for the District in late 2012 (Attachment 2).

The effect of the proposed change in per dwelling unit costs would be as follows:

Poudre School District

Fee per dwelling unit: Current Fee Revised Fee

<i>1-4 attached dwelling units</i>	<i>\$1,600</i>	<i>\$1,710</i>
<i>5 or more attached dwelling units</i>	<i>\$ 800</i>	<i>\$ 855</i>

The Intergovernmental Agreement requires that the City conduct a public hearing prior to any changes in the fee or land requirement. The Poudre School District Board has reviewed its methodology for this program and requested that the City Council approve this revision. The detailed methodology for calculating the fees are provided in Exhibits A and B of the Ordinance.

FINANCIAL / ECONOMIC IMPACTS

The proposed Ordinance will not have a financial impact on the City of Fort Collins because the fees are collected on behalf of Poudre School District. Revenues from the fees will pass through City accounts and will not affect City revenue limits under Article X, Section 20.

This Ordinance implements a fee increase requested by Poudre School District. The increased fee will raise the cost of residential development in the community collected at the time of building permit by \$110 per single family unit Multi-family unit fees (over 5 units) are increased by \$55 per dwelling unit. This is a 6.9% increase.

PUBLIC OUTREACH

This action was reviewed and approved at the February 26, 2013 Poudre School District Board Meeting.”

Councilmember Cunniff expressed concern regarding the methodology used by Poudre School District and asked whether any further consideration has been given to asking the state legislature for additional enabling legislation to allow for brick and mortar to be covered with development fees as well. Ed Holder, Poudre School District, replied the rates are based on three factors, which include student yield, school site size, and the residential land values. Those values have been

reassessed every two years based on Larimer County's assessments and the school site size has dropped.

Councilmember Cunniff asked about legislation for building construction. Mr. Holder replied there is a potential for marijuana tax funding of school construction, but he is unaware of any other proposals.

Eric Sutherland, 3520 Golden Currant, suggested these fees should be prorated to allow for true infill and redevelopment.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 080, 2013, on First Reading.

Councilmember Cunniff asked if Poudre School District currently has a level fee structure across the district. Mr. Holder replied in the affirmative.

Councilmember Campana agreed with Mr. Sutherland that impact fees should be evaluated for infill projects.

Mayor Pro Tem Horak asked if there is a City-Poudre School District committee. Mr. Holder replied in the affirmative. Mayor Pro Tem Horak suggested this item be discussed annually at that committee.

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

THE MOTION CARRIED.

Ordinance No. 081, 2013

Authorizing Dryland Farm Leases to Harry Sauer on Long View Farm Open Space, Prairie Ridge Natural Area, and Coyote Ridge Natural Area, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The City of Fort Collins Natural Areas Department is a minority owner in Long View Farm Open Space and Prairie Ridge Natural Area, and is the sole owner of the McKee parcel within Coyote Ridge Natural Area. The majority owners of Long View and Prairie Ridge are Larimer County and the City of Loveland respectively. All three properties are leased by Harry Sauer for dryland wheat production and have been since the time of purchase of the properties by the Cities and County. Intergovernmental Agreements state which agency has management authority and receives the lease revenues for each property. As current leases expire on the properties, all three entities have worked collaboratively to create leases with similar terms and have advertised the properties for lease via one Request for Proposals process. The new leases have a higher lease rate and more contemporary language. Restoration of the dryland wheat to native grasses on the McKee parcel will continue at the same pace as in the past and it will nearly be completely restored to native grasslands by the end of the lease term of five years.

BACKGROUND / DISCUSSION

In 1997, the 479-acre Long View Farm Open Space was purchased by Larimer County, the City of Fort Collins and the City of Loveland, with an ownership split of 50%, 33%, and 17%, respectively. At the time of acquisition, an Intergovernmental Agreement (IGA) was also drafted. Per the terms of the IGA, the County manages the property and administers the agricultural lease, and receives all rental income from the property.

In 2000, the 785-acre Prairie Ridge Natural Area was acquired from Harry Sauer by Loveland (75% ownership) and Fort Collins (25% ownership). Per the terms of the IGA, Loveland manages the property and the agricultural lease, and receives all rental income from the property.

In 1997, Fort Collins acquired the 973-acre McKee Farm parcel of Coyote Ridge Natural Area. Fort Collins owns and manages the property entirely with no shared ownership or management with other entities.

Mr. Sauer farmed all three properties prior to City and County ownership, and has continued farming under the existing leases that are set to expire in 2013.

RFP Process

In the fall of 2011, a Request for Proposal (RFP) was conducted by Fort Collins for dryland farming leases on all three properties. Mr. Sauer's proposal was selected. The new agricultural lease reflects the terms and conditions outlined in the proposal. Fort Collins, Loveland, and Larimer County worked together to draft leases for each Property that are nearly identical in terms with several minor exceptions. The lease rate and the large majority of terms for all three leases are the same. These consistent lease terms will allow consistency and ease of management across the three adjacent properties and provide Mr. Sauer with essentially one set of lease terms to adhere to.

Lease Terms

Mr. Sauer will lease Long View, Prairie Ridge, and McKee for a period of five (5) years beginning August 1, 2013 and expiring no later than July 31, 2018.

The lease rate will be \$20/acre of farmed land annually for each property. Mr. Sauer will receive 100% of the Crop Flexibility payments from the Farm Service Agency, and is responsible for any and all costs associated with crop production, insect control and noxious weed control. In addition, the lease terms have been updated to a more contemporary format with more preferable terms.

Restoration

Over the past five years, Fort Collins has restored approximately 50 acres of farmland annually to native grasslands on McKee. Currently, Fort Collins plans to continue restoration efforts on McKee at the same pace; approximately 50 acres of farmable acreage will remain on the property by the end of this lease term, which will be restored the following year. The McKee lease details this restoration and Mr. Sauer will work cooperatively with Fort Collins to farm the remaining portion of the property.

FINANCIAL / ECONOMIC IMPACTS

The rent payments from Long View and Prairie Ridge will be retained by Larimer County and Loveland, respectively, per the respective IGAs. The McKee lease rate is roughly double the previous rate, and Mr. Sauer will be responsible for all management on the lease area of the property. The City will receive all rental income from the McKee property.

ENVIRONMENTAL IMPACTS

There are no significant environmental impacts to Fort Collins. The properties' land use will not change and existing farming practices and restoration efforts will continue unchanged.

BOARD / COMMISSION RECOMMENDATION

At its May 8, 2013 meeting, the Land Conservation and Stewardship Board voted unanimously to recommend that City Council approve three leases with Harry Sauer to farm dryland winter wheat on portions of Long View Farm Open Space, Prairie Ridge Natural Area and Coyote Ridge Natural Area."

Councilmember Overbeck asked about the price per acre figure for the lease and requested information regarding a GMO policy, the contemporary lease terms and the mineral rights owner. Daylan Figgs, Natural Areas Senior Environmental Planner, replied the lease price was decided based on a request for proposal, and Mr. Sauer was the high bid in this case. Additionally, the rates are in line with typical custom rates for dryland farms in Colorado and this lease places the cost of weed control solely on Mr. Sauer. He stated there is currently no GMO policy as there are no wheat crops which are pesticide-resistant. Figgs replied oil and gas rights are held by the City and no surface entry is allowed for any ore collection.

Councilmember Cunniff asked about the restoration schedule for the properties. Figgs replied restoration began about five years ago and approximately 50 acres per year are converted from cropland to native grass. Larimer County and Loveland are not restoring their properties at this time.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 081, 2013, on First Reading.

Mayor Pro Tem Horak asked if the Legislative Committee has discussed GMO information provided by Food and Water Watch. Councilmember Troxell replied it has not been discussed.

The vote on the motion was as follows: Yeas: Weitkumat, Poppaw, Campana, Horak, Cunniff, Overbeck and Troxell. 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 Second 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 Ordinance, unanimously adopted on First Reading on May 21, 2013, is necessary to authorize the required long-term (20 year) purchase power agreements.”

John Phelan, Energy Services Manager, provided a brief description of the program and stated citizen comments were addressed via a Service Area Request following First Reading.

Eric Sutherland, 3520 Golden Currant, stated there is a Charter provision which prohibits paying for experimentation with rate payer dollars without a vote of Council. He supported this Ordinance.

Councilmember Poppaw requested information as to what occurs at the end of the 20-year agreement. Norm Weaver, Senior Energy Services Engineer, replied several close-out options are available, including contract extensions and a switch to net metering by the solar client. He stated there is a notion that renewable energy credits (RECs) do retire after a certain amount of time. Phelan replied the RECs are generated as the energy is generated and delivered on an annual basis. The 20-year term is standard in the industry to create a clear financial structure to enable the initial capitalization of the projects.

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

Mayor Pro Tem Horak supported the Ordinance.

Councilmember Troxell supported distributed generation.

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

THE MOTION CARRIED.

Resolution 2013-052
Making Findings of Fact and Conclusions Regarding the Appeal
of the March 21, 2013 Planning and Zoning Board Approval of the
Carriage House Apartments Project Development Plan, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

On March 21, 2013, the Planning and Zoning Board considered and approved the application for the Carriage House Apartments, Project Development Plan. On April 4, 2013, a Notice of Appeal was filed by Joel Rovnak seeking to remand the decision back to the Planning and Zoning Board.

On May 21, 2013, City Council voted 5 - 0 (Poppaw absent, Campana withdrawn) upholding the decision of the Planning and Zoning Board, concluding that the evidence presented did not indicate the Board failed to conduct a fair hearing by considering evidence relevant to its findings which was substantially false or grossly misleading.

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

BACKGROUND / DISCUSSION

The Appellant’s Notice of Appeal was based on allegations that the Planning and Zoning Board failed to conduct a fair hearing in that it considered evidence contained in the Traffic Impact Study which was substantially false and grossly misleading.

At the May 21, 2013 appeal hearing, Council considered the testimony of the Appellant, Applicant and City staff. After consideration of the record and discussion, Council determined that Planning and Zoning Board conducted a fair hearing. Accordingly, the Council upheld the decision of the Planning and Zoning Board, approving the Carriage House Apartments, Project Development Plan.”

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

Councilmember Poppaw withdrew from the discussion of this item as she did not participate in the appeal hearing.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Resolution 2013-052. Yeas: Weitkunat, Troxell, Horak, Overbeck and Cunniff. Nays: none.

THE MOTION CARRIED.

Ordinance No. 083, 2013,
Designating the Johnson Farm Property, 2608 East Drake Road as a Fort Collins
Landmark Pursuant to Chapter 14 of the City Code, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The owner of the property, Gino Campana of Johnson Farm LLC, is initiating this request for Fort Collins Landmark designation for the Johnson Farm Property at 2608 East Drake Road.

BACKGROUND / DISCUSSION

The property is eligible for designation as a Fort Collins Landmark under Designation Standards 1, 2, and 3 for its association with significant historical events and persons, and also for its architectural significance to Fort Collins.

The Johnson Farm is significant under Standard One (1) for its association with agricultural contexts in Fort Collins since the late nineteenth century, including the open range cattle industry, farming and ranching, and sheep raising.

The property is additionally significant under Standard Two (2) for its association with several prominent Fort Collins citizens, including Charles Evans and the Johnson brothers: Elmer, Wesley, Edwin, and Harvey. The Johnsons first moved to Fort Collins in 1902 where they established multiple farms in the area. Throughout the twentieth century, the Johnsons thrived in farming and stock raising. One Johnson brother in particular, Harvey, exerted significant political influence in the city as President of the Water Supply and Storage Company and Mayor from 1963 to 1967. Furthermore, the property also holds significance under Standard Three (3). Its two farmhouses, built in the 1910s by Elmer Johnson, are excellent examples of vernacular agricultural architecture. Also, the Johnson barn, built around 1918, represents one of the city’s few remaining examples of a bank barn. It is built into the side of the land’s natural grade to provide livestock easier access to forage stored in the barn.

