

AGENDA ITEM SUMMARY

February 16, 2016

City Council

STAFF

Wanda Winkelmann, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the January 19, 2016 Regular Council Meeting and the January 26, 2016 Adjourned Council Meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the January 19, 2016 Regular Council meeting and the January 26, 2016 Adjourned Council meeting.

ATTACHMENTS

1. January 19, 2016 (PDF)
2. January 26, 2016 (PDF)

January 19, 2016

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● **ROLL CALL**

PRESENT: Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

Staff Present: Atteberry, Daggett, Winkelmann

● **AGENDA REVIEW: CITY MANAGER**

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

● **CITIZEN PARTICIPATION**

Dick Thomas discussed traditional uses of ex parte and questioned why the City of Fort Collins adopted the use of the policy. He stated its adoption has tilted favor toward developers in the city and questioned how many Colorado home rule cities use the policy. He requested the policy be revoked.

Mike Pruznick discussed the tax increase on his Comcast bill. He encouraged the use of additional tax revenue for the southeast community center and discussed the importance of honoring human rights with regard to the definition of marriage on the Poudre School District website.

Nancy York expressed concern regarding inequality in the community.

Gina Janett presented a formal application with 76 signatures for a non-consensual landmark designation.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Councilmember Cunniff suggested the possibility of examining the ex parte issue which would still preserve the rights of all the parties in an appeal but still allow public input in the process. City Attorney Daggett noted she sent an email to Mr. Thomas regarding the issue today.

Councilmember Overbeck requested staff look into Mr. Pruznick's questions regarding Comcast billing.

City Manager Atteberry noted the additional tax revenues described by the *Coloradoan* are not as robust as indicated and stated he does not believe the City is over-collecting taxes.

Mayor Pro Tem Horak noted the City budgets conservatively.

● **CONSENT CALENDAR**

Councilmember Campana withdrew Item No. 10, *Resolution 2016-004 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District.*

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt and approve all items not withdrawn from the Consent Agenda.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Gino Campana, District 3
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

1. **Second Reading of Ordinance No. 001, 2016, Appropriating Revenue in the Community Capital Improvement Fund for Initiation of the Various 2016 Approved Projects, Transferring a Portion of that Appropriation to the Capital Projects Fund and a Portion thereof to the Cultural Services and Facilities Fund for the Art in Public Places Program Contribution Associated with the 2016 Approved Projects. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 5, 2016, appropriates \$6,980,000 of Community Improvement Program funding for 2016 to initiate ten projects and programs identified as those of the highest priority during community outreach and guidance provided by City Council, and to transfer a portion of these appropriated funds to the Capital Projects Fund from which a portion will also be then transferred to the APP program.

2. **Second Reading of Ordinance No. 002, 2016, Appropriating Unanticipated Grant Revenue from the Congestion Mitigation and Air Quality Grant for the Extension of FLEX Regional Route Service and Authorizing Execution of Implementing Intergovernmental Agreements by the City Manager. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 5, 2016, appropriates \$475,000 to facilitate additional service for the FLEX regional transit route. This additional service is being fully funded through a Congestion Mitigation and Air Quality (CMAQ) grant that was awarded to Boulder County for the extension of FLEX services to Boulder. Staff is not requesting any additional City funding because the local match is being provided by existing Transportation Management Association (TMA) partner contributions and by the City of Boulder. The additional service is set to begin in January 2016 under a three-year pilot program. Transfort is acting in the capacity of pass-through recipient of the CMAQ funding and will request from Council further appropriations for 2017 and 2018 service in the 2016 Budgeting for Outcomes (BFO) process. These further appropriations will again be fully funded with external revenue.

3. **Second Reading of Ordinance No. 003, 2016, Appropriating Unanticipated Grant Revenue in the General Fund for the Fort Collins Police Services Victim Services Unit. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 5, 2016, appropriates \$37,000 to fund the Victim Services Unit of Fort Collins Police Services for victim advocacy services under the Colorado Victim Rights Amendment for victims of crime and their family members. The Fort Collins Police Services Victim Services Unit has been awarded a 12-month grant in the amount of \$37,000 for the period from January 1, 2016 to December 31, 2016, by the Eighth Judicial District Victim Assistance and Law Enforcement (VALE) Board to help fund services provided by this team. These funds will be used for part of the salary for the victim advocate who provides crisis intervention services during weekday hours and is housed in the Victim Services office. These funds will also pay for a portion of the operational expenses needed to provide 24-hour a day, 7-day a week services to victims of crime in the community.

4. **Items Relating to Underage Possession and Consumption of Alcohol and Marijuana Offenses and Consistency with State Law. (Adopted)**

- A. Second Reading of Ordinance No. 004, 2016, Amending Chapter 17 of the Code of the City of Fort Collins to Establish an Offense for Underage Possession or Consumption of Ethyl Alcohol.
- B. Second Reading of Ordinance No. 005, 2016, Amending Chapter 17 of the Code of the City of Fort Collins to Bring the Existing Underage Code Offenses for Possession or Consumption of Marijuana into Conformity with State Law.

Ordinance No. 004, 2016, creates a municipal misdemeanor offense that mirrors the state law on underage possession and consumption of alcohol. Ordinance No. 005, 2016, brings the current underage possession and consumption of marijuana municipal misdemeanor offenses into conformity with state law. Both Ordinances were unanimously adopted on First Reading on January 5, 2016.

5. **Items Relating to Revisions of Certain Detention and Development Policies in the Fort Collins Stormwater Criteria Manual. (Adopted)**

- A. Second Reading of Ordinance No. 006, 2016, Amending Chapter 26 of the Code of the City of Fort Collins and the Fort Collins Stormwater Criteria Manual to Modify the Criteria for Underground Detention Systems.
- B. Second Reading of Ordinance No. 007, 2016, Amending Chapter 26 of the Code of the City of Fort Collins and the Fort Collins Stormwater Criteria Manual to Modify Provisions Implementing Low Impact Development Principles.

