

AGENDA ITEM SUMMARY

December 1, 2020

City Council

STAFF

Mark Sears, Natural Areas Manager
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 142, 2020 Authorizing the Conveyance of a Portion of City Property at Kingfisher Natural Area in Exchange for an Access Easement at 1807 East Mulberry Street.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on November 17, 2020, conveys a Quit Claim Deed of a portion of Kingfisher Natural Area, historically used for parking and access associated with the businesses occupying 1807 East Mulberry Street, to DD&B Investment Group, LLC (DDB) in exchange for a Non-Exclusive Access Easement from DDB to the City for access to Kingfisher Natural Area.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, November 17, 2020 (w/o attachments) (PDF)
2. Ordinance No. 142, 2020 (PDF)

AGENDA ITEM SUMMARY

City Council

November 17, 2020

STAFF

Mark Sears, Natural Areas Manager
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 142, 2020 Authorizing the Conveyance of a Portion of City Property at Kingfisher Natural Area in Exchange for an Access Easement at 1807 East Mulberry Street.

EXECUTIVE SUMMARY

The purpose of this item is to seek Council approval of a Quit Claim Deed conveying to DD&B Investment Group, LLC (DDB) a portion of Kingfisher Natural Area historically used for parking and access associated with the businesses occupying 1807 East Mulberry Street, in exchange for a Non-Exclusive Access Easement from DDB to the City for access to Kingfisher Natural Area.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

DDB owns the commercial building located at 1807 E Mulberry Street (1807). The building and parking area associated with 1807 were constructed in 1974 and a portion of the parking area (approximately 14,300 square feet) was constructed on a separate parcel located west of their property. The use of the parking area on the adjacent parcel continued for 26 years prior to the west parcel being purchased by Natural Areas (NAD) in 2000. NAD did not realize until after purchasing the west parcel that the parking lot extended onto that property, but has recognized the fence outlining the parking area as the boundary and in fact, has reconstructed the existing fence twice since the purchase in the historic location (**Attachment 1**). Currently no recorded agreement exists that allows for this use of Kingfisher Natural Area (Kingfisher) by DDB but based on the information currently known it appears that DDB likely had a claim to the property under its parking area through adverse possession prior to the City's purchase of the adjoining land.

Since NAD purchased this portion of Kingfisher in 2000, NAD has been using a portion of the 1807 parcel parking area (approximately 8,650 square feet) to access Kingfisher through an existing gate to use an existing gravel surface ditch road (**Attachment 1**). This use provides essential access to Kingfisher for NAD maintenance staff. No recorded access agreement or easement exists between DDB and the City that allows for this use. As such, DDB and the City have proposed that DDB grant an access easement and the City quitclaim the portion of Kingfisher under DDB's parking lot so that each party can continue its historic uses.

The City's Land Conservation and Stewardship Board considered and approved this approach in November 2019. The City and DDB then began the process of applying for a boundary line adjustment through Larimer County. This is a lengthy process that required the production of surveys, legal descriptions and plats. It took approximately six months to prepare the submission to the County, and another six months for the County to review and approve the proposed boundary line adjustment. Approval by Council and execution of the documents necessary to transfer the property interests between the two parties is the last step to complete the process.

