

**OPEN SPACE BOARD OF TRUSTEES**

**Wednesday, January 13, 2016**

**Council Chambers, 1777 Broadway**

**MEETING AGENDA**

*(Please note that times are approximate.)*

- 5:30 I.** Approval of Minutes
- 5:35 II.** Public Participation for Items Not Identified for Public Hearing
- 5:45 III.** Matters from Staff
- 5:55 IV.** Matters from the Board
- 6:05 V.** \*Consideration of a Motion Recommending to the City Council a proposed ordinance clarifying the roles of the Open Space Board of Trustees and City Council in requiring that any transfer of open space land to another department comply with the disposal requirements of Charter section 177.
- 6:30 VI.** Adjournment

\* Public hearing

**STUDY SESSION**

6:35 \*\*Study Session: North Trail Study Area Plan Refined Scenarios

**The Study Session may continue to January 14 if necessary. Same location and start time.**

\*\* The study session is open to the public but there will be no public participation.

## OPEN SPACE BOARD OF TRUSTEES

Minutes

Meeting Date December 9, 2015

### BOARD MEMBERS PRESENT

Shelley Dunbar      Frances Hartogh      Molly Davis      Kevin Bracy Knight      Tom Isaacson

### STAFF MEMBERS PRESENT

Tracy Winfree      Steve Armstead      Mark Gershman      Deryn Wagner      Kacey French  
Joe Reale      Brian Anacker      Kelly Wasserbach      Cecil Fenio      Leah Case  
Alycia Alexander

### GUESTS

Tom Carr, City Attorney

### CALL TO ORDER

The meeting was called to order at 6:02 p.m.

### AGENDA ITEM 1 – Approval of the Minutes

Tom Isaacson moved the Open Space Board of Trustees to approve the minutes from Nov. 16, 2015. Kevin Bracy Knight seconded. This motion passed unanimously.

### AGENDA ITEM 2 – Public Participation for Items not Identified for Public Hearing

None.

### AGENDA ITEM 3 – Matters from Staff

#### **Kacey French, Open Space Planner, gave an update on the Agriculture Resources Management Plan.**

Frances Hartogh asked how this will tie into the Master Plan. Tracy Winfree said results could be folded into the Master Plan but there is still more to discuss.

#### **Deryn Wagner, Environmental Planner, gave an update on the Rocky Mountain Greenway (RMG) Trail Project.**

Kevin Bracy Knight asked what will happen when connector trails are proposed to be built in the more rugged mountainous areas, such as Rocky Mountain National Park. Deryn said the RMG group hopes to create an application for smart phones showing users various connections and alignments. Kevin asked who has the final say on an alignment. Deryn said staff has a good relationship with RMG and believes they will continue to be amenable to making the North Trail Study Area (TSA) work.

Tom Isaacson asked if this program will be a source of money for building underpasses. Deryn said because it has regional and state-wide significance, it could help with funding, but it does not by nature come attached with money. Tom asked if there is possibility to re-open the discussion on using the Feeder Canal as a trail. Deryn said she believes it will be referenced in the feasibility study, but only to shed light on the work that has already been done. Tom asked how much priority is being given to trails that are open year round. Deryn said that has not been decided yet. Shelley Dunbar asked who is paying for this project. Deryn said that this is not yet defined. Shelley asked what the goal is for a completion date. Deryn said it is still unclear since there are many agencies involved; staff will have a better idea on the timeline after the public relations campaign.

Frances Hartogh asked if RMG will be able to request changes to trails that might change the characteristic of the North TSA. Deryn said no; they are deferring to Open Space and Mountain Parks (OSMP), and understand the intentions of the North TSA. Frances asked if all trails will need to be Americans with Disabilities Act (ADA) accessible as federal money is involved. Deryn said it is not confirmed that federal money will be involved. Frances asked if RMG has defined the term, “mix of uses.” Deryn said no. She said that using existing trails are a priority, and regulations will generally default to the specific agency.

**Steve Armstead, Environmental Planner, gave an update on the North Trail Study Area.**

Kevin asked what kind of public feedback the North TSA planning team is looking for. Steve said the worksheet that will be provided at the upcoming workshop will also be posted on the website. The worksheet focuses on specific questions about the refined scenarios and will be available until Jan. 3 2016.

Frances asked if the underpass was brought up during the conversation regarding the feasibility of a pedestrian light on Highway 36. Steve said it was not, though Colorado Department of Transportation (CDOT) knows that it is something staff is considering. Frances asked if staff would let the Board know how many permits have been requested for access to Joder. She asked if there will be a place for the public to still provide general comments. Steve said yes, but feedback on the specific questions is more helpful at this point. Molly said she thinks the Spotlight Webpage is a terrific idea. Shelley asked what the estimated cost is for the proposed underpass. Steve said it was discussed to be in the neighborhood of \$2 million.

