

AGENDA ITEM SUMMARY

March 7, 2017

City Council

WITHDRAWN FROM AGENDA

STAFF

Jon Haukaas, Operations Mgr-Water Engineer & Field Svc
Judy Schmidt, Senior Assistant City Attorney
Ken Sampley, Water Systems Engineering Manager

SUBJECT

Resolution 2017-030 Approving the Boxelder Basin Stormwater Authority's Multiple Fiscal Year Payment Obligation to the John W. Day Family Partnership Settling Claims Related to Condemnation of Property for the Eastside Detention Facility.

EXECUTIVE SUMMARY

The purpose of this item is to approve the Authority's multiple fiscal year payment obligation of \$1,675,000 over a four year period to settle an eminent domain lawsuit with the John W. Day Family Partnership, finalizing acquisition of land and associated rights for property on which the Eastside Detention Facility (Facility) has been constructed. The approval of all members (Fort Collins, Wellington, and Larimer County) is required for any borrowing or multiple fiscal year financial obligation by the Authority under the 2008 Intergovernmental agreement (IGA) forming the Boxelder Basin Regional Stormwater Authority (BBRSA).

This item also authorizes the Mayor to approve and execute a memorandum of understanding or other agreement approving Authority's multiple fiscal year payment obligation described above and committing to negotiate with the members in good faith to agree upon a timeline for identifying, evaluating the impact of, and seeking agreement on a potential maximum amount of future obligations to be borne by the Town of Wellington under the IGA and other related matters.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

In connection with construction of the Eastside Detention Facility, the Authority filed a petition in condemnation and sought immediate possession with respect to certain real property owned by the Day Family Partnership. The court entered a written order granting immediate possession of the impacted Day property on April 13, 2015. The Authority deposited its appraised value of \$586,728 with the Court, and thereafter, the Authority constructed the Facility. The condemnation lawsuit continued to determine the final value of the taking and other issues raised by the property owner.

At the request of the parties, Retired Judge Fred Skillern conducted mediation on Friday, February 9, 2017 in an effort to settle the condemnation case and the soils compensation issue related to property on which a portion of the Facility is located. The Authority was represented by Gerry Horak, President of the Board, Stan Myers, BB RSA Manager, Greg White, general counsel to the Authority, and Malcolm Murray, Special Condemnation Counsel. The Day Family Partnership was represented by Tim Goddard, counsel, James Day and Kelly Day.

The parties identified a number of outstanding issues with potential monetary consequences, including the value of the taking, alleged damages due to impairment of the Day's water rights, capital gains taxes on the sale of C-BT shares alleged to no longer be usable on the property, compensation for soil removed from the Day property and utilized in construction of the Facility, the Day's attorneys' fees, expert fees and costs, and potential interest on the difference between any award and previously deposited amounts.

Ultimately, a settlement of \$1,675,000 was reached to resolve all outstanding issues between the parties and finalize acquisition of fee title (rather than a right-of-way) to that portion of the Day property at issue. The settlement amount is to be paid as follows:

1. \$586,728, which the parties confirm was paid in 2015, following the order for immediate possession in 2015;
2. \$500,000 on April 3, 2017;
3. A promissory note for the balance, to be paid, with simple interest at the Wall Street Journal Prime Rate on March 31, 2016 in the following installments:
 - a. \$100,000, with interest, on August 1, 2017
 - b. \$200,000, with interest, on May 1, 2018
 - c. \$200,000, with interest, on May 1, 2019
 - d. A final payment of \$88,272, with interest, on May 1, 2020.

The settlement includes certain additional non-monetary provisions (including certain easement rights) and is conditioned upon written approval by the Authority Board on or before March 15, 2017 and execution of a final settlement agreement with usual and customary terms for an eminent domain action.

The BBRSA Board approved the settlement, subject to Member approval of the multiple fiscal year payment obligations, at its meeting on February 16, 2017.

In order to facilitate approval of the multiple fiscal year payment obligation by all Members, this item also authorizes the Mayor to approve and execute a memorandum of understanding or other agreement committing to negotiate in good faith to agree upon a timeline for identifying, evaluating the impact of and agreeing upon a potential maximum amount of future obligations to be borne by the Town of Wellington under the IGA, to review member billing and collection processes, and to explore adjustment of service area boundaries to add properties benefited by, but not currently within, the Authority's service area.