FINANCIAL / ECONOMIC IMPACTS

Recognition of the Johnson Farm Property at 2608 East Drake Road as a Fort Collins Landmark enables its owner to qualify for federal, state and local financial incentive programs available only to designated properties. Additionally, based upon research conducted by Clarion Associates, the property would see an increase in value following designation. Clarion Associates attributed this increase to the fact that future owners also qualify for the financial incentives; the perception that designated properties are better maintained; the appeal of owning a recognized historic landmark; and the assurance of predictability that design review offers.”

BOARD / COMMISSION RECOMMENDATION

At a public hearing held on April 10, 2013, the Landmark Preservation Commission voted unanimously 8-0 to recommend designation of this property under Designation Standards 1, 2, and 3 for its association with significant historical events and persons, and also for its architectural significance to Fort Collins. “

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

Josh Weinberg, Historic Preservation Planner, showed slides of the property.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 083, 2013, on First Reading.

Councilmember Troxell commended the written history of the property.

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

THE MOTION CARRIED.

**Consideration of an Appeal of the Planning and Zoning Board's
April 18, 2013 Decision to Approve the Max Flats, Project Development Plan,
Planning and Zoning Board Decision Upheld, With Modifications**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

On April 18, 2013, the Planning and Zoning Board considered and unanimously approved the application for the Max Flats, Project Development Plan. The application consisted of a request to demolish the existing King's Auto building at 203 West Mulberry Street and construct a 63,900 square-foot, 5-story, mixed-use building consisting of 64 dwelling units and 1,439 square-feet of ground level retail. The site is on the MAX bus rapid transit (BRT) line at the Mulberry Station in the Transit-Oriented Development (TOD) Overlay Zone and the Community Commercial (CC) Zone District. The project requested four modifications of standards, as follows: (a) a reduction in parking lot landscaping; (b) the ability to provide off-site bike parking; (c) a reduction for parking lot setback from five feet to four feet two inches; and (d) an increased percentage of compact parking spaces.

On May 2, 2013, Bruce Froseth (Appellant) filed a Notice of Appeal alleging that the Planning and Zoning Board failed to properly interpret and apply relevant provisions of the Land Use Code, failed to conduct a fair hearing because it allegedly considered evidence that was substantially false and grossly misleading, and substantially ignored its previously established rules of procedure when approving the Project Development Plan application.

BACKGROUND / DISCUSSION

Under the appeals procedure contained in the Municipal Code, the appeal is required to be considered upon the record on appeal, 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 Municipal 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 4 – 0 to approve the Max Flats Project Development Plan application.

In support of its motion to approve the Max Flats Project Development Plan, the Board adopted the findings of fact and conclusions as contained on page 9 of the staff report.

QUESTIONS FOR COUNCIL CONSIDERATION

Did the Planning and Zoning Board fail to conduct a fair hearing because it allegedly considered evidence that was substantially false and grossly misleading?

ALLEGATIONS ON APPEAL

- 1. “It was an error that staff did not inform the applicant that this project was required to be reviewed as a type 2.”**

The Appellant states, “staff provided information to the board concerning why the hearing was held so soon after the required neighborhood meeting. Staff responded that this project was, ‘caught in the middle’, of a change in the L.U.C. This is not correct. This project in fact, was required to go through a type 2 review process from the beginning of the development submittal.”

During the Planning and Zoning Board hearing staff stated, “This was one of the projects that got caught in the middle of the transition due to all of the discussion on the Student Housing Action Plan and then the transition of some Land Use Code...where you might remember as a Board, you made a recommendation for a certain threshold to apply and then require, instead of Type I hearing review, a Type II hearing review. As part of that definition, Seth and the developer applied the fact that they were in a mixed...they were having a mixed-use development and the discussion that we had around the threshold was about multi-family development. So, Seth and the developer proceeded ahead as if it would still be a Type I review. When the Code was actually adopted, it included a definition that said, any residential, in whole or in part. And this was a last-minute change made on the Second Reading of the Ordinance. And, so, very late in the process for this developer, we discovered that because of the Code change, they were required to do a Type II review. The developer and staff immediately organized a neighborhood meeting and then tried to get back on the timeline that they had been set for a Type I hearing. And, there is no time requirement from the time of the neighborhood meeting to the time of hearing could be held.” (Page 15, Line 30 through Page 16, Line 4 of Verbatim Transcript)

The Planning and Zoning Board stated, “I just wanted to maybe say, for the citizens who participated that your late neighborhood meeting was because we’ve been changing all sorts of things about our process lately, and we’re trying to improve it, and unfortunately you got caught sort of in the middle of it, and we hope that in the future, we collectively will do a better job.” (Page 16, Line 14 - 17 of Verbatim Transcript)

The Planning and Zoning Board stated, “I think one thing that stuck out was clearly the process question where we had some neighborhood meetings, some outreach that got stuck in between two different systems really, and I think that’s unfortunate and it doesn’t feel good, but I think it’s been

explained well as to why it happened and going forward, the improvement for the community is that a project like this will come before this Board and there will be greater outreach, and so that's the right direction." (Page 21, Line 19 – 23 of Verbatim Transcript)

Staff has prepared information regarding the project timeline and the recent Land Use Code change and is able to answer questions regarding this allegation if asked by Council.

2. At the hearing "elevations in their entirety were not shown."

The Appellant states, "Only sections or portions of elevations were shown. A limited visual image in the form of a tree-framed perspective depicting a foreshortened view of the major façade was featured and left on the screen. The true representation of mass and scale of the project remains elusive. The presentation appeared to be misleading and avoided depiction of the reality of the project."

The neighborhood meeting was held on April 10, 2013. The Applicant submitted a revised version of the building elevations prior to the public hearing on April 16, 2013, as shown in the Power Point presentation to Planning and Zoning Board (Attachment 4: Materials submitted to Planning and Zoning Board at the Hearing). The revised plans show a fifth floor setback on the west side and a change in material from metal panel to brick.

The Planning and Zoning Board did not discuss the manner in which images were presented. Building elevations were displayed during staff presentation and provided in the staff report (Attachment 1 – PDP Plan Set).

QUESTIONS FOR COUNCIL CONSIDERATION

Did the Planning and Zoning Board fail to conduct a fair hearing because it allegedly substantially ignored its previously established rules of procedure when approving the Project Development Plan application?

ALLEGATIONS ON APPEAL

1. "The neighbors did not have a reasonable period of time to get comments to the board and indeed were unaware and uninformed by staff that the work session was planned to review this project at all or specifically was taking place the next day."

The Appellant states, "Neighborhood comments should have been delivered to the P & Z Board at that work session where the developer was present and had the opportunity to observe. Subsequently, the P & Z meeting was held on Thursday, April 18, 2013. This timeline was inadequate for comprehensive neighborhood feedback, as well as counter to proper expected procedure."

During the Planning and Zoning Board hearing staff stated, "This was one of the projects that got caught in the middle of the transition due to all of the discussion on the Student Housing Action Plan and then the transition of some Land Use Code...where you might remember as a Board, you made a recommendation for a certain threshold to apply and then require, instead of Type I hearing review, a Type II hearing review. As part of that definition, Seth and the developer applied the fact

that they were in a mixed...they were having a mixed-use development and the discussion that we had around the threshold was about multi-family development. So, Seth and the developer proceeded ahead as if it would still be a Type I review. When the Code was actually adopted, it included a definition that said, any residential, in whole or in part. And this was a last-minute change made on the Second Reading of the Ordinance. And, so, very late in the process for this developer, we discovered that because of the Code change, they were required to do a Type II review. The developer and staff immediately organized a neighborhood meeting and then tried to get back on the timeline that they had been set for a Type I hearing. And, there is no time requirement from the time of the neighborhood meeting to the time of hearing could be held.” (Page 15, Line 30 through Page 16, Line 4 of Verbatim Transcript)

The Planning and Zoning Board stated, “I just wanted to maybe say, for the citizens who participated that your late neighborhood meeting was because we’ve been changing all sorts of things about our process lately, and we’re trying to improve it, and unfortunately you got caught sort of in the middle of it, and we hope that in the future, we collectively will do a better job.” (Page 16, Line 14 - 17 of Verbatim Transcript)

The Planning and Zoning Board stated, “I think one thing that stuck out was clearly the process question where we had some neighborhood meetings, some outreach that got stuck in between two different systems really, and I think that’s unfortunate and it doesn’t feel good, but I think it’s been explained well as to why it happened and going forward, the improvement for the community is that a project like this will come before this Board and there will be greater outreach, and so that’s the right direction.” (Page 21, Line 19 – 23 of Verbatim Transcript)

Staff has prepared information regarding the project timeline and the recent Land Use Code change and is able to answer questions regarding this allegation if asked by Council.

QUESTIONS FOR COUNCIL CONSIDERATION

Did the Planning and Zoning Board fail to properly interpret and apply relevant provisions of the Land Use Code?

ALLEGATIONS ON APPEAL

1. “This project fails to meet compatibility standards.”

LUC Sec. 3.5.3(C)(1) states: horizontal masses shall not exceed a height:width ratio of 1:3 without substantial variation in massing that includes a change in height and projecting or recessed elements.

The Appellant states, “The proposed 5 story 56-foot high building at 240-feet in length along the major axis has a ratio of over 1:4 with no change in height or step backs on the featured block frontage” and the “proposed step in the building height on the North elevation did fully depict how it relates in scale and mass to the overall building due to lack of a West elevation. There is little or no visual effect from the later proposed North minimal stepping at the fifth floor to the major East or West elevations.”

The staff report discusses building and project compatibility and the variation in massing on page 5 and 6 respectively. The Planning and Zoning Board did not discuss the variation in massing.

Staff has prepared information regarding the project compatibility and variation in massing and is able to answer questions regarding this allegation if asked by Council.

2. “Lesser quality materials are used on the facades facing the neighborhood.”

LUC Sec. 3.5.3(D)(2)(a)(3) states: all sides of the building shall include material and design characteristics consistent with those on the front. Use of inferior or lesser quality materials for side or rear facades shall be prohibited.

The Appellant states, “Lesser quality materials are used on the facades facing the neighborhood. No substantial projecting elements or substantial recessed elements of consequence occur to break up the block-like composition leading to the lack of architectural quality, (please see elevations). There are no decks, balconies, horizontal/shading elements brick and minimal enhanced features proposed as shown on the principal elevation.”

The Planning and Zoning Board did not discuss the design characteristics on the side facing the neighborhood.

Staff has prepared information regarding the design characteristics on the side of the building facing the neighborhood and is able to answer questions regarding this allegation if asked by Council.

3. “The project detracts from the character by setting up a physical and visual barrier in its block-type form.”

LUC Sec. 3.5.1(B) states: New developments in or adjacent to existing developed areas shall be compatible with the established architectural character of such areas by using a design that is complementary. In areas where the existing architectural character is not definitively established, or is not consistent with the purposes of this Land Use Code, the architecture of new development shall set an enhanced standard of quality for future projects or redevelopment in the area.

The Appellant states, “The burden is upon this project to set an enhanced standard. It fails to do so as it ignores how sensitive mass and form promote compatibility.”