CITY FINANCIAL IMPACTS

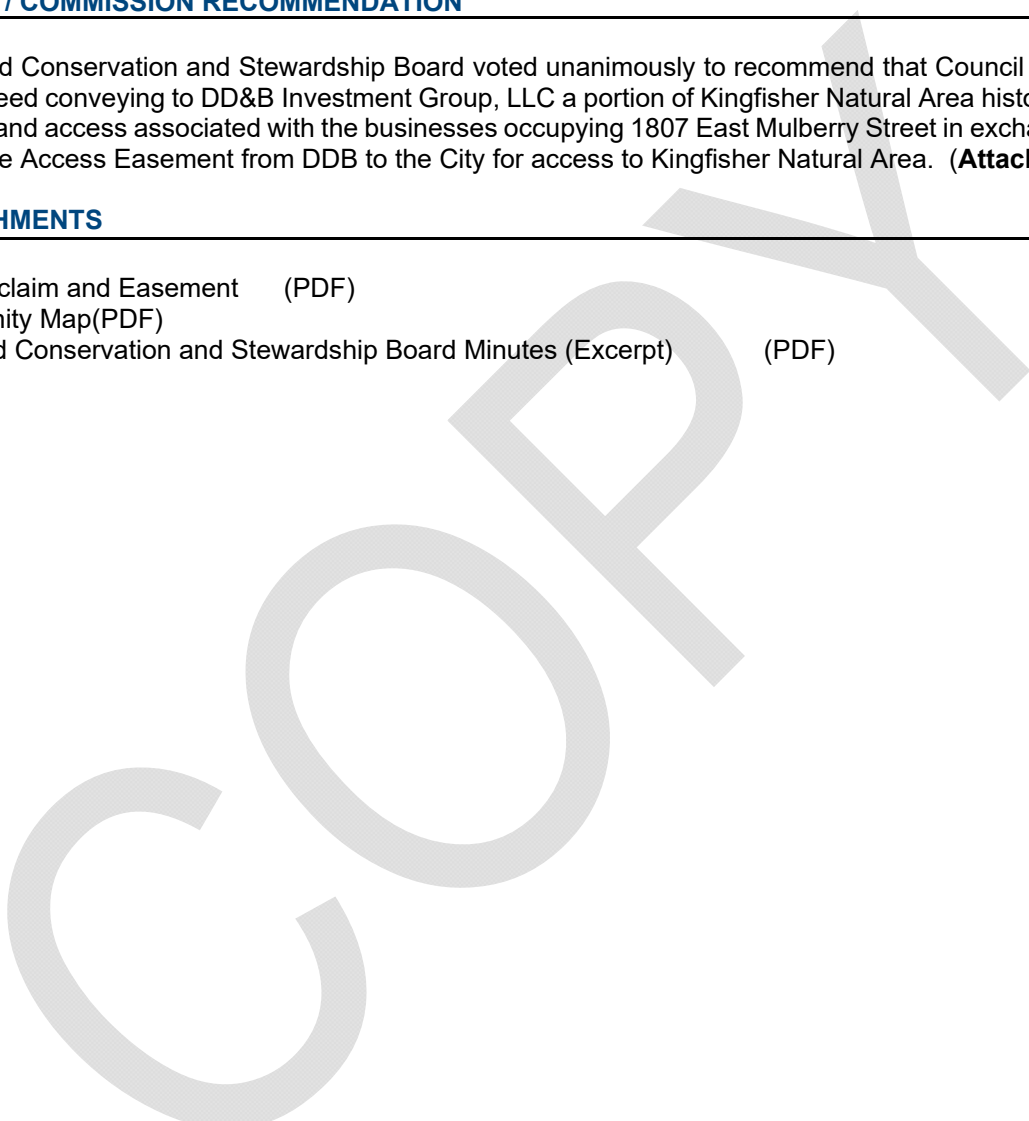
The Quit Claim Deed granted by the City to DDB will be in exchange for an access easement granted by DDB to the City. This is the most efficient and cost-effective way to resolve any issue about the property boundaries and benefits both parties. Securing NAD’s legal right to continue using the existing access across the DDB property to Kingfisher avoids the potential expense of litigating the boundary issues, or of constructing a new access road and the environmental impacts associated with such new construction.

BOARD / COMMISSION RECOMMENDATION

The Land Conservation and Stewardship Board voted unanimously to recommend that Council approve a Quit Claim Deed conveying to DD&B Investment Group, LLC a portion of Kingfisher Natural Area historically used for parking and access associated with the businesses occupying 1807 East Mulberry Street in exchange for a Non-Exclusive Access Easement from DDB to the City for access to Kingfisher Natural Area. (**Attachment 3**)

ATTACHMENTS

1. Quitclaim and Easement (PDF)
2. Vicinity Map(PDF)
3. Land Conservation and Stewardship Board Minutes (Excerpt) (PDF)



ORDINANCE NO. 142, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF A PORTION OF CITY PROPERTY
AT KINGFISHER NATURAL AREA IN EXCHANGE FOR AN ACCESS EASEMENT
AT 1807 EAST MULBERRY STREET

WHEREAS, the City is the owner of real property east of Lemay Avenue and South of East Mulberry Street known as Kingfisher Natural Area (the “City Property”); and