CITY FINANCIAL IMPACTS

It is anticipated that the cost of this settlement will be funded by the regular stormwater impact and monthly services fees.

RESOLUTION 2017-030
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE BOXELDER BASIN STORMWATER AUTHORITY'S
MULTIPLE FISCAL YEAR PAYMENT OBLIGATION TO THE JOHN W. DAY
FAMILY PARTNERSHIP SETTLING CLAIMS RELATED TO CONDEMNATION
OF PROPERTY FOR THE EASTSIDE DETENTION FACILITY AND AUTHORIZING THE
MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING TO NEGOTIATE
IN GOOD FAITH TO RESOLVE RELATED ISSUES

WHEREAS, the Boxelder Basin Regional Stormwater Authority (“BBRSA” or “Authority”) is a separate governmental entity to be known as a drainage authority established by Larimer County, the City of Fort Collins and the Town of Wellington (collectively “Members” or individually “Member”) pursuant to C.R.S. Section 29-1-204.2(1) under that certain Intergovernmental Agreement for Stormwater cooperation and Management dated August 20, 2008 (the “IGA”) to protect life safety, reduce 100-year floodplain extents, protect existing structures, protect existing residences and businesses, reduce flood overtopping of 33 roads and 4 irrigation canals, reduce the costs to construct new stormwater infrastructure, improve emergency response, and reduce flooding on currently undeveloped areas that regional planning shows will be developed in the future; and

WHEREAS, the BBRSA participated in a mediation of the claims involved in a pending eminent domain case in Larimer County District Court, Colorado, 2014CV31057, *Boxelder Basin Regional Stormwater Authority v. John W. Day Family Partnership* (the “Day Lawsuit”) related to condemnation of property on which it constructed the Eastside Detention Facility (“EDF”); and

WHEREAS, at the conclusion of that mediation, the parties agreed to settle the Day Lawsuit on certain terms and conditions including the payment for the property on which the EDF was constructed in the total amount of \$1,675,000 according to a specified schedule over a multiple year period commencing in 2017 and ending in 2020 (the “Payment Obligation”), subject to the final approval of the BBRSA Board of Directors and approval of the Members; and

WHEREAS, Section 2.05(f) of the BBRSA IGA provides that any borrowing, issuance of debt, or multiple fiscal year financial obligation may only be approved by unanimous vote of the Members; and

WHEREAS, the City's approval of the Payment Obligation as a Member under the BBRSA IGA is necessary and beneficial to the public health, safety and welfare, and serves the inhabitants of the City by allowing the Authority to resolve the Day Lawsuit and finalize its interest in the affected portion of the property on which the EDF has been constructed to store and manage stormwater, thereby reducing or eliminating flood hazards in the Boxelder Floodplain and resulting damage to public and private properties, reducing or eliminating flood risk to citizens, increasing protection for public roads, bridges, and other facilities in and enabling development of properties located within the Boxelder Basin; and

WHEREAS, it is anticipated that funds for the Authority's Payment Obligation will be derived from stormwater impact and monthly service fees collected by the BBRSA; and

WHEREAS, in order to facilitate approval of the Payment Obligation by all Members, the City Council desires to cooperate in an effort to agree upon a memorandum of understanding or other agreement ("MOU") committing to negotiate in good faith to establish a timeline for identifying, evaluating the impact of and agreeing upon a potential maximum amount of future obligations to be borne by the Town of Wellington under the IGA and related matters.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That, as Member of the BBRSA, the City Council approves the Authority's undertaking of the Payment Obligation pursuant to Section 2.05(f) of the BBRSA IGA.

Section 3. That the Mayor, in consultation with the City Manager and the City Attorney, is authorized to approve and execute an MOU with the other Members of the Authority documenting all Members' approval of the Payment Obligation. Such an MOU may also include a commitment to negotiate in good faith to: (1) determine a timeline for identifying, evaluating the impact of and agreeing upon a potential maximum amount of future obligations to be borne by the Town of Wellington under the IGA; (2) review member billing and collection processes; and (3) to explore adjustment of service area boundaries to add properties benefited by, but not currently within, the Authority's service area; provided, however, that the MOU shall not amend or modify Member obligations under IGA unless or until an amendment or modification of the IGA is approved by the governing bodies of each of the Members.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 7th day of March, A.D. 2017.

Mayor

ATTEST:

City Clerk