The Applicant’s narrative, attached to the staff report, discusses and illustrates the existing neighborhood character. The Planning and Zoning Board stated, “I like what the applicant’s team has done to design a good project and to continually upgrade it. This is a nice way to extend the downtown toward the campus. It makes the, you know, the Mason Corridor come to life and be functional, and I think this sets a tone to start moving south along Mason, and even across the street, to be able to do this type of urban project. It is good design and there is very eclectic architecture in that neighborhood...very eclectic.” (Page 21, Line 24 – 28 of Verbatim Transcript).

Staff has prepared information regarding the neighborhood character and project compatibility and is able to answer questions regarding this allegation if asked by Council.

4. ***“This building's architectural character has taken on an overall vocabulary of repetitive elements, lacking in detailing superimposed upon an overwhelming scale and building mass.”***

LUC Sec. 3.5.1(C) states: Buildings shall either be similar in size and height, or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures, if any, on the same block face, opposing block face or cater-corner block face at the nearest intersection.

The Appellant states: “It [the proposed building] does not relate to street and neighborhood.”

The staff report discusses building and project compatibility and the variation in massing on page 5 and 6 respectively. The Planning and Zoning Board did not discuss the variation in massing.

Staff has prepared information regarding the project compatibility and variation in massing 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 Max Flats Project Development Plan should be upheld, overturned, modified, or remanded to the Board for further consideration.”

City Attorney Roy reviewed the City’s appeal process.

Seth Lorson, City Planner, reviewed the proposed project and location and stated the Planning and Zoning Board approved the project, with four modifications of standard. Additionally, Lorson reviewed the Notice of Appeal and its allegations.

Councilmember Cunniff stated he attended the site visit in order to obtain a visual aspect of the property.

Mayor Pro Tem Horak stated he attended the site visit for the same reasons.

Councilmember Troxell noted his comments with respect to the properties to the west and solar shading issues.

Councilmember Overbeck stated he inspected the property individually.

Councilmember Campana stated he attended the site visit in order to better understand the property’s physical attributes.

APPELLANT PRESENTATION

Susan Kruel-Froseth, Appellant, stated the Planning and Zoning Board failed to properly interpret and apply relevant provisions of the City Code, Land Use Code, and Charter and cited specific provisions relating to size, mass, and scale and design elements as well as compatibility. She argued the Board failed to adequately address compatibility and the related Land Use Code provisions.

Bruce Froseth, Appellant, argued the neighborhood meeting for the project was held too close to the Planning and Zoning Board work session and hearing.

OPPONENT PRESENTATION

Kevin Brinkman, Brinkman Partners, stated this project is supported by City staff, the Planning and Zoning Board, the Downtown Development Authority, the Chamber of Commerce, and owners of neighboring properties. He discussed the project location and cited examples of neighborhood compatibility.

Eduardo Illanes, Oz Architects, detailed the architectural components of the proposed project.

Jeff Johnson, Counsel for the Developer, discussed the eclectic nature of the neighborhood and stated this project establishes an excellent precedent for further redevelopment. He argued a fair hearing was conducted.

APPELLANT REBUTTAL

Ms. Krue-Froseth stated the first time she heard of the project was in January when the sign was first posted on the property and argued the neighborhood was not made aware of the project until that time. She stated this project is one of high visibility and questioned whether this was the type of tone the City wants to set for the Mason Street Corridor.

OPPONENT REBUTTAL

Mr. Brinkman stated he has met four times with the appellant and has offered enhancements to materials and detailing.

Mr. Johnson stated this project demonstrates its compliance with the Land Use Code and will be a project appropriate for the future.

Mr. Illanes discussed the articulation and materials of the proposed building.

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

Cindy Peck, 212 West Myrtle owner, expressed concern regarding the neighborhood notification process and opposed the parking situation in the neighborhood.

Mr. Brinkman stated the parking situation should not impact neighbors and opposed a remand to the Planning and Zoning Board.

COUNCIL DELIBERATION

Councilmember Cunniff requested the height to width ratio along the north-south axis and asked if the floodplain requirements actually prohibit residential development on the ground floor, or if those units must simply be raised above floodplain level. Lorson replied any residential units must be one or two feet above the floodplain elevation.

Councilmember Cunniff asked when the effective date for the Ordinance requiring a Planning and Zoning Board hearing for projects greater than fifty units occurred. Lorson replied the effective date for that Ordinance was November 30, 2012 and the application date for this project was December 12, 2012.

Councilmember Cunniff asked if the City had erred by not placing this project into the Type II review process at that point. Laurie Kadrich, Community Development and Neighborhood Services Director, replied staff was engaged in updating multi-family Land Use Code regulations to better address some of the community concerns through last fall. A process began last fall requiring multi-family unit developments over a certain unit size to be required to have a Type II hearing. Prior to that, projects of that size in certain zones were allowed to have a Type I hearing.

Councilmember Poppaw asked if Mr. Brinkman would still be willing to discuss landscape buffering and other issues with the appellant. Mr. Brinkman replied the 10-inch landscape modification allowed a parking aisle and added he would be willing to work with the appellant on any landscaping issues. He discussed some concessions he has made to compromise with the appellants and mentioned additional items he is willing to change.

Councilmember Poppaw requested additional detail regarding the project transitions mentioned by Mr. Brinkman. Mr. Brinkman replied he has incorporated a step-back on the fifth floor and has changed materials per neighbor requests.

Councilmember Troxell requested information regarding the Downtown Development Authority (DDA) funding and the differences between the east and west sides of the building. Mr. Brinkman replied the funding went to public improvements in the right-of-way, not to the building facade.

Councilmember Troxell requested a west side rendering showing the Juliet balconies. Mr. Brinkman described the proposed Juliet balconies on the west facade and stated he would be willing to include those per neighborhood requests.

Councilmember Troxell asked about the involvement of the City's Neighborhood Advocate in this project. Lorson replied the Neighborhood Advocate was present at the neighborhood meeting and was available as neighbors expressed concerns.

Councilmember Troxell asked about the multi-family versus mixed-use definition. Lorson replied the new language for the threshold references any residential use consisting in whole or in part. Kadrich replied the Planning and Zoning Board is discussing this issue as part of its policy development and stated there is not currently a requirement within the mixed-use definition that would tie or limit any kind of the mixed-use.

Councilmember Troxell requested a staff comment regarding the benefit, or lack thereof, of remanding the item to the Planning and Zoning Board. Kadrich replied an earlier neighborhood meeting would have allowed for earlier consideration of neighborhood opinions.

Councilmember Overbeck asked about the neighbor reference to parking. Lorson replied this project is in the Transit Oriented Development Overlay Zone (TOD) in which there is no minimum parking requirement. He stated the parking provided by this project provides about one parking space per unit, which adequately meets the Land Use Code.

Councilmember Campana stated the intention of the Ordinance mentioned was to allow more transparency and citizen input on projects, therefore increasing the threshold for requiring a neighborhood meeting. He discussed the confusion which could have occurred relating to multi-family versus mixed-use. He asked if the appellants had a dialogue with the developer or submitted written materials at the neighborhood meeting. Ms. Krueel-Froseth replied in the affirmative and cited the transcript from the meeting.

Councilmember Campana discussed the massing and articulation aspects of the Land Use Code and requested an interpretation of the one-to-three ratio, which he noted could be interpreted in different ways. Lorson replied the Land Use Code section states “horizontal masses shall not exceed a height-width ratio of one-to-three, without substantial variation in massing that includes a change in height or projecting or recessed elements.” He stated staff’s opinion is that the project provides substantial variation in massing and meets this section of the Code.

Councilmember Poppaw discussed the lack of articulation on the west side of the building in comparison to the east side and asked if the developer is willing to make changes to the west side of the building in order to add articulation and visual interest.

Councilmember Campana stated he would have difficulty requiring additional articulation on the west elevation based on the Land Use Code. Councilmember Poppaw disagreed and stated the Land Use Code specifically calls out for the additional articulation.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, that the Planning and Zoning Board did not fail to conduct a fair hearing in its consideration of the MAX Flats Project Development Plan #120034.

Councilmember Cunniff stated it could be argued the Board was presented with false information due to the process flaw and therefore may not have given as much consideration to the neighborhood concerns as it could have.

Councilmember Troxell argued the absence of information is not false information.

Councilmember Cunniff stated the project was submitted two weeks after the Ordinance which would have required the project to go through a Type II review was in place; therefore, the statement that the project was caught in the middle of the transition is false.

Councilmember Campana argued the intent of the neighborhood meeting was met.

Mayor Pro Tem Horak argued the Board conducted a fair hearing regardless of the process prior to the hearing.

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

Councilmember Campana asked if there was a requirement for increased landscaping to compensate for the modification for the parking aisle. Lorson replied the Planning and Zoning Board discussed the issue but there is no tool in the Land Use Code to require that type of mitigation.

Mayor Pro Tem Horak requested that Mr. Brinkman discuss the modifications he would be willing to make. Mr. Brinkman replied he is willing to provide five additional trees, of the appellants' choice, in the landscape buffer.

Councilmember Poppaw stated she would like to see as many trees as possible in the landscape buffer area.

Councilmember Poppaw asked if the caliper of the trees had been discussed. Mr. Brinkman replied there is a utility easement in the area which will partially dictate tree location.

Councilmember Poppaw stated the other modifications mentioned were with respect to enhanced materials and massing compatibility. Mr. Brinkman replied he would be willing to add the Juliet balconies, though they are not required, and he would be willing to add a tower element in the middle of the west elevation to aid in concerns regarding massing; however, other neighbors have opposed the tower element due to the increase in height.

Councilmember Cunniff requested input regarding the tower design from the appellants. Ms. Krue-Froeth replied this is the first time she has heard about the tower and stated there have been no specific discussions relating to the landscape buffer. She stated she would like to see all sides of the building contain materials and design characteristics consistent with the front of the building.

Councilmember Cunniff supported varying the height of the building in order to provide interest.

Councilmember Campana expressed concern regarding re-designing the project at this point.

Councilmember Poppaw stated she would like to see a compromise reached between the parties and asked if the materials to be used on the back side of the building are of lesser quality than those on the Mason Street side. Mr. Brinkman replied the materials are the same from the second floor up. The pedestrian level is mostly brick on the front and side; however, those elements are not there on the back side of the building as there is no pedestrian element.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to modify the decision of the Planning and Zoning Board approving the MAX Flats Project Development Plan #120034 by adding the following conditions: five trees will be added to the landscape buffer along the west side, Juliet balconies will be added, the tower element will be added, and consistent materials will be used around the entire building. Yeas: Cunniff, Horak, Weitkumat, Troxell, Overbeck, Poppaw and Campana. Nays: none.

THE MOTION CARRIED.

Ordinance No. 084, 2013
Authorizing the Conveyance of Four Easements, a
Temporary Construction Easement and a Revocable Permit on City Right-of-Way
and City-Owned Property to Linden Bridges LLC for the Encompass-River
District Block One Mixed Use Development, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Encompass – River District Block One Mixed Use Development (“Encompass”) is a mixed use development at 418 Linden Street consisting of office space, residential space and a restaurant. The property is owned by Linden Bridges LLC (“LB LLC”). Several easements are required for this project. These easement interests are needed for improvements in the right-of-way, bank stabilization and river enhancement, drainage and landscape areas.

BACKGROUND / DISCUSSION

Encompass is a mixed use development at 418 Linden consisting of one building with two floors of office space, two floors of apartments (12 units) and a restaurant. The first floor of this building has a walk-way to the rear of the lot. The O’Neil family is developing the property. Their software company, Encompass Technologies will occupy the second floor. The property is held in the name of Linden Bridges LLC.

Encompass looked at plans to relocate to a larger space and instead chose to develop a new office as part of a mixed-use development as a long-term investment in downtown Fort Collins. The site at 418 Linden provides a great opportunity for Encompass to create a vibrant mixed-use development that connects downtown Fort Collins to the Cache la Poudre River.

This project embodies the character and vision of the City Plan, the Downtown Strategic Plan, the 2001 Poudre River Master Plan, and the R-D-R zone district for high quality redevelopment in downtown with river interface that is envisioned for the Downtown River Redevelopment District.

Easements Requested by Encompass:

*The properties affected by these requests include the property between the development site and the Poudre River. The City owns the top of the bank, which was acquired 30 years ago for a recreational trail, the river bank and the land under the river. In the end, the trail was constructed on the other side of the River and the City will not utilize this site as a trail in the future. The City property has not been maintained for years. All easement requests are shown on the Easement Exhibit, **Attachment 2**.*

Permanent Non-Exclusive Encroachment Easement (shown in green on Easement Exhibit):

This easement would be made up of several easement areas located in the right of way. Since permanent improvements are being constructed in the right-of-way, it is appropriate to grant a permanent easement instead of a revocable permit. Encompass will have a permanent right to use these improvements in perpetuity. The City cannot cancel or terminate this easement; only Encompass could request to have this easement vacated. If the City determined it needed the land under the improvements, it would need to enter into negotiations with the owner to purchase this easement interest. In the Easement Agreement, Encompass will be required to carry property and liability insurance and will need to have the City added as additional insured.

There is a significant change in grade along Linden Street. This creates the need for an upper and lower sidewalk similar to properties downtown. Thus some of the permanent features requiring easements are a ramp, stairs and a planter box. In addition, Encompass has requested an outdoor deck along Linden Street for the restaurant. The restaurant will also have two decks on their property with a river view. Having the deck along Linden Street is a key urban design element.

Permanent Non-Exclusive Construction, Access, and Maintenance Easement (shown in yellow on Easement Exhibit):

This easement abuts the development site and includes a strip of land from the top of the river bank, to the water's edge. The river bank needs to be stabilized and this project plans include reconstruction approximately 160 feet of the river bank to meet the design criteria for a 100 year flood event. Included with the bank stabilization are two decorative retaining walls.

Additional improvements are being completed by Encompass along the bank as per the City's Poudre River Enhancement Plan. This work is a benefit to both the development and the City by providing additional stabilization of the banks and improved scour protection for the Linden Street bridge. Encompass will complete all the construction. When the work is complete and approved by Stormwater Utilities, the City will repay Encompass for river enhancement work that benefits the City from a combination of Stormwater Funds and Bridge Engineering Funds.

As per the Land Use Code, the project is required to provide a continuous buffer and a walking path along the top of the bank. It is planned to build the buffer and path on the development site and the City-owned property. The easement grants Encompass access for the path and its users.

Encompass will maintain all improvements located in this easement area, with the exception of the bridge protection. After acceptance of the work by the City, the City will maintain the bridge protection. The City will not perform maintenance on the trail in the easement area. The City's public trail is on the other side of the River.

Permanent Non-Exclusive Drainage Easement (shown in yellow and outlined in red on Easement Exhibit):

Encompass is requesting a permanent 20-foot wide drainage easement to carry their development flows, as well as the flows from the property to the south, from their water quality pond, in an eighteen-inch pipe under the City's property to the Poudre River. This easement location is in part of the Permanent Construction, Access and Maintenance Easement, but we requested a separate legal description for this use.

Temporary Construction Easement (shown on Temporary Easement Exhibit):

*The above easement gives Encompass the right to do their bank stabilization work; however, they need to be able to access the bank from the Poudre River. In order to complete work in the River, a Floodplain Use Permit is required. Encompass has met with the Floodplain Administrator on site and an access area has been identified. The preferred access point goes through the Encompass site and goes through a break in trees on the City property to access the River. This area is shown on the Temporary Easement Exhibit, **Attachment 3**. There will be very minimal disturbance in the river bed. The banks will only be disturbed in the areas of the Construction, Access and Maintenance Easement. All disturbed areas along construction access from top of bank to the River shall be revegetated per approved landscape plans.*

The area of the Temporary Construction Easement extends upriver under the bridge and adjacent to the Northside Aztlan Community Center site. Encompass will construct a temporary upstream and downstream coffer dam and pump in the Temporary Construction Easement area. Downstream there is an area where the river is separated by a stretch of land. The temporary coffer dam will divert the River to the eastern side of the land and they will also install a pump in low point discharge on other side of island.

The duration of the requested Temporary Construction Easement will start when our Easement Agreement is signed and will continue to December 31, 2014. The work is planned to be in intervals and this is not a consecutive time period. While the Temporary Construction Easement does give them permission to enter our property, they will also need a current Floodplain Use Permit to access the Temporary Construction Easement area. At the meeting held in May with Stormwater staff, it was determined that work in the River cannot commence until the end of September of 2013 due to the high river conditions this year.

Permanent Non-Exclusive Landscape Easement (shown in orange on the Easement Exhibit):
Encompass has requested a Non-Exclusive Permanent Landscape Easement to landscape a 2,206 square-foot area adjacent to their property to improve the view for their project. The strip of land is southeast of the Construction, Access, and Maintenance Easement area and goes to the current top of bank. This area is currently not maintained and does not contain much vegetation. Encompass submitted a landscape plan during the approval process of the development. This landscape plan was approved and determined to meet the criteria of the Land Use Code 4.17 – River Landscape Buffers.

Revocable Permit (shown in purple on the Easement Exhibit):
Encompass has requested the right to come into the large purple shaded area on the Easement Exhibit to trim the existing trees. The trees are not well maintained and contain numerous dead branches. Encompass wants to trim these trees to improve the view of the river to users of the development. The requested Revocable Permit is for twenty (20) years unless revoked sooner, and will allow trimming of trees, but not tree removal.

Along with the Revocable Permit, Encompass must meet with the Forestry Department to agree on which trees can be trimmed. Once Encompass gets the official permission from Forestry, the tree company doing the trimming will need to obtain a permit from Forestry to do the actual trimming. In addition, since this is in a floodplain, Encompass will be required to obtain a Floodplain Use Permit for each time they do any trimming activities.

FINANCIAL / ECONOMIC IMPACTS

Encroachment Easements. These easements are located in the right of way. Currently the City does not have an adequate policy in place on how to process or value permanent easements in the public right of way. Encroachment Permits are charged \$10/year and permanent easements on City-owned properties are compensated at fair market value. Staff will be bringing an Ordinance to Council in the next few months with a recommendation on how to process and value easements in the right of way. Until a policy is established, compensation will be based on fair market value.

Staff has set a value for the encroachment easements requested. Values on Linden Street have increased dramatically over the last two years. The price per square foot assigned for these easements is an average of the last two properties sold. That value is \$19.50 per square foot.

The encroachment easements for the stairs with handrails and the ramp will typically be used not only for occupants or customers of Encompass, but could also be used by the general public. For this reason, the easement percentage of value is 50% and the easement value for these areas is \$5,099.00.

The easement percentage of value for the encroachment easement for the outdoor patio deck is 75%. That is because the general public will not have any use in this area unless they are customers of the restaurant. The easement value for the patio deck is \$8,350.00, or \$13,449.00 for both areas. Developer will be charged \$13,449.00 for the Encroachment Easement; however, if the City Council, on or before December 31, 2013, adopts a policy for granting of easements in the City's rights of way, including charges therefor, Encompass will instead pay compensation for the Encroachment Easement based on the requirements of such policy, but not to exceed \$13,449.00. Compensation for the Encroachment Easement is not due until the new policy is adopted or December 31, 2013.

Other Easements: The City's practice is to charge for easements on estimated market value. Market values for properties are estimated on a wide range of criteria including, the zoning, topography, physical constraints and overall use of the property. After considering the above criteria and consulting with area appraisers, staff set the market value for the City parcels at \$5,000 per acre. It is difficult to set a value for properties within floodplains because there are not many comparable sales. These properties are usually purchased by government entities for preservation. The appraisers compared these properties to highly restricted conservation easement properties. The values recommended by the appraisers range from \$3,500 to \$5,000/acre. The exception is in the Construction, Access and Maintenance Easement. Approximately half of its area is in the FEMA Moderate Risk Floodplain. Generally there is not a deduction for the developable value because it is relatively inexpensive to cure. This small area would not be developable on its own; however, since this area is being used to enhance the development of the adjacent property, the value of this area would be about 50% of developable market value, or \$10 per square foot.

Using this data, staff has determined a value of \$17,675.00 for the Construction, Access, Maintenance Easement and the Drainage Easement, the Landscape Easement, the Temporary Construction Easement, and the Revocable Permit. It is staff's recommendation that we do not charge Encompass for these easements because the enhanced riverbank improvements, landscaping improvements and tree trimming provide benefits to the City that exceed the value of the easements."

Bruce Hendee, Chief Sustainability Officer, discussed the development proposal for 418 Linden Street and stated the street encroachment easement would allow for an improved urban design setting and the river easement would provide the opportunity to enhance the river edge.

Helen Matson, Real Estate Service Manager, detailed the easements and their locations.

Hendee discussed the emergence of the Downtown River District area and new proposed developments in the area, including an enhanced streetscape.

Councilmember Cunniff asked if the Natural Areas staff or other ornithologists will be involved in the tree trimming process. Hendee replied in the affirmative and stated the City Forester and Planning and Natural Areas staff will be involved.

Councilmember Cunniff noted the City is going to reimburse the developer for improvements in the former natural area and requested an estimate of that amount. Jon Haukaas, Water Engineering Field Operations Manager, replied some of the planned work along the river bank includes long term plans from the Poudre River Enhancement Plan and is being treated like a developer re-pay

estimated at around \$100,000, or 40% of the total cost. The amount will be shared between Bridge, Engineering, and Stormwater.

Councilmember Cunniff requested information regarding the slope of the area to be reinforced by the retaining walls. Haukaas replied the slope is currently quite steep and the reinforcement through retaining walls involves anchoring at the base and landscaping which will ultimately cover most of the wall.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 084, 2013, on First Reading.

Councilmember Cunniff stated this property is valuable due to its proximity to the River corridor and its riparian habitat and expressed concern that the City does not charge for this portion of the easement. He suggested a fee for this portion of the easement be developed prior to Second Reading.

Councilmember Campana asked about the value of the property. Matson replied the value of the property is based on market value and the current use of the property; it does not currently have a great deal of monetary value.

Councilmember Cunniff expressed concern that this would set a precedent that the City does not charge for this land. Matson replied the principle used to determine market value would be used on another easement; however, it would be up to staff and Council to determine whether or not the benefits would outweigh the need to charge.

Councilmember Troxell stated this project enhances the Poudre River and the community's access to the River.

Mayor Pro Tem Horak stated Council needs to hold a work session regarding the River area and stated the valuation of land should be examined in values other than monetary.

Councilmember Cunniff made a motion to amend, seconded by Councilmember Overbeck, for staff to create two options for Second Reading, one as written and one including a fee for the land to be purchased by the project.

Councilmember Troxell argued the City is gaining a public benefit.

Mayor Weitkunat stated she would not support the motion to amend and argued no precedent would be set.

Councilmember Poppaw supported bringing forth both options.

Councilmembers Cunniff and Overbeck withdrew the motion to amend.

Mayor Weitkunat supported the Ordinance and commended staff work and the presentation regarding the item.

June 4, 2013

The vote on the motion to adopt Ordinance No. 084, 2013, on First Reading, was as follows: Yeas: Horak, Weitkunat, Troxell, Overbeck, Poppaw, Campana and Cunniff. Nays: none.

THE MOTION CARRIED.

Councilmember Cunniff received support from additional Councilmembers to request that staff bring forth a second option regarding charging for the land on Second Reading.

Other Business

Mayor Pro Tem Horak requested an update regarding discounted Transfort passes at various social agencies. Karen Cumbo, Planning, Development, and Transportation Director, replied Transfort does sell passes to social agencies at a discounted rate and is contacting agencies to determine what they need.

Councilmember Poppaw supported a work session on the topic, given the potential negative effect of these purchases on agency budgets.

Adjournment

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to June 11, 2013 so that the Council may consider any additional business that may come before the Council, including a possible Executive Session to conduct the mid-year reviews of the three direct report employees of the Council. Yeas: Weitkunat, Cunniff, Horak, Overbeck, Poppaw, Troxell and Campana. Nays: none.

THE MOTION CARRIED.

The meeting adjourned at 10:42 p.m.

Mayor

ATTEST:

City Clerk

June 18, 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, June 18, 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, Overbeck, Cunniff, Poppaw and Troxell.

Councilmembers Absent: Campana, Weitkunat.

Staff Members Present: Atteberry, Nelson, Roy.

Agenda Review

City Manager Atteberry stated there were no changes to the published agenda.

Citizen Participation

Eric Sutherland, 3520 Golden Currant, opposed the payment of junk bond interest by taxpayers.

CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the May 21, 2013 Regular Meeting.
7. Second Reading of Ordinance No. 077, 2013 Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved by the Waste Innovation Program.

This Ordinance, unanimously adopted on First Reading on June 4, 2013, shifts \$135,560 that has accumulated in the Waste Innovation Program's reserve account into the City's General Fund account so that the money can be used for the purposes intended. Revenues are paid into the Waste Innovation Program by City departments that "self haul" trash from municipal operations for disposal in the Larimer County Landfill. The fund is designated to pay for projects that enhance these same departments' ability to divert more waste away from the landfill. Unspent funds from several previous years had been moved into a "reserve" account; this action moves the funds back into the General Fund.

8. Second Reading of Ordinance No. 078, 2013 Appropriating Unanticipated Grant Revenue into the Stormwater Fund, and Authorizing the Transfer of Existing Appropriations from the Flood Mapping/Stream Gaging Capital Project to the Post Fire Flood Warning Grant Project for Early Flood Warning Capabilities.

This Ordinance, unanimously adopted on First Reading on June 4, 2013, appropriates funds received from a State of Colorado grant totaling \$17,881. The grant funds will be used to enhance early flash flood warning capabilities due to the increased risk of flooding caused by the High Park Fire. Existing appropriations will be used for the match of \$5,960.

9. Second Reading of Ordinance No. 079, 2013, Authorizing the Use of the Noonan Tract and the Bowes Homestead Tract as Match for a Neotropical Migratory Bird Conservation Act Grant Administered by the U.S. Fish and Wildlife Service.

This Ordinance, unanimously adopted on First Reading on June 4, 2013, authorizes the use of a recent acquisition of 280 acres at Soapstone Prairie Natural Area as match towards a Neotropical Migratory Bird Conservation Act grant, as well as management funds currently obligated in the Natural Areas Department (NAD) budget. Using the funds already spent as match towards this grant is a great secondary benefit for the City. The \$200,000 grant will expand upon Rocky Mountain Bird Observatory's (RMBO) research and monitoring work to implement conservation strategies and management for 19 high priority grassland birds that breed within the Laramie Foothills Mountains to Plains Project and 27 high priority species at wintering sites in the Chihuahua Desert of Mexico.

10. Second Reading of Ordinance No. 080, 2013, Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement.

Since 1998, the City of Fort Collins has collected a fee-in-lieu of land dedication for both Poudre School District and Thompson School District. These fees allow a residential developer to pay a school site fee to the School Districts rather than dedicate a parcel of land to the District for development of future schools. The ability of the school districts to require land dedication is authorized under Colorado Law.

Fees are reviewed every two years and, in 2011, the Poudre School District reduced fee amounts by 11 percent. This Ordinance, unanimously adopted on First Reading on June 4, 2013, will increase the amount of the fees the District receives by 6.9 percent. The School District is requesting an increase in the fees collected because of an increase in land values and cost per acreage. This fee amount was reviewed and approved by the Poudre School Board in February 2013. Thompson School District will not be adjusting fees in 2013.

11. Second Reading of Ordinance No. 081, 2013 Authorizing Dryland Farm Leases to Harry Sauer on Long View Farm Open Space, Prairie Ridge Natural Area, and Coyote Ridge Natural Area.

The City of Fort Collins Natural Areas Department is a minority owner in Long View Farm Open Space and Prairie Ridge Natural Area, and is the sole owner of the McKee parcel within Coyote Ridge Natural Area. The majority owners of Long View and Prairie Ridge are Larimer County and the City of Loveland respectively. All three properties are leased by Harry Sauer for dryland wheat production and have been since the time of purchase of the properties by the Cities and County. Intergovernmental Agreements state which agency has management authority and receives the lease revenues for each property. As current leases expire on the properties, all three entities have worked collaboratively to create leases with similar terms and have advertised the properties for lease via one Request for Proposals

process. This Ordinance, unanimously adopted on First Reading on June 4, 2013, authorizes dryland farm leases to Harry Sauer on these areas. The new leases have a higher lease rate and more contemporary language. Restoration of the dryland wheat to native grasses on the McKee parcel will continue at the same pace as in the past and it will nearly be completely restored to native grasslands by the end of the lease term of five years.

12. Second Reading of Ordinance No. 083, 2013, Designating the Johnson Farm Property, 2608 East Drake Road as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

This Ordinance, adopted by a vote of 6-0 (Campana recused) on First Reading on June 4, 2013, designates the Johnson Farm Property at 2608 East Drake Road as a Fort Collins Landmark. The owner of the property, Gino Campana of Johnson Farm LLC, is initiating this request.

13. Postponement of Second Reading of Ordinance No. 084, 2013 Authorizing the Conveyance of Four Easements, a Temporary Construction Easement and a Revocable Permit on City Right-of-Way and City-Owned Property to Linden Bridges LLC for the Encompass-River District Block One Mixed Use Development to July 2, 2013.

Encompass – River District Block One Mixed Use Development is a mixed use development at 418 Linden Street consisting of office space, residential space and a restaurant. The property is owned by Linden Bridges LLC. Several easements are required for this project for improvements in the right-of-way, bank stabilization and river enhancement, drainage and landscape areas. The Developer has requested that Second Reading of this Ordinance authorizing the conveyance of easements, be postponed until July 2, 2013, due to scheduling conflicts with the developer and the consultant.

14. First Reading of Ordinance No. 085, 2013, Appropriating Unanticipated Revenue in the General Fund to be Remitted to the Fort Collins Housing Authority to Fund Affordable Housing and Related Activities.

The Fort Collins Housing Authority paid the City of Fort Collins \$3,169 as the 2012 payments for public services and facilities. The Authority requests that the City refund those payments, also known as Payment in Lieu of Taxes (PILOT), to fund sorely needed affordable housing related activities and to attend to the low-income housing needs of Fort Collins residents.

Resolution 1992-093 reinstated the requirement that the Authority make annual PILOT payments to the City. The City may spend the PILOT revenues as it deems appropriate in accordance with law, including remitting the funds to the Authority if the Council determines that such remittal serves a valid public purpose. The Council has annually remitted the PILOT payment to the Authority since 1992.

15. First Reading of Ordinance No. 086, 2013, Authorizing the Conveyance of a Non-Exclusive Access Easement on Fossil Creek Wetlands Natural Area to Paragon Estates Homeowners Association.

The Natural Areas Department intends to formalize its verbal agreement with Paragon Estates Homeowners Association (HOA) for access across an existing two-track road off

Trilby Road to the HOA's pumphouse. The pumphouse is located within an existing irrigation easement on Fossil Creek Wetlands Natural Area. The HOA's current access has minimal impact to the Natural Area and no additional impacts are anticipated. Access would be solely for maintenance and operation of the facilities associated with the existing irrigation easement. No other access rights are to be conveyed.

16. Resolution 2013-054 Making Findings of Fact and Conclusions Regarding the Appeal of the April 18, 2013 Planning and Zoning Board Approval of the Max Flats Project Development Plan.

On April 18, 2013, the Planning and Zoning Board considered and approved the application for the Max Flats, Project Development Plan. On May 2, 2013, a Notice of Appeal was filed seeking to modify the approval.

On June 4, 2013, City Council voted 5-2 (Nays: Cunniff, Overbeck) concluding that the evidence presented did not indicate the Board failed to conduct a fair hearing by considering evidence relevant to its findings which was substantially false or grossly misleading, nor did it substantially ignore its previously established rules of procedure. City Council voted 7-0 that the Planning and Zoning Board properly interpreted and applied the Land Use Code in approving the Plan, but that, based upon information presented to the City Council on appeal, the City Council determined that the decision of the Board should be modified by the addition of the following conditions of approval:

- a. Five trees must be planted along the west side boundary of the property.
- b. Juliet balconies must be installed along the west side of the building as shown on the elevation presented to the City Council on appeal.
- c. The tower elements must be added to the building as shown on the elevation presented to the City Council on appeal.
- d. All materials cladding the building must be consistent on all elevations around the building.

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.

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

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

7. Second Reading of Ordinance No. 077, 2013 Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved by the Waste Innovation Program.
8. Second Reading of Ordinance No. 078, 2013 Appropriating Unanticipated Grant Revenue into the Stormwater Fund, and Authorizing the Transfer of Existing Appropriations from the Flood Mapping/Stream Gaging Capital Project to the Post Fire Flood Warning Grant Project for Early Flood Warning Capabilities.

9. Second Reading of Ordinance No. 079, 2013, Authorizing the Use of the Noonan Tract and the Bowes Homestead Tract as Match for a Neotropical Migratory Bird Conservation Act Grant Administered by the U.S. Fish and Wildlife Service.
10. Second Reading of Ordinance No. 080, 2013, Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement.
11. Second Reading of Ordinance No. 081, 2013 Authorizing Dryland Farm Leases to Harry Sauer on Long View Farm Open Space, Prairie Ridge Natural Area, and Coyote Ridge Natural Area.
12. Second Reading of Ordinance No. 083, 2013, Designating the Johnson Farm Property, 2608 East Drake Road as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

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

14. First Reading of Ordinance No. 085, 2013, Appropriating Unanticipated Revenue in the General Fund to be Remitted to the Fort Collins Housing Authority to Fund Affordable Housing and Related Activities.
15. First Reading of Ordinance No. 086, 2013, Authorizing the Conveyance of a Non-Exclusive Access Easement on Fossil Creek Wetlands Natural Area to Paragon Estates Homeowners Association.

Councilmember Cunniff withdrew Item No. 16, *Resolution 2013-054 Making Findings of Fact and Conclusions Regarding the Appeal of the April 18, 2013 Planning and Zoning Board Approval of the Max Flats Project Development Plan*, from the Consent Calendar.

Eric Sutherland, 3520 Golden Currant, withdrew Item No. 10, *Second Reading of Ordinance No. 080, 2013, Authorizing Amendments to the Intergovernmental Agreement Between the City and Poudre School District Pertaining to the Land Dedication and In-Lieu Fee Requirements Contained in Such Agreement*, from the Consent Calendar.

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

THE MOTION CARRIED.

Resolution 2013-054
Making Findings of Fact and Conclusions Regarding the Appeal of the
April 18, 2013 Planning and Zoning Board Approval of the Max Flats
Project Development Plan, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

On April 18, 2013, the Planning and Zoning Board considered and approved the application for the Max Flats, Project Development Plan. On May 2, 2013, a Notice of Appeal was filed seeking to modify the approval.

On June 4, 2013, City Council voted 5-2 (Nays: Cunniff, Overbeck) concluding that the evidence presented did not indicate the Board failed to conduct a fair hearing by considering evidence relevant to its findings which was substantially false or grossly misleading, nor did it substantially ignore its previously established rules of procedure. City Council voted 7–0 that the Planning and Zoning Board properly interpreted and applied the Land Use Code in approving the Plan, but that, based upon information presented to the City Council on appeal, the City Council determined that the decision of the Board should be modified by the addition of the following conditions of approval:

- a. Five trees must be planted along the west side boundary of the property.*
- b. Juliet balconies must be installed along the west side of the building as shown on the elevation presented to the City Council on appeal.*
- c. The tower elements must be added to the building as shown on the elevation presented to the City Council on appeal.*
- d. All materials cladding the building must be consistent on all elevations around the building.*

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.

BACKGROUND / DISCUSSION

The Appellant’s Notice of Appeal was based on allegations that the Planning and Zoning Board failed to conduct a fair hearing in that it considered evidence was substantially false and grossly misleading and that it substantially ignored its previously established rules of procedure. The Appellant also alleged that the Planning and Zoning Board failed to properly interpret and apply relevant provisions of the Land Use Code.”

Councilmember Cunniff stated the intent of one of the conditions was to ensure the materials cladding the non-street sides of the building were of the same quality as the materials cladding the street side.

Seth Lorson, City Planner, stated the materials are already consistent on all sides of the building.

Councilmember Troxell asked about the inclusion of brick on one side of the building. Lorson replied the brick wraps around the north side of the building to the east side along the commercial element of the building. The east side of the building is an open parking structure at the ground level and the higher levels are consistent with the front side of the building.

Councilmember Cunniff stated the intent of Council and the topic of the discussion related to the use of the same high-quality brick as on the Mason Street side of the building elevation on all stories. Lorson replied that may need to be clarified in the language.

City Attorney Roy suggested language for the Resolution.

Councilmember Cunniff made a motion, seconded by Councilmember Poppaw, to adopt Resolution 2013-054, as amended with the suggested language. Yeas: Troxell, Horak, Overbeck, Poppaw and Cunniff. Nays: none.

THE MOTION CARRIED.

Consent Calendar Follow-Up

Councilmember Cunniff noted Item No. 15, *First Reading of Ordinance No. 086, 2013, Authorizing the Conveyance of a Non-Exclusive Access Easement on Fossil Creek Wetlands Natural Area to Paragon Estates Homeowners Association*, was also passed unanimously by the Land Conservation Stewardship Board.

Councilmember Reports

Councilmember Troxell reported on the ribbon-cutting for an exhibit at the Global Village Museum.

Resolution 2013-055

Concerning the Fort Collins Urban Renewal Authority and its Tax Increment Revenue Refunding Bonds (North College Avenue Project), Series 2013, Declaring the City Council’s Present Intent to Appropriate Funds to Replenish the Reserve Fund Securing Such Bonds, If Necessary; and Authorizing a Cooperation Agreement and Other Actions Taken in Connection Therewith, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The URA intends to refinance a portion of the debt it originally borrowed from the City in relation to the North College area. Now that an established revenue stream can be shown to investors, private money can be used to replace City money. The 2013 bonds require the URA to establish a debt reserve fund. To further facilitate the credit rating on the replacement debt, the City Council is asked to adopt the Resolution expressing the Council’s intent to replenish the debt reserve fund if such funds are ever used to make debt payments. With this Resolution, the new URA debt is expected to have an effective interest rate of 3.3%.

BACKGROUND / DISCUSSION

The North College URA Project Area was created in 2004, allowing the URA to receive incremental property taxes through 2029. Property tax increment revenue in North College was first received in 2007 and the 2012 property taxes payable in 2013 are expected to be \$1.3 million.

Table 1 - Net Property Tax Increment Revenue \$000’s

2007	2008	2009	2010	2011	2012	2013 *
\$110	\$287	\$263	\$493	\$536	\$907	\$1,285

*anticipated

A common measure used by lenders in determining risk is the ratio of pledged revenue to debt service, called a coverage ratio. Investors want that ratio to be high – at least 125%. The current revenue of \$1.3 million could support up to \$1 million a year in debt service. The proposed maximum annual debt service of \$919,000 yields a good coverage ratio of 142%.

City Loans to URA

The initial financing model adopted for North College has the City providing initial capital through a loan until the tax increment revenue reaches a maturity level that can support external financing to third party investors. The City Council first authorized an Interagency Loan Policy in December 2008, with the most recent amendments approved in December 2012.

Eight loans have been made by the City to the URA in the North College District. The first loan has been repaid. Table 2 recaps the current status of the loans.

Table 2 – North College Loan Status

\$000's

Date	Project	Original Value	Current Balance	Term Years	Rate	City Fund Holding
09/2006	Valley Steel, URA start-up funds	\$ 150	\$ 0	5	5.55%	General Fund
05/2009	North College Market Place, Phase 1	5,000	4,729	20	2.85%	Capital Expansion
12/2010	JAX	173	106	5	2.50%	Capital Expansion
06/2011	NEECO	326	326	10	3.01%	Storm Drainage
07/2011	Kaufman Robinson	193	193	5	2.46%	General Fund
07/2011	North College Market Place, Phase 2	3,000	2,884	19	4.09%	Water Fund
08/2012	North College Road Improvements	2,700	2,700	18	3.92%	Capital Projects BCC
Loans to be refinanced		11,542	10,938		3.44%	Weighted average
06/2009	RMI2	5,304	5,304	20	2.50%	General Fund
Total North College Area		16,846	16,242			

The proposal is to issue enough debt to take out \$10.94 million in loans to the City, plus interest and debt issue costs. For the following reasons the City loan to the URA that relates to RMI is not being refinanced.

- The use of the RMI2 loan proceeds does not qualify the interest to be tax exempt. Therefore the interest rate would be significantly higher.
- The new market tax credit deal cannot be refinanced until 2017.
- There is not enough revenue capacity to meet external investor expectations. Only about \$1 million of the \$5.3 million could be considered for refinancing if the favorable coverage ratio was to be preserved.

The General Fund is holding the URA loan relating to the RMI2. Later this year the loan will be reallocated and held equally between the Water Fund and Capital Expansion Fund. This will free

up some monies in the General Fund. Future debt payments by the URA will then be allocated appropriately to each fund.

Preliminary Structure of 2013 Bonds

Approximately \$11.4 million of bond proceeds will be used to takeout \$10.94 million of debt to the City, plus interest of \$254,000, and pay debt issue costs of \$206,000. Coupon interest rates vary from 2% for near term bonds and 4% for longer term bonds. The collective Net Interest Cost is expected to be 3.3%, which compares favorably to 3.44% weighted average interest rate on the City debt being retired. Future annual payments will vary from \$914,000 to \$919,000 through 2029.

City Intent to Replenish Reserves

The Underwriters for the 2013 Bonds have recommended that a debt service reserve fund in the amount of approximately \$920,000 would be advisable for marketing the 2013 Bonds and that purchasing a Surety Policy for such amount would be preferable to funding such reserve with cash. The cost of such Surety Policy would be \$55,000. If it was ever necessary to draw upon the Surety Policy, the City's replenishment would repay such draw. Staff prefers the Surety Policy option but will make a decision later based on the potential impact on the credit rating. The City is not legally bound to replenish the reserve fund and it would be subject to annual appropriation of funds by the City Council in its sole discretion. Sherman & Howard will issue a legal opinion that the City can make this non-binding commitment.

It is anticipated that the City's non-binding commitment will result in the replacement debt receiving a credit rating of Aa3. Without this, and a proven revenue stream, the interest rate would likely be 5% or higher rather than 3.3%.

Authority to Adopt the Resolution

Through the adoption of the URA Resolution, the Urban Renewal Authority is issuing property tax increment revenue bonds to refinance loans made by the City to the URA. The loans that are being refinanced by the issuance of those bonds were made by the City to finance public infrastructure. No private improvements were financed through the loans. In order to enhance the marketability of the bonds that are being issued by the URA, staff is recommending that the City Council adopt a resolution pursuant to which the City Council would indicate that, if the reserve fund for the bonds is ever drawn upon, the City Council will consider appropriating funds to replenish the reserve fund. This is not a legally binding obligation but rather is subject to appropriation by the Council, when and if the reserve fund is drawn upon. (This has sometimes been referred to as a "moral obligation pledge".)

Since the City cannot be compelled to appropriate funds under this approach, the Resolution and related documents do not create a debt for purposes of the City Charter or the Colorado Constitution.

A question has been raised by a local citizen as to whether Council actions such as the making of this non-binding commitment violates certain provisions of the City Charter. The Charter provisions in question read as follows:

ARTICLE V. FINANCE ADMINISTRATION
PART I. BUDGET AND FINANCIAL MANAGEMENT

Section 15. Appropriations forbidden.

No appropriation shall be made for any charitable, industrial, educational, or benevolent purposes to any person, corporation, or organization not under the absolute control of the city, nor to any denominational or sectarian institution or association.

(Ord. No. 10, 1991, § 1(a), 2-19-91, approved, election 4-2-91)

Section 16. City not to pledge credit.

The city shall not lend or pledge its credit or faith, directly or indirectly, or in any manner to or in aid of any private person or entity for any amount or any purpose whatever, or become responsible for any debt, contract, or liability thereof.

(Ord. No. 203, 1986, § 1, Part D, 12-16-86, approved, election 3-3-87; Ord. No. 10, 1991, § 1(a), 2-19-91, approved, election 4-2-91)

These charter provisions are, in all material respects, identical to provisions contained in the Colorado Constitution. Thus, the limitations contained in the Charter provisions apply to all Colorado municipalities through the state constitution.

In response to the concerns that have been expressed, staff has conferred with both the City Attorney's Office and the City's bond counsel to ensure that the proposed transaction does not violate either of the provisions in question. Legal counsel has confirmed the following:

Article V, Section 15 of the City Charter is not applicable in this situation because (1) the Urban Renewal Authority is under the absolute control of the City (since its governing body is made up of the same members as the City's governing body) and it is not a denominational or sectarian institution; and (2) the projects refinanced by the bonds are public infrastructure projects; thus, the bond proceeds are not being used, either directly or indirectly, for a charitable, industrial, educational or benevolent purpose.

Article V, Section 16 of the City Charter is not applicable because: (1) the Urban Renewal Authority is a public entity; (2) the City would not incur any indebtedness or other legally binding obligation by taking the proposed action; and (3) as noted above, the projects refinanced by the bonds are public infrastructure projects,.

It should be noted that the financing structure being recommended by staff is not unique to the City. Other municipalities that have utilized this same procedure in connection with tax increment transactions include the City and County of Denver, the cities of Thornton, Westminster, and Steamboat Springs, and the Town of Avon. The State of Colorado has also used this type of financing structures for housing, charter schools and higher education.

Future Financing Model

City staff have communicated to the URA that, going forward, the City intends to only loan money when alternative financing agreements are not feasible. The reimbursement agreement recently approved for Aspen Heights is an example of the preferred approach for future development agreements. The Aspen Heights developer will be reimbursed over time as revenue is collected, rather than in a lump sum upon completion of the project.

Consultants

The URA and City have engaged three firms to help issue the new debt: Sherman & Howard as the Bond Attorney, BLX as the Financial Advisor and RBC Capital Markets as the Bond Underwriters.