The Board discussed the upcoming schedule for the North TSA study sessions, as well as how to make these meetings as efficient as possible.

**Tracy Winfree, Open Space and Mountain Parks Director, gave an update on various staff projects.**

Frances asked if the Hartnagle house and the Viele house are occupied. Tracy said they are not, but staff will be evaluating those possibilities.

**AGENDA ITEM 4 – Matters from the Board**

The Board discussed and finalized their feedback in response to the City Council questions.

**AGENDA ITEM 5 – Consideration of a motion recommending to the City Council a proposed ordinance clarifying the roles of the Open Space Board of Trustees and City Council in determining what constitutes an Open Space Purpose under Charter section 176 and requiring that any transfer of open space land to another department comply with the disposal requirements of Charter section 177.**

Tom Carr, City Attorney, gave a presentation to the Open Space Board of Trustees (OSBT) clarifying an ordinance regarding any transfer of Open Space land.

Frances asked if the definition of conveyance includes an interest in real property. Tom Carr said yes but noted that when going from one department to another, it is not conveying an interest in real property; it is conveying supervision over real property. Frances asked if interest in real property includes use. Tom said no, not in the legal interest.

**Public Comment**

Raymond Bridge, on behalf of the Boulder County Audubon Society, asked the Board to carefully consider the proposed ordinance. He said these changes are unnecessary since the Charter is already quite clear. Changing the title of Chapter 8 will imply that the chapter covers more than it actually does. The

roles of OSBT and City Council are already laid out in the Charter. In regard to transfer of Open Space property to another department, the Charter is clear that it be treated as a disposal; this proposed ordinance would not clarify the existing Charter requirements, it would muddy them.

Pat Billig, on behalf of PLAN-Boulder, said the proposed ordinance is not needed and the Charter is clear on both of the issues. No matter where the land goes, it is a disposal. The role of the Board in relation to council is clear; it is only with disposals where the OSBT can disagree with council and prevail. The proposed language could lead to confusion in the future, and it is better to stay with the core document.

Ruth Wright, Boulder, said she hopes the Board will not use the proposed language regarding the transfer of Open Space. She suggested keeping the language straight forward, and offered specific motion language to the Board.

Dick Harris, Boulder, said his understands that it is intentional that council has the final say. He thinks this proposal is counter to the Charter requirements. He said this needs a serious community debate and if any changes are necessary it needs to be done by a Charter amendment. He encouraged the Board to either reject the proposal or hold it for further review by an independent council.

### **Return to the Board**

Tom Isaacson asked if there is a scenario where something will go through council first without having gone to the OSBT, or if there is anything that prevents the Board from getting council input. Tom Carr said no, the amendment to the purpose of Open Space makes the process more clear. He said there is value for future boards if the ordinance states that they must go through the disposal process. Molly said the one thing she would change is adding the words "Open Space and Mountain Parks" to Chapter 3. She said she agrees that the Charter is very clear, and no further changes are necessary. Kevin said he is in support of the proposed language; having clarity is key.

Shelley clarified that the Board is looking at the transfer of Open Space as well as who can say what the Charter purposes are. She said she would support removing the word "supervise." Tom Carr said he would agree, but he would not recommend taking out the word "lands." He suggested adding that this is an interpretation of the Charter and not intended to change the Charter language. Kevin suggested including language to clarify which sections we must comply with in 177. The Board discussed having Tom Carr work on the language of the proposed ordinance and for him to come back to the Board at an upcoming meeting.

**ADJOURNMENT** – The meeting adjourned at 8:29 p.m.

These draft minutes were prepared by Alycia Alexander.



**CITY OF BOULDER  
OPEN SPACE BOARD OF TRUSTEES AGENDA ITEM**

**MEETING DATE: January 13, 2016**

**AGENDA TITLE:** Consideration of a Motion Recommending to the City Council a proposed ordinance clarifying the roles of the Open Space Board of Trustees and City Council in requiring that any transfer of open space land to another department comply with the disposal requirements of Charter section 177.

**PRESENTER:** Tom Carr, City Attorney

**EXECUTIVE SUMMARY:**

The purpose of this memo is to request that the Open Space Board of Trustees consider recommending a proposed ordinance that clarifies that a transfer of open space land to another department would be subject to the disposition requirements of Charter section 177. In addition, staff recommends two smaller changes to clarify the subject matter of two chapters. Chapter 8-3 includes regulations regarding both Parks and Recreation and Open Space. The title refers only to Parks and Recreation. Staff recommends amending the title to include Open Space. Chapter 8-8 is entitled “Open Space Visitor Master Plan Implementation.” The chapter includes sections that only broadly relate to the master plan. Staff recommends eliminating that reference in the title and in section 8-8-1, which describes the purpose.