These Ordinances, unanimously adopted on First Reading on January 5, 2016, formally adopt two updates to the Stormwater Criteria Manual. Ordinance No. 006, 2016, updates the criteria that govern when, where, and to what extent it is appropriate to design and construct underground stormwater detention systems in the City of Fort Collins. Ordinance No.007, 2016, updates the current Low Impact Development (LID) criteria. The two policies are consistent with sustainability goals for the City of Fort Collins which center on three themes: innovate, sustain and connect. The adoption of these updated policies will allow for more efficient use of space, thus allowing the City to meet its sustainability goals, provide innovative design flexibility for new development that will enhance community affordability and livability, and allow a more compact development pattern in Fort Collins enhancing connectivity and reducing sprawl.

6. **Second Reading of Ordinance No. 008, 2016, Authorizing the Release of a Covenant on the Murphy Center Property. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 5, 2016, releases a covenant that is no longer needed following the loan payoff and Release of Deed of Trust for the Community Development Block Grant (CDBG) Public Facility project regarding the Sister Mary Alice Murphy Center for Hope.

7. **Second Reading of Ordinance No. 009, 2016, Declaring Certain City-Owned Property on Running Deer Natural Area as Road Right-of-Way. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 5, 2016, declares a strip of property owned by the City as part of the Running Deer Natural Area, as road right-of-way. The right-of-way will be used for the construction of a new Boxelder bridge, stormwater improvements, and in the future for the ultimate 4-lane configuration of East Prospect Road. The City owns parcels of property located at the southwest corner of East Prospect Road and Southwest Frontage Road. The City of Fort Collins Utilities and Engineering Departments are working in tandem on two stormwater improvement projects in the area that are intended to eliminate the overtopping of Prospect Road during large flood events in Boxelder Creek and to facilitate the eventual widening of Prospect Road

to the ultimate 4-lane configuration. Construction on the stormwater and Boxelder bridge improvements are anticipated to begin in spring 2016 and will be completed late summer 2016. This Ordinance officially establishes the portion needed for Prospect Road on the City's property as public road right-of-way.

8. **First Reading of Ordinance No. 012, 2016, Appropriating Unanticipated Grant Revenue in the Recreation Fund for the Adaptive Recreation Opportunities Program Paralympic Sport Club. (Adopted)**

The purpose of this item is to appropriate \$15,000 of unanticipated grant revenue in the Recreation Fund to be used for general operating support for the Adaptive Recreation Opportunities (ARO) program Paralympic Sport Club. ARO has been selected to receive a renewal grant of \$15,000 from the U.S. Department of Veterans Affairs (VA) for Veterans Adaptive Sports Programs serving disabled Veterans and disabled members of the Armed Forces for the funding cycle of October 2015- September 2016.

9. **Items Relating to City Property at the College Avenue and Prospect Road Intersection. (Adopted)**

- A. First Reading of Ordinance No. 013, 2016, Authorizing the Conveyance of City Property at College Avenue and Prospect Road to Colorado State University.
- B. First Reading of Ordinance No. 014, 2016, Declaring Certain City-Owned Property at College Avenue and Prospect Road as Road Right-of-Way.

The purpose of this item is to authorize the conveyance of a portion of City property located at the northwest corner of College Avenue and Prospect Road to Colorado State University and declare the remaining City property as road right-of-way. Colorado State University (CSU) is developing a medical center on property it owns at the northwest corner of the College Avenue and Prospect Road intersection. This development will require the construction of ultimate road improvements adjacent to its development. The City owns a small parcel of land located at the northwest corner of College Avenue and Prospect Road. The property was purchased in 1995 as part of the College Avenue/Prospect Road Choices 95 Project. A portion of the City property will be needed for right-of-way purposes as part of the ultimate road improvements. The remaining portion of the City property is not needed for current or future right-of-way needs. City staff desires to release the City's obligations related to the fee simple ownership of the remnant parcel and proposes conveying the remnant portion of the property to the surrounding property owner, CSU, while retaining a utility easement over the remnant parcel. Staff proposes conveying the remnant portion at a minimal cost due to the overall benefits to the public and supporting the City's goals and projects in the area. As part of the medical center project CSU will dedicate the ultimate right-of-way along Prospect Road adjacent to the development. Ordinance No. 013, 2016 will authorize the conveyance of the remnant portion of the City property to Colorado State University. Ordinance No. 014, 2016 will officially establish the remaining portion of the City property as public road right-of-way.

10. **Resolution 2016-005 Authorizing the City Manager to Execute an Intergovernmental Agreement with the East Larimer County Water District Regarding the Coy Measurement Station. (Adopted)**

The purpose of this item is to authorize the City Manager to sign an agreement between the City of Fort Collins (City) and the East Larimer County Water District (ELCO) regarding the Coy Measurement Station. The City and ELCO each own one half (1/2) of the Coy Ditch Water Right. Two Water Court cases have been undertaken and completed by ELCO regarding the portion of the Coy Ditch Water Right it owns. Through the Water Court and district court processes, the City and ELCO have entered into several stipulations regarding the Coy Ditch, including the requirement to install the Coy Ditch Measurement Station in the vicinity of the headgate. Each stipulation also contemplates the City's use of the measurement station subject to an agreement between the City and ELCO that details the terms and conditions of such use. The City has a pending Water Court application which will necessitate the City's use of the Coy Ditch Measurement Station. The City and

ELCO have worked together to develop the agreement and City Council approval of this intergovernmental agreement is required.

