



TOWN BOARD REGULAR MEETING

October 10, 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
Robert Bishop-Cotner
Mike Carrigan
Kristie Melendez
Don Shanfelt
Don Thompson
Mayor Pro-Tem Matthew O'Neill

Absent:

Also present:	Town Manager	Kelly Arnold
	Town Attorney	Ian McCargar
	Director of Planning	Joe Plummer
	Director of Parks & Recreation	Melissa Chew
	Manager of Parks & Open Space	Wade Willis
	Director of Finance	Dean Moyer
	Director of Engineering	Dennis Wagner
	Director of Human Resources	Mary Robins
	Chief of Police	John Michaels
	Town Clerk	Patti Garcia
	Management Intern	Lindsey Haggerty

2. Pledge of Allegiance

Town Board Member Shanfelt 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 Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:

Yeas – Bishop-Cotner, Carrigan, Melendez, Shanfelt, Thompson, Vazquez

Nays – None. Motion carried.

4. Board Liaison Reports

- Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission Alternate
Town Board Member Bishop-Cotner reported the Historic Preservation Commission would be meeting Wednesday at 5:45 p.m.
- Town Board Member Carrigan – Water & Sewer Board
Town Board Member Carrigan noted the Water & Sewer Board would be meeting on Wednesday morning and a topic of discussion will be the water fund budget.

- Mayor Pro-Tem O’Neill – Library Board; Planning Commission; North Front Range/MPO Alternate
No report.
- Town Board Member Melendez – Chamber of Commerce; Cache La Poudre Trail Board; Downtown Development Authority
Town Board Member Melendez reported that the Chamber of Commerce had met this week and items of discussion included the Windsor Bucks program which should be in effect by the end of the month, the Halloween trick or treating event being held downtown on Saturday, October 29 from 1-3 p.m. and a Christmas promotion scheduled for December 3rd in Boardwalk Park in conjunction with the Windsor Downtown Development Authority (DDA). At the Cache La Poudre Trail Board meeting Wade Willis and the Poudre Trail Manager discussed the ADA regulations and their relation to trail requirements. The DDA is moving forward and is anticipating presenting an Intergovernmental Agreement to the Town Board at the October 24 work session.
- Town Board Member Thompson – Parks & Recreation Board; Great Western Trail Board; Tree Board
Town Board Member Thompson reported the Tree Board would be meeting in two weeks and the Great Western Trail would be meeting next week. The Parks and Recreation Advisory Board met last week and focused discussion on review of the 2012 budget.
- Mayor Vazquez – North Front Range/MPO; Student Advisory Leadership Team (SALT Report on 3rd Monday of the month)
Mayor Vazquez noted that representatives of SALT would be present on the third Monday of the month to provide an update.

5. Public Invited to be Heard

Carrie Crow, 8813 Longs Peak Circle, Windsor, addressed the town board regarding concerns related to oil and gas drilling and how property owners will be made aware of options. Mayor Vazquez responded and noted that local regulation is very difficult as the state is the regulator of the oil and gas industry. Due to a current operation in Larimer County located in the Windsor growth management area, the Town Board is giving an effort to create a line of communication with Larimer County and have opportunity to provide input along with trying to establish communication at the state level which ultimately provides the permit.

B. CONSENT CALENDAR

1. Minutes of the September 26, 2011 Regular Town Board Meeting – P. Garcia
2. Liquor License Renewal – American Pizza Partners dba Pizza Hut, 3.2% Beer on Premises Retail License – P. Garcia
3. Liquor License Renewal – Weld County Enterprises Inc. dba Corner Liquor, Retail Liquor Store License – P. Garcia
4. List of Bills – D. Moyer

Town Board Member Carrigan motioned to approve the Consent Calendar as presented; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows:

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

C. BOARD ACTION

1. Public Hearing – An Ordinance Amending Chapter 17 of the Windsor Municipal Code to Adopt Certain Regulations Pertaining to the Applicability of Tree, Shrub, Bush and Related Landscape Standards and Appealing and Readopting Portions of Chapter 7, Article IV of the Windsor Municipal Code, with Respect to Trees, Shrubs and Bushes within the Town of Windsor, Colorado

- Legislative action
- Staff presentation: Wade Willis, Manager of Parks & Open Space

Town Board Member Melendez 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, Melendez, Shanfelt, Thompson, Vazquez

Nays – None. Motion carried.

Manager of Parks & Open Space Willis addressed the Town Board and reviewed the memorandum submitted with the packet. Mr. Willis reported the current landscape standards had been adopted in 2006 and since that time staff has had the opportunity to work within those standards and discover areas that could be modified to provide a better mechanism for use. The material was reviewed and recommended for approval by the Planning Commission; the information was also shared with the development community and they were given opportunity to comment.

Mr. Willis provided a summary of the recommended actions which includes:

1. Appeals and re-adopts portions of Chapter 7 of the Code to clarify that plants (trees/shrubs/bushes) planted in public property will be maintained by the Town. This includes parks, rights of way, planting strips, etc. unless addressed in a separate agreement with a metro district or HOA. It also adds a new sub-section to this existing Code section to make clear that plants planted in private property are the responsibility of the property owner. These two clarifications distinguish between Town-maintained plants and owner-maintained plants.
2. Amends Chapter 17 of the Code, specifically applying the 2011 Tree and Landscape Standards to the development of land within the Town. Any relief from the stated requirements of the standards would occur as a waiver *prior to* Town approval of the landscape plans for a given development (matching that associated with the Commercial Corridor Plan). The property owner will sign off on all approved landscape plans, with or without waivers or variance.
3. If required landscaping is not complete at the time a Certificate of Occupancy (CO) is requested, the Planning Department can issue a Temporary CO, conditioned upon a date certain for compliance and secure a Letter of Credit (LOC), Performance Bond or other sufficient security for 110% of the estimated cost of the landscaping. This would enable the Town to complete the landscaping according to the approved plan if not completed by the property owner by the specified date.
4. After a business is already in operation, the Forester has authority enforce landscape maintenance compliance with the approved plan. For example, if the landscape material died or is removed, it no longer matches the approved plan and must be brought back to that level. This would be accomplished through a letter referencing the development agreement.

Mr. Willis requested the following be entered into the public record: all packet materials as distributed in the October 10, 2011 Town Board meeting for Item C.1. including the staff cover memo, the Planning Commission Minutes, Landscape Standards, summary of changes and comparison to neighboring communities, and all testimony that will be entered during the public hearing at the current meeting.

Town Board Member Carrigan asked if the requirements were for homeowners or if this was just for the development community. Mr. Willis responded that it is primarily for the development community although the Town does have a process in which we require that a homeowner, in their public right of way, submit a site plan as the maintenance of the right of way falls on the Town of Windsor. Trees in a public right of way are taken care of by the Town.

Town Board Member Melendez asked if there had been any issues or concerns voiced by the developers when the Standards were presented. Mr. Willis stated they requested clarification of the intent of the language; to his knowledge there were specific issues brought forward.

It was noted the Standards would not create an additional financial burden on the developers; there would only be a financial issue if they failed to stay in compliance with the landscape standards that were submitted and would have been part of their development agreement.

Town Board Member Melendez also asked if the ordinance was to make the Standards enforceable. Director of Parks & Recreation Chew stated the last piece of the ordinance would bring tree and landscape standards to the same level as the other components of a development agreement such as streets, water and sewer.

Mayor Vazquez stated he supported cleaning up current standards but was not in favor of creating more regulations. Mr. Willis noted the intent of the ordinance is to clarify and further ratify the standards.

The Town Board discussed who is responsible for maintenance related to developments, metropolitan districts and homeowners associations (HOA). Mr. Willis noted that those standards already exist in the current landscape standards.

Town Attorney McCargar noted that the development agreements that he has worked on for Windsor state that the maintenance for landscaping, entry way features, etc. have to be taken on by an entity that has perpetual existence such as a metro district or HOA.