The Open Space Board of Trustees considered a prior version of this ordinance at the December 9, 2015 board meeting. Members of the public questioned whether the ordinance was necessary, asserting that the Charter already provided for the two proposed changes. Staff offered to revise the ordinance to address the concerns expressed.

**STAFF RECOMMENDATION:**

Staff recommends that OSBT adopt a motion recommending the proposed ordinance for council consideration.

**PUBLIC FEEDBACK:**

The Open Space Board of Trustees held a public hearing on December 9, 2015. This item is being heard at this public meeting, advertised in the *Daily Camera* on January 10, 2016.

## **ANALYSIS:**

The Boulder Home Rule Charter includes significant restrictions on the use and disposal of open space land. Charter §§ 176, 177. In addition, the Charter includes the following broad definition of what constitutes open space land:

[A]ny interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on November 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for open space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the open space department, unless disposed of as expressly provided in section 177 below.

Charter § 170. The OSBT was created by the Charter to make recommendations to the City Council. Charter §§ 174-75. No disposal of open space land is permitted, except after an affirmative vote of at least three OSBT members. Charter § 177. This provision effectively gives the OSBT the right to preclude the city council from making a disposition.

The Charter provides that “no open space land owned by the city may be sold, leased, traded, or otherwise conveyed.” There is no provision in the Charter of the Boulder Revised Code addressing the process for transferring open space land from the Open Space and Mountain Parks department to another city department. In such a case, the land remains in city ownership and is not “sold, leased, traded or otherwise conveyed.” Simply transferring the land would not be consistent with the clear intent of the Charter to keep open space land for open space purposes. Thus, the proposed ordinance would add a provision providing that any transfer must be preceded by compliance with the disposal provisions of section 177.

The proposed ordinance includes several changes to address issues raised at the December 9, 2015 board meeting.

- The proposed ordinance includes a legislative intent section making clear that the ordinance is intended to fulfill the intent of the Charter.
- The proposed ordinance would change the title of chapter 8-8 to “Management of Open Space Lands.”
- The proposed ordinance eliminates the word “supervision” from the section making transfers subject to the disposition requirements of Charter section 177.

There was discussion at the December 9 meeting regarding the process for deciding whether an activity was considered an Open Space purpose and all agreed that it is already clear that the OSBT provides a recommendation to the City Council, which then makes the final decision. Accordingly, staff eliminated the section included in the prior version, which would have made the council’s authority explicit.

## **ATTACHMENTS:**

- A. Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 8 “PARKS, OPEN SPACES, STREETS, AND PUBLIC WAYS” BY AMENDING THE TITLE TO CHAPTER 8-3 BY ADDING “OPEN SPACE AND MOUNTAIN PARKS” BY AMENDING THE TITLE TO CHAPTER 8-8 BY ELIMINATING THE REFERENCE TO THE OPEN SPACE VISITOR MASTER PLAN, BY ADDING A NEW SECTION 8-8-11 “TRANSFER OF OPEN SPACE LAND” REQUIRING COMPLIANCE WITH SECTION 177 “DISPOSAL OF OPEN SPACE LAND” PRIOR TO A TRANSFER OF OPEN SPACE LAND TO ANOTHER CITY DEPARTMENT AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Legislative Intent

The intent of this ordinance is to clarify the respective authority of the Open Space Board of Trustees and the Boulder City Council. Under Section 177 of the Boulder Home Rule Charter, the Open Space Board of Trustees must approve any sale, lease, trade or other conveyance of open space land. The Charter does not expressly address whether a disposal occurs when there is a transfer of open space land from the Open Space and Mountain Parks department to another city department, without changing the legal title to the land, which is held by the city of Boulder. Although not expressly stated, it is the city council’s interpretation that the Charter intent is that open space lands be used only for an open space purpose. This ordinance is intended to clarify that any such transfer to another city department may only be completed after compliance with the disposition provisions of Charter Section 177.

Section 2. The title to Chapter 8-3 is amended to read as follows:

**Chapter 3 - Parks and Recreation – Open Space and Mountain Parks**

Section 3. The title to Chapter 8-8 is amended to read as follows:

**Chapter 8 – Management of Open Space Lands and Mountain Parks Visitor Master Plan Implementation**

Section 4. Section 8-8-1 is amended to read as follows:

**8-8-1. - Purpose.**

The purpose of this chapter is to protect the public health, safety and general welfare by establishing procedures and requirements necessary to ~~implement the Open Space and Mountain Parks Visitor Master Plan~~ manage open space lands.



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READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk