



## TOWN BOARD REGULAR MEETING

October 27, 2014 - 7:00 P.M.

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

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### AGENDA

#### A. CALL TO ORDER

1. Roll Call
2. 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
4. Board Liaison Reports
  - Mayor Pro Tem Baker – Water & Sewer Board; North Front Range/MPO alternate
  - Town Board Member Morgan – Parks, Recreation & Culture; Great Western Trail Authority
  - Town Board Member Melendez – Downtown Development Authority; Chamber of Commerce
  - Town Board Member Rose – Clearview Library Board
  - Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission
  - Town Board Member Adams – Tree Board; Poudre River Trail Corridor Board
  - Mayor Vazquez – Windsor Housing Authority; North Front Range/MPO
5. Invited to be Heard

*Individuals wishing to participate in Public Invited to be Heard (non-agenda item) are requested to sign up on the form provided in the foyer of the Town Board Chambers. When you are recognized, step to the podium, state your name and address then speak to the Town Board.*

*Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three (3) minutes. Written comments are welcome and should be given to the Deputy Town Clerk prior to the start of the meeting.*

#### B. CONSENT CALENDAR

1. Minutes of the October 13, 2014 Regular Town Board Meeting – B. Roome

#### C. BOARD ACTION

1. Ordinance No. 2014-1483 – An Ordinance Annexing Certain Real Property Pursuant To The Enclave Annexation Powers Granted Municipalities Under The Colorado Municipal Annexation Act Of 1965

*Super-majority vote required for adoption on second reading*

  - Second reading
  - Legislative action
  - Staff presentation: Ian D. McCargar, Town Attorney

2. Public Hearing – Rezoning certain property known as Poudre Heights Subdivision, Second Filing, Tract I – Gail E. Rumley, President, Poudre Heights LP, applicant
  - Quasi-judicial
  - Staff presentation: Paul Hornbeck, Associate Planner
3. Ordinance No. 2014-1484 – An Ordinance rezoning certain property known as Poudre Heights Subdivision, Second Filing, Tract I – Gail E. Rumley, President, Poudre Heights LP, applicant
  - First reading
  - Quasi-judicial
  - Staff presentation: Paul Hornbeck, Associate Planner
4. Resolution No. 2014-64 – Ratifying, Approving and Confirming the Terms and Conditions of the Poudre Heights Subdivision, Second Filing, Tract I Amended Master Plan – Gail E. Rumley, President, Poudre Heights LP, applicant
  - Quasi-judicial
  - Staff presentation: Paul Hornbeck, Associate Planner
5. Ordinance No. 2014-1485 – An Ordinance Prohibiting the Operation of Internet Sweepstakes Facilities Through the use of Simulated Gambling Devices Within the Town of Windsor
  - First reading
  - Legislative
  - Staff presentation: Ian D. McCargar, Town Attorney
6. September Financial Report – Dean Moyer

D. COMMUNICATIONS

1. Communications from the Town Attorney
2. Communications from Town Staff
3. Communications from the Town Manager
4. Communications from Town Board Members

E. ADJOURN



## TOWN BOARD REGULAR MEETING

October 13, 2014 - 7:00 P.M.

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

### MINUTES

#### A. CALL TO ORDER

1. Roll Call

Mayor  
Mayor Pro Tem

John Vazquez  
Myles Baker  
Christian Morgan  
Jeremy Rose  
Kristie Melendez  
Robert Bishop-Cotner  
Ivan Adams

Also present:

Town Manager  
Town Attorney  
Town Clerk/Assistant to Town Manager  
Chief of Police  
Director of Finance  
Chief Planner  
Management Assistant  
Deputy Town Clerk

Kelly Arnold  
Ian McCargar  
Patti Garcia  
John Michaels  
Dean Moyer  
Scott Ballstadt  
Kelly Unger  
Bruce Roome

2. Pledge of Allegiance

Mr. Rose 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

**Mr. Baker motioned to approve the agenda as presented; Mr. Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Rose, Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

4. Board Liaison Reports

- Mayor Pro-Tem Baker – Water & Sewer Board  
Mr. Baker stated that the Water & Sewer Board met on 10/08/14 and a proposed water rate increase was presented based on Greeley's revised rates. The proposed rate increase is 1.33% which is the increased weighted average of Fort Collins Water (0%), North Weld Water (0%) and Greeley (4%). The Board also toured the new water and storage tank site.
- Town Board Member Morgan – Parks, Recreation & Culture; Great Western Trail Authority  
No report
- Town Board Member Melendez – Downtown Development Authority (DDA); Chamber of Commerce  
Ms. Melendez reported that the DDA meets Wednesday at 7:30 am at Windsor Town Hall. The DDA saw the Mill Feasibility study presentation last week which they will discuss on Wednesday. Ms. Melendez felt there was a lot of interest and excitement at the presentation.

Ms. Melendez reported that the Chamber met on 10/01/14 and several events that they sponsor are coming including: Downtown trick or treating on 10/25/14 from 1-4 pm; Winter Wonderland on 12/06/14 from 12 pm until 5 pm. They did a wrap up of the Windsor Business Exposition that was held in September and they estimated that there were 3,000 attendees and 61 vendors in attendance. Last, they are working on their 2015 budget and planning a Board of Directors retreat in December or January.

- Town Board Member Bishop-Cotner – Clearview Library Board; Historic Preservation Commission; Planning Commission  
Mr. Bishop-Cotner reported that the Clearview Library Board did a general review of the library conduct policy. They passed a resolution that bans the open carry of weapons in the library, concealed carrying is allowed. They began the budget assumptions and staff planning for 2015 and the director evaluation process was discussed. The next meeting is 10/30/14 at 5:30 pm in the library.

Mr. Bishop-Cotner noted that Planning Commission saw several items that the Town Board will see tonight or in the next few meetings.

- Town Board Member Adams – Poudre River Trail Corridor Board; Tree Board  
No report
- Mayor Vazquez – Windsor Housing Authority; North Front Range/MPO  
Mayor Vazquez reported the North Front Range/MPO has made a decision to appropriate authorize the utilization of state transportation planning dollars for the next four years for I-25 from Hwy 14 to Hwy 66. The Mayor also stated that dollars coming available for Region 4 of about \$30 to \$35 million for a project that was funded that is not going to take place. Asked the MPO for support for spending those dollars in Region 4 at the I-25 and Crossroads interchange. These funds must be spent before 2017.

#### 5. Proclamations – National Community Planning Month

Mayor Vazquez read the proclamation.

#### 6. Public Invitation to be Heard

Mayor Vazquez opened the meeting for public comment.

The below listed spoke regarding the Great Western Oil & Gas site:

Marcia Erickson, 8636 Blackwood Drive  
Valerie Schlageter, 2011 Kaplan Drive  
Earl Pittman, 8413 Cherry Blossom Drive  
Todd Sutherland, 1572 Yonkee Drive  
Terri Richter, 2057 Arroyo Court  
Bob Howard, 5856 Stone Chase Drive  
Chris Das, 8426 Blackwood Drive

For the following reasons:

- Afraid that Windsor will turn into a large industrial area.

- The area is already being fracked now by the Extraction company and it is so loud.
- Thanks to the Mayor and Town Board for their efforts with the enclave annexation.
- Worried town regulations aren't strong enough to ensure safety of town residents.
- People move to Windsor because of quality of life. There are wide open spaces, less traffic, peace and quiet.
- Request for constituents to put pressure on the committee
- Performed research and the plan is for 45 tanks in the neighborhood, the most in the US in a neighborhood is 93 tanks. No site as big as this anywhere in Colorado.
- The Great Western application is misleading and should be thrown out because of this.
- Other sites should be considered that are farther away from residential areas.
- This enclave annex should have been completed in May 2014 when it was first brought up.

Those comments were addressed by Mayor Vazquez with the following points made:

- The Mayor, the Board, and Town staff are all listening to the residents and trying to help.
- The Town cannot stop drilling, it is a Colorado Constitutional right.
- With the annexation in place the Town can work with the operator to minimize the adverse effects.
- If the town completes the enclave annexation process before the Great Western site gets approval from Larimer County then the Town standards can be enforced.
- The Mayor and Town Board are trying to give the citizens a voice through this annexation and hopefully it can be completed in a timely matter.
- A local Town designee has filed an extension with Colorado Oil and Gas Conservation Commission (COGCC) and Larimer County for the Great Western site.
- The Town Board and staff have worked over the last three years to build a good rapport with these companies. The companies have shown a willingness to accommodate the Town's requests because of this relationship.
- It is important to preserve property rights while ensuring Windsor remains a great place to live.
- Would never consider a forced annex but because the residents of the neighborhood came to us.
- The Mayor, Town Board, and Town staff are working for pipelines to eliminate truck traffic and tank farms by moving the product out through a pipeline. Extraction Oil Company is investing over \$6 million and the Town is working with GW to get them to invest as well.

## B. CONSENT CALENDAR

1. Minutes of the September 22, 2014 Regular Town Board Meeting – P. Garcia
2. Resolution No. 2014-58 – Resolution Approving An Easement and Right-Of-Way Agreement for Storm Water Drainage Facility Between the Town of Windsor and Broe Land Acquisitions II, LLC, And Authorizing The Mayor To Execute Same – I. McCargar
3. Resolution No. 2014-59 – A Resolution Approving an Agreement Between the Town of Windsor and the Boxelder Sanitation District, and Authorizing the Mayor to Execute Same – I. McCargar
4. Resolution No. 2014-60 – A resolution vacating the northerly 6.7 feet of the 20 foot utility and drainage easement located at the south property line of 680 Dakota Way – P. Hornbeck

5. Resolution No. 2014-61 – A Resolution Approving an Intergovernmental Agreement Between the Town of Windsor and the Town of Timnath With Respect to Maintenance of County Line Road in the Vicinity of its Intersection With Harmony Road – I. McCargar

**Mr. Adams motioned to approve the Consent Calendar as presented; Ms. Melendez seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Rose, Morgan, Melendez, Bishop-Cotner, Adams, Vazquez Nays – None; Motion passed.**

#### C. BOARD ACTION

1. Ordinance No. 2014-1481 – Amending Chapter 16 of the Windsor Municipal Code for the purpose of adopting regulations for accessory dwelling units in residential zoning districts within the Town of Windsor

*Super-majority vote required for adoption on second reading*

- Second reading
- Legislative action
- Staff presentation: Scott Ballstadt, Chief Planner

**Ms. Melendez motioned to approve Ordinance No. 2014-1481; Mr. Bishop-Cotner seconded the motion.**

##### Staff Presentation:

Mr. Ballstadt stated at the August 25, 2014 regular meeting, the Town Board approved Ordinance No. 2014-1481 on first reading and a super-majority vote is required to approve on second reading. At the direction of the Planning Commission in early 2013, staff initiated research and worked with the Town Attorney to prepare a draft ordinance adopting regulations for ADUs. The Planning Commission and Town Board discussed ADUs at work sessions on June 6, 2013, September 18, 2013, September 23, 2013, December 2, 2013 and a joint work session of both boards on July 22, 2013.

Following Town Board consideration, Ordinance No. 2014-1473 failed on second reading on April 28, 2014 due to lack of a super majority vote as required by the Town Charter. However, at the May 12, 2014 work session, the Town Board directed staff to schedule further discussion of ADUs and at the subsequent July 7, 2014 Town Board work session staff was directed to schedule additional public hearings and consideration of the enclosed updated ordinance.

Staff recommends that the Town Board approve the ordinance on second reading as presented

Ms. Melendez stated support for the ordinance. She feels this is a good plan for additional housing options for Windsor residents.

Mr. Rose stated that he will support the ordinance as he is a fan of the ADU concept. He is not satisfied with the limitation of three occupants maximum as there will always be reasons for variations of that number but he doesn't have a better answer.

Mr. Morgan stated he is opposed and will vote no on this ordinance. He felt more public involvement might have helped the process but that didn't happen. Mr. Morgan feels ADU's do not follow the Town's vision and believes that negative impacts of this will be realized in the future.

Mr. Baker stated support for the ordinance and thanked staff for reaching out to Metro Districts and HOA's for their input.

Mr. Adams stated support for the ordinance and that he appreciated that it was taken back to staff and the necessary changes were made.

Mr. Bishop-Cotner stated support for the ordinance and likes the possibilities this gives home owners.

Mayor Vazquez stated support for the ordinance because he has heard from the community that they want ADU's.

Public Comment:

Jason Kingeny, 131 N. 6<sup>th</sup> Street, stated that he is excited about the ADU ordinance and appreciates the time and energy by Town staff and the Town Board. He knows several who will benefit from this ordinance.

**Roll call on the vote resulted as follows: Yeas – Baker, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – Morgan; Motion passed.**

2. Ordinance No. 2014-1483 – An Ordinance Annexing Certain Real Property Pursuant To The Enclave Annexation Powers Granted Municipalities Under The Colorado Municipal Annexation Act Of 1965
  - First reading
  - Legislative action
  - Staff presentation: Ian D. McCargar, Town Attorney

**Ms. Melendez motioned to approve Ordinance No. 2014-1483; Mr. Bishop-Cotner seconded the motion.**

Staff Presentation:

Mr. McCargar stated that an enclave annexation is different than a typical annexation. The requirements for an enclave annexation are an ordinance; the Town must publish the annexation for four consecutive weeks in a local newspaper; and final adoption must wait at least 30 days from the first publication. He stated that the statutory requirements either are met or are being met. Mr. McCargar stated that first reading requires a simple majority to pass.

Mr. Baker stated that this is unprecedented for the Town and feels this is the right thing to do for the residents and Town to give everyone a voice in what happens with land within the Town limits.

Ms. Melendez stated that this is making history and setting an unusual precedent but this is why they are elected, to listen to the constituents and their requests and honoring this one is the right thing to do.

Mr. Morgan stated that he has every confidence in the Mayor to answer the citizens and make comments on his behalf. Thanks the Mayor for taking active role in understanding the issue and being able to answer the questions.

Mr. Rose stated that he was out of country for the last month and is catching up on this issue. At this time he doesn't feel like he has a handle on this. Mr. Rose respects property rights and is questioning if this is truly what's best for the community. He is concerned that the impetus behind this is that it will magically change the oil and gas process, because it won't significantly change the development. He will think about it more and welcomes feedback from all but at this time he will vote against it.

Mayor Vazquez supports this enclave annexation. His initial reaction was reservation and reluctance but he believes that the Town can protect individual land rights of the owners. This is an infringement on land rights but it is the smallest that can be done.

**Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – Rose; Motion passed.**

3. Public Hearing – Final Major Subdivision – Brunner Farm Subdivision, Tenth Filing – Cary St. Onge, Windsor CAS, LLC, applicant; Mary B. Wohnrade, Wohnrade Civil Engineers, Inc., applicant's representative.
  - a. Quasi-judicial
  - b. Staff presentation: Scott Ballstadt, Chief Planner

**Ms. Melendez motioned to open the public hearing; Mr. Adams seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

Mr. Bishop-Cotner stated:

“Mr. Mayor, for the record, I would like to point out that in my capacity as Town Board liaison to the Planning Commission, I was present at the Planning Commission meeting during which this matter was previously presented. I wish to state that my participation in the Planning Commission proceedings has in no way influenced me in my capacity as a Town Board Member this evening. I will make my decision and cast my vote this evening based solely on the evidence presented during this public hearing.”

Staff Presentation:

Mr. Ballstadt stated that Mr. Cary St. Onge, Windsor CAS, LLC, represented by Ms. Mary Wohnrade, Wohnrade Civil Engineers, Inc., has submitted a final major subdivision plat, known as the Brunner Farm Subdivision, Tenth Filing. The subdivision encompasses approximately 3.302 acres and is zoned Residential Mixed Use (RMU). The subdivision includes a total of 14 single family residential lots. The single family residential lot sizes range from approximately 7,000 square feet, up to 16,000 square feet, due to the unique orientation and depth of some of the lots. At their June 4, 2014 regular meeting, the Planning Commission approved the preliminary subdivision plat. No concerns or issues were raised during that meeting.

Staff recommendations:

A recommendation of approval of the Brunner Farm Subdivision, 10th Filing, final major subdivision plat and Resolution No. 2014-62, subject to the following conditions, and staff concurs with this recommendation:

1. All subdivision requirements shall continue to be met.

Mr. Arnold asked Mr. Ballstadt to explain what appears to be inactivity from April to September on the timeline. Mr. Ballstadt answered that the neighborhood hearing occurs at the onset of the project and staff review and approval from the Town Board occur at the end of the project which is what is highlighted on the timeline. During this intervening time the staff and the applicant are reviewing and exchanging redline comments.

Mary Wohnrade, Wohnrade Civil Engineers, Inc., applicant's representative. Ms. Wohnrade stated that this is a straight forward project on two tracts of land. Based on current market conditions the owner wants to build single family residents.

Ryan St. Onge, Windsor CAS, LLC, stated they have no objections to the conditions set forth.

**NOTE:** The official record of this evening's proceedings shall include the application, staff memos and recommendations, packet materials and supporting documents, and all testimony received.

Public Comment:

None

**Mr. Morgan motioned to close the public hearing; Mr. Adams seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

4. Resolution No. 2014-62 – A Resolution of the Windsor Town Board approving the final subdivision plat for the Brunner Farm Subdivision, Tenth Filing in the Town of Windsor, Colorado – Cary St. Onge, Windsor CAS, LLC, applicant; Mary B. Wohnrade, Wohnrade Civil Engineers, Inc., applicant's representative.
  - a. Quasi-judicial
    - Staff presentation: Josh Olhava, Associate Planner

**Mr. Bishop-Cotner motioned to approve Resolution No. 2014-62; Mr. Adams seconded the motion.**

Staff Presentation:

Mr. Ballstadt stated that he had nothing further to add than was covered in Agenda Item C.3.

**Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

5. Great Western Trail Authority Presentation and Request
  - Presentation: Tom Jones, Great Western Trail Authority

Presentation:

Mr. Jones, a representative of the Great Western Trail Authority (GWTA), asked the Town Board for a letter of support for their grant application to CDOT. Mr. Jones requested the Town Board to act as a conduit to handle the flow of funds and also to issue a letter of support for their application. He stated the Town did a similar thing in 2011. This grant does not require any matching funds from the Town.

This is the Rails to Trails project which completed its first segment earlier this summer. The next phase is from Eaton to Severance to complete the trail. They hope to do this by using two grants, one is from CDOT and the other is a Colorado State Trails grant. At this time they need to have both applications in by 11/01/14. The GWTA need a sponsor for the CDOT grant and a partner for the Colorado State Trails grant. The Town would be the governmental agency that is required for the process.

At issue is that Colorado State Trails doesn't pay their grant until complete and the GWTA needs the Town to pay the bills as they come due. At the conclusion of the project the Town will be reimbursed 100% by the grant. The amount of the grants are \$550,000 for the CDOT grant and \$200,000 for the Colorado State Trails grant. By receiving two grants for the matching funds requirement they can use each grant to match the other.

The basic timeline of the project is after 1/01/2015 they will find out if they received the grant. The design phase will take place starting in May 2015. The project will go out to bid in January of 2016 and start in May of 2016. Per the grants they have four years to complete the project but the GWTA hopes to complete it in two years.

Karen Schneiders, CDOT Northwest Regional Planner, believes that this project is eligible for a grant. This project is eligible for funding that is being directed by the North Front Range/MPO.

Mr. Adams asked where does the path go. Mr. Jones answered across Hwy 85 into the old sugar factory and dead ends.

