



TOWN BOARD REGULAR MEETING
August 22, 2011 - 7:00 P.M. Town Board Chambers
301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

MINUTES

A. CALL TO ORDER

1. Roll Call

Mayor John Vazquez
Mayor Pro-Tem Matthew O'Neill
Robert Bishop-Cotner
Mike Carrigan
Kristie Melendez
Don Shanfelt
Don Thompson

Also present:	Town Manager	Kelly Arnold
	Town Attorney	Ian McCargar
	Director of Planning	Joe Plummer
	Director of Parks & Recreation	Melissa Chew
	Chief of Police	John Michaels
	Management Intern	Lindsey Haggerty
	Town Clerk	Patti Garcia

2. Pledge of Allegiance

Town Board Member Thompson led the Pledge of Allegiance.

3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board

Town Board Member Thompson motioned to approve the Agenda as presented; Town Board Member Carrigan seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

4. Board Liaison Reports

- Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission Alternate
No report.
- Town Board Member Carrigan – Water & Sewer Board
Town Board Member Carrigan reported the Water & Sewer Board had met August 10 at which Management Intern Haggerty provided a water conservation update. The original plan was established in 2008 with a goal to reduce water use in Windsor by 12% which has not yet been attained. Mr. Carrigan noted that water rates had increased by about 5%; the increase was passed on to the consumer. There have also been discussions of a local water treatment plant; it was noted that Town Manager Arnold and Director of Engineering Wagner are meeting with other jurisdictions regarding the topic.
- Mayor Pro-Tem O'Neill – Library Board; Planning Commission; North Front Range/MPO Alternate
Mayor Pro-Tem O'Neill stated the Planning Commission had met last Wednesday at which an extension of a site plan for Windsor Auto was approved. The Planning Commission also approved two conditional use grants for oil and gas which will be on the September 12 Town

Board agenda, along with the conditional use grant that is on the current Town Board agenda for consideration. It was noted that Town Board Member Thompson met with the two Library Director applicants.

- Town Board Member Melendez – Chamber of Commerce; Cache La Poudre Trail Board; Downtown Development Authority (DDA)
Town Board Member Melendez reported the DDA would be meeting August 24 with DOLA and a regular meeting on August 25. It was also reported that the Cache La Poudre Trail Board would be holding the 2011 Poudre River Trail Challenge at Island Grove Park on September 17 from 11-1.
- Town Board Member Thompson – Parks & Recreation Board (PRAB); Great Western Trail Board; Tree Board
Town Board Member Thompson stated that PRAB would be meeting on September 6 and the Tree Board would be meeting on September 23. Mr. Thompson reported the Great Western Trail Board would be holding a bike rode from 8-10 on Saturday.
- Mayor Vazquez – North Front Range/MPO; Student Advisory Leadership Team (SALT)
Mayor Vazquez reported the MPO meets on the first Thursday of the month.

5. Suicide Prevention Week Proclamation

Mayor Vazquez read the proclamation and Krismichelle Nohavec addressed the Town Board regarding suicide prevention.

6. Public Invited to be Heard

Kristie Duffy - 1057 Pinyon Drive, Windsor stated her frustration regarding the inability to live stream town board meetings from the town's website, concerns regarding the larger number of mosquitos at local parks, and weeds in public areas that were in violation of town ordinances.

Emily Green, 548 Trailwood Circle, Windsor addressed the Town Board regarding her concern for the feral cat situation in Boardwalk Park.

B. CONSENT CALENDAR

1. Minutes of the August 8, 2011 Regular Town Board Meeting and August 15, 2011 Special Meeting – P. Garcia
2. Liquor License Renewal – Senor Jalapeno, Tavern Liquor License – P. Garcia
Mayor Vazquez requested an amendment on the August 15, 2011 Special Meeting minutes to note that Town Board Member Melendez was absent.

Town Board Member Bishop-Cotner motioned to approve the Consent Calendar with the amendment to the August 15, 2011 minutes; Town Board Member Melendez seconded the motion.

Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

C. BOARD ACTION

1. Ordinance No. 2011-1415 - An Ordinance Repealing, Amending, and Re-Adopting Chapter 18, Article I of the Windsor Municipal Code with Respect to the Imposition, Collection and Disposition of Park Improvement Fees Paid in Conjunction with the Development of Land within the Town of Windsor, Colorado
 - Second Reading
 - Legislative action

- Staff presentation: Ian McCargar, Town Attorney

Town Board Member Thompson motioned to approve Ordinance No. 2011-1415, An Ordinance Repealing, Amending, and Re-Adopting Chapter 18, Article I of the Windsor Municipal Code with Respect to the Imposition, Collection and Disposition of Park Improvement Fees Paid in Conjunction with the Development of Land within the Town of Windsor, Colorado on Second Reading; Town Board Member Carrigan seconded the motion.

Town Attorney McCargar reported on the ordinance and noted its adoption would accomplish two things; it requires the Town Board to appropriate each fiscal year the dollars that accumulate in the Neighborhood Parks Development Fee Fund and it deletes the responsibility for developers to submit fees in lieu of neighborhood park construction or to build neighborhood parks. Mr. McCargar recommended that the Town Board may want to discuss a substitute developer fee to make up for the development fees not being submitted to replace the revenue loss. Mr. McCargar noted that there had not been any changes to the ordinance since first reading.

It was noted that the funds could not be used for maintenance; they could only be used to develop infrastructure.

Mayor Vazquez opened the meeting for public comment.

Aaron Lore, Windsor resident, stated his concern that once the parks are built the burden of the operations and maintenance would be on the citizens through the collection of taxes, etc.

Town Board Member Melendez inquired as to the maintenance costs. Director of Parks and Recreation Chew noted information had been submitted which found that once the parks were completed there would be an impact on staff and equipment of a one-time expense for a vehicle and one additional full-time staff member.

The Town Board discussed the financial aspects of an additional staff member with Town Manager Arnold noting there were funds available for the one-time expense of equipment along with an additional full-time staff member.

Town Board Member Thompson commented that grass could be used that does not require as much maintenance to alleviate staff time required at the parks.

Staff has proposed the projects include the following parks to be completed next summer: Prospect, Poudre Heights and Bison Ridge.

Ms. Chew noted the Master Plan for the parks would come before the Parks & Recreation Advisory Board and Town Board for consideration.

Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O’Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

2. Public Hearing – Amendment to Chapter 16 of the Windsor Municipal Code adopting certain regulations pertaining to administrative site plans for redevelopments
 - Staff presentation: Joe Plummer, Director of Planning

Mayor Pro-Tem O’Neill motioned to open the Public Hearing; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O’Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

Director of Planning Plummer reported on the agenda item and noted the amendment establishes criteria for redevelopment or reuse projects that would be required to be brought before the Planning Commission and Town Board.

Mr. Plummer noted the information had been reviewed by the Town Board on July 11, 2011 with review by the Planning Commission at their August 4, 2011 meeting. The Planning Commission recommended approval of the amendment as presented.

Mayor Vazquez opened the meeting for public comment to which there was none.

Town Manager Arnold stated the purpose of the ordinance was to help articulate redevelopment issues that may have interest to the public and surrounding areas, such as increased parking or lighting; there has not been a process in place for the Town Board to review redevelopment.

Mayor Pro-Tem O'Neill motioned to close the Public Hearing; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

3. Ordinance No. 2011-1416 – An Ordinance amending Chapter 16 of the Windsor Municipal Code adopting certain regulations pertaining to administrative site plans for redevelopments
 - First Reading
 - Legislative action
 - Staff presentation: Joe Plummer, Director of Planning

Town Board Member Bishop-Cotner motioned approve Ordinance No. 2011-1416, An Ordinance amending Chapter 16 of the Windsor Municipal Code adopting certain regulations pertaining to administrative site plans for redevelopments; Town Board Member Carrigan seconded the motion.

Director of Planning Plummer had no additional information to add and stated he was available for questions to which there were none.

Mayor Vazquez noted the public would have opportunity to comment at second reading of the ordinance.

Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

4. Public Hearing – Conditional Use Grant to allow an adult daycare home located in an RMU, Residential Mixed Use, zoning zone district - 163 Sunflower Drive – Tom Trotter, property owner
 - Staff presentation: Elizabeth Fields, Associate Planner

Mayor Pro-Tem O'Neill motioned to open the Public Hearing; Town Board Member Melendez seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.**

Director of Planning Plummer reported the same Conditional Use Grant had been before the Town Board for consideration in June; the ownership is being transferred to the spouse of the original applicant and the Town Code does not allow for the transfer of a Conditional Use Grant.

Thomas Trotter, applicant, addressed the Town Board and noted that he would comply with all the conditions as set forth in the original Conditional Use Grant; only the name was changing on the application.

Mr. Plummer stated the Planning Commission had reviewed the application on August 17, 2011 and recommended approval with the conditions as follows:

1. The previously approved Conditional Use Grant for 163 Sunflower Drive will expire on September 1, 2011.
2. The total number of residents in the proposed facility shall be limited to a maximum of two (2) people.
3. The property shall maintain compliance with all the requirements of Section 16-7-80 of the Municipal Code.
4. The applicant shall comply with all federal, state and local regulations for such facilities including, but not limited to, the requirements of the state and county health departments, the Windsor-Severance Fire Protection District and SAFEbuilt Colorado.
5. The applicant shall apply for and receive approval of a building permit for any new landings, ramps, or other accessible features that are proposed to be installed.

Mayor Pro-Tem O'Neill motioned to close the Public Hearing; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:

Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.

5. Conditional Use Grant to allow an adult daycare home located in an RMU, Residential Mixed Use, zoning district - 163 Sunflower Drive – Tom Trotter, property owner
 - Staff presentation: Elizabeth Fields, Associate Planner
 - Quasi-judicial action

Mayor Pro-Tem O'Neill motioned follow the Planning Commission's recommendation to approve the Conditional Use Grant; Town Board Member Carrigan seconded the motion.

Director of Planning Plummer did not have any additional information to provide.

Roll call on the vote resulted as follows:

Yeas – Bishop-Cotner, Carrigan, O'Neill, Melendez, Shanfelt, Thompson, Vazquez
Nays – None. Motion carried.

6. Discussion of Oil & Gas Mineral Rights Leasing Process
 - Staff presentation: Kelly Arnold, Town Manager; Ian McCargar, Town Attorney

Mayor Vazquez addressed the public and noted that the agenda item was a discussion and learning opportunity for the Town Board as they have been following the issue just as the community has. The presentation at the meeting will be an opportunity for everyone to learn what the rights and limitations are of the industry and the property owners.

Town Manager Arnold reported approximately two months ago the Town Board had authorized the Town to seek special counsel for oil and gas purposes to educate staff and the Town Board. The presentation would discuss the process and bring forward information on topics such as surface and mineral rights along with other questions related to the industry. Mr. Arnold also noted that Town Attorney McCargar would follow up with a presentation regarding local regulations.

Ken Lind, 355 Eastman Park Drive, Windsor, addressed the Town Board and stated he and his staff would be providing an educational presentation for purposes of providing basic information regarding oil and gas rights. Mr. Lind noted that Jonathan Batt and Chrys Hinze had put the presentation together with Mr. Batt addressing the Town Board.

Town Manager Arnold stated the presentation would be available on the Town's website on Tuesday for public viewing.

Mr. Batt greeted the Town Board, staff and the public and noted the firm serves as special counsel to the Town of Windsor and did not represent any oil and gas companies.

The power point presentation "Oil and Gas Basics – 101" was presented in full by Mr. Batt.

Mr. Batt began the presentation by discussing property rights and noted that the mineral estate may be separated from the surface ownership. The surface owner does not have the right to prevent the development of the subsurface mineral estate. If an oil & gas lease is silent about surface use, there is an implied right to use the surface to develop the minerals. Mr. Blatt noted the "Reasonable Accommodation Doctrine" is "An operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land." Mr. Blatt noted that the "Reasonable Accommodation Doctrine" does not allow a surface owner to completely block the development of minerals under the surface.

Oil and gas lease provisions were brought forward with definitions provided for the granting clause – defines what rights are granted and defines the property; duration clause – generally includes a primary and secondary term; royalty clause is defined as the payment amount and method of calculation and pooling clause is when leased lands are combined with adjoining lands to form a pool or unit.

Oil and gas pooling was noted with voluntary pooling being defined as the landowners agreeing to pool their lands and influence the conditions of drilling and operations. Mr. Batt reported that compulsory or forced-pooling is found in most states as they have statutory provisions allowing or compelling landowners to enter into a pooling arrangement. Pooling considerations for property owners were provided as follows:

- Voluntary pooling – the landowner negotiates with the potential developer concerning the terms and conditions of the development of their property. Mr. Batt noted that when voluntary pooling is done, they have had success with negotiating surface use agreements with the mineral developer. The property owners can influence provisions and operations, royalties received are from 12.5% to 20% and bonus payments could be received.
- Forced pooling – property owners do not have any direct control, royalty of 12.5% and there are questions whether the post production costs terms can be imposed with no bonus payments. Forced pooling is currently being used by mineral development companies to consolidate both leased and non-participating lands into drilling units.

Mr. Batt reported on the Pugh Clause and provided the following definition: Pugh Clause – the lease will end in all non-producing areas when the primary term ends. This means that drilling operations or production in a part of the pooled unit will not preserve the whole lease. Portions of the leased lands that are not held by production are released from the lease.

Mr. Batt reviewed the regional municipalities that have oil and gas development in their municipalities. A bubble map was provided that noted the wells that are in the region with 605 wells being noted; 408 are vertical wells and 197 are deviated wells. An overview of how drilling takes place and the ability for the drilling to go horizontally and not intrude on specific properties was noted.

An overview of regulatory information, including the Oil and Gas Conservation Commission Act, was provided. The Oil and Gas Commission's mission is: To foster the responsible, balanced development, production, and utilization of oil and gas in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

Mr. Batt described the application and the process noting the well location, formations and spacing and drilling plans are included on the application. The information is reviewed by engineers and permit

technicians at the Colorado Oil and Gas Conservation Commission. Additional conditions can be imposed where necessary to protect public health and the environment.

Mayor Vazquez inquired if there was a required notification period of an application being submitted and if a resident could request a copy of an application submitted to the Oil and Gas Conservation Commission. Mr. Lind noted that it is not a requirement that the drilling company provide the information but it is public information. Mr. Lind noted it could be researched on the Commissions website.

The Location Assessment is where water comes into play; the Assessment includes information about equipment being used, nearby improvements, surface and ground water, access roads, current and future land uses and soils. The information is reviewed from an environmental standpoint with conditions being imposed where necessary to protect the public health and environment.

Mr. Blatt reviewed Public Notice Rule 305 which provides that special notice is given to the local government, the surface owner and the owners of surface property within 500 feet.

Rule 306 states that an operator must consult in "good faith" with the surface owner. The "Good Faith Consultation" is defined as "Such good faith consultation shall allow the surface owner or appointed agent the opportunity to provide comments to the operator regarding preferences for the timing of oil and gas operations and preferred locations for wells and associated facilities." Mr. Blatt stated this is the time that there is dialogue between the operator and the landowner during the permitting process.

Mayor Vazquez noted that the Good Faith Consultation is non-binding. Mr. Blatt stated that their firm emphasizes the importance of the voluntary negotiations in the pooling process. As a law firm, they strongly recommend working out the details during the pooling process. A mutual negotiation of conditions is the best possible outcome in these types of scenarios.

Town Board Member Thompson inquired if there was a process for protest to which Mr. Batt affirmed. This will be discussed at a later date after research.

Mr. Batt reviewed the approval process noting that after staff review and any consultation and public comment, the Location Assessments and Applications for Permit to Drill are approved by the Director of the Colorado Oil and Gas Conservation Commission. A permit can be approved, and the COGCC can also include conditions on the permit. Applicants must file financial assurances along with meeting any additional reporting requirements.

An audience member inquired if it was too late to hire legal counsel to help them in the process. Mayor Vazquez stated the current application was through Larimer County and the Town of Windsor was not privy to the application or information.

Mr. Batt went on to review fracing and explained that hydraulic fracturing is the process of creating small cracks, or fractures, in the underground geological formations to allow oil or natural gas into the wellbore and increase production. Mr. Batt referred people to the Oil and Gas Conservation Commission website for additional information regarding the process.