11. **Resolution 2016-006 Approving an Exception to the Use of a Competitive Process for the Purchase of Animal Control Services from the Larimer County Humane Society for 2016. (Adopted)**

The purpose of this item is to request an exception to the competitive bid process for the purchase of services for a one-year term beginning February 1, 2016 from the Larimer Humane Society for the operation and management of the animal shelter. Approval of this exception may be used as authorized in City Code Section 8-161(d)(4) as the basis for the City Manager and the Purchasing Agent to negotiate and agree to the additional purchase of animal control services from the Larimer Humane Society through January 2021 without further Council approval.

12. **Resolution 2016-007 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Planning and Zoning Board Decision Approving the Uncommon Project Development Plan, PDP15-0013. (Adopted)**

The purpose of this item is to make Findings of Fact and Conclusions regarding the appeal of the Planning and Zoning Board's decision to approve the Uncommon Project Development Plan. The appeal was heard by City Council on January 12, 2016.

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Cunniff noted he will be discussing issues relating to the back sides of buildings in Other Business, as a follow-up to the Uncommon Appeal. (Item #13)

● **COUNCILMEMBER REPORTS**

Councilmember Overbeck reported on the Martin Luther King walk at CSU and the recent Homeward 2020 meeting.

Councilmember Martinez reported on time spent with Boy Scouts.

● **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

13. **Resolution 2016-004 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District. (Adopted)**

The purpose of this item is to authorize the City Attorney to file a petition in Larimer County District Court to exclude properties annexed into the City in 2015 from the Poudre Valley Fire Protection District (the "District") in accordance with state law. The properties affected by this resolution are Kechter Farm Second Annexation and Wood Street Second Annexation. C.R.S. Section 32-1-502 requires an order of exclusion from the district court to remove these annexed properties from special district territories. The properties have been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files the petition in Larimer County District Court each year seeking exclusion for all properties annexed in the previous year that should be removed from the District to avoid double taxation.

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

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, to adopt Resolution 2016-004.

RESULT:	RESOLUTION 2016-004 ADOPTED [6 TO 0]
MOVER:	Gerry Horak, District 6
SECONDER:	Ray Martinez, District 2
AYES:	Martinez, Stephens, Overbeck, Troxell, Cunniff, Horak
RECUSED:	Campana

● **DISCUSSION ITEMS**

14. **Second Reading of Ordinance No. 010, 2016, Amending Section 15-620 of the Code of the City of Fort Collins Relating to Retail Marijuana Establishments' Hours of Operation. (Adopted on Second Reading)**

This Ordinance, adopted on First Reading on January 5, 2016 by a vote of 6-1 (Nays: Martinez) changes the allowable operating hours of retail marijuana businesses from 8:00 a.m. to 7:00 p.m. to 8:00 a.m. to 8:00 p.m.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 010, 2016, on Second Reading.

RESULT:	ORDINANCE NO. 010, 2016, ADOPTED ON SECOND READING [6 TO 1]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Stephens, Overbeck, Campana, Troxell, Cunniff, Horak
NAYS:	Martinez

15. **Consideration of an Appeal of the Building Review Board Regarding the Coy-Hoffman Silos. (Remanded to the Building Review Board)**

Woodward, Inc. has appealed the Building Review Board (BRB) decision to uphold the Chief Building Official's declaration that two historic farm silos are "dangerous structures" and not structures that pose an "imminent danger" at 1041 Woodward Way.

City Attorney Daggett reviewed the appeal procedure and defined parties-in-interest.

Mayor Troxell identified the parties-in-interest and outlined the presentation and rebuttal times for those in support of the appeal and those opposed to the appeal.

Tom Leeson, Community Development and Neighborhood Services Director, discussed the history of the silos on the Woodward property, stating they were declared dangerous, though not imminently dangerous, structures on September 18, 2015 by the Chief Building Official. Leeson discussed the results of the reports on the silos by three different engineering firms and stated the Building Review Board upheld the decision of the Chief Building Official following an appeal to the Board by Woodward. The dangerous classification requires the silos to either be stabilized and repaired or go through a public process prior to demolition. The Landmark Preservation Commission has postponed the consideration of this item until February 10 for the purpose of gathering additional information related to the benefits of landmark designation, as well as to receive copies of the engineering reports, Woodward's plans for interpretive signage, and a more specific plan of protection. Leeson noted an application was received this morning for a non-consensual designation of the silos initiated by 76 individuals. He showed a video of the silos which was made by City staff.

Mayor Troxell asked Councilmembers to explain any observations from a site visit earlier today.

Councilmember Cunniff stated he observed the context of the silos and their exteriors.

Councilmember Overbeck stated he asked how long the trees have been growing inside the silo.

Councilmember Campana noted the site visit took place from within the public right-of-way.

Mayor Troxell asked if any procedural issues need to be addressed. Carolynne White, land use counsel for the appellant, stated she would like to include pieces of concrete from the silos as evidence and requested additional time for presentations.

Carol Tunner, party-in-interest, opposed the inclusion of the concrete as evidence.

Councilmember Cunniff supported allowing additional time; however, he questioned why the physical evidence is necessary. Ms. White replied the evidence illustrates the condition and state of the silo concrete which could not be determined at the Council site visit, since the Councilmembers were not able to go near to or touch the silos.

Councilmember Campana supported allowing the evidence.

Councilmember Overbeck asked why the evidence was not presented at the Building Review Board hearing. Ms. White replied it became evident at the hearing that having this type of physical evidence would be helpful.

Councilmember Martinez supported allowing the evidence, stating he does not want to preclude the inclusion of any evidence which may reveal truth.

Councilmember Overbeck expressed concern regarding the possible setting of a precedent. City Attorney Daggett noted it is within Council's purview to request the inclusion of evidence.

Ms. Tunner questioned how it can be guaranteed the concrete came from the site and stated concrete on the ground will deteriorate more quickly than concrete in place. She stated this evidence is not applicable.

Ms. White stated she does not have a formal chain of evidence for the concrete; however, she stated she could provide testimony from the person who collected it from within the silos.

Councilmember Cunniff asked if staff or consultants are on hand who can address how this concrete relates to the concrete at the base of the silos. Leeson replied all three structural engineers have reviewed the concrete in place and did not address any concrete on the ground. He stated the City's consulting engineer is not in attendance; however, the consulting engineer for Woodward is in attendance.

Mayor Troxell stated presentations will be limited to 25 minutes, with 10 minute rebuttals. Any new evidence from parties opposed to the appeal would need to be introduced at this time.

Ms. Tunner stated she has evidence regarding JVA Engineering's restoration of silos on other sites. Ms. White objected to the evidence stating it is not relevant to whether or not these particular silos create an imminent danger.

Councilmembers Campana and Overbeck requested the evidence be admitted and copies were distributed.

APPELLANT PRESENTATION

Steve Stiesmeyer, Woodward Director of Corporate Real Estate, discussed the site. Given the structural concerns with the silos, Woodward has developed a plan which retains the historical significance of the farmstead.

Ms. White stated three engineering firms have evaluated the silos and the City's Chief Building Official issued his letter in September ordering Woodward to take immediate action, requiring a lockable protection fence and signage indicating danger; however, staff did not find the silos posed an imminent threat, which opinion was upheld by the Building Review Board. The sole issue before Council is whether the silos constitute an imminent threat or danger, regardless of the ability of the silos to be restored and regardless of whether the silos may be designated as historical landmarks in the future. The Chief Building Official and Building Review Board misinterpreted the Code and an additional layer of opinion was included in order to reach the determination.

Steve Carpenter, JVA Engineering, discussed the results of the three engineering reviews and showed photos of the silos.

Ms. White discussed the conclusion of the Exponent report, the City's consulting engineer. She stated Exponent concluded no imminent danger exists as long as the silos are fenced off. The definition of imminent danger does not involve taking extra measures to protect life safety. The Exponent report states that there is a risk, however slim, that the silos could collapse at any time.

Mr. Carpenter acknowledged an error in his calculations which was discussed at the Board meeting. Concrete strength is a key factor. He discussed Swiss hammer tests done by Martin and Martin and further detailed other calculations dealing with concrete strength, wind speeds and risk categories.

Ms. Tunner objected to the evidence being presented by Mr. Carpenter.

Ms. White stated there are two places in the Board hearing transcript in which this information was discussed.

Councilmember Campana stated he had planned to ask questions related to this information and requested its inclusion in the record.

Chris Fawzy, Woodward Corporate Vice-President and General Counsel, discussed Woodward's commitment to its communities, respect, integrity, and safety.

Ms. White concluded by stating the silos are clearly an imminent threat.

OPPONENT PRESENTATION

Ms. Tunner discussed the history of the farmstead property and opposed the appeal of the Board's decision. She discussed the possibility of restoring the silos and noted all three of the

engineering reports acknowledged that possibility. Additionally, Ms. Tunner discussed the importance of restoring and saving the silos as landmarks.

APPELLANT REBUTTAL

Ms. White reiterated the question before Council, which is whether or not the silos, in their current condition, pose an imminent threat or create imminent danger. She stated the silos fail to satisfy the wind load requirements of what it would take to satisfy the Code in their current condition, and they could collapse at any time. The potential for repair or safety measures does not affect the determination of whether or not an imminent threat exists.

Mayor Troxell provided the parties-in-interest opposed to the appeal an opportunity to examine the concrete pieces presented by the appellants.

OPPONENT REBUTTAL

Ms. Tunner suggested the consulting engineers hired by Woodward would not have gone into the silos to take measurements should they have believed the structures to be imminently dangerous. Additionally, she stated none of the three engineers were able to say the silos will fall today.

COUNCIL DISCUSSION

Councilmember Cunniff requested staff input regarding the definition of imminent. Mike Gebo, Chief Building Official, replied the Martin and Martin engineer asked for additional information as to how the City would be judging imminent danger. The Property Maintenance Code definition of imminent danger is: a condition which could cause serious or life-threatening injury or death at any time, and Webster's definition of imminent is: appearing as if about to happen, likely to happen without delay, and impending.

Councilmember Cunniff noted that, while the term imminent danger or threat is defined in the Code, the word imminent itself is not. Gebo replied in the affirmative.

Councilmember Cunniff asked about the warning red tag placed on the silos. Gebo replied the red tag exists because the City has classified the silos as dangerous; it is a standard form tag which is meant to be taken seriously, although it does not correlate to imminent danger under the definition of the Building Code.

Councilmember Cunniff asked if the concrete samples provided are necessarily representative of the structural concrete near the base of the silos. Gebo replied he does not know where the samples came from, though he assumed they were from the interior of the silos as indicated by the appellant.

Councilmember Cunniff asked if it is true of any structure that it will eventually fail if not maintained. Gebo replied in the affirmative.

Councilmember Stephens requested information regarding the accuracy of the Swiss hammer testing. Gebo replied he is unfamiliar with the tool. Mr. Carpenter stated the Swiss hammer is a handheld device that shoots a small piston at the concrete and measures the rebound. He stated it works well on flat, smooth surfaces but is not quite as accurate on rough surfaces and is not a perfect test.

Mayor Troxell asked if the Swiss hammer is designed for concrete. Mr. Carpenter replied in the affirmative.