Town Board Member Shanfelt stated concern regarding the language of the document as he is supportive of instructive language but was not in favor of language that states that things must be done regardless if it makes sense or not. Mr. Shanfelt referred to his email that was included in the Board packet regarding his HOA's landscape plan responsibilities and financial issues that have arisen due to having to take care of the landscaping which was implemented by the developer. Mr. Shanfelt spoke directly regarding the costs taken on by the HOA after the developer is done along with tying other areas, such as water conservation efforts, into the Plan.

Mayor Vazquez opened the meeting for public comment.

Aaron Lore, 1004 Indian Trail Drive, Windsor, noted that regulating this type of effort drives the cost of homes up due to the requirement of the developer to put trees in and landscape. Mr. Lore also encourage water conservation efforts be addressed in the Plan.

Mr. Willis noted that the Town has minimum requirements that need to be met; a developer can go above those requirements if they desire. Mr. Shanfelt stated concern that once the HOA takes over, they take on the responsibility of maintaining the landscaping in perpetuity. Ms. Chew also commented that a developer, metro district or HOA who has the responsibility of maintenance of the landscaping has the option to come to the town and request to revise their landscape plan as long as it still met the minimum standards.

Clint Sattler, 1201 Stone Mountain Drive, Windsor recommended that if the Plan is approved that the town get someone on staff that is an accredited landscape designer that would have the knowledge to remedy the situations that could occur. Mr. Sattler also reviewed the enforcement language in the ordinance and stated concern with giving that power and authority to staff.

Town Attorney McCargar commented that the Town already has landscape standards in place which were approved by resolution; they are just not part of the Code. The ordinance will bring the landscape standards to the same equal legal “dignity” as the street and sewer standards. The Plan makes the standards and process clear to the development community and requires the developer to sign off acknowledging they understand the landscape standards as set forth to alleviate any misunderstanding of what is expected. Mr. McCargar also addressed the language that allows for staff to make minor modifications and noted the same language is included in the water and sewer standards; it allows staff to make administrative changes within the standards. Staff would in no way be usurping the legislative function of the Town Board. Mr. McCargar stated this is an attempt at approving the standards by ordinance that are already on the book. He also noted that a lot of work had been done by staff to assure that the standards were acceptable by the development community along with not burdening individual property owners.

Mayor Vazquez noted that developers have a two year warranty period on streets and sewer which then become a Town asset, liability and obligation. Mr. Vazquez stated landscaping is constant and changes hands dependent on ownership and asked at what point would there be a cap on the regulation or warranty side. Mr. McCargar replied that we would require, under the terms of the development agreement, an HOA or metro district maintain them permanently as there is no cap when it comes to something that is living.

Doug Paterson, 580 Lakewood, Windsor inquired if it was fundamentally needed for landscape standards to be the at the same restriction level as streets and sewers as landscaping probably does not cause the same public threat as streets and sewers.

Town Board Member Melendez 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, Melendez, Shanfelt, Thompson, Vazquez

Nays – None. Motion carried.

2. Ordinance No. 2011-1418 - An Ordinance Amending Chapter 17 of the Windsor Municipal Code to Adopt Certain Regulations Pertaining to the Applicability of Tree, Shrub, Bush and Related Landscape Standards and Appealing and Readopting Portions of Chapter 7, Article IV of the Windsor Municipal Code, with Respect to Trees, Shrubs and Bushes within the Town of Windsor, Colorado

- First Reading
- Legislative action
- Staff presentation: Wade Willis, Manager of Parks & Open Space

Town Board Member Bishop-Cotner motioned to approve Ordinance No. 2011-1418, An Ordinance Amending Chapter 17 of the Windsor Municipal Code to Adopt Certain Regulations Pertaining to the Applicability of Tree, Shrub, Bush and Related Landscape Standards and Appealing and Readopting Portions of Chapter 7, Article IV of the Windsor Municipal Code, with Respect to Trees, Shrubs and Bushes within the Town of Windsor, Colorado on First Reading; Town Board Member Thompson seconded the motion.

Manager of Parks & Open Space Willis had nothing further to add and stated he was available to answer any questions.

Town Board Member Thompson commented that he has seen Mr. Willis bring landscape standards for review to the Parks & Recreation Commission and Town Board for years so this isn't anything new. Mr. Thompson did state concern regarding the wording. Mr. Thompson noted safety issues that could arise due to brush hiding stop signs or trees that are damaging sidewalks; there needs to be a way those issues can be addressed. Mr. Thompson stated that he believes there should be some level of ordinance that allows enforcement.

Mayor Vazquez noted that he has voiced concerns over the landscape standards in the past and is not comfortable with the types of vegetation that are being placed in certain areas. Mr. Vazquez stated that he was not comfortable with what the landscape policy has a problem with the way the policy will be enforced. He agreed that health, safety and welfare are a priority but struggles with enforcing a regulation he is not comfortable with.

Town Board Member Shanfelt stated the public safety concerns are ordinance issues and recommended taking those out and packaged into an ordinance, such as the breaking up of roadway, trees and limbs overhanging power lines, etc. Dr. Shanfelt commented that the rest are landscaping guidelines to be applied to the various types of developments and reviewed by a certified landscape architect. He would like to see a requirement that when a landscape plan is submitted to staff that a referral is required to the HOA to comment on the landscape plan to determine affordability of maintaining the plan.

The Town Board discussed how to proceed with Town Manager Arnold recommending a vote be taken. Mr. Arnold stated that to get the ordinance before the Board for consideration took about six months of work. If the ordinance is voted down, then the Town Board could determine in what fashion they would like to see the ordinance again, if at all.

Roll call on the vote resulted as follows:

Yeas – Bishop-Cotner, Carrigan

Nays – Melendez, Shanfelt, Thompson, Vazquez. Motion failed.

3. Resolution No. 2011-38 - A Resolution Supporting and Encouraging Participation by the Town of Windsor in an Application by Weld County and the City of Greeley for Grant Funding From the "Transportation Improvements Generating Economic Recovery" Program for the Purpose of Facilitating Much Needed Transportation Infrastructure Improvements within Weld County, Colorado

- Legislative Action
- Staff presentation: Kelly Arnold, Town Manager

Town Board Member Bishop-Cotner motioned to approve Resolution No. 2011-38; Town Board Member Carrigan seconded the motion.

Town Manager Arnold addressed the Town Board regarding the TIGER III grant that has been submitted and will be sponsored by Weld County and noted the final application is due October 29, 2011. Weld County would like to send a strong application so is seeking support from other municipalities and individuals for the application. The concept for the application came from Broe Development through Omnitrax Rail as a qualified project and concept has been reviewed by the Weld County Commissioners. The City of Greeley has provided their support of the grant application and Mr. Arnold recommended the Town of Windsor support it as well. Mr. Arnold stated that this would help start moving the trains east instead of west and without the support of a large grant it won't happen in a timely manner.

Representatives of Broe Development and Omnitrax were present and reviewed the application with the Town Board.

Mike Ogborn, Managing Director of Omnitrax, reviewed the power point presentation that was included in the town board packet. Mr. Ogborn stated the TIGER III program is a federal program that funds surface transportation projects; the fund consists of \$527 million with \$140 million set aside for rural areas. The project does qualify to be in a rural-defined area as the majority of it is in Weld County and Windsor. It was noted that the program is highly competitive process. Mr. Ogborn reviewed the infrastructure constraints related to rail traffic, weight limitations as the current rail can only handle 270 pound cars and the standard in the rail industry is 286,000 pound cars, yard switching and improve vehicle and emergency access.

Mr. Ogborn reviewed the short and long-term outcomes of the project such as job creation and economic activity. The project was described as Section 1 and Section 2; Segment 1 consists of rehabilitation of 10.7 miles of track, construction of a rail by-pass in Windsor with the relocation of the yard in Windsor to the industrial park area. A by-pass in Greeley would take traffic away from a large portion of the city of Greeley and bypass directly into the Union Pacific system. Mr. Ogborn referred to the Greeley to Windsor line and noted that it would be upgraded and the bridge would be replaced. Omnitrax is working with Vestas and Front Range Energy on some designs around their track area. Mr. Ogborn views this as a win/win for the shippers, the community and the railway. Segment 2 would extend Crossroads to Great Western Drive for a total of two miles.

The map of the project was reviewed and highlighted the eleven miles of track that would be rehabilitated along with the bypass go Greeley. Mr. Ogborn noted the benefits of the project match goals: improving the condition of existing transportation facilities and systems, economic competitiveness, livability, environmental sustainability, safety and job creation.

Mr. Ogborn requested the Town of Windsor be a co-applicant with the City of Greeley; the lead applicant is Weld County. A letter or resolution of support would be sufficient. Funding from Windsor is not required although money into the project would be welcomed and Mr. Ogborn stated that it does enhance the ability to receive the grant. There are no requirements to be met as a co-applicant.

The Town Board discussed if others could access and take advantage of the new tracks to which Mr. Ogborn stated the tracks would be owned and operated by Great Western. Any rail

companies that would want access to the tracks would need to come into an agreement with Great Western to pay for “trackage rights” to come across.

Mayor Vazquez stated he doesn’t believe that there will be opportunity to completely eliminate rail traffic through town but this would help reduce a large portion of it.

Town Board Member Thompson expressed his concern that other rail lines (Class 1 routes) would want access to the tracks.

Town Board Member Melendez stated the concept addresses safety issues, economic development issues and leaves the Town in a state of good repair; the best thing it does is it positions the town and county for future growth.

Town Manager Arnold recommended the resolution be approved and authorize the Town of Windsor as a co-applicant.

Town Board Member Bishop-Cotner motioned to amend the motion to include the Town of Windsor as co-applicant on the TIGER III grant application; Town Board Member Carrigan seconded the motion. Roll call on the vote resulted as follows:

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

Town Board Member Bishop-Cotner motioned to approve Resolution NO. 2011-38 as amended; Town Board Member Carrigan seconded the motion. Roll call on the vote resulted as follows:

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

4. Financial Report

- Staff presentation: Dean Moyer, Director of Finance

Finance Director Moyer thanked the Town Board for their time and input at the Saturday budget retreat. Mr. Moyer reviewed the memorandum submitted in the town board packet and noted that sales tax collections through September 2011 are at \$416,784 which is \$31,346 over September, 2010 year to date. Through September, 2011, the Town is at 93% of its 2011 budget figure. Collections of construction use tax is at \$872,536 which is 181% over the annual budgeted amount. The Town of Windsor projected 103 building permits for 2011 and have issued 194 through September. Operating expenditures are at 73% which are sufficient as the goal through the end of September is to be at no more than 75%. Capital projects are being wrapped up and are on budget and should be completed on time. Mr. Moyer anticipates \$5.4 million in sales tax collections for 2011 and 260 building permits.

D. COMMUNICATIONS

1. Communications from the Town Attorney

Town Attorney McCargar reported he and Town Attorney Frey would be attending the Colorado Municipal League Fall Attorney Conference Thursday through Saturday.

2. Communications from Town Staff

Police Chief Michaels reported that October 29, 2011 would be the 3rd National Drug Take Back Day from 10 a.m. – 2 p.m. at the police department. He also noted that the police department

would be co-hosting the 29th Annual Halloween Party at the Community Recreation Center on October 31 from 6 p.m. – 8 p.m.

3. Communications from the Town Manager
No communications.
4. Communications from Town Board Members
No communications.

E. ADJOURN

Town Board Member Bishop-Cotner motioned to adjourn the meeting; Town Board Member Thompson seconded the motion. Roll call on the vote resulted as follows:

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



Patti Garcia, Town Clerk