

Approved as Amended September 11, 2013
OPEN SPACE BOARD OF TRUSTEES
Minutes
Meeting Date August 14, 2013

BOARD MEMBERS PRESENT

Allyn Feinberg Tom Isaacson Shelley Dunbar Frances Hartogh Molly Davis

STAFF MEMBERS PRESENT

Mike Patton Jim Reeder Dean Paschall Eric Stone Kacey French
Phillip Yates Dave Kuntz Leah Case Michele Gonzales

GUESTS

Glenn Magee, Facilities Design and Construction Manager

CALL TO ORDER

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

AGENDA ITEM 1 – Approval of the Minutes

Tom Isaacson said on page 6, in the fifth line from the bottom, the word “places” should be “placed.” He said on page 8, under OSMP Expenses, the period in the middle of line 4 should be a comma. Allyn Feinberg said on page 8, the second line from the bottom should say, “they cannot make decisions that violate the charter.” Frances Hartogh said on page 2 in the middle of the last paragraph, it should say, “Frances asked when water rights are purchased whether the use changes.” She said on page 3, first paragraph, the word “regulations” should be added after “state” in the second line. She said the following language should say, “Allyn asked if they can frack those wells to get them to produce longer. Jim said they only own the 40 acres so, they would not be able to do a horizontal drill (makes fracking very difficult).” She said to capitalize the name “Culver” on page 3. Frances said on page 6, halfway down the last paragraph it should say, “Frances said OSMP employs highly trained professional scientists and if the data they come up with is being perceived as biased; staff should not need to bring in outside people.” Molly Davis said on page 1, the word “food” should be removed in front of “waste.” She said “on the weekends” should be added after “the trash does not get cleared out quickly enough.”

Tom Isaacson moved to approve the minutes from July 10, 2013 as amended. Frances Hartogh seconded. This motion passed unanimously.

AGENDA ITEM 2 – Public Participation for Items not on the Agenda

Andrew Shoemaker, Boulder, on behalf of the Local Organizing Committee (LOC) from the 2012 USA Pro Cycle Challenge, handed out a letter to the Board that Governor Bill Ritter wrote to the Boulder City Council in 2012. Andrew read a few excerpts from the letter. He said this race was carried out with minimal impacts and Boulder showcased its beauty to the community and to the world. Andrew quoted an article from the Denver Post saying, “the picture could not have been prettier if it had a frame surrounding it.” He said the Flagstaff Summit finish made this race what it is today. He said this race has become an economic boon for Colorado. Flagstaff helps this race, and this race helps to promote so much for Boulder including Open Space and cycling around the world. Andrew also referenced a letter to Community Cycles (distributed to the Board; a copy of this letter is saved in the Board book).

Sue Douglass, Boulder, said she disagrees with the comment regarding the means justifying the ends in terms of the ProCyce race. She said she questions the validity of the ProCycle race as each point in time affects the future.

AGENDA ITEM 3 – Director’s Updates

FAM presentation – Council Chambers Audiovisual Upgrades

Glenn Magee, Facilities Design and Construction Manager, gave an update to the Board regarding a project identified to increase the usability of the Municipal Building Council Chambers with a focus on replacing outdated audio-visual presentation equipment to enhance the user and public experience. The map showing the changes is saved in S:OSMP\admin\OSBT\Minutes\Minutes 2013.

Shelley asked what the expected time frame is for construction, and how will it affect meetings in the Council Chambers. Glenn said construction will last from Nov. 15 through Jan. 15. He said the options for alternate meeting rooms include the West Senior Center as well as the Library Auditorium. Allyn said having the option for those sitting at the dais to control their own laptop seems like a good way to configure space (vs. individual screens). Mike said sometimes complex maps can be hard to see so, in that sense having screens closer to the Board would be helpful. Glen said there will be big screens on the wall that should be much easier to see. Allyn said the bigger screens will be helpful as well as the additional access to the women’s restroom. She said moving the dais forward will allow for a better interaction with the public, and adding more office space is valuable as well. Mike asked if this project will address the overflow audience downstairs. Glen said things are still in flux for downstairs; upstairs will be the focus for now. Tom asked about how far away dais will be away from the steps. Glen said dais will move nine feet closer, and the main podium will be across from clerk desk. Molly asked if they have looked into lighting that would make the colors on the screens easier to see. Glen said all lighting will be upgraded to help with sight, and the richness in wall fabrics will be improved as well.

Open Space and Mountain Parks and Boulder County Parks and Open Space Joint Property

Management: Superior Associates Property Management Plan

Kacey French, Environmental Planner, gave a presentation to the Board regarding the Superior Associates Property Management Plan. The primary purpose of the plan is to document how Open Space and Mountain Parks (OSMP) will manage the jointly-owned property and to provide Boulder County Parks and Open Space (BCPOS) with a plan describing OSMP’s management.