Mr. Arnold wanted to verify that Eaton has embraced this project now as they were originally lukewarm to the project. Per Mr. Jones they are on board and in favor of the project as the Eaton Town Board will vote on it this Thursday night.

Mayor Vazquez asked what is involved from the Town. Mr. Moyer answered that this is not a big time requirement of his staff as they mainly just pay the bills and then submit them for reimbursement through CDOT and the Trails grant.

Mr. Morgan speaking as the GWTA liaison passed along that in his opinion that GWTA Board is dedicated and meticulous. They are good stewards with their money and do a great job. Thanks to the CDOT representative for coming tonight

**Mr. Adams motioned to approve the request from Great Western Trail Authority; Ms. Melendez seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

6. Approval of TIGER V Railroad Quiet Zone Grant
  - Legislative action
  - Staff presentation: Kelly Arnold, Town Manager

Staff Presentation:

Mr. Arnold explained in September 2013, the Town of Windsor was awarded the TIGER (Transportation Investment Generating Economic Recovery) grant by the U.S. Department of Transportation for the Great Western Freight Improvement Project. The goal of the project is to improve and add safety measures at thirteen (13) public grade crossings through two main

residential areas in the Town of Windsor, and work with the Federal Railroad Administration (FRA) to determine the feasibility of establishing a Quiet Zone. See Attachment 2: Statement of Work, for more details.

The initial grant funding of \$2.7 million was later reviewed and altered to reflect the total project cost and the addition of three (3) crossing not originally included in the grant. The new project cost of \$3.3 million is fully funded by the FRA. Due to FRA September 30th deadline, the grant contract was signed by the Town Manager to secure grant funding.

Mr. Baker is excited about this project. Congratulations for Mayor and Town Staff for all the hard work on this project.

Mayor Vazquez stated kudos to staff as they deserve credit. It would be an accomplishment to put in two to four Quiet Zones but for thirteen it is unprecedented and very impressive.

**Ms. Melendez motioned to authorize the Town Manager to sign the TIGER V Grant for the Grant Western Freight Improvement Project; Mr. Baker seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

7. Approval of FHU Contract
  - Legislative action
  - Staff presentation: Kelly Arnold, Town Manager

Staff Presentation:

Mr. Arnold explained that in order to properly execute the Western Freight Improvement Project, staff would like to hire Felsburg Holt & Ullevig (FHU) as project consultants. FHU shall perform, furnish, and complete the following professional services: Preliminary Design, Final Design, Permits, Bidding Phase, Construction Observation, and Project Management. According to FHU's design/construction schedule, the Quiet Zone will be completed by December 2015.

Stephanie Anzia, representative from Felsburg Holt & Ullevig, said the diagnostic is complete so they can start immediately on the design process. Four of the crossings are under CDOT jurisdiction which means they have to go through a CDOT review process. The reminder are Town and County jurisdiction, these will go through the Public Utilities Commission for approval. The goal is for final design completed by February as well as PUC applications approvals. After that a bid package has to be compiled for advertisement. The impacts to the community will be low because there are no surface improvements so the crossings do not need to be closed to traffic.

Mr. Morgan asked who is responsible for ongoing maintenance. The Town has basic maintenance agreement with Great Western Railroad and they are responsible.

**Mr. Morgan motioned to authorize the Town Manager to sign the FHU Agreement for Professional Services for the Great Western Freight Improvement Project; Ms. Melendez seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

8. Resolution No. 2014-63 – A Resolution recognizing Colorado Cities and Towns Week, October 20-26th, 2014
  - Staff presentation: Kelly Unger, Management Assistant

**Mr. Bishop-Cotner motioned to approve Resolution No. 2014-63; Mr. Adams seconded the motion.**

Staff Presentation:

Ms. Unger stated that the Resolution is to recognize local towns and municipalities. She stated that there is whole slate of activities planned for that week including dinner with SALT; a Touch a Truck Day where the Police and Public Works will have their equipment available for the kids; Town Board members and Town division directors guest speaking at Windsor High; finishing with “Coffee with the Mayor Pro Tem” at Town Hall.

Mr. Adams last time they Board members sat with students to answer questions

**Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

D. COMMUNICATIONS

1. Communications from the Town Attorney

Mr. McCargar thanked the Town Board and the residents of Windsor because he was able to attend the CML annual town attorney conferences where he was able to meet with other municipal attorneys and exchange ideas.

2. Communications from Town Staff

Chief Michaels stated the drug take back program netted 144 pounds of prescription medications from residents that were handed off to the DEA to destroy. Unfortunately, this is the last time the DEA will do this. The DEA has notified participating agencies that they are passing the program to the State which means it could end up with the Municipalities to handle. This is a good program which enhances citizen safety by giving them a proper method to get rid of expired or unwanted medications. Chief Michaels estimates that Windsor Police has taken in 600 pounds through this program since the program started.

3. Communications from the Town Manager

No report

4. Communications from Town Board Members

Nothing further from the Town Board members

D. ADJOURN

**Mr. Bishop-Cotner made a motion to adjourn the meeting; Mr. Baker seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Morgan, Rose, Melendez, Bishop-Cotner, Adams, Vazquez; Nays – None; Motion passed.**

The Regular Meeting was adjourned at 9:32 p.m.

*Bruce Roome*

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Bruce Roome, Deputy Town Clerk



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## MEMORANDUM

**Date:** October 27, 2014  
**To:** Mayor and Town Board  
**Via:** Town Board Packet  
**From:** Ian D. McCargar, Town Attorney  
**Re:** Pace enclave annexation  
**Item #:** C.1

**Background / Discussion:**

Before you this evening for final adoption is the ordinance under which the Town will annex the statutory enclave known as the *Pace Annexation to the Town of Windsor*. This parcel has been surrounded by Town-annexed territory for more than three years, the key statutory factor that allows us to annex the property by Town-initiated ordinance. This is a departure from the more-common owner petition for annexation; the property owner is not a required player in the enclave annexation process.

The statutory enclave annexation process eliminates the public hearing requirements usually applicable to annexations by owner petition. No public hearing is required for an enclave annexation, although public comment is required on second reading under the Charter. The Municipal Annexation Act of 1965 only requires that the Town publish notice in the newspaper for four consecutive weeks. With the first publication of this annexation occurring on September 25, 2014, the statutory requirements for notice have been met.

The question of zoning for this parcel will be deferred, pending staff recommendation and property owner input. Zoning must be accomplished within 90 days of annexation.

**Financial Impact:** None.

**Relationship to Strategic Plan:** Community Spirit and Pride.

**Recommendation:** Adopt Ordinance No. 2014-1483, An Ordinance Annexing Certain Real Property Pursuant To The Enclave Annexation Powers Granted Municipalities Under The Colorado Municipal Annexation Act Of 1965

**Attachments:** Ordinance No. 2014-1483; Final Annexation Plat

TOWN OF WINDSOR

ORDINANCE NO. 2014 – 1483

AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY PURSUANT TO THE ENCLAVE ANNEXATION POWERS GRANTED MUNICIPALITIES UNDER THE COLORADO MUNICIPAL ANNEXATION ACT OF 1965

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality with all powers and authority vested by Colorado law; and

WHEREAS, the power to annex enclaves is specifically granted to municipalities under Section 31-12-106, C.R.S.; and

WHEREAS, the real property (“Property”) described in the attached Exhibit A has been entirely surrounded by Town-annexed property for more than three years; and

WHEREAS, the Property qualifies for annexation by ordinance under Section 31-12-106, C.R.S, and Section 30(1) (c) of Article II of the Colorado Constitution; and

WHEREAS, the Town Clerk has published notice of the within Ordinance as required by Section 31-12-106, C.R.S.; and

WHEREAS, the Town Board has concluded that annexation of the Property is a proper exercise of municipal powers.

NOW, THEREFORE, be it ordained by the Town Board for the Town of Windsor, Colorado, as follows:

1. The foregoing recitals are incorporated herein as if set forth fully.
2. The real described in the attached Exhibit A, the contents of which are incorporated herein as if set forth fully, is hereby annexed pursuant to Section 31-12-106, C.R.S.
3. The Property shall henceforth be known as the “Pace Annexation to the Town of Windsor”.
4. The Town Clerk is hereby directed to comply with the filing requirements of Section 31-12-113 (2) (a), C.R.S.

Introduced, passed on first reading, and ordered published this 13<sup>th</sup> day of October, 2014.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 27<sup>th</sup> day of October, 2014.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

# PACE ANNEXATION

## To The Town Of Windsor

Situate In The Northeast Quarter Of Section 25, Township 6 North, Range 68 West Of The 6th P.M.,  
County Of Larimer, State Of Colorado

THIS IS AN ENCLAVE ANNEXATION BY THE TOWN OF WINDSOR

**DESCRIPTION**

A plot of a parcel of land in the TOWN OF WINDSOR, County of Larimer, Colorado, located in the Northeast Quarter of Section Twenty-five (25), Township Six North (T.6N), Range Sixty-eight West (R.68W) of the Sixth Principal Meridian (6th P.M.) and more particularly described as follows:

The Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of said Section 25, less the 30.00 feet previously annexed to the Town of Windsor, being the Easterly 30.00 feet of said SE1/4NE1/4 and being more particularly described as follows:

COMMENCING at the East Quarter corner of said Section 25 and assuming the East line of said SE1/4NE1/4 as bearing South 00°48'15" West a distance of 1314.97 feet with all other bearings contained herein relative thereto;

THENCE North 89°32'49" West along the South line of said SE1/4NE1/4 a distance of 30.00 feet to the parallel with and 30.00 feet West of, as measured at a right angle to the East line of said SE1/4NE1/4 and to the POINT OF BEGINNING;

THENCE North 89°32'49" West continuing along the South line of said SE1/4NE1/4 a distance of 1314.45 feet to the Center-East Sixteenth corner of said Section 25;

THENCE North 00°32'26" East along the West line of said SE1/4NE1/4 a distance of 1313.73 feet to the Northeast Sixteenth corner of said Section 25;

THENCE South 89°32'57" East along the North line of said SE1/4NE1/4 a distance of 1317.83 feet to the a line parallel with and 30.00 feet West of, as measured at a right angle to the East line of said SE1/4NE1/4;

THENCE South 00°48'15" West along said parallel line a distance of 1314.95 feet to the POINT OF BEGINNING.

Containing 39.711 acres more or less.

**ENGINEERING DEPARTMENT APPROVAL**

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Director of Engineering \_\_\_\_\_

**PLANNING COMMISSION APPROVAL**

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Chairman, Windsor Planning Commission \_\_\_\_\_

**PLANNING DEPARTMENT APPROVAL**

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Director of Planning \_\_\_\_\_

**TOWN MANAGER'S APPROVAL**

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Town Manager \_\_\_\_\_

**PUBLIC WORKS DEPARTMENT APPROVAL**

Approved this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Director of Public Works \_\_\_\_\_

**SURVEYOR'S CERTIFICATE**

I, Lawrence S. Pappe, a Colorado Registered Professional Land Surveyor do hereby state that this map of land proposed to be Annexed to the Town of Windsor, County of Larimer, State of Colorado was prepared under my direct supervision from existing documents of record, and that the same is true and correct to the best of my knowledge, information and belief.

I further state that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous to the boundary line of the Town of Windsor, County of Larimer, State of Colorado.

Lawrence S. Pappe-On Behalf Of King Surveyors  
Colorado Registered Professional Land Surveyor #33642

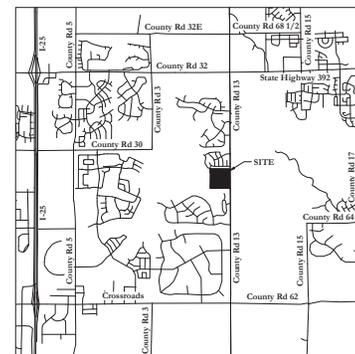
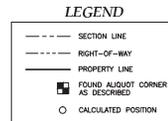
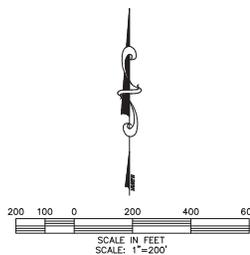
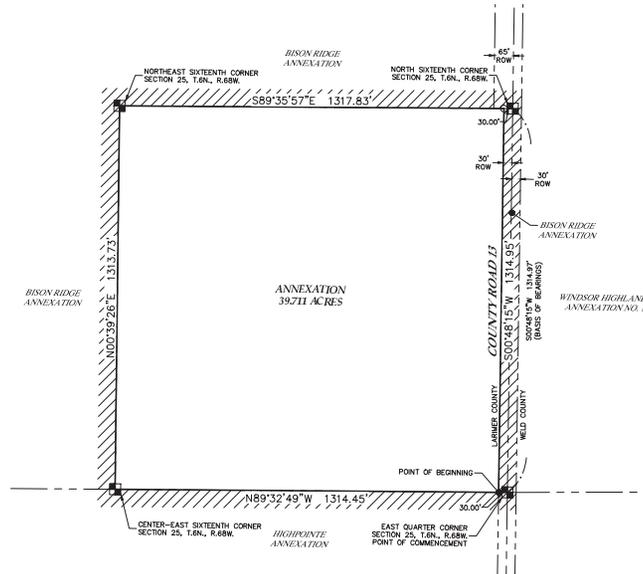
**BASIS OF BEARINGS AND LINEAL UNIT DEFINITION**

Assuming the East line of said SE1/4NE1/4 as bearing South 00°48'15" West a distance of 1314.97 feet with all other bearings contained herein relative thereto.

The lineal dimensions as contained herein are based upon the "U.S. Survey Foot."

CONTIGUOUS BOUNDARY = 5260.96 L.F.  
TOTAL BOUNDARY = 5260.96 L.F.  
RATIO = 1 : 1.000  
AREA = 39.7111 NET ACRES

////// DENOTES CONTIGUOUS BOUNDARY



VICINITY MAP  
SCALE: 1"=4000'

**NOTICE OF OTHER DOCUMENTS**

All persons take notice that certain documents have been executed pertaining to this development, which create certain rights and obligations of the development, the developer and/or subsequent owners of all or portions of the development site, many of which obligations constitute promises and covenants that run with the land. These documents are of record and are on file with the director of planning of the Town of Windsor and should be closely examined by all persons interested in purchasing any portion of the development site.

**NOTE**

According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown herein. (13-80-102 C.R.S.)

**TITLE COMMITMENT NOTE**

In the request of our client, recorded rights-of-way and easements were not researched and recorded and apparent rights-of-way and easements are not shown herein. (38-51-106 C.R.S. 1994)

**MAYOR'S CERTIFICATE**

This is to certify that an annexation map of the property described herein was approved by Ordinance No. \_\_\_\_\_ of the Town of Windsor passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D. and that the Mayor of the Town of Windsor, as authorized by said ordinance, on behalf of the Town of Windsor, hereby acknowledges and adopts the said annexation map upon which this certificate is endorsed for all purposes indicated thereon.

Mayor \_\_\_\_\_ ATTEST: \_\_\_\_\_ Town Clerk

DATE:	9/22/2014
FILE NAME:	2014390ANX
SCALE:	1"=200'
DRAWN BY:	CSK
CHECKED BY:	LSP

**KING SURVEYORS**  
650 E. Garden Drive | Windsor, Colorado 80550  
phone: (970) 686-5011 | fax: (970) 686-5821

DATE:	
REVISIONS:	

PACE ANNEXATION  
FOR  
TOWN OF WINDSOR  
WINDSOR, CO 80550

PROJECT #  
2014390

**1**  
SHEET 1 OF 1



## MEMORANDUM

**Date:** October 27, 2014  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
Joseph P. Plummer, AICP, Director of Planning  
**From:** Paul Hornbeck, Associate Planner  
**Subject:** Public Hearing and Ordinance No. 2014-1484 – An Ordinance rezoning certain property known as Poudre Heights Subdivision, Second Filing, Tract I – Gail E. Rumley, President, Poudre Heights LP, applicant  
**Location:** West of 7<sup>th</sup> Street and north of New Liberty Road  
**Item #s:** C.2 and C.3

### **Background:**

The applicant, Mr. Gail “Spike” Rumley of Poudre Heights, LP, has requested to rezone Tract I of Poudre Heights Subdivision, Second Filing from Single Family Residential (SF-1) to Residential Mixed Use (RMU). This proposal to rezone the entire 92 acre tract would allow a multifamily component as a part of the overall development. The associated master plan that is proposed depicts 265 single family lots and 124 multifamily units in the form of two, three, and four unit buildings. What follows is an overview of the project history, the rezoning, and master plan to give context to this action.

The Second Filing was approved in 2003 and included the platting and subsequent development of 163 single family lots and, as part of that approval, Tract I was designated for future development subject to the Town’s normal review process upon submittal of any development proposal. A preliminary plat for the third filing depicting single family and multifamily uses for Tract I was approved in 2006 but no approvals were received for the final plat, rezoning, or master plan amendment needed to proceed with development. The applicant recently received approval of the land use map amendment from the Planning Commission at its October 1, 2014 meeting, changing the designation from Single Family Residential and Multi-Family Residential to Residential Mixed Use. At this time the applicant is seeking approval of the rezoning and master plan amendment prior to submitting a new preliminary plat.

The Preliminary Plat approved in 2006 shows 233 single family lots and 190 multifamily units for a total of 423 dwelling units. The currently proposed master plan shows 265 single family lots and 124 multifamily units for lesser overall total of 389 dwelling units. The multifamily was previously located in the center of the development with single family located around the perimeter. That layout has changed to locate the multifamily development east of the B.F. Eaton Ditch with single-family lots to the west. Internal street layout within the development has changed and better connectivity with fewer cul-de-sacs is now proposed. External connections remain largely the same with the exception of a reduced number of access points to the adjacent property owned by Charles Betters and Larry Odau.

The approved preliminary plat shows two streets accessing the Betters/Odau property while the new proposal depicts only one access. The reduced number of access points is relevant because the property lacks any connections to adjacent public streets. Reducing the access points from two to one would have the effect of potentially reducing the future development potential of the property. Fire codes limit an area with only one access to 25 units unless the units include fire sprinklers. There has been some confusion over this issue and a related reference to aggregate building areas over 24,000 square feet requiring two access points or sprinklers. The Fire Marshal

has stated that the square footage requirement only applies to commercial uses. The 25 unit limitation is mitigated somewhat by a drainage conveyance across the property and the location of an oil/gas well that would likely eliminate the development potential of a portion of the property for the lifetime of the well.

The preliminary plat gave the owners of the adjacent lot, Mr. Betters and Mr. Odau, an expectation that the two access points would be provided. Access to this property has been a contentious issue but the applicant has attempted to reach a consensus with the property owners to satisfy both parties. Thus far they have not agreed to any resolution. Therefore, the Planning Commission recommended the master plan be amended to show two access points.

**Conformance with Comprehensive Plan:**

The application is consistent with the following goals and policies of the Comprehensive Plan:

**Residential Goals:**

1. Promote an adequate supply and variety of safe and economically achievable housing products to meet the current and future needs of the community.
2. Maintain housing that represents a diversity of style, density and price to meet the needs of Windsor residents.

**Residential Policies:**

11. Encourage and facilitate the development of housing which offers alternative choices in lifestyle such as townhouses, apartments and condominiums.

**Conformance with Vision 2025:**

The application is consistent with Vision 2025 Housing Quality and Diversity Goal 1: “Provide choices for housing in town, not just single family homes.”

**Notification:**

- Notice of October 27, 2014 Town Board public hearing published in the newspaper on October 11, 2014
- Notice of public hearing posted on Town website and bulletin board
- Signs posted on property October 9, 2014
- Applicant sent letter to property owners within 300 feet on October 16, 2014

**Recommendation:**

The Planning Commission forwarded a recommendation of approval to the Town Board with the following condition:

1. All staff redlines and comments shall be addressed

**Enclosures:** Ordinance 2014-1484  
application materials  
rezoning petition  
neighborhood meeting notes  
excerpt of Planning Commission minutes  
staff PowerPoint

pc: Spike Rumley, Poudre Heights LP, applicant  
Chuck Betters, adjacent property owner

October 27, 2014  
Poudre Heights 2nd, Tract I – Rezoning TB memo

Larry Odau, adjacent property owner  
Sandra Friedrichsen, Fire Marshal

TOWN OF WINDSOR, COLORADO

ORDINANCE NO. 2014-1484

AN ORDINANCE PURSUANT TO CHAPTER 16, ARTICLE V OF THE *WINDSOR MUNICIPAL CODE* APPROVING THE RE-ZONING OF THE POUDBRE HEIGHTS SUBDIVISION, THIRD FILING UPON THE APPLICATION OF POUDBRE HEIGHTS, LP

WHEREAS, the Town of Windsor is a home rule municipality with all powers conferred under Colorado law; and

WHEREAS, the Town has in place a comprehensive system of land use regulations, the purpose of which is to promote the public health, safety and welfare; and

WHEREAS, the Town has adopted the zoning regulations set forth in Chapter 16 of the Windsor Municipal Code (“Zoning Code”), under which parcels of land are identified and classified for regulatory purposes; and

WHEREAS, the Poudre Heights Subdivision, Third Filing (“Property”), is presently zoned “Single Family SF-1” pursuant to the regulations found in Articles XXII and XXIII of the Zoning Code; and

WHEREAS, the owner of the Property, Poudre Heights, LP, has filed a Petition (“Petition”) requesting re-zoning of the Property from its current Single Family SF-1 designation to a “Residential Mixed Use RMU” designation; and

WHEREAS, in accordance with the requirements for re-zoning found in Article V of the Zoning Code, the Petition has been reviewed by staff and referred to the Planning Commission for review and recommendation following a public hearing; and

WHEREAS, the Planning Commission has recommended that the Town Board approve the re-zoning request, subject to certain conditions; and

WHEREAS, pursuant to the requirements for re-zoning found in Article V of the Zoning Code, the Town Board has convened a public hearing and heard relevant evidence with respect to the merits of the Petition; and

WHEREAS, based upon the evidence presented at the public hearing, the Town Board concludes that the Petition should be granted, and the Property re-zoned as requested.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The Poudre Heights Subdivision, Second Filing, Tract I (“Property”) is and shall henceforth be re-zoned from Single Family SF-1 to Residential Mixed Use RMU.
2. In addition to all other applicable regulations, the use of the Property shall be subject to the regulations found in Chapter 16, Article XXIV of the *Windsor Municipal Code*.
3. Pursuant to *Windsor Municipal Code* § 16-5-20 (3), within ten (10) days of the effective date of this Ordinance, Poudre Heights, LP, shall submit to the Planning Department a certified copy of a compact disc (CD) containing all drawings that have been approved by the Town, plus two (2) translucent original Mylars of final rezoning maps to be recorded in the office of the Weld County Clerk and Recorder.

Introduced, passed upon a vote of \_\_\_\_ in favor and \_\_\_\_ opposed on first reading and ordered published this 27<sup>th</sup> day of October, 2014.

TOWN OF WINDSOR, COLORADO

\_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

Passed on second reading upon a vote of \_\_\_\_ in favor and \_\_\_\_ opposed, and ordered published this 10<sup>th</sup> day of November, 2014.

TOWN OF WINDSOR, COLORADO

\_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

# POUDRE HEIGHTS LP

August 13, 2014

Mr. Paul Hornbeck, Assistant Planner  
Planning Department  
Town of Windsor  
301 Walnut Street  
Windsor, Colorado 80550

re: Rezoning Application to RMU, revised  
Poudre Heights Subdivision Third Filing

Dear Mr. Hornbeck:

We are submitting the Rezoning Application for the Poudre Heights Subdivision Third Filing requesting a change from Single Family (SF-1 and SF-2) to Residential Mixed Use (RMU). This is Tract "I" of the Poudre Heights Subdivision Second Filing.

The site is 92.128 acres and located northwest of Riverplace Drive, north of the Poudre Heights Park and south of the Poudre River Trail. The legal description is Poudre Heights Subdivision Second Filing, Tract "I" of Section 29, Township 6 North, Range 67 West of the 6<sup>th</sup> Principle Meridian, Town of Windsor, County of Weld, State of Colorado as recorded on August 12, 2003 as Reception No. 3094269 in the Weld County records.

The site is annexed into Windsor and is a portion of the Poudre Heights Subdivision Master Plan that was approved in 2002. The site consists of Tracts A, B, C, D, G and J of the Poudre Heights Master Plan which specify zoned areas of either SF-1 and MF-2. We request the site be re-zoned to Residential Mixed Use (RMU) with underlying zoning for single-family (SF-1 and SF-2) and multi-family (MF-1 and MF-2) areas, which is consistent with the Master Plan. This residential use is shown in the Town's Land Use Map as desired and was anticipated in the Development Agreement for the Second Filing dated August 8, 2003. The multi-family area will consist of fee-simple townhomes exhibiting two (2) to four (4) unit buildings.

RMU zoning is consistent with zoned areas near the Poudre Heights. The Water Valley South, Water Valley West and the Raindance projects located east and west of the site's boundaries are zoned RMU. RMU is also consistent with the Recreational Open-space activity adjacent to the north and northeast property line which are zoned Weld County Agriculture (A) and Parks/Open Space. Our requested zoning is consistent with the adjacent uses including residential, trails, common recreational parks, open space and light industrial uses.

Projects exhibiting a mixture of desirable, compatible, residential dwelling classifications located with open space and common recreational uses is encouraged by the Municipal Code to be facilitated utilizing the RMU zoning. Poudre Heights Subdivision Third Filing exhibits all the characteristics consistent with RMU zoning. It exhibits a mixture of single family lots, multi-family lots, open space and trails and is adjacent to community recreational uses. The design of the site encourages improved vehicular and pedestrian

traffic circulation and access and promotes the preservation of adjacent open space uses.

The single-family residential lots (SF-1) will meet the minimum lot size requirements set forth in the Municipal Code of six-thousand square feet with five-foot side offsets from property lines to buildings and a twenty-foot front setback. All zoned requirements for single-family (SF-1) and (SF-2) and multi-family residential (MF-1 and MF-2) uses shall be adhered to as set forth in Article XXIV Section 16-24 of the Municipal Code.

The site is currently used for agricultural purposes.

Approximately 22.3 acres of multi-family for townhomes  
Approximately 69.7 acres for single family

We propose utilizing the south and west portions of the site as single-family lots. These lots are consistent with the land use that is adjacent to the project's south boundary, which is platted as single family lots. This project is developed and most of the lots contain single family homes. Our site reflects the same residential use and is consistent with the quality, layout and lot character of this project. We request a zoning designation for this area of RMU (SF-1 and SF-2)

The site generally slopes from the southwest to the northeast which allows for a variety of architectural styles including walk-out and garden level basements. The Poudre River runs near the northeast side of the project with detention and retention ponds located along the east edge. Running along the north edge of the project is the Poudre River Trail. The site is bisected by the B. F. Eaton Ditch. The ditch is proposed to be piped. The open space easement will exhibit a recreational trail connecting the Poudre Heights Park to the Poudre River Trail. Community use of the Poudre Trail and Poudre Heights Park will be enhanced with the installation of the connecting trail. We propose the streets be public. Landscaping will be incorporated in common areas and be consistent with the Poudre Heights Second Filing.

The portion of the site east of the B. F. Eaton Ditch is proposed to be utilized for townhomes. The ditch and trail easement will provide a natural separation of the multi-family unit from the single-family lots. Along the east edge of the site is open space exhibiting a pond and the Poudre River near the northeast boundary. We propose approximately 124 multi-family lots configured in a combination of two, three and four unit buildings. The townhomes will be constructed on single fee-simple lots with 2-car garages accessed from alley accesses. Vehicular access to the townhomes is from River Place Drive, which provides vehicle conductivity through the project. We request a zoning designation for this area of RMU (MF-1 and MF-2)

The Poudre River Trail runs along the north edge of the site. Due to flooding from the B. F. Eaton ditch some modification of the trail will be required to increase it's elevation and alignment to alleviate the problem.

The site has been identified as part of the Windsor sanitary sewer service area. We will request sanitary sewer service from the Town of Windsor. The sanitary sewer has been constructed to the site boundary and will be extended to serve the site.

Irrigation will be provided by a non-potable, gray water system. The gray water lake is in place and the water rights have been provided for this system. We will install the gray water irrigation system throughout the site for landscape watering. The pond has been certified by Terracon as meeting the requirements of the State of Colorado. The irrigation pipe has been installed to the boundary of the site.

Domestic water will be provided by the Town of Windsor. Water rights will be provided from the North Poudre Valley Irrigation Company and/or the Colorado North Conservatory (Colorado Big Thompson) in amounts to be agreed on with the Town of Windsor. Water rights are available from these providers. The domestic water system has been installed to the boundary of the site. Water service will be extended to serve the site adjacent to the northwest corner of the site as requested by the Town of Windsor.

Storm water mitigation will utilize water quality systems and be installed in accordance with the drainage requirements approved by the Town of Windsor. The pond located at the east edge of the site, north of River Place Drive and adjacent to Weld County Road 17 (7<sup>th</sup> Street), provides for the on-site detention. Controlled discharge from the pond is into the Poudre River. Added water clarity ponds will be constructed as provided for by the approved drainage study.

Poudre Heights Third Filing is anticipated to be constructed in 16 vertical construction phases. Four of the Phases will be in the multi-family area. Phases will be numbered but not necessarily built in the numbered sequence. Phases may be constructed in any order or more than one phase constructed at one time. This will allow a coordinated, systematic flow of construction through the project and not have developed areas deteriorating from lack of use. During construction we will provide systematic erosion control, emergency access and utility services. Access to adjacent parcels will be maintained for use by the adjacent property owners.

Telephone service will be provided by Century Link. Gas and electrical service will be provided by Xcel Energy Company. Both have confirmed that service is available to the site.

The site does not directly impact the adjacent County Roads and no improvement plan has been provided.

Approximately eight acres of land for public parks has previously been provided.

In summary, we request the Town of Windsor consider this rezoning. Poudre Heights Subdivision Third Filing will be a quality addition to the Town of Windsor. It is located in a beautiful and convenient location which presents us with a unique opportunity to provide a quality project for the Town.

We request approval of Residential Mixed Use (RMU) zoning.

Sincerely,

A handwritten signature in black ink, appearing to read "G. E. Rumley". The signature is written in a cursive style with a horizontal line underneath the name.

G. E. "Spike" Rumley

# POUDRE HEIGHTS L.P.

## REZONING PETITION

(I,We) the undersigned, being the owners of the property described as "A plat of a parcel of land in the Town of Windsor, Colorado, Tract I, Poudre Heights Subdivision Second Filing as recorded in Weld County records on August 12, 2003 as Reception No. 3094269, all being located in Section Twenty-nine(29), Township Six North (Y.6N.), Range Sixty-seven West (T.67W) of the Sixth Principle Meridian (6<sup>th</sup> P.M.), Town of Windsor, County of Weld, State of Colorado," containing 92.128 acres more or less, hereby request a change in zoning from SF-1 to RMU and do hereby pay the required fee.,

Date: 21 October 2004  
rev: 6 June 2014

Owner: Poudre Heights L.P.  
By: LDCC Management III GP LLC (GENERAL PARTNER)  
By: Land Development and Construction Consulting Ltd.  
(Manager)  
By: Gail E. Rumley, President

  
\_\_\_\_\_  
Gail E. Rumley,

# POUDRE HEIGHTS LP

## Neighborhood Meeting:

Location: Windsor Community Recreation Center  
Date: August 14, 2014  
Time: 6:00 to 8:00 P.M.  
Attendees: 34 individuals

## Introduction of Poudre Heights Subdivision Third Filing to attendees:

Spike Rumley introduced presenters, himself as the Developer representative, Cole Haberer of HCI Engineering (Civil Engineer) and Nathan Rumley of LDCC Developer representative.

Introductory statement included the name of the project and the purpose of the meeting was to provide project information concerning the current submission for rezoning to Residential Mixed Use (RMU) and the Amendment of the Master Plan. Additionally, Spike conveyed that we are providing additional information beyond the scope of rezoning and amending the master plan documentation which would consist of site design information. He explained the additional items being shown are site plan and design work product to date.

Additional initial presentation items covered were at the request of concerned Second Filing resident attendees and included discussion about:

- Flooding of a eastern portion of the Poudre Heights Third Filing site from recent storm events.
- Reason for the flood waters entering and affecting portions of the site.
- Requirement of Poudre Heights Third Filing to Elevate current areas located in the FEMA floodplain and submit a Letter Of Map Revision Based on Fill (LOMR-F) to FEMA for approval.
- Efforts on the part of the Town of Windsor, B.F. Eaton Ditch Company and ourselves to develop a solution to mitigate future flooding being caused by the current B.F. Eaton ditch configuration.
- Current conditions leading to the flooding of the intersection of 7<sup>th</sup> Street and Riverplace Drive.

## Storm Waters & Drainage -

Cole Haberer presented the design of the civil grading and site layout. Included was the change of topography, storm water flow, street layout, interconnection with adjacent streets, and trail connections of the site as currently planned. As flooding issues were the main concern being demonstrated by attendees, Cole expanded on this issue showing how storm water flows are being designed for the Third Filing. He showed how storm water would flow from West to East across the site with the bottom 1/3 to a clarity pond and the top 2/3 to a swale in middle of site and directed to a detention pond. Cole also talked about offsite influences to the site which included street connections, B. F. Eaton Ditch, Poudre River, slopes, storm drainage, trails and detention.

Cole and Spike explained that much of flooding at the intersection of 7<sup>th</sup> Street and Riverplace Drive, which are located in the Second Filing, has been experienced partly because of the B. F. Eaton Ditch overflowing its banks during heavy storm events. It was explained that the open ditch needs additional flood control measures installed along its length and that the Town and B. F. Eaton Ditch Company are currently working with consultants for remediation solutions. The Town has hired Anderson Consulting to evaluate the problem and design a solution. Cole explained that part of the grading of the Third Filing would be to raise the elevation along the north property line to keep the flood water from entering the site and force the

waters back to the Cache La Poudre River.

Attendee asked if lot owners individually were responsible for how storm water flowed off their lots. He stated owners in the Second Filing were experiencing flooding problems from uphill neighbors living in Hilltop Estates. Cole explained that a subdivision as a whole had to have a storm water plan. Normally individual homeowner did not have retention pond requirements on individual lots. Normal storm water design directs flows through a defined drainage system of pipes and swales to retention/detention ponds. These developed excess flows then need be released at historic flow rates from a developed site to the stream or river for conveyance away from the project. Concern was expressed by a number of attendees about excess storm water drainage from off-site. Several indicated they were experiencing excess storm water flows from the Hilltop Estates project and asked what should they do about it and/or if we would be influencing their flooding issue.

*Cole responded: Storm water from the Third Filing would not affect the lots in the Second Filing. All water from the Hilltop Estate that came to the Third Filing would be channeled to the detention ponds.*

Attendees asked if we were the developer of Second Filing.

*Spike response: We did not develop Hilltop Estates nor the Poudre Heights Second Filing. He recommended the solution to flooding from the East facing slope of Hilltop Estates will need to be accomplished by engineering design to redirect the water. He also recommended they schedule a meeting with the Town's Director of Engineering Dennis Wagner. Significant discontent was expressed by the Second Filing homeowners who were aggressive in stating they had contacted engineering and planning but had not received satisfactory response.*

Attendee expressed concern about the adequacy of the designed of the Poudre Heights retention pond because it currently floods.

*Cole response: The pond was designed to retain storm water only. Once water control on the B.H. Eaton ditch has been installed the flooding will be controlled and stopped. The flood water will be redirected back to the Poudre River north of the Poudre River Trail along the north edge of the Poudre Heights Third Filing. No flooding of the ponds nor 7<sup>th</sup> Street intersection should continue after the completed improvements which include changing the elevation and grading of the Poudre Heights Third Filing.*

Attendee wanted to know who was going to provide electrical service to the site. They hoped it would be other than Xcel Energy as they had experience many problems with the electrical pedestals/transformers in the Second Filing.

*Spike response: Electrical service is controlled by tariff and Xcel was designated to provided electrical and gas service.*

### **Traffic Concern -**

Cole presented the street layout and connection points to the existing streets. He discussed the points of connection are as provided for on the Second Filing plan and at Merlin Lane. A traffic study had been complete and the amount of additional vehicular traffic is anticipated to be less that the study allowed for. Fewer single family lots and inclusion of townhomes is projected to result in about 10 percent fewer trips per day than the study estimated.

Attendee expressed concern about how townhome product would affect traffic leaving Poudre Heights.

*Spike response: The townhomes produce smaller traffic volumes than single family homes do.*

*Further explanation provided that the traffic study would dictate street design standards, type of usage, and parking connection characteristics.*

Attendees expressed concern about traffic because they had been in touch with the Town and felt were not being providing good answers. One attendee even called out loudly, "what planning department?"

*Spike responded to questions about Poudre Heights only having two exits, one to 7<sup>th</sup> Street and one to New Liberty. Merlin Lane would also be connected to the project providing a third access. (The Second Filing also allows for a future connection point at Boxelder Drive). He also indicated that he had discussed utilizing the Hilltop haul road to bring construction materials, if possible, to the site.*

At this point Spike expressed sympathy with the attendees and the hardships they are experiencing but let them know that the meeting needed to focus on the Third Filing currently being designed and submitted to the Town. He recommended the attendees concerned about resolving drainage issues from the adjacent property, or concerns about flooding at the 7<sup>th</sup> Street intersection, contact their Board representative (Kristie Melendez) as she will have more direct contact with the Town's staff that can resolve the problems. Approximately 10 attending neighbors then left the meeting together. The members who left the Windsor Recreation Center Aspen Room, gathered outside the door to develop a plan to solve their issues.

#### **Residential Mixed Use Zoning –**

Spike presented the request to change the zoning to Residential Mixed Use (RMU) and showed the preliminary site plan. The location of the single family lots and multi-family lot locations were described. The separation of the two housing types at the B. F. Eaton Ditch and trail easement was described. The easement containing the piped ditch, sanitary sewer transfer main and trail system with complementary landscaping providing a natural change of use was discussed. The single-family lots exhibit generally the same lot sizes and dimensions as the Second Filing. The new single family lots will separate Poudre Heights Second Filing from the Third Filings townhome lots.

Spike presented exterior elevations of the multi-family townhomes and explained the buildings contained two, three or four units. Most of the units are ranch plans or 1<sup>st</sup> floor master designs. The location of the townhomes is separated from the single family lots by the landscaped trail easement. All have two car attached garages accessed from driveways. Garages do not face the streets. It is estimated that approximately 124 townhomes will be built.

Attendees expressed concern that the price point of the townhomes would negatively effect the value of their homes because it was not a single family home.

*Spike response: The townhomes are expected to sell at a base price around **\$275,000** which is not significantly lower than the single family homes. The units would not be rentals and would be sold to owner residents. The floor plans would be primarily ranch and 1<sup>st</sup> floor master designs. They would sell as fee-simple units constructed on individual lots. The sizes would be around 1,600 and 1,800 square feet per unit with a two car garage. The townhomes will not have basements. Exterior maintenance would be through an association.*

Attendee asked why not built single family lots.

*Spike responded: Not all residents of Windsor want single family homes. Many people would like to live in Windsor but prefer to have exterior maintenance handled by others. Also people that do not want a single family home, but want something smaller after their children are gone, have an optional housing type.*

After the attendees heard the units would not be priced, nor designed, to be rental or apartments units they expressed comfort with the townhome concept. They were also happy the garages would not face the streets.

An attendee asked how long construction will take.

*Spike response: It depends on economy. However, we would like to have the project finished in 5 or 6 years. He explained that the Third Filing will be developed and built in stages. We will build all of the townhomes and at least 100 of the single family homes ourselves. We may sell some of the lots to others but may not.*

Attendee asked what types of home architectural character was planned. He presented the Second Filing exhibited predominately Craftsman (Prairie) architecture.

*Spike response: A final commitment was not given about the architectural design for the Third Filing single family homes. However, the architecture would not exhibit modern architecture design and would be complementary to the homes built in the Second Filing. The townhomes will exhibit a mid-western design as shown in the renderings.*

At 8:00 the meeting was adjourned as the Community Center representative indicated the building was being closed for the day.



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# **Poudre Heights Subdivision 2<sup>nd</sup> Filing, Tract I**

## **Rezoning**

**Paul Hornbeck, Associate Planner**

**October 27, 2014**

Town Board

C.2-C.3



# Rezoning

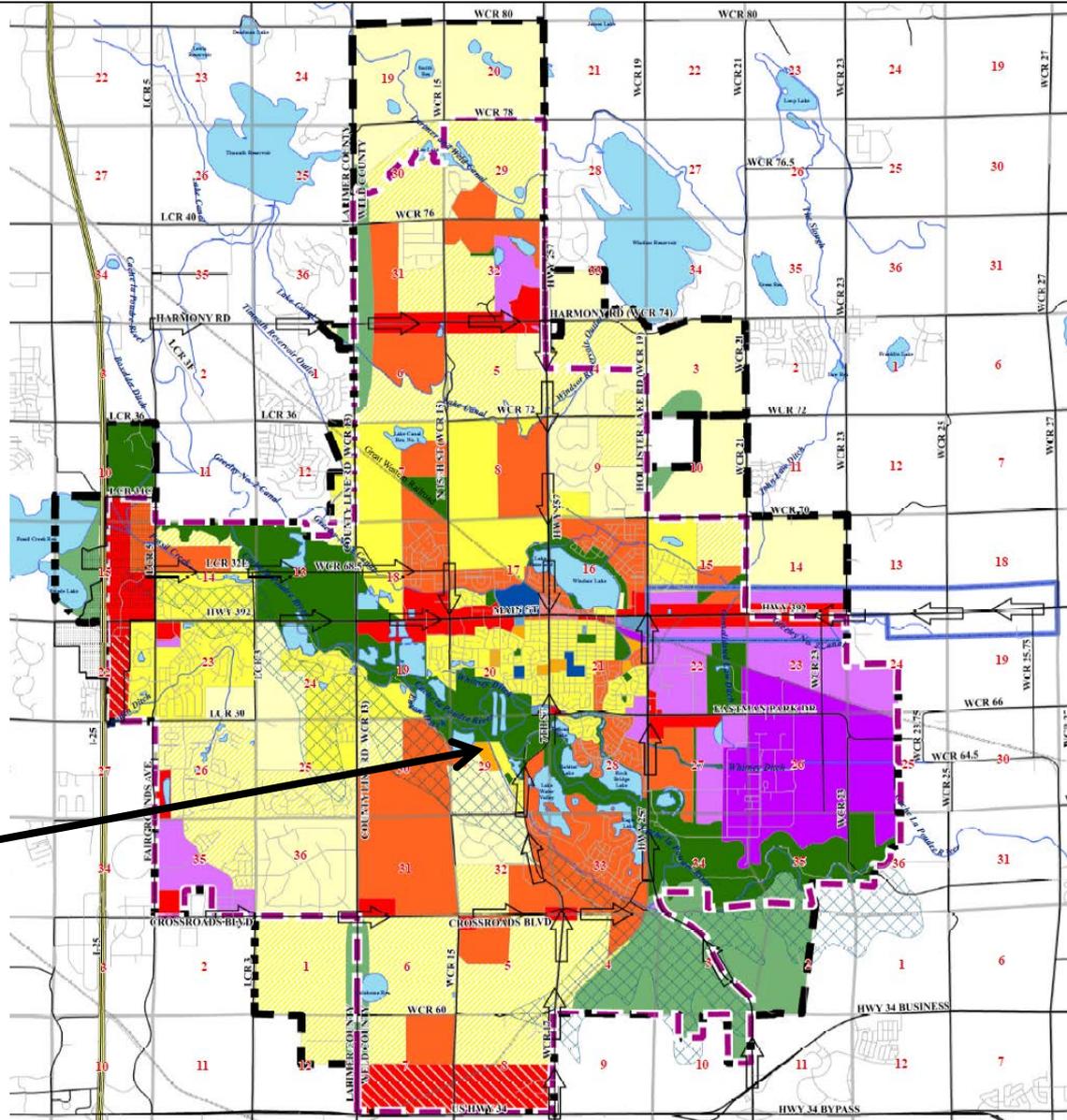
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Article V of Chapter 16 of the Municipal Code outlines the purpose of the Rezoning process:

## **Sec. 16-5-20. Rezoning applications.**

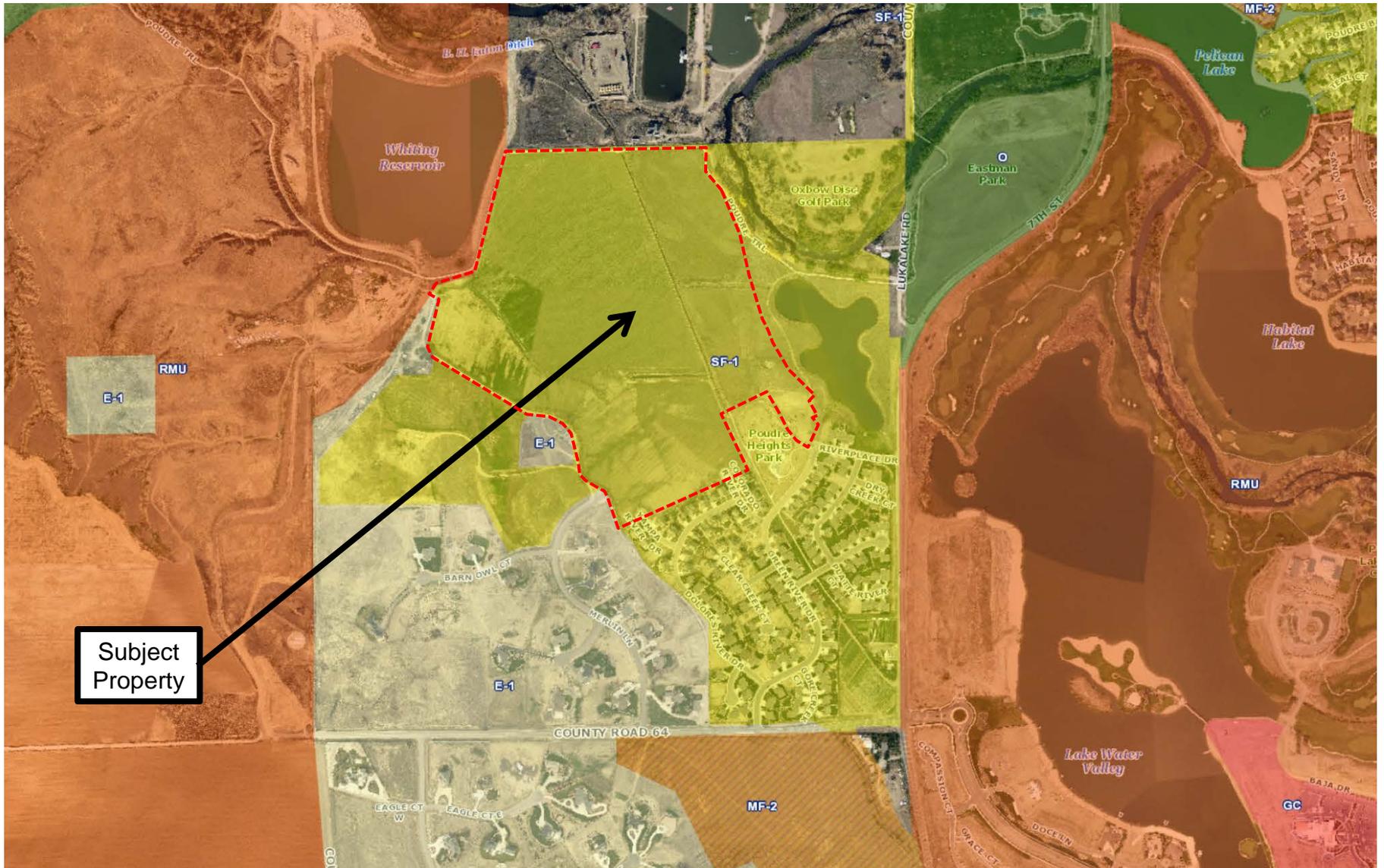
(a) Purpose. The purpose of this Section is to provide a procedure for changing the existing zone classification of parcels of land within the Town.

# Site Vicinity Map



Subject Property

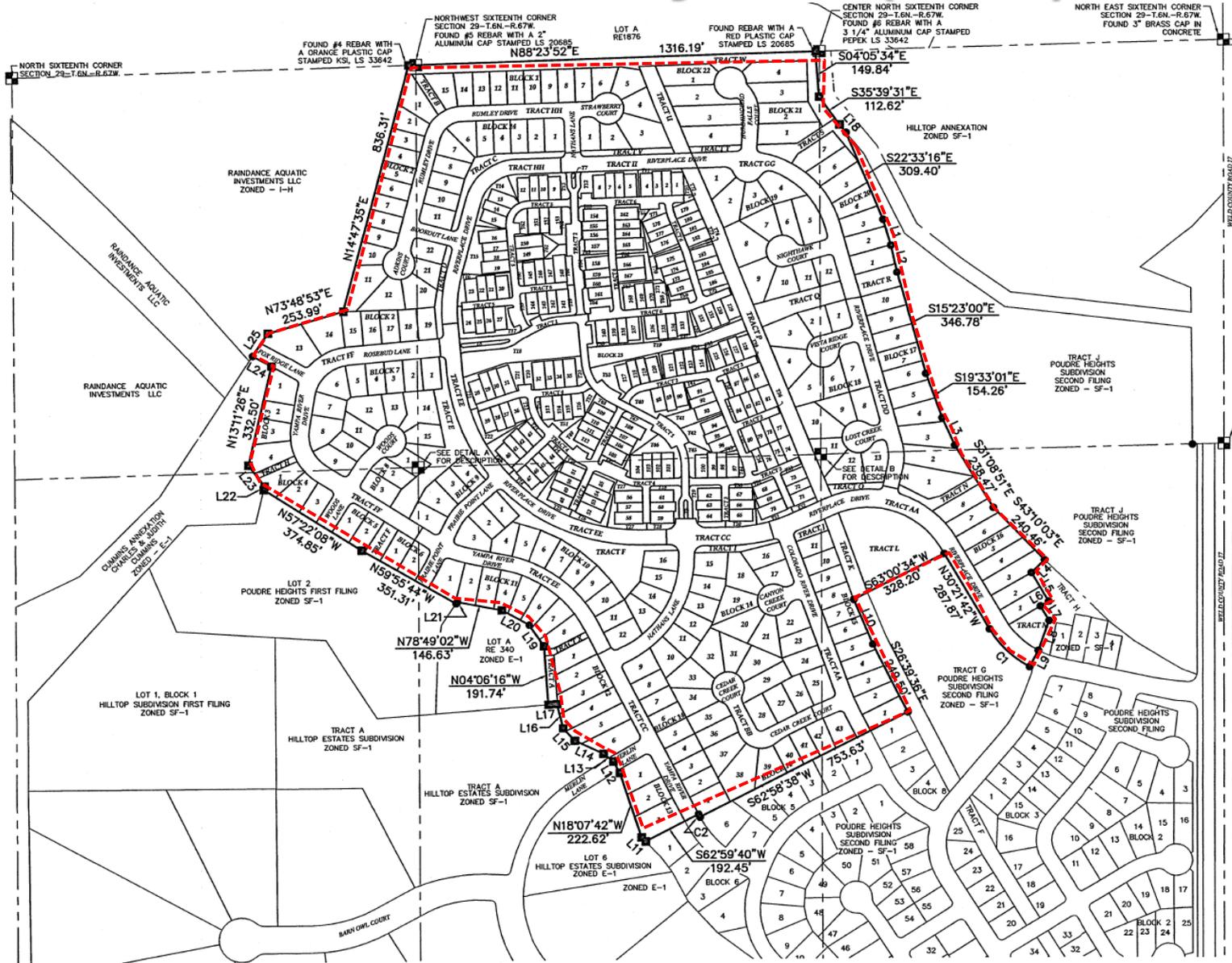
# Zoning Map





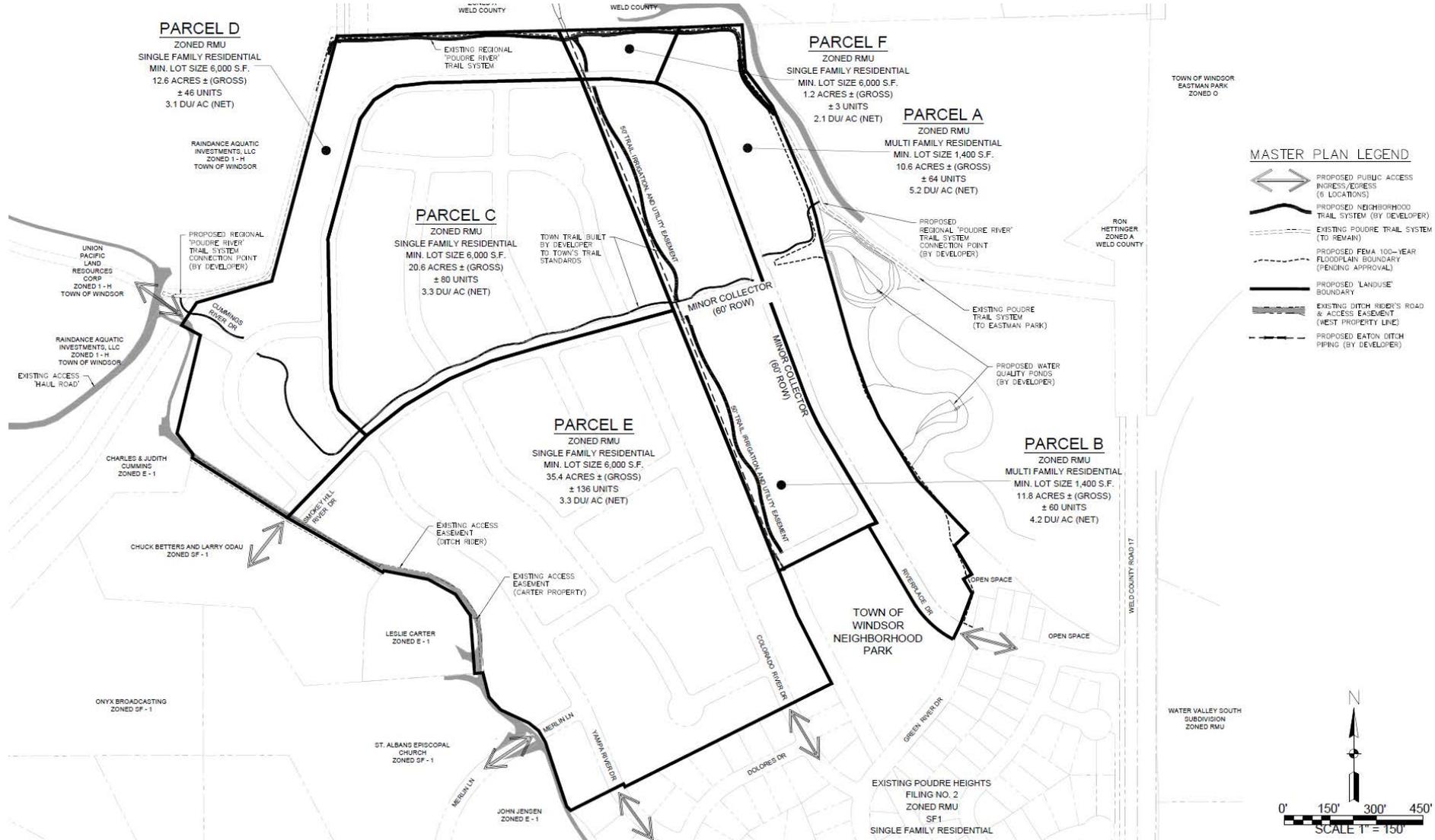


# Previously Approved Preliminary Plat (2006)



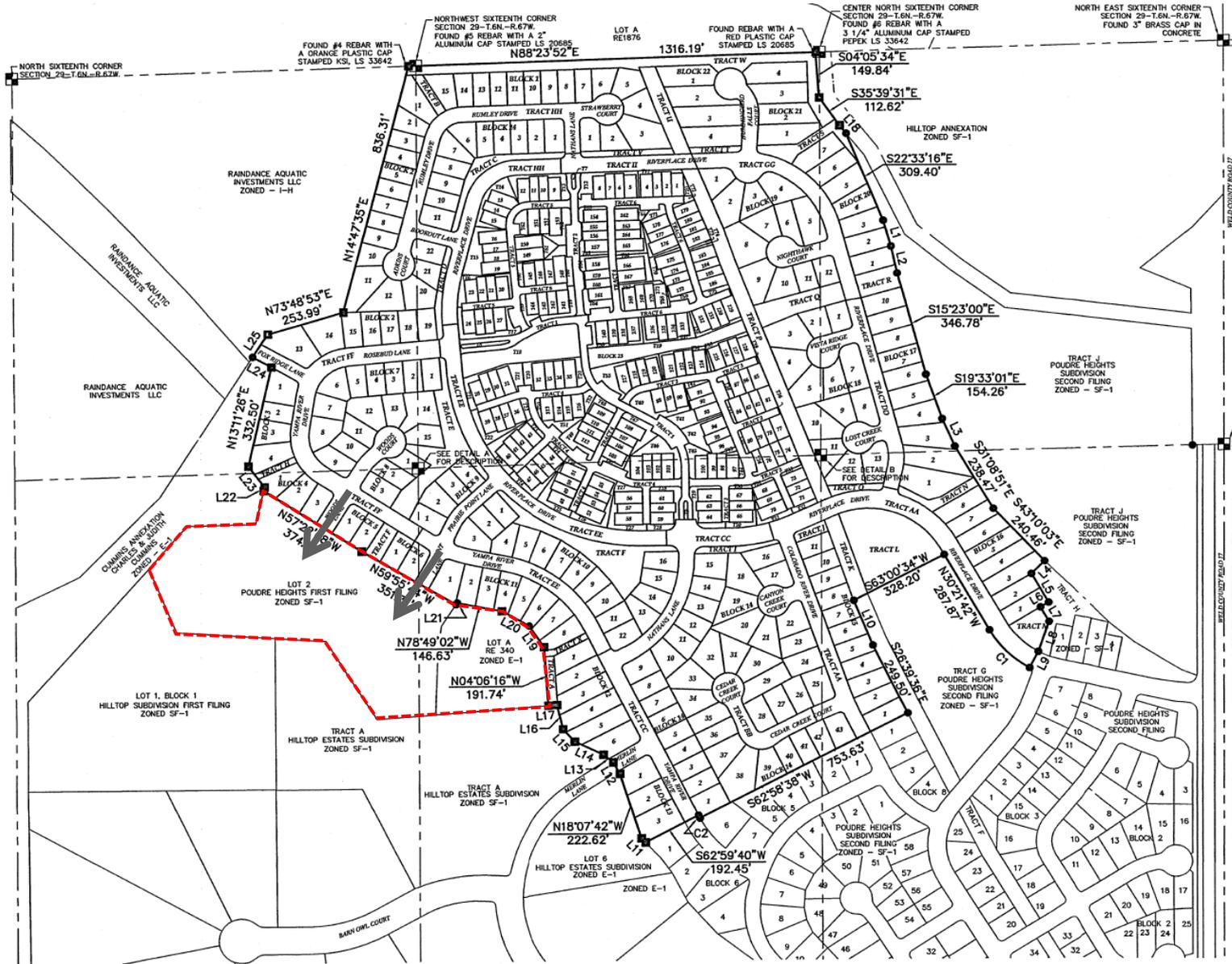


# Proposed Master Plan

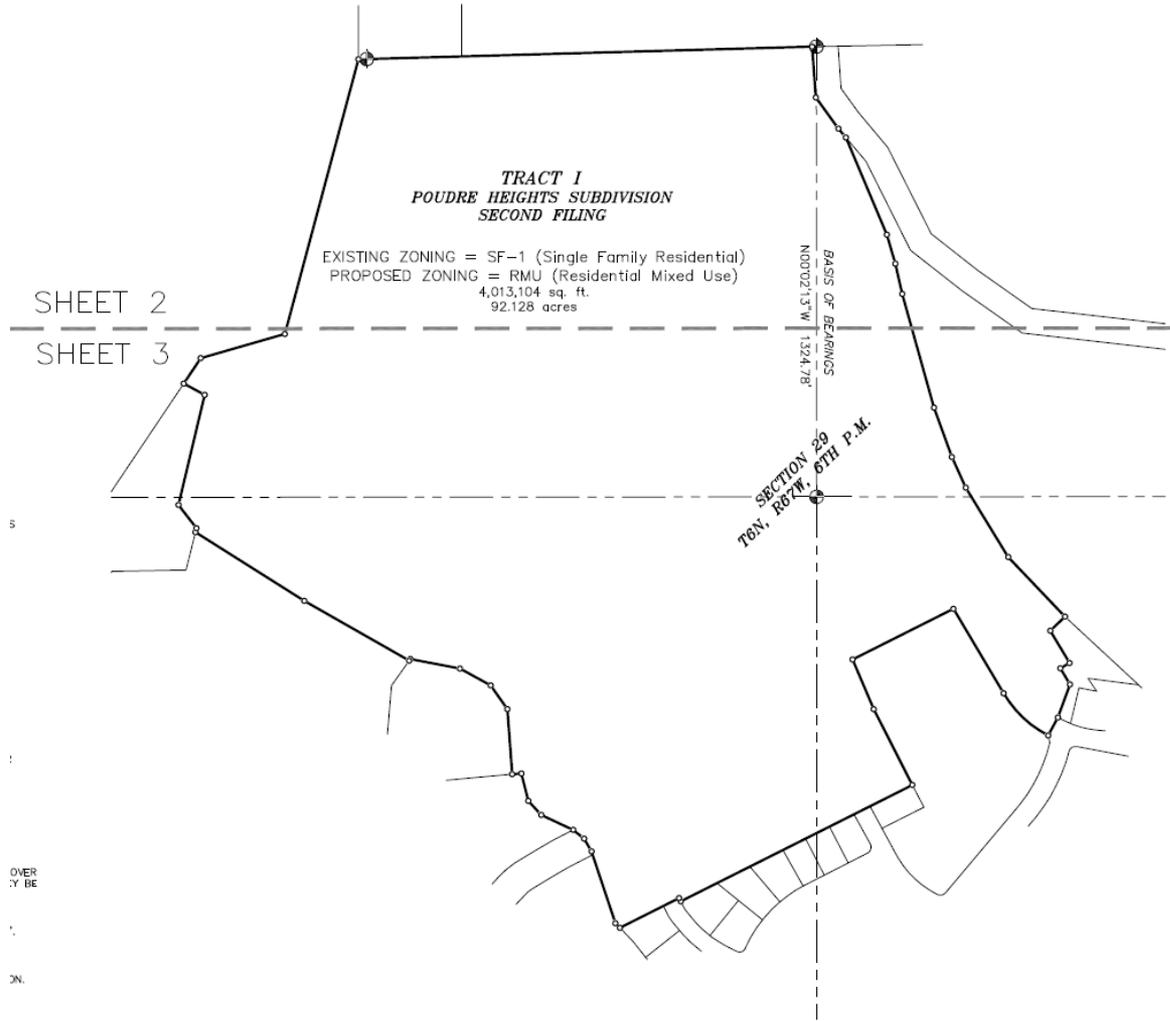




# Odau/Bettors Property Access



# Rezoning



OVER  
 BY BE  
 :  
 :  
 ON.

- LEGEND**
-  SECTION CORNER
  -  PROPERTY CORNER
  -  PROPERTY LINE
  -  SECTION LINE
  -  EASEMENT LINE

  
 NORTH

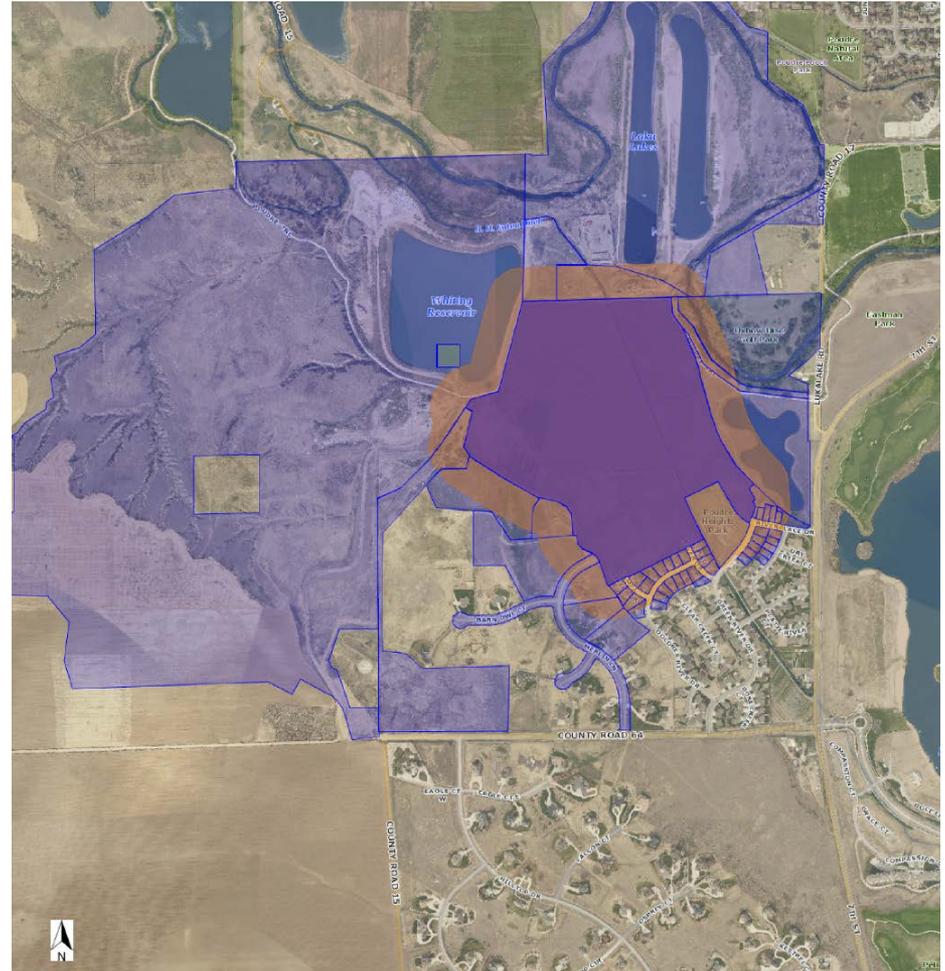
SCALE: 1" = 200'



# Notification

## Notification Area

- The neighborhood meeting was held on August 14, 2014
- Notice of public hearings was published in the newspaper on 10/11/14
- Signs were posted on the property on 10/09/14
- Letters were mailed to surrounding property owners within 300-feet on 10/16/14





# Recommendation

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At their October 1, 2014 meeting the Planning Commission forwarded a recommendation of approval to the Town Board with the following condition:

1. All staff redlines and comments shall be addressed



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Minutes

3. Public Hearing - Proposed amendment to the Windsor Comprehensive Plan Land Use Plan Map - Poudre Heights Subdivision, Second Filing, Tract I – Gail E. Rumley, President, Poudre Heights LP, applicant

- Staff presentation: Joe Plummer, Director of Planning

Chairman Schick closed the Regular meeting and opened the Public Hearing

Staff Presentation:

Per Mr. Plummer:

The applicant, Mr. Gail Rumley of Poudre Heights, LP, has requested an amendment to the Comprehensive Plan Land Use Map. This is a part of three different reviews related to the development of Tract I of Poudre Heights Subdivision, Second Filing that is being reviewed.

This proposal is to develop the 92 acre Tract I of Poudre Heights Subdivision, Second Filing. The Second Filing was approved in 2003 and included the platting and subsequent development of 163 single-family lots. Tract I was designated at that time for future development, subject to the Town's normal review process upon submittal of any development proposal. A preliminary plat for the third filing depicting single-family and multi-family uses for Tract I was approved in 2006 but no approvals were received for the final plat, rezoning, or master plan amendment, all of which were needed to proceed with development.

At this time the applicant is seeking approval of three items in order to move this project forward prior to submitting a new preliminary plat. The applicant seeks to rezone the property from Single-family Residential (SF-1) to Residential Mixed Use (RMU); to amend the Town's Land Use Map of the Comprehensive Plan from Single-family Residential and Multi-Family Residential to Residential Mixed Use; and to amend the Master Plan for Poudre Heights that was approved in 2003.

The Preliminary Plat approved in 2006 shows 233 single-family lots and 190 multi-family units, while the currently proposed master plan shows 265 single-family lots and 124 multi-family units. The multi-family was previously located in the center of the development with single-family located around the perimeter. That layout has changed to locate the multi-family development on the eastern side and the single-family portion to the west with the B.F. Eaton Ditch and proposed adjacent trail separating the two. Internal street layout within the development has changed and better connectivity with fewer cul-de-sacs is now proposed.

The change from a Single-family designation to Residential Mixed Use would potentially allow for higher density. However, as previously mentioned the proposed Master Plan includes 265 single-family lots and 124 multi-family units. This is an overall density of 4.2 units per acre and a gross density of approximately 3.6 units per acre which equates to a lower density than the maximum allowed under the 6,000 square foot minimum lot size for the current Single-family SF-1 District. The Engineering department has reviewed the proposed Master Plan and sufficient sewer capacity exists to accommodate the development as proposed.

Staff recommends that the Planning Commission approve the proposed change to the land use map as presented with the follow conditions:

1. Density does not exceed the 389 units depicted on the currently proposed master plan
2. All staff comments and redlines shall be addressed

Public Comment:

The below listed all spoke in opposition to the amendment to the Land Use Plan Map from Single-family Residential and Multi-family Residential to Residential Mixed Use (RMU):

Mark Peterson, 1739 Green River Drive  
Eric Moore, 1017 Dry Creek  
Stacy Younger, 1678 Platte River Drive  
Dennis Pohl, 1696 Dolores River Drive  
Linda Iannuzzi, 1768 Green River Drive  
Carla Moore, 1017 Dry Creek Court  
Ravi Sharma, 1750 Green River Drive

For the following reasons:

- Traffic flow
- Significantly increased traffic
- Safety concerns
- Multi-family dwellings will affect property values
- The traffic study is too old, it was 7 years ago. Since that time there has been a roundabout constructed at Crossroads Boulevard, and a crosswalk and a walking path have been added to 7<sup>th</sup> Street.
- Flooding

**Mr. Frank moved to close the public hearing. Mr. Tallon seconded the motion. Roll call on the vote resulted as follows:**

**Yeas – Gale Schick, Steve Scheffel, Robert Frank, Victor Tallon, Ronald Harding, David Cox, Wayne Frelund**

**Nays – None**

**Motion carried**

1. Resolution 2014-02 approving amendments to the Windsor Comprehensive Plan Land Use Plan Map - Poudre Heights Subdivision, Second Filing, Tract I – Gail E. Rumley, President, Poudre Heights LP, applicant (affirmative vote of a super majority of five members required for approval)

*Super-majority vote required for adoption of Resolution*

- Legislative
- Staff presentation: Joe Plummer, Director of Planning

Staff Presentation:

Per Mr. Plummer, this resolution is required by State Statute in order to amend the Town's Land Use Map of the Comprehensive Plan from Single-family Residential and Multi-Family Residential to Residential Mixed Use

Staff reiterated the recommendation for approval of Resolution 2014-02 with the following conditions:

1. Density does not exceed the 389 units depicted on the currently proposed master plan
2. All staff comments and redlines shall be addressed

Mr. Harding asked how many total homes could be built, and Mr. Plummer answered that they have not done that calculation yet because there is not a plat for single-family homes. The current proposal is for 389 total units comprised of 265 single-family lots and 124 multi-family units, which is a decrease from the 2006 plat which had 233 single-family lots and 190 multi-family units or 423 total units.

Mr. Harding asked about the increased traffic impact. The Town's Civil Engineer, Doug Roth, stated that the traffic study was prepared for the original master plan of 400-plus units. The current proposal will have less impact because there are fewer units. When asked about how the present proposal would compare to the property only being developed with single-family homes, Mr. Roth stated that this comparison has not been made since all of the proposals for the subject property have always related to a mix of single-family and multi-family homes.

Mr. Frelund asked which engineering firm completed the original traffic study, and Mr. Roth stated it was Drexel Burrell, but that an update of the traffic study relative to the current proposals was completed by Matt Delich of Delich Associates. Mr. Frelund further stated that he believes that the proposed uses going forward could be a real benefit to Windsor.

Mr. Scheffel stated that this issue is to consider modification of the area to accommodate the proposed new development. He asked if the Town changes the zoning and the current developer doesn't develop the area as planned could a new developer add rental units. Mr. Plummer answered that the proposed change in the land use depiction and the proposed zoning change to RMU does allow for rental type units such as apartments.

Mr. Frelund asked if the subdivision is sold would the purchaser be required to perform another round of traffic studies and approvals. Mr. Plummer stated that is the case.

Mr. Frank asked if this item can be deferred for a few weeks so more information can be brought forward. Mr. Plummer stated that the item before the Planning Commission is the Resolution to consider the land use map amendment, and it is the Board's decision to either postpone or act on the Resolution.

Mr. Tallon asked if there is an advantage to having an RMU land use depiction other than to allow different densities, and Mr. Plummer stated that the current land use depiction and likewise the SF-1 zoning only allows single-family homes, so in order for a developer to be able to have more than just single-family homes, the land use depiction and the zoning needs to be changed.

Mr. Schick asked the applicant if he is in agreement with the conditions as set forth by staff. Mr. Rumley stated that he is not particularly fond of the 389-unit number because it is an absolute number and he would be more comfortable with 400 units for more flexibility depending on final configuration of the site and roads. Mr. Rumley also stated that not only is he the applicant but that he will also be the developer/builder, and as such he will build all of the structures on the site. Mr. Rumley further stated that it was not his intention to sell the site to other builders. Mr. Rumley also stated that he feels that the proposed townhomes fit the Town's needs for more diverse housing as there are already quite a few single-family homes in Windsor but very few multi-family units. Mr. Rumley went on to say that the townhome products that he is proposing will provide additional opportunities relative to the Town's housing stock, especially for individuals who don't want outdoor maintenance issues but still want to live in a community environment. Mr. Rumley also said that the townhome units that he is proposing will have two-car garages and will have common walls, a front yard and back yard, and contrary to what someone had mentioned earlier, he is not proposing to build an apartment complex.

Mr. Frelund stated he has an emergency access concern. Mr. Plummer stated that there is another action item later tonight which may address this question.

Mr. Frank asked if rezoning is granted will the developer be required to replat to meet square footage requirements. Mr. Plummer stated it is required because of building code that the Town adopted.

Mr. Frelund asked Mr. Roth if the roads are classified as collectors or arterials, and Mr. Roth answered that 7<sup>th</sup> Street is an arterial and New Liberty is a collector. He also stated that Riverplace Drive is a minor collector, which is larger than a residential street.

**Mr. Tallon moved to approve the Resolution to amend the land use map with staff conditions. Mr. Frank seconded the motion. Roll call on the vote resulted as follows:**

**Yeas – Gale Schick, Steve Scheffel, Robert Frank, Victor Tallon, Ronald Harding, David Cox, Wayne Frelund**

**Nays – None**

**Motion carried**

5. Public Hearing – Rezoning - Poudre Heights Subdivision, Second Filing, Tract I Rezoning – Gail E. Rumley, President, Poudre Heights LP, applicant

- Staff presentation: Joe Plummer, Director of Planning

Chairman Schick closed the Regular meeting and opened the Public Hearing

Town Board Liaison Bishop-Cotner:

Stated "...for the record I would like to disclose that I am a sitting member of the Town Board, and that I am here in my capacity as non-voting liaison to the Planning Commission. Although I will be present during this public hearing, I will not be giving my opinion or participating in the discussion. I will not let tonight's proceedings influence or affect my review of this matter when it comes before the Town Board. I will make my decision at the Town Board level based only on the evidence presented during the Town Board public hearing."

Staff Presentation:

Per Mr. Plummer:

As outlined in Item C.3., Mr. Rumley is seeking to develop Tract I of Poudre Heights Subdivision, Second Filing. In order to allow the proposed multi-family component he is seeking a rezoning from Single-family Residential (SF-1) to Residential Mixed Use (RMU). The associated master plan that is proposed depicts 124 multi-family units in the form of two, three, and four unit buildings. The master plan also shows 265 single-family lots.

Recommendation:

Staff recommends the Planning Commission approve the rezoning request as presented with the following condition:

All staff comments and redlines shall be addressed.

Town Attorney McCargar advised the Planning Commission that it would be proper to address any questions to or from the applicant during the public hearing portion of the meeting so that any questions, comments or discussion would be entered into the record as evidence.

Mr. Rumley was present to answer questions regarding rezoning request.

Mr. Frank asked about the flooding concerns that have been voiced tonight. Mr. Rumley stated that the Town has hired Anderson Consulting to work with Town Engineering staff as well. It was discussed that flooding comes from over topping the banks of the B.F. Eaton Ditch during 100 year flood events, and that proposals are being made for mitigation, including raising elevations at the north and east areas of project. An additional mitigation measure Mr. Rumley referred to is that the B.F. Eaton proposing to construct a pipe that will run through the project,

and even though this is not fool proof, it is a good way to divert the water. Lastly, the Town is proposing to construct flood gates at the north end of the project.

Mr. Cox asked the applicant if these proposed flood improvements could cause potential flooding towards the current homes and wanted to know if these improvements will stop water from reaching the current areas or would these measures be an improvement to the current conditions.

Mr. Cole Hauber, civil engineer for the project, explained that FEMA has stated that one-third of the area of the proposed project lies within the flood plain so the developer will be required to raise any structures that could be affected by the floodplain by following both FEMA regulations and the requirements in the Town's flood prevention ordinance.

Mr. Harding asked if these changes will affect homes that are already occupied as well as 7<sup>th</sup> Street. Mr. Plummer again stated that the Anderson Consulting study is currently under way to find ways to mitigate the current flood plain.

Public Comment:

The below listed all spoke in opposition to the rezoning of the area from Single-family to Residential Mixed Use (RMU):

Chuck Cummins, 31013 County Road 17  
John Boyle, 1712 Clear Creek Court  
Stacy Younger, 1678 Platte River Drive  
David Younger, 1678 Platte River Drive  
Gary Billings, 1749 Dolores River Drive  
Paul Rennemeyer, 1709 Clear Creek Court  
Scott Sandridge, 1005 Dry River Court  
Mikaela Sandridge, 1005 Dry Creek Court  
Ravi Sharma, 1750 Green River Drive  
Kevin Meyer, 1748 Clear Creek Court  
Frank Iannuzzi, 1768 Green River Drive  
Dennis Pohl, 1696 Dolores River Drive

For the following reasons:

- Eaton ditch is an asset, Poudre River is flooding over the top of it and it is not the Eaton ditch that is flooding.
- Residents currently enjoy the neighborhood because of low traffic volume and they will lose that.
- The only access to this new development is through their neighborhood.
- There is residential mixed use directly east of them and units there are not sold. Other places in Windsor have RMU zoning, so there isn't any need to have RMU zoning in the vicinity of their houses.
- Multi-family dwellings will affect property values.
- There are too many unknowns with this proposal and there are so many questions that need to be answered.
- The entrance on Riverplace at 7<sup>th</sup> is raised up in this plan and if that entrance gets flooded and is blocked then all of the traffic goes through the neighborhood.
- There is nothing stopping this or other developers from building apartments.

**Mr. Tallon moved to close the public hearing. Mr. Frank seconded the motion. Roll call on the vote resulted as follows:**

**Yeas – Gale Schick, Steve Scheffel, Robert Frank, Victor Tallon, Ronald Harding, David Cox, Wayne Frelund**

**Nays – None**  
**Motion carried**

6. Recommendation to Town Board – Rezoning - Poudre Heights Subdivision, Second Filing, Tract I Rezoning – Gail E. Rumley, President, Poudre Heights LP, applicant

- Quasi-judicial action
- Staff presentation: Joe Plummer, Director of Planning

Staff Presentation:

Per Mr. Plummer:

This item has been placed on the agenda in accordance with Chapter I Section E.3 of the Comprehensive Plan, and that this proposal is to rezone approximately 92 acres known as Tract I of the Poudre Heights Subdivision Second Filing from Single-family Residential to Residential Mixed Use. Mr. Plummer further stated that the applicant's proposal requires that the subject property be rezoned since the current SF-1 zoning does not allow for the proposed multi-family

units, and that the Municipal Code allows the RMU Zoning District in any location designated as such on the Land Use Map or in any area zoned or rezoned as such by the Town Board.

Therefore, this rezoning will allow for consistency between the land use depiction on the Land Use Map that was approved as the previous agenda item and the current rezoning proposal. The change from a Single-family designation to Residential Mixed Use would potentially allow for higher density. However, as previously mentioned the proposed Master Plan includes 265 single-family lots and 124 multi-family units. This is an overall density of 4.2 units per acre and a gross density of approximately 3.6 units per acre which equates to a lower density than the maximum allowed under the 6,000 square foot minimum lot size for the current Single-family SF-1 District. The Engineering department has reviewed the proposed Master Plan and sufficient sewer capacity exists to accommodate the development as proposed.

Recommendation:

Staff recommends the Planning Commission forward a recommendation of approval to the Town Board with the following condition:

1. All staff redlines and comments shall be addressed.

**Mr. Tallon moved to forward to the Town Board a recommendation of approval of the rezoning with the staff condition. Mr. Frank seconded the motion. Roll call on the vote resulted as follows:**

**Yeas – Gale Schick, Steve Scheffel, Robert Frank, Victor Tallon, Ronald Harding, David Cox, Wayne Frelund**

**Nays – None**

**Motion carried**

7. Recommendation to Town Board – Poudre Heights Subdivision, Second Filing, Tract I Amended Master Plan – Gail E. Rumley, President, Poudre Heights LP, applicant

- Quasi-judicial action
- Staff presentation: Joe Plummer, Director of Planning

Staff Presentation:

Per Mr. Plummer:

As outlined in the previous agenda items, Mr. Rumley is seeking to develop Tract I of Poudre Heights Subdivision, Second Filing. The current development proposal is not in conformance with the approved Master Plan so that document must be amended to reflect the land uses that are being proposed.

The preliminary plat that was approved in 2006 shows two streets accessing the adjoining property owned by Mr. Chuck Betters and Mr. Larry Odau, while the amended master plan that is being proposed shows only one access. The reduced number of access points is relevant because the property lacks any connections to adjacent public streets. Reducing the accesses from two to one would have the effect of potentially reducing the future development potential of the property. Fire codes limit an area with only one access to 25 units unless the units include fire sprinklers. The preliminary plat gave the owners an expectation that the two access points would be provided. Access to this property has not been resolved, but Mr. Rumley has indicated that he has been in conversations with Mr. Betters and Mr. Odau to try and reach a consensus with them on this issue. Thus far, however, there has not been a resolution to this issue. Mr. Plummer stated that the two access points are essential based upon the review of the fire department and because continuing to show both access points is consistent with the previously-approved preliminary plat.

Mr. Rumley and Mr. Hauber showed the Planning Commission a schematic drawing of the adjoining property and presented information pertaining to their reasons for proposing only one access point for the development.

Mr. Frank asked Mr. Rumley and Mr. Hauber why they felt that the two accesses to the adjoining property wasn't warranted, and Mr. Hauber stated that the adjoining property is zoned single-family and is encumbered by a drainage pathway and an oil well which restricts the amount of units that can be built. Mr. Hauber also stated that providing two access points to the adjoining property will cause excessive infrastructure costs to the developer, and that they had spoken with the fire department which he said was fine with the one access point that was being proposed.

Mr. Betters and Mr. Odau, owners of the adjoining property, were both present and each stated that it is still their desire to have the two access points.

Per Mr. Plummer:

Because the applicant introduced the new schematic drawing this evening with a single access point that staff has not had an opportunity to review, Mr. Plummer stated that staff stands by the present recommendation for the master plan to show the two points of access. Mr. Plummer further stated that if the amended master plan only shows the one access point to the adjoining property, staff further recommends that the recommendation on the master plan should be one of denial.

Mr. Frank stated that it doesn't plan for the future if just one access point is proposed and it assumes what you see is what you get forever. Mr. Frank also stated that there are too many unforeseen changes that could happen in the future that could not be adequately addressed with only the one access point.

Mr. Frelund stated that making land use decisions based on encumbering other properties is not a function of planning.

Recommendation:

Staff recommends the Planning Commission forward a recommendation of approval to the Town Board of the amended master plan as presented, subject to the following three conditions:

1. Prior to execution of the mylars the master plan shall be updated to show two access points to the adjacent property owned by Chuck Betters and Larry Odau.

2. The overall densities on the amended master plan shall not exceed 265 single-family lots and 124 multi-family townhome units, for a total density of 389 dwelling units; and
3. All staff comments and redlines shall be addressed.

**Mr. Tallon moved to forward to the Town Board a recommendation of approval of the amended master plan with all three of the staff conditions. Mr. Frank seconded the motion.**

**Roll call on the vote resulted as follows:**

**Yeas – Gale Schick, Steve Scheffel, , Victor Tallon, Ronald Harding, David Cox, Wayne Frelund**

**Nay – Robert Frank**

**Motion carried**



## MEMORANDUM

**Date:** October 27, 2014  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
Joseph P. Plummer, AICP, Director of Planning  
**From:** Paul Hornbeck, Associate Planner  
**Subject:** Resolution No. 2014-64 – Ratifying, Approving and Confirming the Terms and Conditions of the Poudre Heights Subdivision, Second Filing, Tract I Amended Master Plan – Gail E. Rumley, President, Poudre Heights LP, applicant  
**Location:** West of 7<sup>th</sup> Street and north of New Liberty Road  
**Item #s:** C.4

### **Background:**

The applicant, Mr. Gail “Spike” Rumley of Poudre Heights, LP, has requested to amend the existing master plan for Tract I of the Poudre Heights Subdivision, Second Filing. The master plan must be amended because of proposed changes to the location of the multifamily and single family areas within the development and changes to the number of units. The multi-family units were previously located in the center of the development with single family lots around the perimeter. The new proposal locates the multi-family lots to the east of the B.F. Eaton Ditch with the single family lots located to the west. The overall number of units proposed has decreased from 423 to 389 while the mix of units has changed from 227 single family and 190 multi-family units to 265 single family and 124 multi-family units, respectively.

The preliminary plat approved in 2006 shows two streets accessing the adjacent Betters/Odau property while the new proposal as depicted on the master plan has only one access. Please refer to the previous memorandum for more detailed analysis of this issue.

### **Conformance with Comprehensive Plan:**

The application is consistent with the following goals and policies of the Comprehensive Plan:

#### **Residential Goals:**

1. Promote an adequate supply and variety of safe and economically achievable housing products to meet the current and future needs of the community.
2. Maintain housing that represents a diversity of style, density and price to meet the needs of Windsor residents.

#### **Residential Policies:**

11. Encourage and facilitate the development of housing which offers alternative choices in lifestyle such as townhouses, apartments and condominiums.

### **Conformance with Vision 2025:**

The application is consistent with Vision 2025 Housing Quality and Diversity Goal 1: “Provide choices for housing in town, not just single family homes,”

### **Recommendation:**

The Planning Commission forwarded a recommendation of approval to the Town Board with the following conditions:

October 27, 2014

Poudre Heights 2nd, Tract I – Amended Master Plan TB memo

1. Prior to execution of the mylars the master plan shall be updated to show two access points to the adjacent property owned by Chuck Betters and Larry Odau.
2. The overall densities on the amended master plan shall not exceed 265 single-family lots and 124 multi-family townhome units, for a total density of 389 dwelling units; and
3. All staff comments and redlines shall be addressed.

**Enclosures:** Resolution 2014-64  
neighborhood meeting notes (included in rezoning materials )  
excerpt of Planning Commission minutes (included in rezoning materials )  
staff PowerPoint

pc: Spike Rumley, Poudre Heights LP, applicant  
Chuck Betters, adjacent property owner  
Larry Odau, adjacent property owner  
Sandra Friedrichsen, Fire Marshal

TOWN OF WINDSOR

RESOLUTION NO. 2014-64

A RESOLUTION APPROVING AN AMENDED MASTER PLAN FOR THE POUFRE HEIGHTS SUBDIVISION THIRD FILING

WHEREAS, the Town of Windsor (“Town”) is a home rule municipality, with all powers attendant thereto; and

WHEREAS, the Town has in place a comprehensive regulatory scheme for the orderly and efficient development of land within its corporate limits; and

WHEREAS, by Resolution No. 2003-53 adopted on July 14, 2003, the Town Board approved the Master Plan for the Poudre Heights Subdivision Third Filing (“Master Plan”); and

WHEREAS, under Section 15-2-10 of the *Windsor Municipal Code*, master plan approval is a condition precedent to subdivision of property within the Town; and

WHEREAS, inherent in the Town’s powers to approve a master plan is the power to amend previously-approved master plans; and

WHEREAS, the property owner of Poudre Heights Subdivision Third Filing has requested an amendment of the Master Plan, a reduced copy of which is attached hereto for reference; and

WHEREAS, the proposed Amended Master Plan has been presented to the Planning Department as required by the *Windsor Municipal Code*, and has been referred to the Planning Commission for review and recommendation as required; and

WHEREAS, the Planning Commission has recommended the approval of the attached Amended Master Plan; and

WHEREAS, the Town Board has reviewed the Amended Master Plan, and finds that it is consistent with the Town’s Comprehensive Plan and applicable infrastructure planning documents; and

WHEREAS, the Town Board wishes to approve the Amended Master Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The attached Amended Master Plan, incorporated herein by this reference, is hereby approved, subject to the administrative requirements of Section 15-2-50 of the *Windsor Municipal Code*.

2. The Mayor is hereby authorized to execute such certifications and affirmations as may be necessary to finalize the Amended Master Plan on behalf of the Town.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 27<sup>th</sup> day of October, 2014.

TOWN OF WINDSOR, COLORADO

By: \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

DRAFT

# POUDRE HEIGHTS SUBDIVISION SECOND FILING

## TRACT I - AMENDED MASTER PLAN

POUDRE HEIGHTS SUBDIVISION SECOND FILING,  
BEING PART OF SECTION 29, TOWNSHIP 6 NORTH, RANGE 67 WEST OF THE 6TH P.M.,  
TOWN OF WINDSOR, COUNTY OF WELD, STATE OF COLORADO

### ACKNOWLEDGEMENT OF OWNERSHIP INTEREST:

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, BEING ALL THE OWNERS, LIENHOLDERS, AND HOLDERS OF ANY OWNERSHIP INTEREST AS DEFINED BY THE TOWN OF WINDSOR, OF THE LAND DESCRIBED HEREON, HAVE CAUSED SUCH LAND TO BE ANNEXED AND MASTER PLANNED AS INDICATED ON THIS MASTER PLAN. THE WITHIN MASTER PLAN IS SUBMITTED IN ACCORDANCE WITH THE WINDSOR MUNICIPAL CODE. IT IS HEREBY ACKNOWLEDGED THAT ALL CONSTRUCTION, USE AND DEVELOPMENT OF THIS PROPERTY WILL BE IN STRICT ACCORDANCE WITH THIS MASTER PLAN. IT IS FURTHER ACKNOWLEDGED THAT DEVIATION FROM THIS MASTER PLAN WITHOUT THE EXPRESS WRITTEN CONSENT OF THE TOWN OF WINDSOR MAY RESULT IN REVOCATION OF THE TOWN'S APPROVAL OF THE MASTER PLAN, DENIAL OF BUILDING PERMITS, REFUSAL TO ISSUE CERTIFICATES OF OCCUPANCY, INJUNCTIVE RELIEF PROHIBITING USE OF THE PROPERTY AND OTHER REMEDIES AVAILABLE TO THE TOWN UNDER THE WINDSOR MUNICIPAL CODE AND OTHER APPLICABLE LAWS OF THE STATE OF COLORADO. KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED HAVE CAUSED SAID LAND TO BE LAID OUT AND MASTER PLANNED UNDER THE NAME OF POUDRE HEIGHTS SUBDIVISION, SECOND FILING TRACT I, AMENDED MASTER PLAN.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS AND SEALS THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

POUDRE HEIGHTS LP.  
BY: LDCC MANAGEMENT III GP, LLC (GENERAL PARTNER)  
BY: LAND DEVELOPMENT AND CONSTRUCTION CONSULTING LTD. (MANAGER)  
BY: GAIL E. RUMLEY, PRESIDENT

### NOTARIAL CERTIFICATE

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )ss

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY:

\_\_\_\_\_, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

MY COMMISSION EXPIRES: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, NOTARY PUBLIC

(SEAL)

### PREPARER'S CERTIFICATE:

I CERTIFY THAT THIS POUDRE HEIGHTS SUBDIVISION, SECOND FILING TRACT I AMENDED MASTER PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

\_\_\_\_\_  
Signature

PREPARER OF POUDRE HEIGHTS SUBDIVISION, SECOND FILING TRACT I AMENDED MASTER PLAN

\_\_\_\_\_  
Print Name

PREPARER OF POUDRE HEIGHTS SUBDIVISION, SECOND FILING TRACT I AMENDED MASTER PLAN

### NOTES:

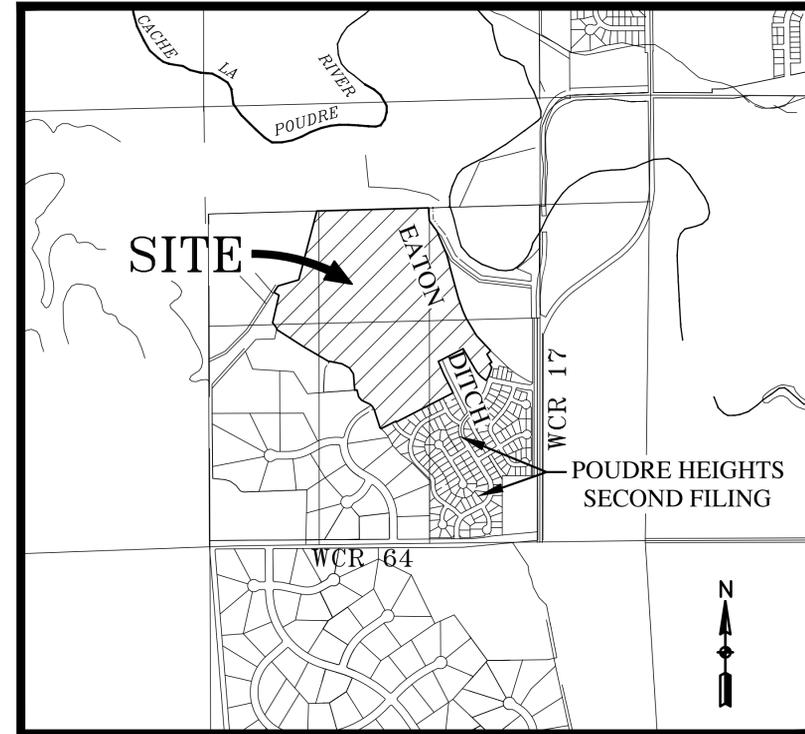
- ALL DENSITIES AND UNIT COUNTS ARE PROJECTIONS. FINAL DENSITIES TO BE DETERMINED AT TIME OF PLATTING, NOT TO EXCEED DENSITIES ALLOWED BY TOWN OF WINDSOR MUNICIPAL CODE.
- FINAL PARK DEDICATION AND/OR FEE IN LIEU OF PARK LAND DEDICATION WILL BE DETERMINED AT TIME OF FINAL PLAT, UNLESS PREVIOUSLY PROVIDED.
- THE RMU DISTRICT CONTAINS ADDITIONAL OPEN SPACE AND LANDSCAPE BUFFER SETBACKS FOR MULTI-FAMILY AND COMMERCIAL USES ADJACENT TO ARTERIALS AND COLLECTORS. OPEN SPACE AND LANDSCAPE BUFFERS SHALL BE IDENTIFIED AT THE TIME OF PLATTING.
- A NON-POTABLE WATER SYSTEM SHALL BE UTILIZED FOR IRRIGATION.
- AREAS OF DEVELOPMENT PARCELS SHOWN ARE APPROXIMATE AND MAY VARY. EXACT LOT SIZES WILL BE DETERMINED WITH EACH PRELIMINARY AND FINAL SUBDIVISION SUBMITTAL.
- FINAL CONFIGURATION OF PARCELS, TRACTS AND OPEN SPACE AREAS MAY VARY FROM THAT SHOWN.
- ACTUAL NUMBER OF UNITS WILL BE DETERMINED AT TIME OF SUBDIVISION PLATTING.
- SEE PLAT AND UTILITY PLANS FOR DESIGN OF EASEMENTS, LOT AREAS AND DIMENSIONS.

