

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



WATER COMMISSION

REGULAR MEETING

November 17, 2022, 5:30-7:30 p.m.

Online via Zoom

1. CALL TO ORDER

5:32 p.m.

2. ROLL CALL

- *Commissioners Present:* Jason Tarry (Chairperson), Jordan Radin, Kent Bruxvoort, Paul Herman, Rick Kahn, Tyler Eldridge, Randy Kenyon
- *Commissioners Absent - Excused:* Greg Steed (Vice Chairperson), John Primsky
- *Staff Members Present:* Kendall Minor, Jason Graham, Jen Dial, John Song, Kirk Longstein
- *Members of the Public:* None

3. AGENDA REVIEW

- Chairperson Jason Tarry briefly summarized items on the agenda

4. COMMUNITY PARTICIPATION

- None

5. APPROVAL OF MINUTES

CHAIRPERSON TARRY ASKED FOR COMMENTS AND REVISIONS ON THE OCTOBER 20 MINUTES.

Commissioner Radin moved to approve the October 20th minutes.

Commissioner Bruxvoort seconded the motion.

Vote on the motion: it passed unanimously, 5-0

Commissioners Herman and Kenyon abstained as they were not present at the October 20th Regular Meeting.

6. NEW BUSINESS

a. Staff Reports

(Attachments available upon request)

i. Financial Monthly Report

(meeting packet only)

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ii. **Water Resources Monthly Report**
(meeting packet only)

Discussion Highlights

Water Resources Manager Jen Dial commented that the City's biggest concern right now is to monitor the Colorado River basin as it feeds the Colorado Big-Thompson (CBT) supply. A Commissioner inquired about the discrepancy this month to take 41% from the Poudre River when usually it's a 50/50 split with Horsetooth Reservoir, wondering if it was due to water quality issues in the river this month. Ms. Dial responded that water quality is still impacted from the Cameron Peak fire, thus leading them to take majority from the reservoir. Staff Liaison Jason Graham added that there are no concerns specific to this month that deterred from the 50/50 split aside from the fire and just operational decisions from the water treatment plant. The Commissioner inquired further about the reservoir sitting at 51% of capacity, as it's a lean percentage and may impact achieving quota next year, to which Ms. Dial responded that the City is hopeful that they will meet a larger quota.

iii. **Halligan Water Supply Project Quarterly Report**

Staff Liaison Jason Graham presented a verbal update on the Halligan Water Supply Project, including staffing efforts and the City's progress along its intended timeline.

Discussion Highlights

Mr. Graham updated the Commission that they had completed the second draft of the Fish and Wildlife Mitigation Enhancement Plan. They are currently working with HR and a national firm to recruit a project manager, elevating the job title and pay scale to reach an adequate candidate pool. They are also going through proposals from engineering and construction firms to be able to adequately support the project manager when they're hired, for which they will leave open until the 27th with anticipation for an early December decision, but as there are no pressing time constraints or detriments to the permitting timeline, the candidate review process may extend into the new year. The City reached a settlement with VanderMeer and the Nature Conservancy regarding access to properties around Halligan, but there are still two remaining property owners with whom they are hoping to reach a decision together next year. The City hopes to see concrete cost estimates in January, and so the first quarter of 2023 will include intensive stakeholder engagement and outreach.

b. Regular Items

(Attachments available upon request)

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i. **1041 Regulations Update**

Senior Environmental Planner Kirk Longstein presented an update on the 1041 Regulations, the purpose of which is to give local governments agency during the review of particular development projects occurring within their jurisdiction, even when the project has statewide impacts. The term “1041” refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974, and the statutes regarding 1041 powers are also referred to as the *Areas and Activities of State Interest Act* (“AASIA”). The City of Fort Collins is developing regulations for water and highway projects that are contextually appropriate to Fort Collins and provide predictability for developers and decision makers and adequate guidance for review by City staff. The intent is to match or exceed state requirements to ensure the protection of public health, safety, welfare, the environment, and wildlife resources.

Discussion Highlights

A Commissioner asked to clarify the purpose of the moratorium. Mr. Longstein explained that the statutory process requires local jurisdictions to designate areas or activities as statewide interest, and a moratorium is required to be put in place for twelve months before permitting is allowed and Council can accept applications through the 1041 Regulations. Another Commissioner inquired if the City would be subject to its own 1041 review, to which Mr. Longstein responded that it would in the current version of the draft. It would be triggered by a material or significant change as a part of an expansion—but not for maintenance—as well as having a negative or adverse impact to a natural habitat buffer. The Commissioner continued by asking if it would be reviewed by staff, to which Mr. Longstein responded that it would undergo an initial staff review before going to the Planning and Zoning Commission and City Council for decision. Another Commissioner commented that having prairie dogs as a triggering factor may be best with a determined minimum number to avoid loss of time to undergo analysis and public angst during the review process. Another Commissioner inquired about the 90-day time frame from the completion of the application to staff review and whether that takes into account multiple rounds of comments and revisions. Mr. Longstein responded that the initial 60-day application submittal and completion check ensures that the application process won’t need to be repeated or slowed. Another Commissioner asked if there are procedural items written in that allows staff recommendation to be appealable, to which Mr. Longstein responded that if a party disagrees with staff recommendation, it is appealable to Planning and Zoning Commission, and the final decision would be with City Council, before otherwise starting over at the application level or a possible lawsuit. Another Commissioner

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commented that the nature of the permit is to review projects to avoid or minimize impact, and if it's unavoidable, then to mitigate the impact, and so it's not intended to stop projects but rather to move forward responsibly. Another Commissioner asked if any of the City's Capital Improvement Projects (CIP) or linear asset and plant upgrades trigger the 1041 review. Mr. Graham answered that it's still in discussion, as there are plant upgrades currently planned that has to be determined whether it would undergo the review. The Commissioner continued by asking who would perform the review and whether it would make sense from the taxpayers' perspective for internal review. Mr. Graham responded that it would be at the City Council's discretion for the intent of the 1041 Regulations. The Commissioner expressed concerns as they've been a part of 1041 processes through counties, and the cost and time of the reviews were significant, as well as wondering who would manage the department that leads these reviews and the resources required to do so. Another Commissioner inquired whether the language of the regulations have been compared to those of other nearby municipalities. Mr. Longstein responded that traditionally it's counties that have 1041 powers, from which the City is taking examples and using outside counsels, but ultimately, the City's regulations moved away from project thresholds as triggering factors and instead geographic or natural habitat buffers for reviewing projects.

7. COMMISSIONER REPORTS

None

8. OTHER BUSINESS

a. Discussion of 2023 Work Plan

9. ADJOURNMENT

7:35 p.m.

These minutes were approved by the Water Commission on December 15, 2022.