Tom said this plan was well put together, and set a high precedent for how it should be set. He asked what the status of negotiations is with the Farmers Reservoir and Irrigation Company (FRICO) in regards to the possible connection to Marshall Lake. Mike said there has been no change. Tom said in the Trail Study Area (TSA) there was a suggestion for an additional trailhead, but his impression is there is no need for this. He said usage patterns are well established and the county trailhead is now in place. Molly asked for staff to add Road 66 on the map. She asked how OSMP is satisfying the Terra foundation funds. Mike said this grant has already been expended. Kacey said yes, it was used prior to the Grassland Plan. Molly noted that use on this trail is heavy. Mike said this will provide a commuter trail from Superior into Boulder. Molly asked if the Colorado Department of Transportation (CDOT) has temporary access. Kacey said yes. Frances asked if establishing in-stream flows would involve acquisition of water rights. Kacey said she believes OSMP has all water rights already. Frances asked if the water is currently being used for something. Kacey said the water has been diverted so this will bring water back to its natural flow.

Frances asked if there is a set definition for on-corridor. Mike said it varies property by property, but all have a set definition. Frances asked if there is something like this in Shadow Canyon. Dean Paschall said yes. Frances asked how the nighttime curfew can be encouraged. Mike said mostly with signage and the website. Frances asked how the language will read. Mike said staff will say the nighttime curfew is recommended or encouraged. Frances asked about the definition for camping. Mike said staff will send the definition to the Board. Frances asked what the definition of high quality passive recreation is. Mike said there is no clear definition; the Visitor Master Plan (VMP) came up with a way to determine what

was appropriate as well as a process for new activities. He said staff then looks at the advantages and analyzes the potential impacts. Allyn asked if there are other plans like this. Kacey said the Beech property is tentatively planned to be next.

AGENDA ITEM 4 – Matters from the Board

Pro Cycle

The Board held a discussion regarding the 2014 USA Pro Cycle Challenge, and the questions:

A) Whether Flagstaff Summit Drive is Open Space, because as part of Open Space, Charter Section 176 restricts allowed uses to passive recreation, which this race is not; and

B) Whether the permits required to hold the race are “exclusive” or “non-exclusive”, since if they are “exclusive”, they are governed by Charter Section 177, which requires an affirmative vote of the OSBT. This memo is saved in S\OSMP\admin\OSBT\Minutes\Minutes 2013\August.

Allyn wanted to note that she is not interested in suing the city (based on comments she has received). Allyn asked for the Boards input on this matter regarding a public hearing and a potential evaluation. She said the city attorney would not be available until after the election is over to answer questions from the Board. Frances said there was not enough time for the public to weigh in last year. Tom said he came prepared to discuss this topic, but if the Board feels the public has not had enough time then he is okay moving this to the next meeting. He noted the disadvantage of moving this topic is there is a light agenda so, it would be a shame not to take advantage of that. Mike said the September agenda is unlikely to be too full. Allyn said her intent with pulling information together was to help the Board decide whether to move forward. Tom said he does not feel like he needs a public hearing to be better informed. He said the question of whether competitive events are consistent with the charter is what this comes down to. Whether the road belongs to Open Space or not is not the issue; the city would be spending Open Space resources on the race so, either way this race has to meet Open Space purposes. Allyn said allowing an opportunity for the public to comment might be helpful, as well as giving the option for people to express their opinions before the Board makes any decisions is important. Molly said getting a good definition of the word “passive” should be the first step. She said she would like to see a public forum. Shelley said it is unlikely that the city manager and city attorney would change their viewing of this road, but said she liked Allyn’s suggestion of this race possibly being managed by a different city entity. Allyn added that as a trustee there is a responsibility for what happens on Open Space, and she does not want to overlook the potential conflict. Tom said last year a lot of discussion was held regarding where the race would end; Realization Point or Flagstaff Summit; he said this section ended up having very few spectators.

Tom said ten years ago the OSBT voted in favor of holding a running race on Open Space. This Board was not unsympathetic to conservation concerns, but did not discuss the race going against the charter. He said it should be looked at whether bikes are what go against the charter. Allyn said after this foot race there was a conversation regarding passive recreation (which does not include competitive events), and an ordinance was passed clarifying that there will be no competitive events. Shelley said current ordinance states that the city manager can waive the rules. Allyn said if it goes against the charter purpose it cannot be waived. Frances asked if the subject for the public hearing would be limited to whether the road is Open Space. Allyn said it seems like the fundamental question is if this is a use allowed under the charter. Tom said this race uses Open Space resources therefore it needs to be within charter purpose. He said if this is passive recreation then it fits into the charter purpose. If it is not, then the Board should ask if it promotes other charter purposes. If the Board were to say everything needs to fit the charter, a lot might have to be looked at.

Molly said the issue of carrying capacity needs to be looked at. She would like to focus on the burden to land and the volume of people. Shelley asked if at the next meeting staff could present the post race presentation that they did last year. This would be helpful to answer questions for those who are new or who forgot. Frances said last year everyone got lucky as the conditions were good. This race will continue

to grow, and may expand to areas not just on the pavement; the Board and public needs the opportunity to let opinions be voiced. The Board chose to put this on the September agenda and include public comment.