### PROPERTY DESCRIPTION:

A PLAT OF A PARCEL OF LAND IN THE TOWN OF WINDSOR, COUNTY OF WELD, COLORADO, LOCATED IN THE SOUTHWEST QUARTER (SW1/4) OF SECTION TWENTY-NINE (29), TOWNSHIP SIX NORTH (T.6N) RANGE SIXTY-SEVEN WEST (R.67W), SIXTH PRINCIPAL MERIDIAN (6TH P.M.), AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PART OF SECTION TWENTY-NINE (29), TOWNSHIP SIX NORTH (T.6N), RANGE SIXTY-SEVEN WEST (R.67W), SIXTH PRINCIPAL MERIDIAN (6TH P.M.), TOWN OF WINDSOR, COUNTY OF WELD, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT I, POUDRE HEIGHTS SUBDIVISION SECOND FILING, RECORDED IN THE COUNTY OF WELD, COLORADO, ON AUGUST 12, 2003 UNDER RECEPTION NO. 3094269.



VICINITY MAP

SCALE: 1" = 1000'

### LAND USE TABLE:

NOTES:

- NET DENSITY IS APPROXIMATE AND IS CALCULATED AS 85% OF THE GROSS DENSITY. FINAL NET DENSITY SHALL BE DETERMINED WITH FINAL PLAT

PARCEL	GROSS AC.	LAND USE	MINIMUM LOT SIZE	GROSS DENSITY DU/AC	NET DENSITY DU/AC	PROPOSED # OF UNITS (BY PARCEL)	PROPOSED ROW 15%	NET ACREAGE (BY PARCEL)	PROPOSED ZONING
A	10.6	MULTI-FAMILY RES.	1,400 SF	6.1	5.2	64	1.6	7.4	RMU
B	11.8	MULTI-FAMILY RES.	1,400 SF	5.1	4.3	60	1.8	8.3	RMU
C	20.6	SINGLE-FAMILY RES.	6,000 SF	3.9	3.3	80	3.1	14.4	RMU
D	12.6	SINGLE-FAMILY RES.	6,000 SF	3.7	3.1	46	1.9	8.8	RMU
E	35.3	SINGLE-FAMILY RES.	6,000 SF	3.8	3.3	136	5.3	24.7	RMU
F	1.2	SINGLE-FAMILY RES.	6,000 SF	2.4	2.1	3	0.2	0.9	RMU

### APPLICANT:

GAIL E. RUMLEY  
POUDRE HEIGHTS, LP.  
18487 EAST COLGATE CIRCLE  
AURORA, COLORADO 80013  
303-639-1300  
303-639-1311 (FAX)

### OWNERS:

POUDRE HEIGHTS, LP.  
18487 EAST COLGATE CIRCLE  
AURORA, COLORADO 80013  
303-639-1300  
303-639-1311 (FAX)

### SHEET INDEX:

SHEET 1 COVER SHEET  
SHEET 2 MASTER PLAN

### NOTICE OF OTHER DOCUMENTS:

ALL PERSONS TAKE NOTICE THAT CERTAIN DOCUMENTS HAVE BEEN EXECUTED PERTAINING TO THIS DEVELOPMENT, WHICH CREATE CERTAIN RIGHTS AND OBLIGATIONS OF THE DEVELOPMENT. THE DEVELOPER AND/OR SUBSEQUENT OWNERS OF ALL OR PORTIONS OF THE DEVELOPMENT SITE, MANY OF WHICH OBLIGATIONS CONSTITUTE PROMISES AND COVENANTS THAT RUN WITH THE LAND. THESE DOCUMENTS ARE OF RECORD AND ARE ON FILE WITH THE DIRECTOR OF PLANNING OF THE TOWN OF WINDSOR AND SHOULD BE CLOSELY EXAMINED BY ALL PERSONS INTERESTED IN PURCHASING ANY PORTION OF THE DEVELOPMENT SITE.

### TOWN MANAGER'S APPROVAL:

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(TOWN MANAGER)

### PUBLIC WORKS DEPARTMENT APPROVAL:

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(DIRECTOR OF PUBLIC WORKS)

### MAYOR'S CERTIFICATE:

THIS IS TO CERTIFY THAT A MASTER PLAN OF THE PROPERTY DESCRIBED HEREIN WAS APPROVED BY RESOLUTION NO. \_\_\_\_\_ OF THE TOWN OF WINDSOR PASSED AND ADOPTED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D. AND THAT THE MAYOR OF THE TOWN OF WINDSOR, AS AUTHORIZED BY SAID RESOLUTION ON BEHALF OF THE TOWN OF WINDSOR, HEREBY ACKNOWLEDGES AND ADOPTS THE SAID MASTER PLAN UPON WHICH THIS CERTIFICATE IS ENDORSED FOR ALL PURPOSES INDICATED THERON.

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(TOWN OF WINDSOR MAYOR)

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(TOWN OF WINDSOR CLERK)

### PLANNING COMMISSION APPROVAL:

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(CHAIRMAN  
WINDSOR PLANNING COMMISSION)

### PLANNING DEPARTMENT APPROVAL:

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(DIRECTOR OF PLANNING)

### ENGINEERING DEPARTMENT APPROVAL:

APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_  
(DIRECTOR OF ENGINEERING)

HCI ENGINEERING

A DIVISION OF  
HABERER CARPENTRY INC.  
821 SOUTHPARK DR., SUITE 1600  
LITTLETON CO. 80120  
INFO@HABERERGROUP.COM  
PHONE: 303.979.3800

POUDRE HEIGHTS SUBDIVISION SECOND FILING  
TRACT I - AMENDED MASTER PLAN  
FOR  
LDCC  
18487 EAST COLGATE CIRCLE  
AURORA, COLORADO 80013

ISSUE	DATE
TOWN COMMENTS	02.23.06
TOWN COMMENTS	06.06.06
TOWN COMMENTS	01.11.08
TOWN COMMENTS	04.10.08
TOWN COMMENTS	08.19.14
TOWN COMMENTS	09.23.14

DRAWN BY: JIM  
CHK BY: CCH

PLOT DATE: 9/29/14

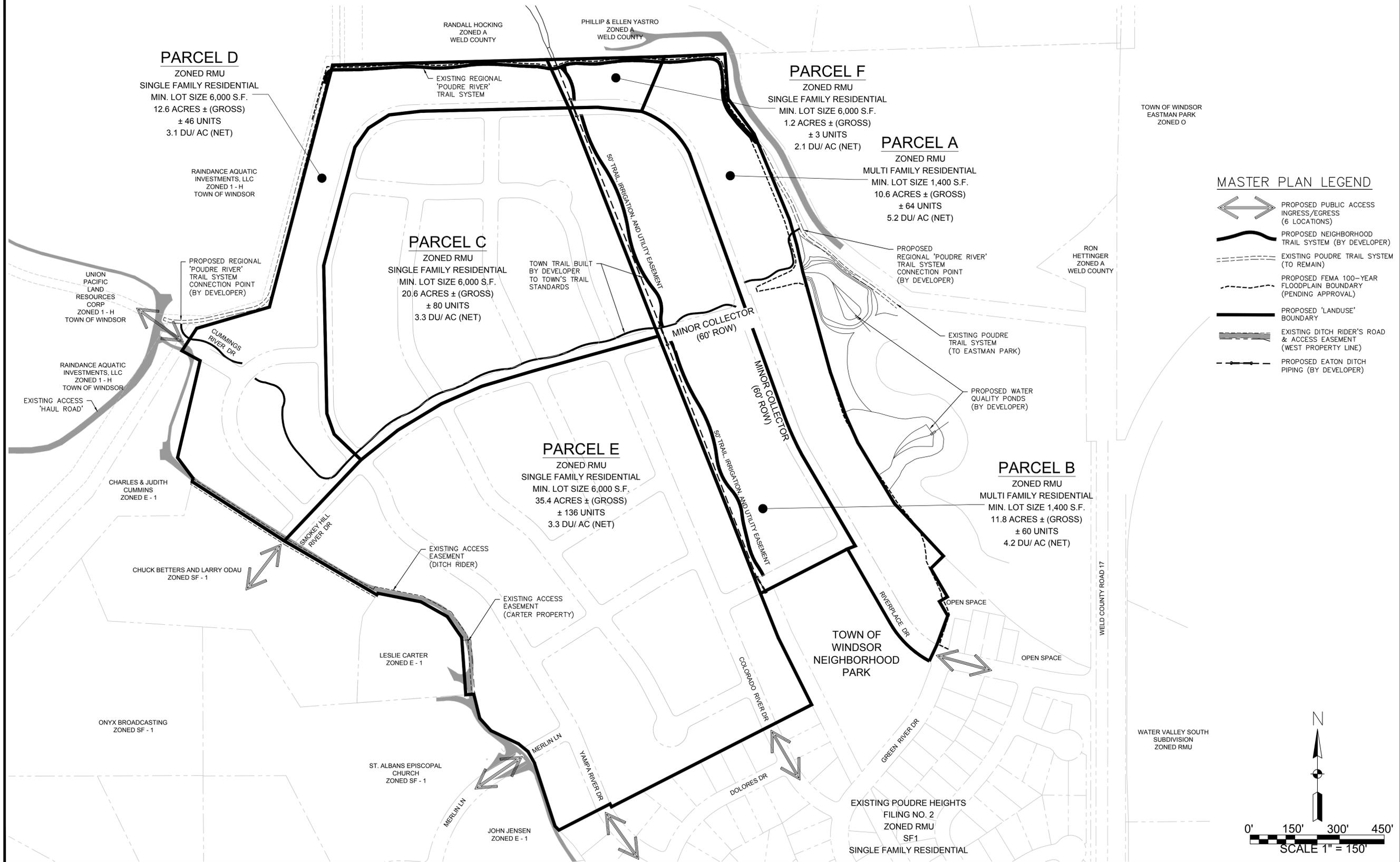
COVER SHEET

1 OF 2

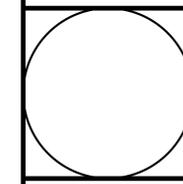
# POUDRE HEIGHTS SUBDIVISION SECOND FILING

## TRACT I - AMENDED MASTER PLAN

POUDRE HEIGHTS SUBDIVISION SECOND FILING,  
BEING PART OF SECTION 29, TOWNSHIP 6 NORTH, RANGE 67 WEST OF THE 6TH P.M.,  
TOWN OF WINDSOR, COUNTY OF WELD, STATE OF COLORADO



**HCI ENGINEERING**  
A DIVISION OF  
**HABERER CARPENTRY INC.**  
621 SOUTH PARK DR., SUITE 1600  
LITTLETON, CO. 80120  
INFO@HABERERGROUP.COM  
PHONE: 303.979.9500



POUDRE HEIGHTS SUBDIVISION SECOND FILING  
TRACT I  
AMENDED MASTER PLAN  
FOR  
LDC  
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DRAWN BY: JIM  
CHK BY: CCH  
PLOT DATE: 9/29/14

MASTER PLAN  
**2 OF 2**



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# **Poudre Heights Subdivision 2<sup>nd</sup> Filing, Tract I**

## **Master Plan Amendment**

**Paul Hornbeck, Associate Planner**

**October 27, 2014**

Town Board

C.4



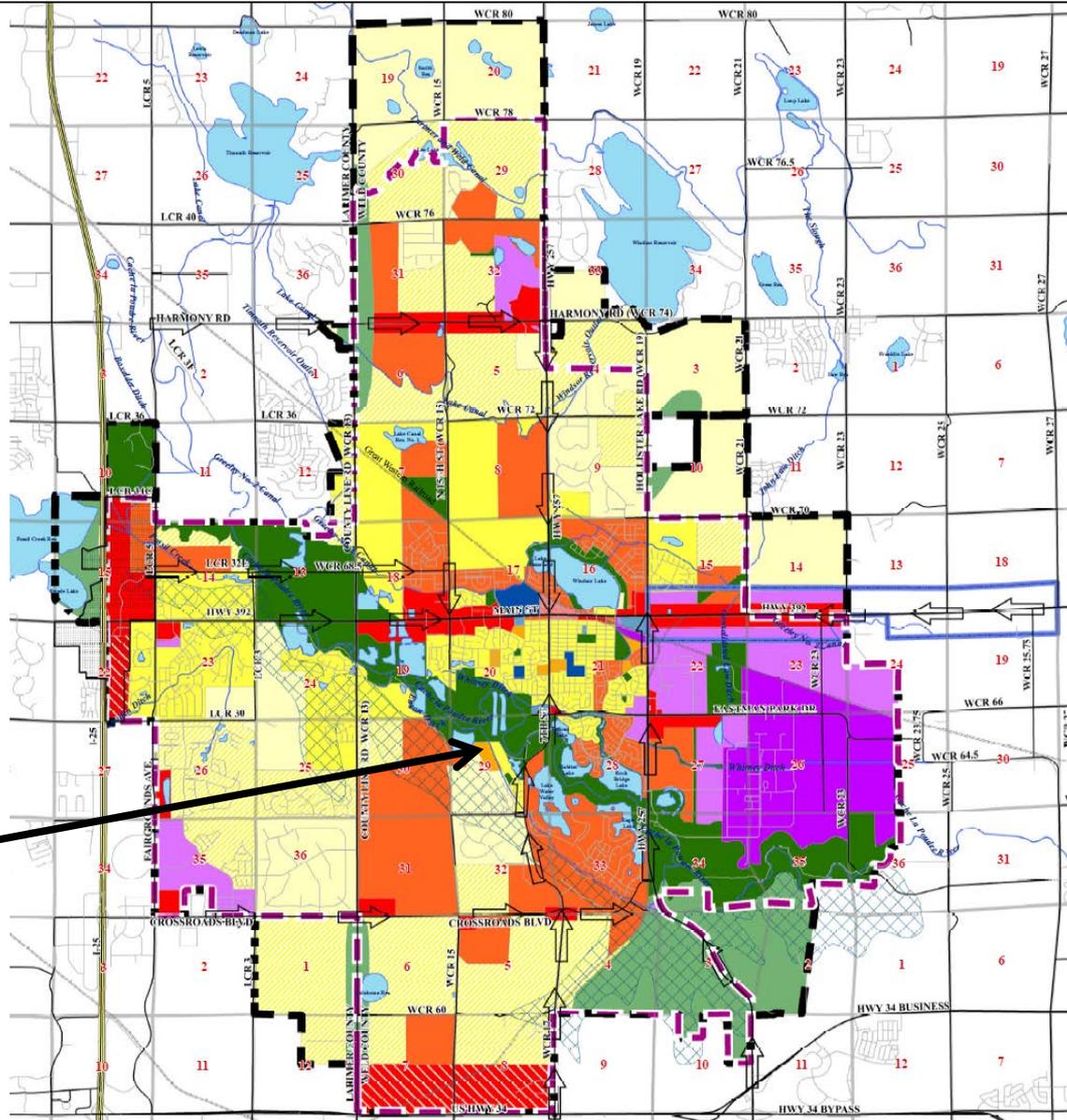
# Master Plan Amendment

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Article II of Chapter 15 of the Municipal Code outlines the purpose of the Master Plan process:

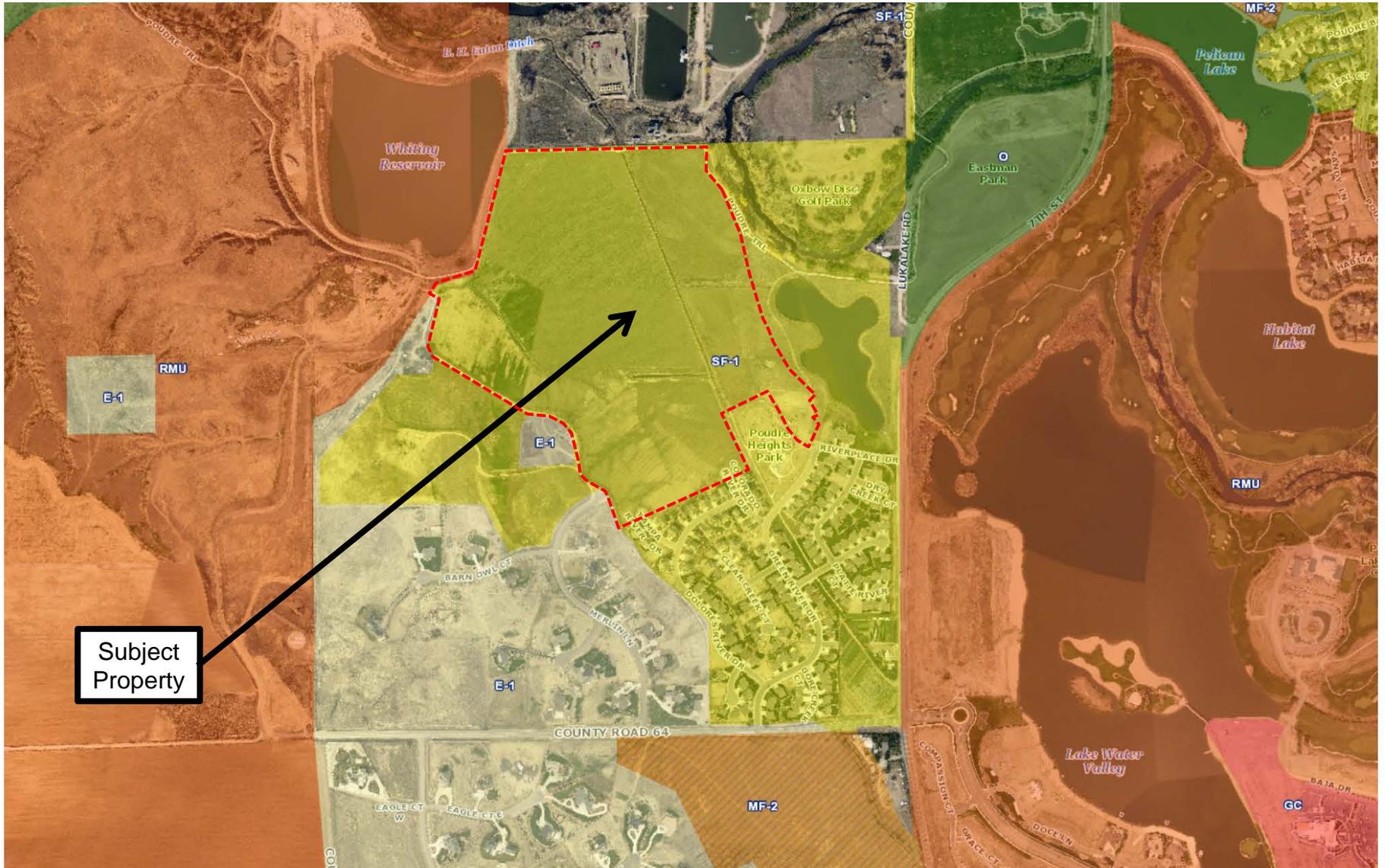
The purpose of this Article is to establish a procedure to provide for the master planning of property annexed to the Town pursuant to Article I of this Chapter. As provided in Article I of this Chapter, master planning in conjunction with the annexation of property is permissive but not required. The foregoing notwithstanding, the approval of a master plan shall be a condition precedent for the subdivision of property in the Town.

