

AGENDA ITEM SUMMARY

November 7, 2017

City Council

STAFF

Helen Matson, Real Estate Services Manager
Kurt Friesen, Director of Park Planning & Development
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 135, 2017, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands as Part of the Fossil Creek Trail System.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on October 17, 2017, authorizes the use of eminent domain to acquire a tract of land owned by the Clarendon Hills Homeowners' Association (CHHA) that is being used as part of the Fossil Creek Trail. In the 1990s, the Fossil Creek Trail (FCT) was constructed from Cathy Fromme Prairie at Taft Hill Road to the underpass at Shields Street. As the FCT comes to the east side of Shields Street, it crosses a portion of Tract D, Clarendon Hills Fourth Filing.

This tract is currently owned by CHHA. CHHA supports conveyance of a portion of Tract D to the City for the FCT. Due to restrictions in the Declaration of Covenants for Clarendon Hills, CHHA asked the City to use eminent domain procedures to accomplish this acquisition.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, October 17, 2017 (PDF)
2. Ordinance No. 135, 2017 (PDF)

AGENDA ITEM SUMMARY

October 17, 2017

City Council

STAFF

Helen Matson, Real Estate Services Manager
Kurt Friesen, Director of Park Planning & Development
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 135, 2017, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands as Part of the Fossil Creek Trail System.

EXECUTIVE SUMMARY

The purpose of this item is to obtain authorization from City Council to use eminent domain to acquire a tract of land owned by the Clarendon Hills Homeowners' Association (CHHA) that is being used as part of the Fossil Creek Trail. In the 1990s, the Fossil Creek Trail (FCT) was constructed from Cathy Fromme Prairie at Taft Hill Road to the underpass at Shields Street. As the FCT comes to the east side of Shields Street, it crosses a portion of Tract D, Clarendon Hills Fourth Filing. This tract is currently owned by CHHA. CHHA supports conveyance of a portion of Tract D to the City for the FCT. Due to restrictions in the Declaration of Covenants for Clarendon Hills, CHHA asked the City to use eminent domain procedures to accomplish this acquisition.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The developer of Clarendon Hills Fourth Filing was responsible for construction of improvements on Shields Street and to acquire the required property interests. This was specified in the development agreement and the approved plans titled South Shields Street Widening Project.

In 2015, a property owner in Clarendon Hills Fourth Filing came to the City Park's Department inquiring about a portion of the FCT in relation to his property. The City investigated and found that the City had not acquired all the appropriate property interests before constructing the FCT. During this time period, City staff also met with CHHA to discuss these issues and questions about the trail acquisition on Clarendon Hills Fifth Filing.

The City purchased the area of the FCT that crosses the property of the owner who identified the issue. City staff then met with property owners in Clarendon Hills Fourth and Fifth Filing to review the history and to discuss the City purchasing 1,263 square feet of Tract D, Fourth Filing. Agreement was reached to pursue the acquisition, but restrictions in the Declaration of Covenants for Clarendon Hills make it very difficult for CHHA to convey common area property. Therefore, the CHHA and City staff agree the use of eminent domain is appropriate. The City has used this approach several times in the past when faced with a similar situation.

CITY FINANCIAL IMPACTS

The City intends to purchase this small portion of Tract D. The City is required to pay market value for the acquired parcel. Normally, the next step would have been to get an appraisal for the portion to be acquired. One of the City's appraisers was contacted to discuss the appraisal. Tract D by itself is not a developable

parcel; however, it still provides value to CHHA as a buffer and a setback. Unfortunately, the cost of an appraisal would be \$4,000. With this information, the City contacted CHHA to discuss values and offered \$4,000 without the City acquiring a formal appraisal. The CHHA Board met and unanimously accepted the offer of \$4,000.