Councilmember Stephens asked about the context of 120 to 130 mile per hour winds. Gebo replied buildings are designed with a design wind speed of 120 to 130 mile per hour, which would be roughly equivalent to a low-category hurricane or tornado.

Mayor Troxell asked about the notion of failing anytime versus a slim chance of failing. Gebo replied the three engineers indicated that the silos could fail under design wind speeds. If he had heard the silos could fail at any time, he would have a different opinion and noted there are many buildings which may not stand up to winds of that speed.

Councilmember Cunniff asked what forces are considered in terms of imminent. Gebo replied his charge is to determine whether a structure provides an imminent threat and he relies on engineers to help determine whether that threat exists.

Mayor Troxell noted the silos were constructed differently and asked if one is more dangerous than the other. Mr. Carpenter replied the stave silo is probably more critical as the concrete has deteriorated past the tongue and groove interface due to acid erosion. He acknowledged the analysis is complicated and there are a number of variables.

Mayor Troxell asked about the condition of the silo foundations. Mr. Carpenter replied both silos have foundations; however neither silo has a positive attachment to its foundation.

Mayor Troxell requested an opinion as to the mode of failure. Mr. Carpenter replied the stave silo would likely buckle and stated the erosion of the silos is a process which has been slowed since silage is no longer stored in the structures.

Mayor Troxell asked about the tree growing in the cast-in-place silo. Mr. Carpenter replied the tree is large and has likely been there a while. He noted tree roots can cause a foundation to heave.

Councilmember Martinez asked about photos indicating the silos are not attached to the ground. Mr. Carpenter replied that is the crux of the problem and the acids from the silage concentrate to the bottom of the silos, leading to these gaps. He stated approximately 25% of the silo is not touching the ground on the eastern silo. Ms. White replied the Exponent report indicates 15 feet missing out of the 52 foot total circumference, which is 29%.

Councilmember Martinez asked if another force, such as seismic activity, could affect the silos. Gebo replied there are traffic vibrations, construction vibrations and other possible factors which could make the situation more imminent. He acknowledged that without intervention, the silos will fail.

Councilmember Martinez asked if the silos are in a floodplain. City Manager Atteberry replied he will attempt to find that information prior to the close of the hearing.

Councilmember Martinez asked how bridges are classified with regard to dangerous conditions. Laurie Kadrich, Planning, Development and Transportation Director, replied bridge structures

are classified as being structurally deficient and/or functionally obsolete. She stated she is uncertain those classifications compare to one another.

Councilmember Martinez asked what the fall zone of the silos would be. Gebo replied the fall zone is a radius around the structure, given there is no certainty what direction it will fall.

Councilmember Martinez asked about the failing tongue and groove connections. Mr. Carpenter replied the structure is no longer acting like a composite hoop structure, but is rather a series of 60 individual columns.

Councilmember Martinez asked about expressions of imminent danger by the consulting engineers. Mr. Carpenter stated his firm designs to the standard of care and these structures need significantly more concrete strength than they have. He stated his belief is that the structures are imminently dangerous.

Councilmember Martinez asked if the structures are dangerous or potentially dangerous. Gebo replied the structures are dangerous based on the Code definition of dangerous.

Councilmember Martinez asked if the tree growing inside the silo will ultimately cause heaving. Gebo replied in the affirmative.

Councilmember Martinez noted there are many factors other than wind which could potentially cause the structures to fall. He asked why cables are placed around the silos. Gebo replied they are part of the design and construction of the silos.

Councilmember Overbeck asked how long the tree has been growing in the silo. Leeson replied staff does not have a definite answer to that.

Councilmember Overbeck requested information regarding the error in Mr. Carpenter's calculations. Mr. Carpenter replied that error was brought up at the end of the Building Review Board meeting and stated the error had to do with transposing a number in the calculation determining the weight of the silo and ultimately the stress at the base of the silo. He stated the miscalculation made about a 20-25% difference.

Councilmember Overbeck asked about a possible date typo in the Martin and Martin report. City Clerk Winkelmann replied the report should be from January 7, 2015.

Mayor Pro Tem Horak asked if Gebo has had previous situations dealing with imminent versus dangerous. Gebo replied in the negative, stating this was a recent historical Code change.

Mayor Pro Tem Horak asked Gebo if his opinion on the condition of the silos is still the one he would make today. Gebo replied in the affirmative; however, he stated he would need to look at any additional analyses prior to ensuring his decision would not change. He stated he has not seen anything to this point regarding failure under wind loads other than design wind loads. He acknowledged his opinion may change if he were presented with information that the structures would fail during 90 mile per hour winds.

City Manager Atteberry stated, once Woodward completes the Letter of Map Revision, the silos will no longer be in the flood plain. The official map change would not be done until the fall; however, physical grading is complete.

Wayne Timura, Next Level Development, stated the fill work has been done and the silos are physically out of the 100-year floodplain. However, the actual FEMA document has not yet been completed.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, that, based on the evidence on the record and presented at this hearing, Council uphold the decision of the Building Review Board sustaining the Chief Building Official's determination that, while the silos are dangerous, they are not an imminent threat under City Code Section 5-47-12 or IMPC Section 202, for the purposes of authorizing demolition or alternation under City Code 14-71B, and find that the BRB properly interpreted and applied the provisions of the City Code, that the appeal is hereby found to be without merit and is denied.

Councilmember Cunniff stated the crux of the issue is the definition of the word imminent and discussed the probability of whether or not the structures will spontaneously fail under normal day-to-day conditions, and he does not believe that is probable.

Councilmember Campana stated Codes are established based on standards, and once those Codes are established, probability and statistics do not come into play. He cited the fact the Code does not allow lateral movement in terms of health and safety and stated these structures do not meet the Code standard of design winds.

Councilmember Cunniff stated the word imminent needs to be better defined and details regarding conditions which need to be addressed from an engineering standpoint also need to be reviewed. He discussed the fact the structures may be considered dangerous, after which point the remainder of the Code will be allowed to apply in terms of the historic structures.

Councilmember Campana discussed the fact Council has a very narrow purview regarding the application of the Code in this case and discussed the importance of preserving health and safety over an historic structure.

City Attorney Daggett stated Council would need to detail the further inquiry it would want the Building Review Board to make in the case of a remand.

Mayor Troxell stated he would be comfortable with a remand as there is no way to define the difference between imminent and dangerous.

Councilmember Martinez argued the IPMC defines imminent danger as a condition which could cause serious or life-threatening injury or death at any time. Additionally, he noted the concrete samples were falling apart in his hands.

Councilmember Stephens expressed concern the 90 mile per hour wind issue did not come up during the Board hearing, noting that information may have changed Mr. Gebo's mind.

Councilmember Campana stated the 120 to 130 mile per hour winds are the standard; however, he stated the 90 mile per hour winds were brought up because the structures may also fail at that wind speed. He questioned what Council would ask the Building Review Board to do on a remand.

Councilmembers Cunniff and Overbeck withdrew their original motion.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to remand the decision of the Building Review Board sustaining the Chief Building Official’s determination that the silos are not an imminent threat in order for the BRB to receive and consider additional information with regard to analysis on weather events of the ten-year probability, including rain, hail, wind, thunderstorms, etc., with the purpose that those events should be part of the consideration when looking at imminent danger, and that, except as so stated, based on the evidence in the record and presented at this hearing, this appeal is hereby found to be without merit and is denied.

Mayor Troxell stated focus needs to be placed on the IMPC Building Code and its definition of imminent danger and stated a serious understanding of the definition of the word is necessary.

Councilmember Campana questioned what new information the Building Review Board will receive.

Mayor Pro Tem Horak asked about the possibility of continuing the hearing for additional information. City Attorney Daggett replied that could be done; however, that situation may create more process pressure on Council than usual, given ex parte restrictions. It is possible the BRB would be in a better position to evaluate additional data.

Mayor Pro Tem Horak asked when the BRB would hear the remand. Gebo replied the next Building Review Board meeting is February 25.

Mayor Pro Tem Horak requested the City Attorney present the motion and its conditions. City Attorney Daggett projected the language and Council suggested wording changes regarding natural occurrences and probability.

RESULT:	REMANDED TO THE BUILDING REVIEW BOARD [5 TO 2]
MOVER:	Ross Cunniff, District 5
SECONDER:	Bob Overbeck, District 1
AYES:	Stephens, Overbeck, , Troxell, Cunniff, Horak
NAYS:	Campana, Martinez

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

16. **First Reading of Ordinance No. 011, 2016, Amending Chapter 14 of the Code of the City of Fort Collins Regarding Landmark Preservation. (Adopted as Amended on First Re)**

The purpose of this item is to present to Council proposed changes to the landmark designation procedure set forth in Article II, Chapter 14, of City Code to make the landmark designation process more efficient in cases where a property owner does not consent to landmark designation (“non-consensual” designation) and the property is already designated on the National and/or State Historic Registers, either individually or as a part of a historic district.

City Attorney Daggett stated a question was asked at Leadership Planning Team regarding why the Ordinance has been proposed so as to apply to any designation procedures initiated after January 1, 2016. One reason is that staff has found the length and extensiveness of the designation process, particularly with non-consensual designations, could ultimately prolong the process. Allowing the Landmark Preservation Commission to choose to make a

recommendation to Council without having two full hearings, which is currently an option, may fix a flaw in the process.

Laurie Kadrich, Director of Planning, Development and Transportation, stated this section of the Code, relating to non-consensual designation, has not really been tested as the Landmark Preservation Commission has not referred a non-consensual designation to Council since the Code was written. There is no required timeframe for the Council to hear a nonconsensual designation recommendation from the LPC, and in the event the LPC decided to seek nonconsensual designation, the property owner is given 15 days to agree to seek consensual designation or not, and the Code is not clear as to whether that time involves hearing or notice requirements.

Karen McWilliams, Historic Preservation Manager, stated this Ordinance would create an option for the Landmark Preservation Commission to forward a recommendation to City Council when it is considering a nonconsensual landmark designation. This option would apply only to properties which are already designated on the national or state registers and would apply only when the LPC feels it has sufficient information on the property. The option would help create predictability to the property owner regarding when a hearing would be scheduled before Council. McWilliams detailed the specific changes which would be made a result of this Ordinance.

Rheba Massey discussed an article in the *Coloradoan* which seemed to imply that historic preservation is not practical and gets in the way of important future development. She discussed the importance of the completion of a comprehensive historic preservation plan and the development of a demolition review ordinance.

Lisa Ashbach opposed the Ordinance, stating changing City Code to reduce public input is not in the best interest of the City.

Mary Humstone stated Fort Collins is well known for its effective historic preservation program and opposed adoption of the Ordinance, questioning who will benefit from its proposed changes.

Harry Rose discussed nonconsensual landmark designation and opposed the Ordinance.

Gina Janett opposed the Ordinance, stating the appearance is that this change would solely benefit Woodward.

Carole Hossan opposed the Ordinance and stated the public needs time to oppose the demolition or degradation of historic properties.

Dee Amick opposed the Ordinance and supported the preservation of the structures on the Woodward property.

Randy Pope opposed adoption of the Ordinance, specifically citing its retroactivity and the fact that other decisions are made based on two readings.

Myrne Watrous opposed adoption of the Ordinance, stating the appearance is that this change would solely benefit Woodward.