An overview of the fracing process was reviewed; it was noted that chemicals are used and the COGCC states that 99.5% of fracing fluid is water and sand. Mr. Batt provided information on how groundwater is protected and stated specific requirements made by the COGCC have to be met before use. The COGCC has 15 inspectors for the state of Colorado who performed over 17,000 inspections last year.

There is a provision for a complaint process; Mr. Blatt reviewed the process as provided by the COGCC. When a complaint is filed, they will respond within 24 to 48 hours. Water will be tested and

analyzed; samples of gas, oil produced water, flow back and other wastes from nearby oil and gas wells will be collected. They compare analytical results to background and regional water quality along with comparing stable isotopic signatures and composition of gas samples to determine the source. If there is a verified complaint, then it goes to the state for a hearing with the Colorado Oil and Gas Commission addressing concerns regarding the issue with the mineral developer.

Town Manager Arnold asked at what point can an application go to the COGC; does the drilling company that makes the application need to have all or a majority of the rights under their control before the application is submitted? Mr. Batt stated the application notes they have to be an interested party which would require them to have some rights to petition. Typically the first landowner in the negotiation sets the stage for the other landowners. Mr. Batt noted his firm strongly encourages negotiating oil and gas leases and as well as surface use agreements up front. It is when the application goes through the permitting process that the forced pooling occurs with those that have not negotiated an agreement. Mr. Lind stated that forced pooling can take place after a permit has been applied for and issued.

Town Attorney McCargar addressed the Town Board and noted there are permitting processes that apply to oil and gas operations proposed for land within the Town of Windsor. He understood that many people in attendance were looking for information regarding a particular project proposed in unincorporated Larimer County which is out of the Town's corporate limits and thus is not subject to the Town's permitting processes.

Windsor uses a Conditional Use Grant (CUG) process for these types of uses. It is available for specific landowners/interest owners to come before the town board to petition to do something unique on their property. Local land use regulations cannot invade the authority of the OGCC, state law is very clear that this is a matter of statewide concern that local governments cannot invade in general.

Mr. McCargar noted there are exceptions and noted that local regulations may apply in areas where the local regulations can be harmonized with State regulations in the following areas:

- Protection of public water supplies, soil erosion, wildlife and vegetation, livestock, geologic hazards, cultural and historic resources, and recreation resources.

Mr. McCargar noted a recent CUG that was approved for a gravel mining operation which the Town established conditions due to its proximity to the Town's trail system.

Members of the public addressed the Town Board and legal counsel regarding the presentation and the proposed project. There was discussion of the arbitration process and bond posting, notification procedures, drilling techniques, concerns regarding loss of property value, the issue of forced pooling, concerns regarding Ranchers Exploration's application regarding incorrect information.

Town Board Member Melendez stated that Governor Hicklenlooper is working toward full disclosure of materials used in the process. Mr. Lind stated that drilling techniques cannot be negotiated but aesthetics could be. Mayor Vazquez stated we have little control over the aesthetics.

The citizens requested the Town Board get involved in some fashion; Town Board Member Thompson volunteered to contact Commissioner Donnelly. It was noted by David Stansfield, 2072 Ridge West Drive, that property owners from River West & Ridge West were creating a committee related to the upcoming wells.

Mayor Vazquez stated that he has found that historically working with the industry is the best direction to go; if a property owner waits to be forced pooled it generally does not come out well. He noted the citizens need to contact Larimer County regarding their concerns as well.

Members of the public noted they had received a letter from Ranchers Exploration which the Town has not seen or received yet. The Town does own the streets in the subdivisions and should be receiving the letter.

There were several citizens who came forward and stated concern regarding the industry and the leasing process; they were encouraged to seek legal counsel.

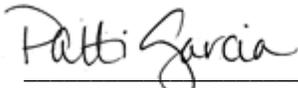
Mayor Vazquez thanked everyone for their patience and noted the power point presentations would be available on the Town's website.

D. COMMUNICATIONS

1. Communications from the Town Attorney
No communications.
2. Communications from Town Staff
Chief of Police Michaels noted that Irish Festival would be starting Friday night with Harvest Fest the following weekend.
3. Communications from the Town Manager
No communications.
4. Communications from Town Board Members
None.

E. ADJOURN

Upon a motion duly made, the regular meeting was adjourned at 9:53 p.m.



Patti Garcia, Town Clerk