COPY

ORDINANCE NO. 135, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE ACQUISITION BY EMINENT DOMAIN PROCEEDINGS
OF CERTAIN LANDS AS PART OF THE FOSSIL CREEK TRAIL SYSTEM

WHEREAS, in the 1990s the City constructed the Fossil Creek Trail from Cathy Fromme Prairie on South Taft Hill Road to the east side of South Shields Street; and

WHEREAS, City staff recently discovered that a portion of the trail at the underpass at South Shields Street was constructed on a narrow tract of land called Tract D, Fourth Filing, owned by the Clarendon Hills Homeowners' Association ("Association"), although the City apparently failed to acquire an interest in Tract D before constructing the trail; and

WHEREAS, the Association is willing to convey to the City a portion of Tract D as more particularly described on Exhibit "A", attached and incorporated herein by reference (the "Trail Parcel"); and

WHEREAS, because the Declaration of Covenants, Conditions, Easements and Restrictions for Clarendon Hills places very restrictive requirements on conveyance of lands owned by the Association, the Association and City staff agree that it is appropriate for the City to initiate eminent domain proceedings to acquire the Trail Parcel; and

WHEREAS, the City will negotiate in good faith for the acquisition of the Trail Parcel; and

WHEREAS, the acquisition of the Trail Parcel is desirable and necessary for the continued operation and maintenance of the Fossil Creek Trail, is in the City's best interest, and enhances public health, safety, and welfare; and

WHEREAS, the City is authorized under Article XX, §1 of the Colorado Constitution and Article V, §14 of the City Charter to use the power of eminent domain to acquire real property as reasonably necessary for public improvements such as the Fossil Creek Trail; and

WHEREAS, the acquisition of the Trail Parcel may, by law, be accomplished through eminent domain.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

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

Section 2. That the City Council hereby finds and determines that is necessary in the public interest to acquire the Trail Parcel, as described on Exhibit A, for the purpose of the continued operation and maintenance of the Fossil Creek Trail.

Section 3. That the City Council hereby authorizes the City Attorney and other appropriate officials of the City to acquire the Trail Parcel for the City by eminent domain proceedings.

Section 4. That the City Council further finds that, in the event acquisition by eminent domain of any of the Property Interests, or any portion of them, is commenced, immediate possession of the same is necessary for the public health, safety and welfare.

Introduced, considered favorably on first reading, and ordered published this 17th day of October, A.D. 2017, and to be presented for final passage on the 7th day of November, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 7th day of November, A.D. 2017.

Mayor

ATTEST:

City Clerk

**DESCRIPTION OF A TRACT OF LAND TO BE CONVEYED
TO THE CITY OF FORT COLLINS**

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2,
TOWNSHIP 6 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT
COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 84.23 FEET OF TRACT D, CLARENDON HILLS FOURTH FILING.

CONTAINING 1,263 SQUARE FEET (0.029 ACRES), MORE OR LESS, AND BEING
SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT
NOW EXIST ON THE GROUND.

IT IS THE INTENT OF THIS DESCRIPTION THAT THE NORTH BOUNDARY OF THE
ABOVE-DESCRIBED TRACT BE PARALLEL WITH ITS SOUTH BOUNDARY.

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME AND
IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE,
BELIEF, AND OPINION



JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

EXHIBIT OF
 A TRACT OF LAND TO BE CONVEYED BY THE
 CLARENDON HILLS HOMEOWNERS ASSOCIATION
 TO THE CITY OF FORT COLLINS

SOUTH SHIELDS STREET



THE SOUTH 84.23' OF TRACT D,
 CLARENDON HILLS FOURTH FILING
 AREA: 1,263 S.F.

REMAINDER
 OF LOT 44
 CLARENDON HILLS
 FOURTH FILING

PORTION OF LOT
 44, CLARENDON
 HILLS FOURTH
 FILING CONVEYED
 TO THE CITY OF
 FORT COLLINS,
 REC. NO.
 20160001351

TRACT E, CLARENDON
 HILLS FOURTH FILING
 (CITY OF FORT COLLINS)

TRACT F
 CLARENDON HILLS
 FIFTH FILING
 (CITY OF FORT COLLINS)



JULY 27, 2016
 1"=20'



THIS EXHIBIT'S SOLE INTENT IS TO GRAPHICALLY REPRESENT AND AUGMENT THE ATTACHED PROPERTY DESCRIPTION. IT DOES NOT REPRESENT A MONUMENTED LAND SURVEY AS DEFINED IN C.R.S. 38-51-102. IN THE EVENT OF DISCREPANCIES BETWEEN THIS EXHIBIT AND THE ATTACHED PROPERTY DESCRIPTION, THE INFORMATION CONTAINED WITHIN THE ATTACHED PROPERTY DESCRIPTION SHOULD BE RELIED UPON.