

ORDINANCE NO. 084, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF FOUR EASEMENTS, A TEMPORARY
CONSTRUCTION EASEMENT AND A REVOCABLE PERMIT ON CITY RIGHT-OF-WAY
AND CITY-OWNED PROPERTY TO LINDEN BRIDGES LLC FOR THE
ENCOMPASS-RIVER DISTRICT BLOCK ONE MIXED USE DEVELOPMENT

WHEREAS, the City is the owner of the right-of-way for Linden Street between Willow Street and the Poudre River (the “City Right-of-Way”); and

WHEREAS, the City is also the owner of a parcel of real property located adjacent to and under the Poudre River as described on Exhibit “A”, attached and incorporated herein by reference (the “River Parcel”); and

WHEREAS, the City Right-of-Way and the River Parcel are referred to herein as the “City Property”; and

WHEREAS, Linden Bridges LLC (the “Developer”) is the owner of a parcel of real property located at 418 Linden Street, adjacent to the City Property (the “Developer’s Property”); and

WHEREAS, the Developer has proposed a mixed-use development to be constructed on the Developer’s Property, which would consist of one building with two floors of office space, two floors of apartments, and a restaurant (the “Development”); and

WHEREAS, to facilitate the Development, the Developer has requested four permanent, non-exclusive easements on the City Property, as follows:

- an encroachment easement in the City Right-of-Way for a ramp, stairs, a planter box, a deck, and upstairs balconies as described on Exhibit “B”, attached and incorporated herein by reference (the “Encroachment Easement”);
- a construction, access and maintenance easement on the River Parcel as described on Exhibit “C”, attached and incorporated herein by reference (the “Access Easement”);
- a drainage easement on the River Parcel for drainage from the Developer’s Property to the Poudre River as described on Exhibit “D”, attached and incorporated herein by reference (the “Drainage Easement”); and
- a landscape easement on the River Parcel as described on Exhibit “E”, attached and incorporated herein by reference (the “Landscape Easement”); and

WHEREAS, the Encroachment, Access, Drainage and Landscape Easements are collectively referred to herein as the “Permanent Easements”; and

WHEREAS, the Developer would be required to maintain any improvements constructed within the Permanent Easements; and

WHEREAS, the Developer has also requested a temporary construction easement to do riverbank stabilization work as part of the Development, as shown on Exhibit “F”, attached and incorporated herein by reference (the “TCE”); and

WHEREAS, the Developer has also requested the right to come onto a portion of the River Parcel to trim existing trees and maintain the view of the Poudre River from the Development, and City staff is recommending that this right be handled through a revocable permit (the “Revocable Permit”); and

WHEREAS, the Revocable Permit would expire in twenty years if not sooner revoked, and would require the Developer to consult with the City Forester before doing any tree trimming on the River Parcel; and

WHEREAS, the area of the proposed Revocable Permit is described on Exhibit “G”, attached and incorporated herein by reference; and

WHEREAS, the City does not have an established policy on setting compensation for easements in the City’s rights-of-way; and

WHEREAS, in the absence of such a policy, compensation would be based on the fair market value of the easement granted; and

WHEREAS, the Developer would be charged \$13,449 as fair market value for the Encroachment Easement; however, if the City Council, on or before December 31, 2013, adopts a policy, whether by ordinance or resolution, for the granting of easements in the City’s rights-of-way, including charges therefor, the Developer will instead pay compensation for the Encroachment Easement based on the requirements of such policy, but not to exceed \$13,449; and

[ALTERNATIVE A] WHEREAS, the total value of the other proposed Permanent Easements, the TCE and the Revocable Permit is approximately \$17,675, but City staff is recommending that the City not charge for these property interests because the enhanced riverbank improvements, landscaping improvement and tree trimming services that the Developer will undertake as part of the Development provide benefits to the City that exceed this value; and

[ALTERNATIVE B] WHEREAS, the Developer will also pay the City the total value of the other proposed Permanent Easements, the TCE and the Revocable Permit, which is approximately \$17,675; 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, Article XI, Section 10 of the City Charter states that the Council may grant a permit for the use or occupation of any street, alley or public place, and that such permit shall be revocable by the City Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit.

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

[ALTERNATIVE A]

Section 1. That the benefits that the City will receive from conveying the Permanent Easements, the TCE and the Revocable Permit to the Developer, as recited above, exceed the difference between the fair market value of those property interests and the amount the Developer will pay the City for the property interests.

Section ~~2~~2. That the City Council ~~hereby~~therefore finds that the conveyance of the Permanent Easements, the TCE and the Revocable Permit to the Developer as provided herein is in the best interests of the City.

Section ~~2~~3. That the Mayor is hereby authorized to execute such documents as are necessary to convey the Permanent Easements, TCE and Revocable Permit to the Developer 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 descriptions of the property interests to be conveyed, as long as such changes do not materially increase the size or change the character of such property interests.

[ALTERNATIVE B]

Section 1. That the Developer will pay fair market value (or such other amount as may be determined under a future policy) for the Encroachment Easement and will pay fair market value for the other Permanent Easements, and the City will also benefit from the improvements the Developer will make on the River Parcel.

Section ~~2~~2. That the City Council ~~hereby~~therefore finds that the conveyance of the Permanent Easements, the TCE and the Revocable Permit to the Developer as provided herein is in the best interests of the City.

Section ~~2~~3. That the Mayor is hereby authorized to execute such documents as are necessary to convey the Permanent Easements, TCE and Revocable Permit to the Developer 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 descriptions of the property interests to be conveyed, as long as such changes do not materially increase the size or change the character of such property interests.

Introduced, considered favorably on first reading, and ordered published this 11th day of June, A.D. 2013, and to be presented for final passage on the 2nd day of July, A.D. 2013.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 2nd day of July, A.D. 2013.

Mayor

ATTEST:

City Clerk