Timeline

*June 24 Publish Preliminary Official Statement on Internet Sites
July 9-10 Market Bonds
July 23 Closing*

FINANCIAL / ECONOMIC IMPACTS

Property tax revenue in the North College URA plan area is unlikely to decline enough to trigger the use of the Debt Service Reserve Fund.

The 2013 Bonds will be used to takeout \$10.94 million in debt to the City, pay \$254,000 of interest and pay \$206,000 in delivery date expenses.

Later this summer the City will use some of the returned monies to loan \$5 million to the URA for the first Midtown Project – The Summit (Capstone).

BOARD / COMMISSION RECOMMENDATION

The Council Finance Committee reviewed and tentatively approved the refinancing and the concept of a Council Resolution regarding a debt reserve replenishment pledge at its meeting on December 17, 2012 and again on May 20, 2013. “

Mike Beckstead, Chief Financial Officer, briefly introduced the item.

John Voss, Controller, discussed the refinance and stated this item would provide a moral obligation pledge to help enhance the credit of the URA. He discussed the North College TIF district. Adoption of this Resolution would enable the City to pledge to consider replenishing the URA reserve fund. He noted this process may be new to Fort Collins but it has occurred in other Colorado municipalities.

Eric Sutherland, 3520 Golden Curreant, suggested the City has already approved the moral obligation pledge. He opposed the URA tax increment financing arrangement.

Councilmember Cunniff requested an estimate of the date for the return of funds to the General Fund. Beckstead replied the intent would be to do that in the fall, though it could be done earlier if needed.

Mayor Pro Tem Horak requested staff input regarding the reason for taking this action. Beckstead replied a great deal of due diligence goes into a process such as this prior to the item coming before Council, including getting a credit rating on the offering. This allows quick execution of the transaction as quickly as possible after Council approval. He stated there was no representation that Council had approved the moral obligation pledge. He discussed the methodology used by the County for URAs.

Councilmember Troxell made a motion, seconded by Councilmember Overbeck, to adopt Resolution 2013-055.

Councilmember Cunniff stated the Finance Committee reviewed the item and recommend approval.

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

THE MOTION CARRIED.

**Ordinance No. 080, 2013,
Authorizing Amendments to the Intergovernmental Agreement Between the City and
Poudre School District Pertaining to the Land Dedication and In-Lieu
Fee Requirements Contained in Such Agreement, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Since 1998, the City of Fort Collins has collected a fee-in-lieu of land dedication for both Poudre School District and Thompson School District. These fees allow a residential developer to pay a school site fee to the School Districts rather than dedicate a parcel of land to the District for development of future schools. The ability of the school districts to require land dedication is authorized under Colorado Law.

Fees are reviewed every two years and, in 2011, the Poudre School District reduced fee amounts by 11 percent. This Ordinance, unanimously adopted on First Reading on June 4, 2013, will increase the amount of the fees the District receives by 6.9 percent. The School District is requesting an increase in the fees collected because of an increase in land values and cost per acreage. This fee amount was reviewed and approved by the Poudre School Board in February 2013. Thompson School District will not be adjusting fees in 2013.”

Eric Sutherland, 3520 Golden Currant, stated Poudre School District is building a school in Timnath and it is being funded by all the citizens in Timnath, with the exception of those living in the Urban Renewal Authority. He opposed the way in which the County Assessor has been diverting a portion of Poudre School District’s revenues to Urban Renewal Authorities.

June 18, 2013

Councilmember Cunniff made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 080-2013, on Second Reading.

Councilmember Cunniff stated he is interested in ultimately affecting legislation change.

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

THE MOTION CARRIED.

Other Business

Councilmember Troxell discussed construction of the new Xcel pipeline. He suggested a more formal agreement should be put in place regarding dispute resolution in order to avoid potential long-term costs being incurred by the City. City Manager Atteberry replied he will follow up with Xcel and look into the possibility of creating such an agreement.

Adjournment

The meeting adjourned at 6:45 p.m.

Mayor

ATTEST:

City Clerk

June 11, 2013

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting - 6:00 p.m.

An adjourned meeting of the Council of the City of Fort Collins was held on Tuesday, June 11, 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: Campana, Cunniff, Horak, Overbeck, Poppaw, Troxell, and Weitkunat.

Staff Members Present: Atteberry, Nelson, Roy.

**Items Relating to the Operation of the Sister Mary Alice Murphy
Center of Hope, Adopted on First Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- A. *Resolution 2013-053 Authorizing the City Manager to Execute an Agreement with United Way of Larimer County for Funding of Operations at the Sister Mary Alice Murphy Center of Hope.*
- B. *First Reading of Ordinance No. 082, 2013, Appropriating Prior Year Reserves in the General Fund to Be Used for Operation of the Sister Mary Alice Murphy Center of Hope.*

The City has received a request for funding in the amount of \$45,000 for the operation of the Sister Mary Alice Murphy Center of Hope, from January to July, 2013 (six months). Other funding partners include United Way (\$58,000), Bohemian Foundation (\$45,000) and Serve 6.8 (\$35,000). The Murphy Center, located at 242 Conifer Street, is the one-stop center in Fort Collins for homeless and near homeless persons. The operation of the Center is an important component in the community’s network of housing and complimentary services so that homelessness is rare, short-lived and non-recurring in Fort Collins.

BACKGROUND / DISCUSSION

Sister Mary Alice Murphy Center of Hope (“Murphy Center”)

The Murphy Center, located at 242 Conifer Street, is the one-stop center in Fort Collins for homeless and near homeless persons; approximately 23 agencies provide services at the Center; the Center also provides showers, breakfast, phones/computers, washers/dryers, clothing, day shelter services, and more. Services available at the Center include employment resources, housing assistance, financial counseling, transportation assistance, mental health and substance abuse

counseling, and more. Many believe that the Center is one of the most innovative facilities in the nation for serving the homeless and near homeless. The Murphy Center is currently owned by the United Way of Larimer County (UW) and operated by Touchstone Health Partners of Fort Collins.

During the past four years, the Murphy Center has been a major player in the local homeless service delivery system and will play an even more critical role as the region moves toward a new and improved housing model. Notable achievements of the Center include:

- *Total number of visits: 110,782.*
- *Now averaging 156 visitors per day, up from 80 at the end of the 1st year.*
- *Now have 23 different agencies that provide services out of the Center.*
- *Total number of showers taken: 12,841.*
- *Total number of loads of laundry done: 4,649.*
- *Total number of unduplicated people provided services by a Resource Specialist: 10,148.*
- *37% of the people served are part of a family with children.*
- *In 2012, 77% of the people that meet with a Resource Specialist report being literally homeless, a 57% increase from 2011.*
- *Received mail through the center: more than 800 people.*
- *Utilized lockers at the center: more than 250 people.*
- *Provided voicemail boxes: more than 150 people.*
- *429 people have been assisted in getting Food Stamps.*
- *106 people have been assisted in getting Aid to the Needy.*
- *253 people have been assisted in getting Medicaid.*
- *879 people have received mental health and/or substance abuse services.*
- *1,312 households have received emergency rent assistance.*
- *2,507 households have received utility assistance.*

The approximate \$2.5M cost of construction of the Center was funded through a collaboration of private foundations, private resources, and the cities of Fort Collins and Loveland. Since 2004, the City has contributed approximately \$90,000 in CDBG and General Fund dollars to build the facility, and as such has a legal and financial interest. In addition, the City has funded several of the agencies that occupy the Center. As equity partners on the land (along with the City of Loveland), City staff has met with United Way and Serve 6.8 officials. Our goal, moving forward, is a smooth transition on executing new legal documents, and ensuring that parameters for property use tied to federal funding are clear. One of these parameters includes federal limitations on inherently religious activities such as worship, religions instruction, or proselytization. We are also interested in being sure that the Murphy Center has a critical role to play in the future in the "Continuum of Care" for the homeless and near homeless.

Ownership and Operations of the Center

The Murphy Center opened in March, 2009. At that time, the United Way (UW) committed to owning/funding/operating the Center for one year, hoping to find someone who would take over operations of the Center from United Way in year two. Funding was secure for the first three years of operation, until March 2012; the Center was originally intended to be transferred debt free. The original plan was for Touchstone Health Partners to take over the facility, and over several years, plans for the transition were discussed. Last March 2012, those plans started to fall apart when Touchstone announced it was no longer interested in taking over the Center. Subsequently, United

Way had to search for a new owner/operator. UW had serious but unsuccessful discussions with several potential agencies about taking over the facility, including but not limited to, Catholic Charities and the Salvation Army. UW was also left with the challenge of more than \$180,000 in additional expenses to continue operations of the facility. United Way had to use general reserves not intended for this purpose while it searched for a new partner. United Way also seriously considered closing or curtailing services at the Center when reserve funding ran out in December 2012. Instead, United Way chose to keep the Center operating and sought community partners to cover the \$180,000 in extra costs.

Last November, a small group of interested stakeholders met to discuss the future of the Murphy Center. The group consisted of Gordan Thibedeau (United Way), Randy Ratliff (CEO Touchstone Health Partners), Cheryl Zimlich (Bohemian Foundation), Alison Hade, City of Loveland (Community Partnership Department), Julie Brewen (FCHA), Bryce Hach (Homeward 2020), and Joe Frank (Social Sustainability Department). Last January, the group met with Mark Orphan, Pastor of the Timberline Church Missions and Outreach program, and Mike Walker, Timberline Church Local Outreach Director, about potentially taking ownership and operation of the Center.

Serve 6.8 is the “community service” arm of the Timberline Church. “Serve 6.8” is in reference to two passages in the bible (Micah and Isaiah). Serve 6.8's stated mission is “people serving our community to demonstrate God’s love in tangible ways to people in Northern Colorado with no strings attached.” Serve 6.8 has said “We partner with many local organizations to promote their mission, provide volunteers, and offer assistance.” Serve 6.8 has been involved in a variety of “ministries” and partnerships in the community, some involving the homeless. Serve 6.8 was heavily involved in the High Park Fire recovery efforts. Serve 6.8 now has 501(c)3 status, and is a separate entity from the Timberline Church.

Serve 6.8 submitted a letter of intent to assume ownership and operation of the Murphy Center, and most appear to be comfortable with them. United Way is satisfied that it has the resources and mission to take over and successfully operate the facility. Mark Orphan and Mike Walker will be the primary managers of the Murphy Center. They indicated that the Center will continue to deliver current services and will keep the current professional staff. Serve 6.8 will also be using volunteers. At this time, Serve 6.8 is doing its due diligence, developing a business plan, completing necessary agreements, talking with the cities of Fort Collins and Loveland, etc. Serve 6.8 has said that they have recently embarked on a fund raising campaign for the Murphy Center, with a goal of \$5 million; having already raised about \$750,000. The goal is to complete the ownership/operation transition on/around July 1, 2013.

The United Way and Serve 6.8 has been very transparent in the transition process, including involving key stakeholders early on, working with existing Murphy Center staff, presenting to the North Fort Collins Business Association, informing Murphy Center customers, working with staff from the cities of Loveland and Fort Collins, informing Murphy Center funders, informing Timberline Church members, and providing interviews and information to the local press. UW/Serve 6.8 intends to do additional outreach when the transfer of ownership/operation finally occurs, and Serve 6.8 has indicated that they plan to hold a formal “opening” event later this year, possibly as part of National Homeless Month.

*An article of the Murphy Center written by Sarah Jane Kyle, and published in the June 2, 1013 Coloradoan on the Murphy Center transition is attached (**Attachment 1**)*

Funding Request

The United Way is seeking funding partners to continue the operation of the facility. The Center's monthly operating cost is about \$38,600; approximately 85% of that is personnel and 15% is operations. United Way has a federal grant that covers about \$8,100 per month; the net monthly cost is approximately \$30,500. Six months of operations costs approximately \$183,000. United Way's proposal is that it provides \$58,000, the Bohemian Foundation and the City each provide \$45,000 and Serve 6.8 provides \$35,000, for the operation of the Murphy Center from January to July, 2013 (6 months). The City of Loveland was approached to participate in funding but declined; less than 10% of the Murphy Center visitors are from Loveland, and because the participation is so low, it declined to participate in the one-time funding of operations.

According to Gordan Thibedeau, Executive Director of the United Way:

"There are two reasons that we are seeking continuation funds to support the operation of the Murphy Center. First, it was our intent to transfer ownership no later than December 31, 2012, which did not happen. Second, we have been unable to secure additional grant funding to support the operation primarily because we play a "pass through" role. We were able to overcome this concern for the first 4 years of funding but foundations have become increasingly interested in having the funds go directly to the service provider."

Funding Alternatives

During the May 28 Work Session, Council specifically asked staff to consider making the funds available to a different agency (not United Way) that could potentially benefit from leveraging the City funds. There are four alternatives that the City Council could consider to fund the operations of the Murphy Center:

- A. "United Way" Option - Approve the original funding request to United Way in the amount of \$45,000, for operating expenses incurred between January 1 and June 31, 2013. The funds would go directly to United Way for additional expenses they incurred to continue the operation of the facility.*
- B. "Touchstone" Option - Approve the funding request, in the amount of \$45,000, with the direct recipient of the funds being Touchstone Health Partners, for operating expenses incurred between January 1 and June 31, 2013. The funds would go directly to Touchstone Health Partners for expenses they incurred during this time period. Touchstone is the only agency at the Murphy Center that incurs significant operating expenses. Touchstone has said they would then reimburse United Way.*
- C. "Serve 6.8" Option - Approve the funding request, in the amount of \$45,000, with the direct recipient being Serve 6.8 for future operating expenses. Serve 6.8 has not incurred any direct operating costs of the facility. So, if it is the recipient of the funds, the funds would be used to cover future operating costs (after July 1, 2013). The reasoning behind this is different from the other options; funding future operations (saving Serve 6.8 and/or United Way from having to do it) rather than reimbursing UW for past expenses. Since this option would no longer be framed as a sort of "emergency", it also raises a question of why Serve*

6.8 should not just apply for the funds through the City's Competitive Process like other social service agencies.

D. "Do nothing" option – No City funding.

According to agency representatives, the "benefit" to Touchstone or Serve 6.8 in receiving the City funds, for instance, to leverage other funds, is not significant, because the funds would already have been spent, and would not be available to "match" other grants. The funds would show up on their balance sheet as a contribution from the City; the City's financial support is important to other potential funders.

Funding Agreement

The major terms of the "funding agreement" are as follows:

1. The City shall pay the agency selected by the Council the sum of \$45,000 upon receipt of the expense report.
2. The funds will be (or must have been) used for personnel and non-personnel costs associated with the operation of the Murphy Center.
3. The agency shall submit a detailed expense report to the City for our review and approval.
4. The process and conditions of turning the facility over to Serve 6.8 should be as transparent and inclusive as possible to the critical stakeholders.
5. The existing functions of the Murphy Center as a one stop center and entry for homeless services must continue; and Serve 6.8, needs to be at the table in the discussions around a new homeless service delivery model, known as "Continuum of Care".
6. The City shall have a representative on the advisory/leadership board of the new Murphy Center.

FINANCIAL / ECONOMIC IMPACTS

The City's share will come from the City's General Fund Reserves. Providing financial assistance to the Murphy Center is a long term investment. Helping people out of homelessness prevents future community costs associated with homelessness.

Typically, funding requests for human services are made thru the City's Spring Competitive Process. The Spring Competitive Process was not a good match for the current Murphy Center situation because the funds do not become available until October 1, 2013. Also, the Competitive Process funds cannot pay for any cost of services, projects or programs expended prior to October 1, 2013.

Over the years, the City has also funded from the General Fund, several social service programs and activities, outside of the Competitive Process. For example, since 2009, the City has funded:

- Homeward 2020 (the original \$100,000 was through the exceptions process) and continue to do so with a \$25,000 sponsorship each year out of the City Manager's Office budget (and approved through BFO), for a total of \$175,000.
- The Murphy Center Capital Campaign in 2009 (\$5,000), 2010 (\$6,000), and 2011 (\$2,000) using contingency funding.
- The United Way Temporary Winter Homeless Shelter (\$3,000 – operating costs).

- *The Crossroads Safehouse, in 2010 - \$3000 – appraisal report; and, in 2010 - \$350,000 for renovation of Crossroads' new facility, from Police Capital Improvement Expansion fees.*
- *The Bender Mobile Home Park relocation assistance – 2012 (\$50,000) – BFO.*
- *The City has also provided “sponsorships” through a donation and sponsorship line item in BFO through the City Manager’s Office (CMO). For those sponsorships that were unexpected and not funded through BFO, the CMO usually relies on Contingency or Community Opportunities funds to cover. Agencies receiving this funding include United Way, Habitat for Humanity, Crossroads Safehouse, and the Food Bank of Larimer County.*

STAFF RECOMMENDATION

Staff recommends approval of Alternative B - Touchstone, because it most closely responds to the direction of Council at its May 28 Work Session. The Murphy Center plays a critical role in the delivery of services to the homeless and near-homeless in the community, a role that is likely to become more important as a new model (e.g., “Continuum of Care”) evolves in the North Front Range area. United Way has carried the cost of operating the Center for the past four years, over a year longer than originally intended. United Way has demonstrated that it needs the financial assistance of the City and the other partners, to pay for part of the costs of six months of operations of the Center. After that time, it appears very likely that Serve 6.8 will take over the ownership and operation of the Center. Serve 6.8 has said that it intends to continue the original mission and services of the Center. Serve 6.8 also appears to have the capacity, experience and mission to continue the important services the Center now provides, and to work collaboratively toward a new homeless model.”

Bruce Hendee, Chief Sustainability Officer, stated the request before Council is for a one-time appropriation of General Fund reserves in the amount of \$45,000. He discussed the community services provided by the Murphy Center and the reason for the funding request. The funds would be used to backfill funding from United Way reserves.

Gordan Thibedeau, United Way of Larimer County CEO, discussed the history of the Murphy Center in terms of funding and noted there was a plan to transfer the ownership of the Center after its first year of operation. He stated though this may appear as a request for retroactive funding, the agreement was informally made six months ago.

Mike Pruznick, 636 Castle Ridge Court, stated he would support any of the available options, but suggested a modified option C. He asked if United Way takes a fee if the money is given through it in Option A and asked why the full \$183,000 is not being considered for funding.

Mark Orfan, Serve 6.8 Development Director, expressed appreciation for the opportunity to partner with the United Way and stated it is their intent to continue to building on the existing model.

Monica Elliott, 815 Roma Valley Drive, stated she volunteers at the Murphy Center and supported funding for the Center.

Emily Peterson, Touchstone Health Partners, discussed the mental health services provided by Touchstone and expressed support for Option B.

Kristen Eiswerth, Fort Collins resident, stated she volunteers at the Murphy Center and supported providing funding in order to maintain necessary services.

David Rout, Homeless Gear Program Director, discussed the need for support for the community's homeless population and supported funding for the Murphy Center.

Sarah Pruznick, 636 Castle Ridget Court, stated she volunteers at the Murphy Center and supported funding for the Center.

Bonnie Inscho, 2815 William Neal Parkway, stated she was a mental health specialist at the Murphy Center and discussed the importance of the Center to the community. She supported funding.

Richard Thompson, 636 Cheyenne Drive, Fort Collins Area Interfaith Council President, discussed the value of the Murphy Center to the community and supported funding for the Center.

Mayor Pro Tem Horak asked Mr. Thibedeau for additional information regarding the City's role in the agreement mentioned. Mr. Thibedeau replied there were two options discussed approximately six months ago: to either decrease the hours of the Center or to close it. He discussed the involvement of Serve 6.8, which was not possible for a few months following its initial interest. He stated keeping the Center open for that time period would cost about \$180,000 and an informal discussion was held regarding possible sources for that funding. He stated he recommended, based on that conversation, continuing full-time operation until such time as Serve 6.8 decided on taking over the Center.

Mayor Weitkunat asked why the request for funding did not occur several months ago. Mr. Thibedeau replied there was a need to first ensure that Serve 6.8 would be moving forward and scheduling issues also came into play.

Councilmember Overbeck asked about the impact to the Murphy Center should this funding not be approved. Mr. Thibedeau replied the Center would not go away and noted the United Way has completed its contract payments with Touchstone and is in the process of handing over the operation of the Murphy Center to Serve 6.8.

Councilmember Campana asked about the informal agreement, mentioning a commitment by the City. Mr. Thibedeau replied the members of the Homeward 2020 Board had conversations with City representatives and Bohemian Foundation representatives. He reiterated there was no formal commitment or agreement.

Councilmember Campana asked who from the City made the informal commitment. Mr. Thibedeau again stated there was no formal commitment, though he felt comfortable enough the funding would eventually occur.

City Manager Atteberry stated this funding always hinged on Council approval, whether recommended by staff or not.

Joe Frank, Social Sustainability Officer, stated the facility is important for the community and noted the importance of the City continuing its support of the Center.

Councilmember Cunniff asked if this program would be part of the competitive process for CDBG funds in the future. Frank replied in the affirmative.

Mayor Pro Tem Horak asked why the funding was not brought forward as a budget amendment in November or December. Frank replied things were not far enough along at that time to bring forward a request for funding.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Option B of Resolution 2013-053.

Councilmember Cunniff supported the Murphy Center but opposed the perceived lack of fairness of this funding request and suggested Serve 6.8 go through a future competitive process for CDBG funding.

Councilmember Overbeck supported the Murphy Center, but opposed this request for funding.

Councilmember Troxell stated he would support the motion and stated this is an important expenditure for an important aspect of the community.

Councilmember Campana stated he would support the motion and expressed support for the Murphy Center.

Mayor Pro Tem Horak agreed the process for this funding request was imperfect but stated he would support the motion, given there was a potential commitment from staff.

Councilmember Poppaw thanked the individuals who spoke regarding this item but questioned the fairness of providing a backfill on reserves for an organization. She expressed support for the Center, the United Way, Touchstone, and Serve 6.8 and encouraged future participation in the competitive process for CDBG funds.

Mayor Weitkunat reiterated support for the Murphy Center and opposed this general appropriation process; however, she stated she would support the motion as the City made a commitment.

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

THE MOTION CARRIED.

Councilmember Troxell made a motion, seconded by Mayor Pro Tem Horak, to adopt Ordinance No. 082, 2013, on First Reading. The vote on the motion was as follows: Yeas: Weitkunat, Campana, Troxell, Overbeck and Horak. Nays: Cunniff and Poppaw.

THE MOTION CARRIED.

Executive Session Authorized

Mike Pruznick, 636 Castle Ridge Court, asked if citizens are allowed to provide input regarding the mid-term reviews of the three direct Council employees. The Council accepted a document from Mr. Pruznick for consideration.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to go into Executive Session as permitted under Section 2-31(a)(1) of the City Code, for the purpose of conducting the mid-year performance reviews of the City Manager, City Attorney, and Municipal Judge. Yeas: Weitkunat, Campana, Poppaw, Horak, Troxell, Overbeck and Cunniff. Nays: none.

THE MOTION CARRIED.

(Secretary's Note: The Council returned from Executive Session at 10:08 p.m.)

Adjournment

The meeting adjourned at 10:08 p.m.

Mayor

ATTEST:

City Clerk