Other Matters from Board

Tom said there are a lot of paved paths, such as the Boulder Creek Path, that run through Open Space. He asked if these are viewed as Open Space, and would Open Space rules apply. Staff said they will send info to the Board on whether this is considered OSMP property. Tom asked who pays for the maintenance for these paths. Mike said transportation, Greenways, Public Works, and Parks and Recreation. He said OSMP might maintain weeds that would interfere. Allyn said electric bikes are a topic that might come up as the city is about to start a pilot program. She said whether these will be allowed on paths that run through Open Space (depending on management) will be a topic of conversation.

AGENDA ITEM 5 – Recommendation to designate the ERTL property as a Habitat Conservation Area*

Eric Stone, Resource Systems Division Manager, gave a presentation regarding the purchase of the Energy Resource Technology Land, Inc. (ERTL) parcel, located east of the Weiser property and west of 95th Street along Boulder Creek. OSMP has a contiguous ownership and the opportunity for consistent management of the Boulder Creek Floodplain and White Rocks ecosystems. The property has never been open for public access and will remain closed until a management plan is developed. This memo (saved in S:OSMP\admin\OSBT\Memos\2013) describes the rationale for designating ERTL as a Habitat Conservation Area (HCA) to provide guidance for future management of the property.

Shelley said she liked that the HCA designation was separated out from the purchase. She said in this case, it is easy and obvious for ERTL to be an HCA, but other properties it might not be as clear. Eric suggested that even if the purchase and the HCA are brought to the Board at the same time, staff can separate them to be two separate motions. The Board can decide whether to vote on both, or table the HCA designation. Molly asked how much flexibility is really needed when determining an HCA. Eric said with both Joder and ERTL staff was familiar so, there would not be a lot that surfaces after purchasing, but each property will be different. Dean noted that both the Joder and ERTL properties are in an area where a TSA has not happened and that is where the in depth evaluation will happen. Shelley said then designating ERTL prior to the TSA would be jumping ahead in the process. Allyn noted that the West TSA was an area of intense focus as people were very familiar with the area and had a clear idea of what they wanted. There will be less knowledge about the northern areas. She said an option for ERTL would be to deny public access until after the TSA. Eric said there is no public access except for East Boulder White Rocks. He also noted that a TSA process could take a long time, and there is a golden eagle nest on the property as well as a number of elk in winter time; this protection needs to be immediate. Shelley said if the current users (mostly neighbors) activities are not impactful, it would be nice to still allow use. Dean said there could be an option to designate the road as a trail, but that should wait until the TSA.

Public Comment

None.

Return to the Board

Allyn asked what will happen with the ERTL life estate. Eric said this has yet to be determined.

Motion

Tom Isaacson moved the Open Space Board of Trustees approve and recommend that the City Council pass a motion approving the designation of approximately 655 acres of the 685-acre ERTL property (8323 Valmont Road, Boulder, CO), shown in Attachment B, as part of the Lower Boulder Creek Habitat Conservation Area. Molly Davis seconded. This motion passed unanimously.

AGENDA ITEM 6 – Consideration of a motion to approve disposal of OSMP land described as a permanent easement on approximately 34,747 square feet or about 0.798 acres to Public Service Company of Colorado and Century Link to place power poles on the East Rudd property for the purpose of facilitating the construction of the planned Community Ditch Trail underpass at State Highway 93. This is a disposal of Open Space land under City Charter Section 177.

Jim Reeder, Land and Visitor Services Division Manager, gave a presentation regarding the disposal facilitating the construction of the underpass at State Highway (SH) 93. Currently, Public Service Company (PSCo) of Colorado has an electric power line and supporting poles that cross the area where the planned Community Ditch Trail underpass at SH 93 will be constructed. There are three poles that need to be relocated onto the OSMP property known as East Rudd. The poles cannot be relocated within Colorado Department of Transportation (CDOT) right-of-way (ROW) due to the grade differences and tight layout that will exist between the ditch, trail, underpass and retaining walls. Also, the highway itself will be widened to accommodate bike paths on both sides of the highway. At the present time, Century Link has a buried fiber cable in the CDOT ROW on SH 93. The building of the trail underpass will require this cable to be realigned and strung on the new power poles which PSCo will erect for its power line.

Tom said putting power lines on Open Space is not an Open Space purpose, but part of how Open Space integrates with other entities. Jim said that is why it had to come to the Board; it is considered a disposition (disposal).

Public Comment

None.

Return to the Board

Allyn asked about Century Link and if they do not come to an agreement with public service they would somehow have to relocate their line. Jim said yes, their line is underground at that point and once the underpass goes in they would have to shut down their power. Jim said he feels strongly they will accommodate this.

Motion

Tom Isaacson moved the Open Space Board of Trustees approve and recommend that City Council pass a motion approving the disposal of Open Space land described as a permanent easement approximately 34,747 square feet, or about 0.798 acres, on the East Rudd Open Space property to Public Service Company of Colorado and Century Link for the placement of power poles for an electric power line and media cable across the East Rudd property in order to facilitate the construction of the planned Community Ditch Trail underpass at State Highway 93. Shelley Dunbar seconded. This motion passed unanimously.

ADJOURNMENT – The meeting adjourned at 8:33 p.m.

These minutes were prepared by Leah Case.