

ORDINANCE NO. 105, 2022
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONDITIONAL CONVEYANCE OF CERTAIN CITY-OWNED
PROPERTY RIGHTS TO CHRIS VANDEMOER AND GEO. A. HENDERSON CO.

WHEREAS, by the adoption of Resolution 2003-121, City Council authorized the City Manager to proceed with investigation, planning, regulatory review processes, site acquisition, design, and construction of the Halligan Reservoir Enlargement Project, now referred to as the Halligan Water Supply Project (the “Project”); and

WHEREAS, the City is proceeding with Phase 1 of three phases of the Project, which will include site visits and data collection related to the permitting and design work for the reservoir enlargement and replacement or modification of the dam and diversion structures; and

WHEREAS, to accomplish the work of Phase 1, the City needs access to Halligan Reservoir; and

WHEREAS, Chris Vandemoer and Geo. A. Henderson Co. (collectively, “Vandemoer”) jointly own property adjacent to the reservoir and which is encumbered by conservation easements owned by The Nature Conservancy (“TNC”); and

WHEREAS, the primary access to the reservoir and the Halligan dam is by a private road that crosses Vandemoer’s property; and

WHEREAS, pursuant to the authorization by City Council in Ordinance No. 013, 2020, the City is engaged in eminent domain litigation with Vandemoer, TNC, and other parties to acquire access rights along the existing road for Phase 1 of the Project; and

WHEREAS, negotiations with Vandemoer and TNC have led to the possible settlement of access rights and real property acquisitions for all three phases of the Project; and

WHEREAS, part of the proposed settlement with respect to Vandemoer would include a cash payment by the City to Vandemoer as compensation for certain property rights the City would unconditionally acquire from Vandemoer, including land in fee, temporary and permanent access easements, and a permanent inundation easement; and

WHEREAS, the City owns real property at the reservoir by way of a Halligan Reservoir agreement with the North Poudre Irrigation Company (“NPIC”), dated November 8, 1993, pursuant to which NPIC conveyed property to the City and retained the right to the return of that property in the event the City terminates the project to enlarge Halligan Reservoir; and

WHEREAS, as additional consideration for said settlement, the City would convey certain property rights to Vandemoer, conditioned upon the City completing construction of the Project and NPIC’s right to reacquire property either irrevocably lapsing or being expressly released in writing by NPIC; and

WHEREAS, the property rights the City would conditionally convey to Vandemoer are described on Exhibits “A” and “B”, attached hereto and incorporated herein by this reference (the “City Property Rights”); and

WHEREAS, more specifically, the City would conditionally convey to Vandemoer fee interest in certain real property, subject to a restrictive covenant that would limit Vandemoer’s use of the property and subject to a flood easement to allow the City to inundate the property during high water events; and

WHEREAS, the City would also conditionally convey to Vandemoer a permanent shoreline access easement that would allow Vandemoer the use of other City property to access the reservoir; and

WHEREAS, if City Council approves the conditional conveyance, City staff has determined the City will receive sufficient value for the City Property Rights by way of the value of the property rights it would obtain from Vandemoer in the proposed settlement combined with the value of avoiding the risk and expense of eminent domain litigation to obtain property rights for all three phases of the Project; and

WHEREAS, the parties are engaged in ongoing negotiations with the intent of executing a settlement agreement in advance of the Phase 1 eminent domain trial set to begin October 31, 2022; and

WHEREAS, the proposed settlement of all three phases would include the City’s acquisition of property rights that are desirable and necessary for the design, permitting, construction, long-term maintenance and operation of the Project, is in the City’s best interest, and enhances public health, safety, and welfare because it is in furtherance of the Project, which will meet the demands of future Fort Collins Utilities customers and provide added reliability for all Utilities customers; and

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

WHEREAS, Section 23-111(b) of the City Code further requires that, for the conveyance of real property that is part of the City’s water or utility systems, the City Council must also find that the disposition will not materially impair the viability of the particular utility system as a whole and that it will be for the benefit of the citizens 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 determination and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds and determines, pursuant to Section 23-111(a) of the City Code, that it is necessary in the public interest and in the best interests of the City to conditionally convey the City Property Rights as described herein for the purpose of settling the eminent domain litigation with Vandemoer and TNC so that the City acquires all property interests it needs from Vandemoer and TNC for all three phases of the Project.

Section 3. That the City Council hereby finds and determines, pursuant to Section 23-111(b) of the City Code, that the conveyance of the City Property Rights will not materially impair the viability of the City's water utility system as a whole and will be for the benefit of the citizens and residents of the City;

Section 4. That the City Council finds and determines, pursuant to Section 23-114 of the City Code, that the disposition of the subject real property interests described in this Ordinance will result in the City receiving value in an amount equal to or greater than the fair market value of such land.

Section 5. That the City Council hereby authorizes the Mayor to execute deeds and other instruments of conveyance to conditionally convey the City Property Rights to Vandemoer, and the City Manager is authorized to execute such other documents related to the property conveyances as may be necessary, all 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, including, but not limited to, any necessary changes to the legal description of such property interest, as long as such changes do not materially increase the size or change the character of the interests to be conveyed.

Introduced, considered favorably on first reading, and ordered published this 4th day of October, A.D. 2022, and to be presented for final passage on the 18th day of October, A.D. 2022.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 18th day of October, A.D. 2022.

Mayor

ATTEST:

City Clerk