WHEREAS, DD&B Investment Group, LLC (“DDB”) is the owner of a parcel of real property located at 1807 East Mulberry Street that includes a commercial building and parking area constructed in 1974 (the “DDB Property”); and

WHEREAS, one parcel of the land that makes up the City Property (the “West Parcel”) was purchased by the City’s Natural Areas Department in 2000, and is adjacent to the south and west borders of the DDB Property; and

WHEREAS, after purchasing the West Parcel City staff discovered that the historic fence line between the West Parcel and the DDB Property is not actually on the boundary line between the two properties, and portions of the DDB Property parking lot were constructed on the West Parcel long before the City purchased it; and

WHEREAS, since purchasing the West Parcel, City staff has accessed it across the DDB Property using an existing gate and gravel ditch road, but without a formal access easement between the City and DDB; and

WHEREAS, DDB may have a claim to the portion of the West Parcel lying under its parking lot (the “Disputed Parcel”) through adverse possession of the property accruing prior to the City’s purchase of the West Parcel; and

WHEREAS, the Disputed Parcel is described on Exhibit “A”, attached hereto and incorporated herein by reference; and

WHEREAS, City staff and DDB have negotiated a proposed resolution to this property boundary issue whereby the City would convey to DDB by quitclaim deed whatever interest the City may have in the Disputed Parcel in exchange for DDB granting the City a permanent, non-exclusive access easement over the DDB Property (the “Easement”); and

WHEREAS, City staff has determined that the value to the City of securing the proposed Easement and not having to either litigate the boundary dispute or potentially build a different access route elsewhere on the City Property is at least equivalent to the value of the Disputed Parcel, and believes it is in the best interests of the City to resolve the boundary line issue in this way; and

WHEREAS, at its regular meeting on November 19, 2019, the Land Conservation and Stewardship Board voted unanimously to recommend that the City Council approve conveying the Disputed Parcel to DDB by quitclaim deed; and

WHEREAS, Section 23-111 of the City Code authorizes the City Council to sell, convey or otherwise dispose of any interests in real property owned by the City, provided the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City.

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 that the conveyance of the Disputed Parcel to DDB in exchange for the Easement as provided herein is in the best interests of the City.

Section 3. That the Mayor is hereby authorized to execute such documents as are necessary to quitclaim the Disputed Parcel on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 17th day of November, A.D. 2020 and to be presented for final passage on the 1st day of December, A.D. 2020.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 1st day of December, A.D. 2020.

Mayor

ATTEST:

City Clerk

**DESCRIPTION OF TRACT OF LAND TO BE CONVEYED FROM
THE CITY OF FORT COLLINS TO DD&B INVESTMENT GROUP, LLC**

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE SIXTH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING A PORTION OF TRACT A OF THE STOCKOVER BOUNDARY LINE ADJUSTMENT PLAT RECORDED DECEMBER 30, 2004 AT RECEPTION NO. 20040124202; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THAT TRACT OF LAND CONVEYED TO DD&B INVESTMENT GROUP, LLC BY WARRANTY DEED RECORDED MARCH 24, 2003 AT RECEPTION NO. 20030034533 (DD&B TRACT), AND CONSIDERING THE SOUTH LINE OF SAID TRACT TO HAVE AN ASSUMED BEARING OF N85°59'31"W, SAID LINE BEING MONUMENTED ON ITS EAST END BY A NO. 4 REBAR WITH A 1" YELLOW PLASTIC CAP STAMPED LS 25372, AND ON ITS WEST END BY A NO. 5 REBAR WITH 1-1/4" ORANGE PLASTIC CAP STAMPED LS 17497, BASED UPON GPS OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE EASTERLY BOUNDARY OF SAID TRACT A OF THE STOCKOVER BOUNDARY LINE ADJUSTMENT, S00°07'29"W, A DISTANCE OF 8.19 FEET;
THENCE N86°47'43"W, A DISTANCE OF 423.19 FEET;
THENCE N06°07'30"W, A DISTANCE OF 178.36 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID TRACT A OF THE STOCKOVER BOUNDARY LINE ADJUSTMENT;
THENCE N74°38'06"E, A DISTANCE OF 64.70 FEET TO THE NORTHWEST CORNER OF SAID DD&B TRACT;
THENCE S00°07'29"W, A DISTANCE OF 183.36 FEET TO THE SOUTHWEST CORNER OF SAID DD&B TRACT;
THENCE S85°59'31"E, A DISTANCE OF 380.52 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 14,046 SQUARE FEET (0.322 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