Sally Ketchum opposed adoption of the Ordinance stating laws are intended to be fair (statement read by Carol Tunner).

Carol Tunner opposed adoption of the Ordinance, stating it will weaken the Landmark Preservation Code.

Councilmember Martinez requested staff input regarding the comments this change would solely benefit Woodward. Kadrach replied there is no question this proposed change came about in looking at the Woodward project, as it was the project which requested a timeline in terms of options the Landmark Preservation Commission could take. She stated this may or may not benefit Woodward.

Councilmember Martinez asked if there is any rush to pass this Ordinance. Kadrach replied the direction she has been given is that staff address confusing or otherwise unclear Code issues as soon as they arise.

Councilmember Cunniff noted most Land Use Code changes go before Council in a package. Kadrach replied in the affirmative.

Councilmember Cunniff asked under which rules the nonconsensual designation of the structures on the Woodward property is being processed. City Attorney Daggett replied it would be processed under the current Code at this time; however, if this Ordinance is not adopted, the LPC will not have the option to forward a designation recommendation to Council after only one hearing.

Councilmember Cunniff asked why this Ordinance is different in its retroactive application. City Attorney Daggett replied this process most directly affects an individual property owner with particular rights and, if that property owner is not anxious to have a second LPC hearing, they are in a different place than an applicant with a project development plan which is legally entitled to a certain process.

Councilmember Cunniff asked about the normal process for historic preservation ordinance changes. Kadrach replied there has been no normal process per se and stated the Landmark Preservation Commission is not the final decision maker in these types of instances.

Councilmember Cunniff asked about review processes for landmark preservation codes. Kadrach replied it is not as structured a process as with the building code.

Councilmember Campana asked when the most recent review of historic preservation codes occurred. Kadrach replied the process started in 2012 and changes were adopted in 2014.

Councilmember Campana asked about the purpose of the 15 days if the property owner either consents or disagrees to consent on day one. Kadrach replied that time is intended to allow for a further community discussion; however, if the owner has already made the decision not to consent, there may be no reason to wait two weeks to delay the next process.

Councilmember Campana stated the second hearing would be at the discretion of the LPC; therefore, that option is not being removed. Additionally, he supported placing a timeline on Council's hearing and stated he does not have any strong opinion regarding whether or not the changes are applied retroactively.

Mayor Pro Tem Horak stated he would remove Section 6 in a motion and more detailed language could be presented at Second Reading.

City Attorney Daggett stated there may be benefit in specifying the date on which the initiation would occur.

Councilmember Campana made a motion, seconded by Mayor Pro Tem Horak, to adopt Ordinance No. 011, 2016, on First Reading, changing Section 6 to read "on the effective date of the Ordinance."

Councilmember Cunniff expressed disappointment with the process of this Ordinance given the perceptions related to Woodward. He stated he would prefer to postpone consideration of the item.

Councilmember Stephens agreed with Councilmember Cunniff stating this process seemed rushed.

Councilmember Overbeck agreed with Councilmembers Cunniff and Stephens.

Councilmember Campana discussed the importance of addressing issues in codes in a timely manner.

Councilmember Cunniff expressed concern regarding jumping to conclusions and noted no information was presented on best practices. He suggested the possibility of postponement to a date certain. Additionally, he noted the LPC is likely already pre-disposed to not use the option given its decision to postpone consideration of this item at its last hearing.

Mayor Pro Tem Horak discussed the importance of due process and predictability and stated these changes are not substantive.

Mayor Troxell stated he would support the motion stating this change builds in clarity and predictability.

RESULT:	ORDINANCA NO. 011, 2016, ADOPTED AS AMENDED ON FIRST RE [4 TO 3]
MOVER:	Gino Campana, District 3
SECONDER:	Gerry Horak, District 6
AYES:	Martinez, Campana, Troxell, Horak
NAYS:	Stephens, Overbeck, Cunniff

17. **First Reading of Ordinance No. 015, 2016, Amending the City of Fort Collins District-Precinct Map. (Adopted on First Reading)**

The purpose of this item is to amend the City of Fort Collins District-Precinct Map to (1) align the City precinct boundaries with the County precinct boundaries, which were amended in May 2015; and (2) adjust Council district boundaries to achieve a required population deviation between the most populous district and the least populous district. The district boundaries were last adjusted in August 2012.

City Clerk Winkelmann stated this item would establish City precincts which match the County precinct boundaries and establishes City Council districts. The current deviation of Council

boundaries exceeds 20% and staff has developed six options for Council consideration, each of which will establish a deviation of less than 10%, as required by City Code. City Clerk Winkelmann detailed the six options available for Council consideration.

Eric Sutherland expressed concern regarding due process and stated the District map should have previously been adopted. He discussed the protest procedure regarding redistricting.

City Attorney Daggett stated the Code provides specific notice requirements for a proposed redistricting, which were met with publications made of the notice and information regarding all six potential options. This proposal is a City districting proposal based on the precinct maps.

Chief Deputy City Clerk Knoll stated the County changed its precinct boundaries in May 2015; therefore, this proposal would match the City's boundaries to the County boundaries which is beneficial from the standpoint of attaining voter registration information. The population deviation was discovered in the course of looking at the boundary changes.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 015, 2016, on First Reading, with option number one being inserted as attachment A.

Mayor Pro Tem Horak commended the fairness of this process through the City Clerk's Office.

Councilmembers Cunniff and Martinez and Mayor Troxell commended staff work on the item.

RESULT:	ORDINANCE NO. 015, 2016, ADOPTED ON FIRST READING [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

● **OTHER BUSINESS**

Councilmember Cunniff requested and received support to have staff look at the issue of emails and other contact with regard to ex parte.

Councilmember Cunniff requested and received support to examine the Land Use Code with respect to setbacks along non-public streets and alleys.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to 6:00 p.m., Tuesday, January 26, 2016, for the purpose of consideration a resolution relating to Fort Collins Housing Authority property and such other business that may come before Council.

RESULT:	MOTION TO ADJOURN TO JANUARY 26, 2016, ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

- **ADJOURNMENT**

The meeting adjourned at 10:40 PM.

Mayor

ATTEST:

City Clerk

January 26, 2016

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

Staff present: Atteberry, Daggett, Nelson

1. **Resolution 2016-008 Expressing the City Council's Direction and Intent to Facilitate the Fort Collins Housing Authority's Proposed Affordable Housing Development on the City's Land Bank Property on Horsetooth Road. (Adopted)**

The purpose of this item is to authorize City staff to continue to pursue the Fort Collins Housing Authority's (FCHA) proposal to develop the Horsetooth Land Bank parcel at 1506 West Horsetooth Road in a manner that would serve the needs of low income residents that is consistent with the intention of the land bank program's guidelines but that would require a change to City Code. This Resolution also states that the City expects to sell the parcel to the FCHA for a qualifying development that complies with City Code and the Land Use Code.

Mayor Troxell noted Resolution 2016-008 has been revised.

City Manager Atteberry stated the Resolution was revised to direct staff to bring forward an Ordinance authorizing the conveyance of the Horsetooth Land Bank property to the Fort Collins Housing Authority.

Beth Sowder, Social Sustainability Director, stated this Resolution provides guidance to staff and demonstrates the City's intention to sell the property to the Fort Collins Housing Authority for the purpose of developing affordable housing. The Housing Authority was selected in an RFP process as the City's development partner and the project is based on 96 housing units. A funding application through Colorado Housing Finance Authority needs to be met by February 2 and this action will assist the Housing Authority in that application.

Cheryl Distaso, Fort Collins Community Action Network, supported the item and use of the land; however, she expressed concern regarding the inclusion of Section 3 which would direct staff to look at a 60% AMI, noting the lower AMI categories need to be represented in the project.

Councilmember Stephens requested staff input regarding Ms. Distaso's comments. Sowder replied staff feels the 60% number keeps the average at 50%, but allowing some at 60% can also allow for more at 30%, which provides a more diverse income among residents. There are 43 units planned for the 30% AMI.

Councilmember Cunniff asked about the proposed rent rates at the various AMI levels. Kristin Fritz, Fort Collins Housing Authority, replied the 30% AMI units will be subsidized with project-based vouchers; therefore, the residents will be paying 30% of their income toward the rental amount.

Councilmember Cunniff asked if other options, other than the 60% AMI, have been considered. Sowder replied the Code change will apply to all of the Land Bank properties and noted a full evaluation will occur and changes could be made in the future based on that.

Councilmember Cunniff asked if the ability of the Housing Authority to apply for the grant is hurt if the City is not prescriptive regarding future Land Bank properties. Sowder replied in the negative.

Councilmember Stephens asked if 60% AMI gets into workforce housing. Ms. Fritz replied 60% AMI in Larimer County for a 2-person household is \$37,380 and a 30% AMI for a 2-person household is \$18,690.

Councilmember Campana made a motion, seconded by Councilmember Stephens, to adopt Resolution 2016-008 as revised.

Mayor Pro Tem Horak commended the work of the Housing Authority in the community.

Councilmember Campana commended the agility of staff and Council regarding this item.

Councilmember Martinez asked about the effect of property values near affordable housing projects. Sowder replied studies have shown property values actually increase near these projects.

Councilmember Martinez noted these projects all go through the same City planning process as do other housing projects.

RESULT:	RESOLUTION 2016-008 ADOPTED [UNANIMOUS]
MOVER:	Gino Campana, District 3
SECONDER:	Kristin Stephens, District 4
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

2. **Resolution 2016-009 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Building Review Board Decision Upholding the Chief Building Officer Determination Regarding the Coy Hoffman Silos. (Adopted)**

The purpose of this item is to make Findings of Fact and Conclusions regarding the appeal of the Building Review Board (BRB) decision to uphold the Chief Building Official's declaration that the two historic farm silos located at 1041 Woodward Way are "dangerous structures" and not structures that pose an "imminent danger" (also referred to "imminent threat"). The appeal was heard by City Council on January 19, 2016.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Resolution 2016-009.

Mayor Pro Tem Horak commended staff work on this issue, particularly Mike Gebo.

RESULT:	RESOLUTION 2016-009 ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

● **OTHER BUSINESS**

Councilmember Cunniff discussed recent allegations regarding the legitimacy of City revenue collections and TABOR requirements. He stated the City Attorney has drafted a public statement and may be willing to draft a more detailed statement if Council were willing to entertain releasing attorney-client privilege for that specific item.

Mayor Troxell stated a question was raised as to whether, under TABOR, the City is legally allowed to retain tax revenues generated from the Keep Fort Collins Great tax measure approved by the voters in November 2010 to the extent the amount collected exceeds the annual tax revenue estimate that was stated in the ballot language. The City is allowed to keep those revenues as the approved ballot language expressly authorized the City to retain all revenues.

Councilmember Campana suggested Council include emails regarding ex parte issues as part of the record.

Councilmember Cunniff agreed with Councilmember Campana's suggestion.

Mayor Pro Tem Horak suggested public comment opportunities at Council meetings remain free of ex parte issues.

City Attorney Daggett stated a staff group has been looking at the appeal process and these concerns will be included in that conversation. A work session has been recommended for the spring.

● **ADJOURNMENT**

The meeting adjourned at 6:24 PM.

Mayor

ATTEST:

City Clerk