

AGENDA ITEM SUMMARY

September 3, 2019

City Council

STAFF

Tawnya Ernst, Real Estate Specialist III
Carol Webb, Deputy Director, Utilities
Judy Schmidt, Legal

SUBJECT

Second Reading of Ordinance No. 106, 2019, Authorizing the Termination of the Declaration of Covenants, Conditions, Restrictions and Easements for Inverness Innovation Park.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 20, 2019, authorizes the termination of a restrictive covenant that is obsolete and no longer beneficial to property on East Vine Drive.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, August 20, 2019 (w/o attachments) (PDF)
2. Ordinance No. 106, 2019 (PDF)

AGENDA ITEM SUMMARY

August 20, 2019

City Council

STAFF

Tawnya Ernst, Real Estate Specialist III
Carol Webb, Deputy Director, Utilities
Judy Schmidt, Legal

SUBJECT

First Reading of Ordinance No. 106, 2019, Authorizing the Termination of the Declaration of Covenants, Conditions, Restrictions and Easements for Inverness Innovation Park.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the termination of a restrictive covenant that is obsolete and no longer beneficial to property on East Vine Drive.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 2009, Urban Development Partners, LLC and The Jensen Investment Group, LLC partnered to create an office/retail/industrial park development on East Vine Drive, the Inverness Innovation Park. To that end, the parties entered into Declaration of Covenants, Conditions, Restrictions and Easements for Inverness Innovation Park (Covenants) to define how the property would be used, developed, and managed. The legal description for the Covenants inadvertently included property that was not owned by Urban Development Partners, LLC and The Jensen Investment Group, LLC, 213 East Vine Drive, formerly owned by Lori Fleming and sold to the City in 2011 as part of Stormwater's willing buyer/willing seller program. 213 East Vine is now part of the Whitewater Park. At least one City-owned property on the south side of Vine was inadvertently included in the description. **(Attachment 1)** In addition, one of the Inverness Innovation Park parcels, Tract A, has since been conveyed to the City. Portions of the property subject to the Covenants have also been transferred to RMI2 Properties LLC and is now the site of Innosphere.

The successors to the Covenants, RMI2 Properties, LLC and Vine Drive Properties, LLC and the City of Fort Collins, want to terminate the Covenants for the following reasons:

1. The original Covenants inadvertently covered property not owned by Urban Development Partners, LLC or The Jensen Investment Group, LLC.
2. The original Covenants contemplated a comprehensive development and operational plan that has since been rendered obsolete by subsequent development that is not dependent upon or intended to be used in accordance with the Covenants;
3. The Covenants include limitations on use, common maintenance, and shared parking and other facilities that no longer provide a benefit to the encumbered properties and have been rendered obsolete by changed conditions;
4. The parties to the Covenants no longer require or wish to control future development as contemplated therein and wish to remove the reciprocal obligations imposed by the Covenants;

5. Termination of the Covenants fulfills a requirement of RMI2 Properties related to the RMI and City water quality lab agreement; and
6. No utility easements are dependent on the Covenants.

Staff agrees that the restrictive covenant should be terminated. Specifically, staff is asking for Council permission to have the City Manager sign a termination of covenants.

CITY FINANCIAL IMPACTS

This action will not impact the finances of the City. The covenants are mutual and since both parties are giving up their rights under the covenants, each party also benefits.

ATTACHMENTS

1. Location map (PDF)

COPY

ORDINANCE NO. 106, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING TERMINATION OF THE DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR INVERNESS INNOVATION PARK

WHEREAS, in 2009, Urban Development Partners, LLC and the Jensen Investment Group, LLC partnered to create an office/retail/industrial park development on East Vine Drive (the “Inverness Innovation Park”); and

WHEREAS, the parties entered into a Declaration of Covenants, Conditions, Restrictions and Easements for Inverness Innovation Park, dated December 23, 2009 (the Covenants”) to define how the property was to be developed, used and managed by imposing restrictions on use and development, as well as common management and use of certain areas for the mutual benefit of the owners; and

WHEREAS, Tract A and other portions of the Inverness Innovation Park have since been conveyed to the City and other portions of the property encumbered by the Covenants have been transferred to and developed by RMI2 Properties LLC (“RMI2”) and is now the site of the Innosphere; and

WHEREAS, the successors to the Covenants (RMI1 Properties, LLC, Vine Drive Properties, LLC and the City) wish to terminate because they contemplated a comprehensive development and operational plan that has since been rendered obsolete by changed conditions, including subsequent development that is not dependent upon or intended to be used in accordance with the Covenants, and the Covenants no longer provide a benefit to the encumbered properties; and

WHEREAS, the City’s agreement with RMI2 for the purchase of two condo units in a new building to be constructed to house water lab facilities calls for termination of the Covenants; and

WHEREAS, City Council has determined that the restrictive Covenants should be terminated so that they no longer encumber City property.

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 in consideration of the mutual benefits accruing to the owners of the properties subject to the Covenants, including the City, the City Council hereby authorizes the City Manager to execute a Termination of Covenants in the general form attached hereto as Exhibit A.

Introduced, considered favorably on first reading, and ordered published this 20th day of August, A.D. 2019, and to be presented for final passage on the 3rd day of September, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 3rd day of September, A.D. 2019.

Mayor

ATTEST:

City Clerk