RESERVING UNTO THE CITY A 20-FOOT WIDE ACCESS EASEMENT OVER AND ACROSS THE ABOVE-DESCRIBED TRACT, BEING TEN (10) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID DD&B TRACT;
THENCE ALONG THE WEST LINE OF SAID DD&B TRACT, N00°07'29"E, 166.10 FEET TO THE POINT OF BEGINNING;
THENCE S74°39'32"W, A DISTANCE OF 62.80 FEET TO THE POINT OF TERMINUS, WITH THE SIDELINES OF SAID EASEMENT BEING LENGTHENED OR SHORTENED TO END ON THE BOUNDARIES OF THE ABOVE-DESCRIBED TRACT.

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
 FROM THE CITY OF FORT COLLINS TO
 DD&B INVESTMENT GROUP, LLC

MULBERRY STREET
 STATE HWY. 14

CENTERLINE OF CACHE LA POUVRE RESERVOIR DITCH NO. 2

BOOK 96, PAGE 194

BOUNDARY OF CACHE LA POUVRE RESERVOIR

DITCH NO. 2 PER COURT DECREE.

SEE NOTE 3

POINT OF BEGINNING, RESERVED 20' ACCESS ESMT.

POINT OF BEGINNING, RESERVED 20' ACCESS ESMT.

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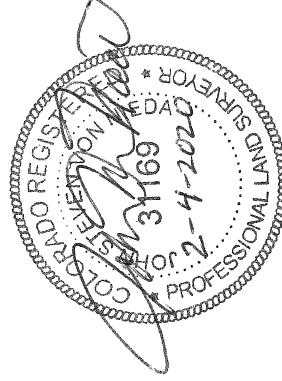
POINT OF BEGINNING, RESERVED 20' ACCESS ESMT.

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DD&B INVESTMENT GROUP, LLC

REC. NO. 20030034533



POINT OF BEGINNING
 NO. 5 REBAR WITH ORANGE
 PLASTIC CAP STAMPED LS17497
 SEE NOTE 1

POINT OF BEGINNING
 NO. 4 REBAR WITH
 YELLOW PLASTIC
 CAP STAMPED
 LS25372
 SEE NOTE 2

S85°59'31"E 380.52' (BASIS OF BEARINGS)

N86°47'43"W 423.19'

S0°07'29"W
 8.19'

CITY OF FORT COLLINS
 REC. NO. 20040124204

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.

NOTES:
 1. ALSO FOUND NO. 4 REBAR WITH BLUE PLASTIC CAP STAMPED LS10725 LYING S12°24'E, 2.76' FROM ACCEPTED CORNER. ALSO FOUND NO. 4 REBAR WITH YELLOW PLASTIC CAP STAMPED LS25372 LYING N15°38'E, 0.47' FROM ACCEPTED CORNER.

2. ALSO FOUND NO. 4 REBAR WITH ORANGE PLASTIC CAP STAMPED LS5028 LYING S20°04'E, 2.49' FROM ACCEPTED CORNER.

3. ALSO FOUND NO. 4 REBAR WITH ORANGE PLASTIC CAP STAMPED LS5028 LYING S06°57'E, 2.81' FROM ACCEPTED FOUND MONUMENT. ALSO FOUND NO. 4 REBAR WITH RED PLASTIC CAP STAMPED LS 17662 LYING S09°28'E, 2.50' FROM ACCEPTED FOUND MONUMENT.

JANUARY 23, 2020
 1"=60'



N74°38'06"E 64.70'

POINT OF TERMINUS, RESERVED 20' ACCESS ESMT.

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POINT OF TERMINUS, RESERVED 20' ACCESS ESMT.

S0°07'29"W 183.36'

166.10'

AREA:
 14,046 S.F.

S74°39'32"W

62.80'

62.80'

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N6°07'30"W 178.36'

S0°07'29"W 183.36'