# Site Vicinity Map



Subject Property

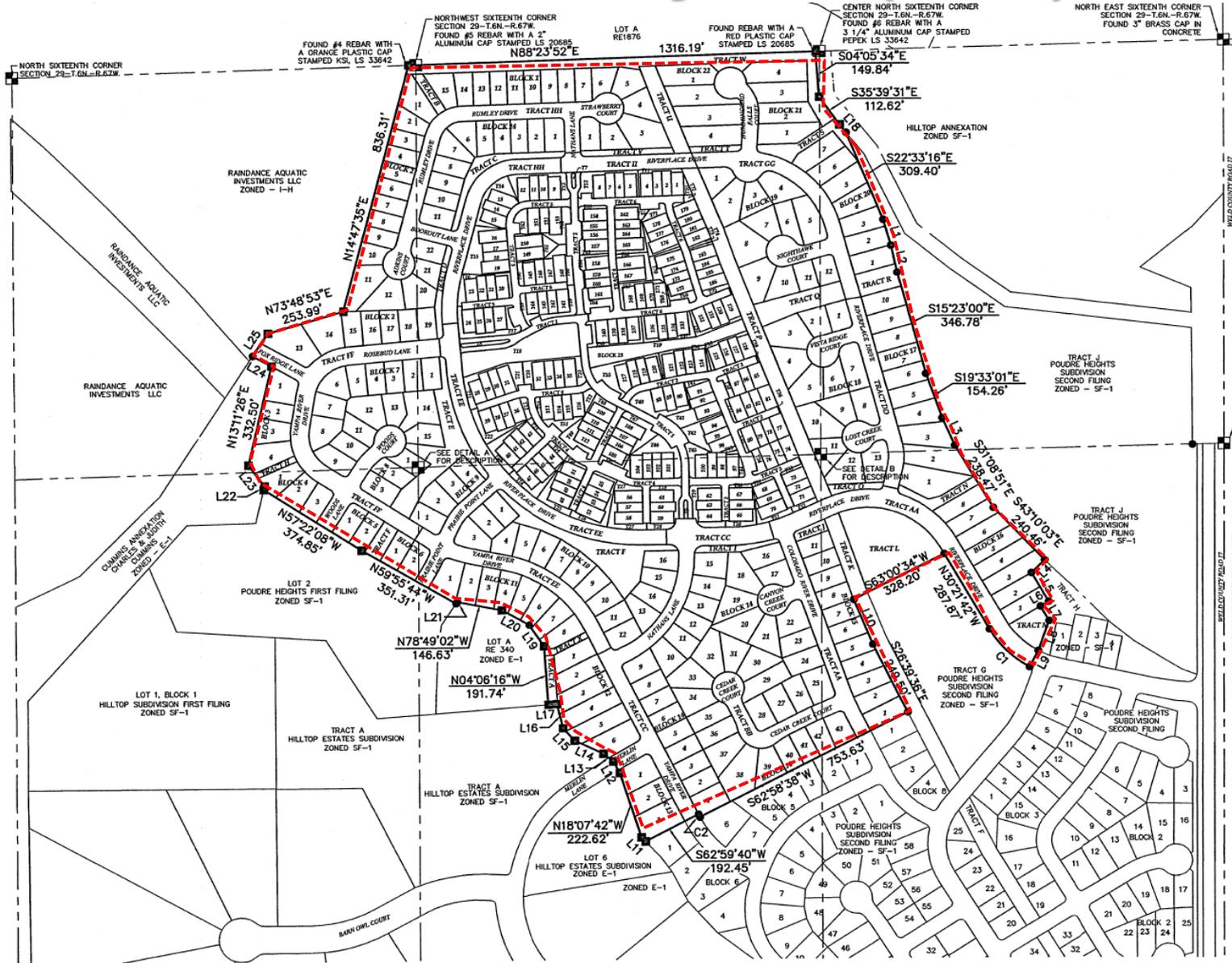
# Zoning Map







# Previously Approved Preliminary Plat (2006)





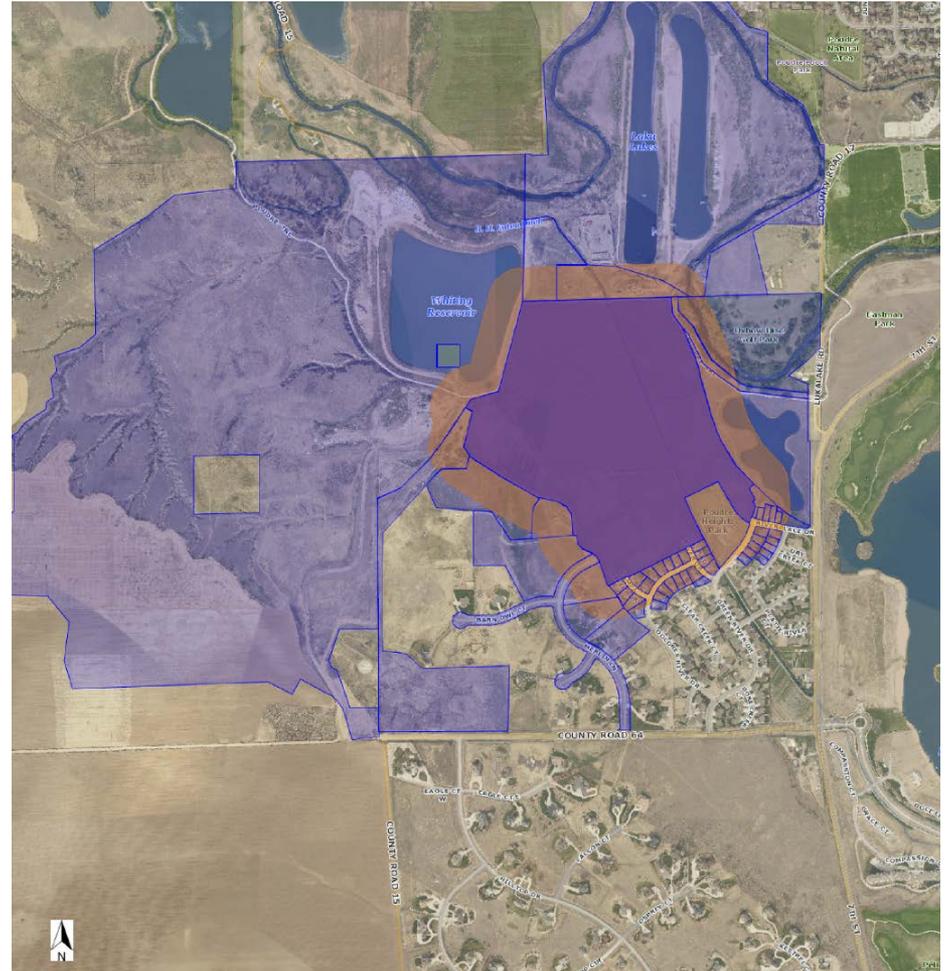




# Notification

## Notification Area

- The neighborhood meeting was held on August 14, 2014
- Notice of public hearings was published in the newspaper on 10/11/14
- Signs were posted on the property on 10/09/14
- Letters were mailed to surrounding property owners within 300-feet on 10/16/14





# Recommendation

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At their October 1, 2014 meeting the Planning Commission forwarded a recommendation of approval to the Town Board with the following conditions:

1. Prior to execution of the mylars the master plan shall be updated to show two access points to the adjacent property owned by Chuck Betters and Larry Odau.
2. The overall densities on the amended master plan shall not exceed 265 single-family lots and 124 multi-family townhome units, for a total density of 389 dwelling units; and
3. All staff comments and redlines shall be addressed.



---

## MEMORANDUM

**Date:** October 27, 2014  
**To:** Mayor and Town Board  
**Via:** Regular meeting materials, October 27, 2014  
**From:** Ian D. McCargar, Town Attorney  
**Re:** Simulated Gambling Devices; prohibition  
**Item #:** C.5.

**Background / Discussion:**

On September 8, 2014, the Town Board adopted an emergency Ordinance which placed a moratorium on Town approvals for what were termed “cyber cafes”, but are also known as internet sweepstakes outlets. The Ordinance directed staff to research and formulate policy recommendations directed at regulating or, if warranted, prohibiting facilities in which internet sweepstakes games were offered.

On October 9, 2014, the Colorado Attorney General issued Opinion No. 14-03, in which the Attorney General concluded that internet sweepstakes operations are not lawful sweepstakes under existing law, and are a form of gambling not permitted under existing law. My analysis of these facilities and, in particular, the computer devices used by them, brought me to the same conclusion.

Before you this evening is Ordinance No. 2014-1485, which contains a ban on facilities offering internet sweepstakes play. The Ordinance is closely modeled on HB 2014-1392, a measure presented to the State House during the 2013-2014 legislative session. This ordinance defines its terms, outright prohibits simulated gambling facilities, establishes penalties and remedies, and sets forth exceptions. The core of this Ordinance is based on the Attorney General’s conclusion that simulated gambling devices are unlawful.

**Financial Impact:** None.

**Relationship to Strategic Plan:** Community spirit and pride; vibrant downtown; diversify & grow local economy.

**Recommendation:** Adopt the attached Ordinance Prohibiting the Operation of Internet Sweepstakes Facilities Through the use of Simulated Gambling Devices Within the Town of Windsor.

**Attachments:**

- Ordinance Prohibiting the Operation of Internet Sweepstakes Facilities Through the use of Simulated Gambling Devices Within the Town of Windsor.
- Attorney General Opinion No. 14-03

TOWN OF WINDSOR, COLORADO

ORDINANCE NO. 2014-1485

AN ORDINANCE PROHIBITING THE OPERATION OF INTERNET SWEEPSTAKES FACILITIES THROUGH THE USE OF SIMULATED GAMBLING DEVICES WITHIN THE TOWN OF WINDSOR

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality, with all powers and authority vested under Colorado law; and

WHEREAS, on September 8, 2014, the Town Board adopted Ordinance No. 2014-1482, which placed an immediate moratorium on Town approvals associated with “Cyber Cafes”, as defined therein ; and

WHEREAS, the Town’s stated intention in Ordinance No. 2014-1482 was to “... research, investigate, draft and submit ... appropriate regulations governing or prohibiting Cyber Cafes within the Town of Windsor”; and

WHEREAS, following the adoption of Ordinance No. 2014-1482, Town staff undertook analysis and consideration of appropriate regulations through legal review, peer interaction and industry outreach; and

WHEREAS, on October 9, 2014, the Colorado Attorney General issued Formal Opinion No. 14-03 (“AG Opinion”); and

WHEREAS, the AG Opinion concluded that Sweepstakes Cafes, as defined therein, are not lawful sweepstakes under Colorado law, constitute unlawful gambling as defined by Colorado law and requires further voter action to amend the Colorado Constitution; and

WHEREAS, the Town Attorney has recommended that, in order to preserve the public health, safety and welfare, the Town should expressly prohibit the operation of Sweepstakes Cafes as defined by the Office of the Attorney General; and

WHEREAS, the Town Board has given due consideration to the matter, and has concluded that prohibition of Sweepstakes Cafes, as defined in the AG Opinion, is necessary to promote the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

**Section 1.** Chapter 10 of the Windsor Municipal Code is hereby amended by the addition of a new Article X, which shall read as follows:

**ARTICLE X**  
**Regulation of Internet-based Simulated Gambling Facilities**

**Sec. 10-10-10. Statement of Intent and Legal Authority.**

(a) **Statement of Legal Authority.** The Town of Windsor, as a Colorado home rule municipality, is authorized to exercise all powers of self-government, as set forth in Article 20, Section 6 of the Colorado Constitution. Included within these general powers of self-government are the powers necessary, requisite or proper for the government and administration of its local and municipal matters. The Town's Home Rule Charter, at Section 2.4 (B), specifically provides that the Town shall have all powers granted to municipalities under the State Statutes, as defined therein. These powers specifically include:

- i. The General Police Powers enumerated in § 31-15-401, C.R.S; and
- ii. The Powers to Regulate Businesses enumerated in § 31-15-501, CR.S.

(b) **Statement of Intent.** The intent of this Article is to prohibit the operation of simulated gambling devices, as defined herein, to provide for remedies in conjunction therewith, and to provide for the imposition of penalties for violations thereof.

**Sec. 10-10-20. Definitions.** As used in this Article, unless the context otherwise requires:

(a) "Electronic gaming machine" means a mechanically, electrically, or electronically operated machine or device that displays the results of a sweepstakes game entry or game outcome to a participant on a screen or other mechanism at a business location, including a private club, that is owned, leased, or otherwise possessed, in whole or in part, by any person conducting the sweepstakes or by that person's partners, affiliates, subsidiaries, agents, or contractors.

The term includes an electronic gaming machine or device that:

- (i) Uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (ii) Selects prizes from a predetermined, finite pool of entries;

(iii) Predetermines the prize results and stores those results for delivery at the time the sweepstakes entry is revealed;

(iv) Uses software to create a game result;

(v) Requires a deposit of any currency or token or the use of any credit card, debit card, prepaid card, or other method of payment to activate the electronic gaming machine or device;

(vi) Requires direct payment into the electronic gaming machine or device or remote activation of the electronic gaming machine or device upon payment to the person offering the sweepstakes game;

(vii) Requires purchase of a related product with legitimate value in order to participate in the sweepstakes game, or makes a related product available for no cost but under restrictive conditions;

(viii) Reveals a sweepstakes prize incrementally even though the progress of the images on the screen does not influence whether a prize is awarded or the value of any prize awarded; or

(ix) Determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(b) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a game promotion or sweepstakes.

(c) "Prize" means any gift, award, gratuity, good, service, credit, or anything else of value that may be transferred to a person, whether or not possession of the prize is actually transferred or placed on an account or other record as evidence of the intent to transfer the prize. "Prize" does not include free or additional play or any intangible or virtual award that cannot be converted into money or merchandise.

(d) "Simulated gambling device" means a mechanically or electronically operated machine, network, system, program, or device that displays simulated gambling displays on a screen or other mechanism at a business location, including a private club, that is owned, leased, or otherwise possessed, in whole or in part, by any person conducting the game or by that person's partners, affiliates, subsidiaries, agents, or contractors. The term includes:

(i) A video poker game or any other kind of video card game;

(ii) A video bingo game;

(iii) A video craps game;

- (iv) A video keno game;
  - (v) A video lotto game;
  - (vi) A video roulette game;
  - (v) A pot-of-gold;
  - (vi) An eight-liner;
  - (vii) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols;
  - (viii) A personal computer of any size or configuration that performs any of the functions of an electronic gaming machine or device as defined in this section;
  - (ix) A slot machine, as defined by Section § 12-47.1-103 (26)(a), C.R.S.; and
  - (x) A device that functions as, or simulates the play of, a slot machine.
- (e) "Sweepstakes" shall have the same meaning as is set forth in § 6-1-802 (10), C.R.S.

**Sec. 10-10-30. Simulated Gambling Devices Prohibited.**

- (a) A person commits the crime of unlawful offering of a simulated gambling device if the person offers, facilitates, contracts for, or otherwise makes available to or for members of the public or members of an organization or club any simulated gambling device where:
  - (i) The payment of consideration is required or permitted for use of the device, for admission to premises on which the device is located, or for the purchase of any product or service associated with access to or use of the device; and
  - (ii) As a consequence of, in connection with, or after the play of the simulated gambling device, an award of a prize is expressly or implicitly made to a person using the device.

**Sec. 10-10-40. Criminal Penalties.**

Any person found to be in violation of this Article shall, upon conviction, be fined up to the maximum penalty permitted for municipal courts of record. Each day such violation continues shall be considered a separate offense.

**Sec. 10-10-50. Other Remedies.**

- (a) Without regard to any penalty imposed under Section 10-10-40, the Town may apply to a court of competent jurisdiction for appropriate additional relief, including:
  - (i) Injunctive relief to restrain and enjoin violations of this Article;
  - (ii) Such other and further relief as is available at law or in equity.
- (b) The remedies set forth in this Article shall not be exclusive, shall be cumulative, and shall be in addition to any other relief or penalty imposed upon the person in violation.

**Sec. 10-10-60. Exceptions, Exemptions, Provisions Inapplicable.**

- (a) Nothing in this section:
  - (i) Prohibits, limits, or otherwise affects any purchase, sale, exchange, or other transaction related to stocks, bonds, futures, options, commodities, or other similar instruments or transactions occurring on a stock or commodities exchange, brokerage house, or similar entity;
  - (ii) Limits or alters in any way the application of the requirements for sweepstakes, contests, and similar activities that are otherwise established under the laws of Colorado; or
  - (iii) Prohibits any activity authorized under Article 35 of Title 24 or Article 9, 47.1 or 60 of Title 12, C.R.S.
- (b) The provision of internet or other on-line access, transmission, routing, storage, or other communication-related services or web site design, development, storage, maintenance, billing, advertising, hypertext linking, transaction processing, or other site-related services by a telephone company, internet service provider, software developer or licensor, or other party providing similar services to customers in the normal course of its business does not violate this Article even if those customers use the services to conduct a prohibited game, contest, lottery, or other activity in violation of this article; except that this subsection (b) does not exempt from criminal prosecution or civil liability any software developer, licensor, or other party whose primary purpose in providing such service is to support the offering of simulated gambling devices.

**Section 2.** The Town Board finds that it is authorized to adopt this Ordinance pursuant to the following: C.R.S. §31-15-103, §31-15-401, §31-15-501, §§31-23-301, et seq., §§29-20-101, et seq., Article XX of the Colorado Constitution, and the Town of Windsor Home Rule Charter.

Introduced, passed on first reading, and ordered published this 27<sup>th</sup> day of October, 2014.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 10<sup>th</sup> day of November, 2014.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk



**John W. Suthers**  
 Attorney General  
**Cynthia H. Coffman**  
 Chief Deputy Attorney General  
**Daniel D. Domenico**  
 Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**  
 Office of the Attorney General

**Ralph L. Carr**  
 Colorado Judicial Center  
 1300 Broadway, 10th Floor  
 Denver, Colorado 80203  
 Phone (720) 508-6000

FORMAL	)	
OPINION	)	
	)	No. 14-03
OF	)	
	)	October 9, 2014
JOHN W. SUTHERS	)	
Attorney General	)	

This opinion, requested by Laura L. Manning, Director of the Division of Gaming of the Colorado Department of Revenue (the "Division"), addresses the legality under Colorado law of sweepstakes offered at internet cafes, cyber cafes, and other similar establishments ("sweepstakes cafés").

**QUESTIONS PRESENTED AND SHORT ANSWERS**

*Question 1:* Do the games offered for play at sweepstakes cafés in Colorado comply with Colorado’s legal requirements for sweepstakes?

*Answer 1:* No. Section 6-1-802(10), C.R.S. expressly defines “Sweepstakes” to exclude any activity that is “otherwise unlawful under other provisions of law.” Because games offered for play at sweepstakes cafés constitute illegal gambling activity, they do not qualify as a sweepstakes by definition.

*Question 2:* Do the games offered for play at sweepstakes cafés in Colorado constitute illegal gambling?

*Answer 2:* Yes. Under Colorado law, gambling activity is defined as “[R]isking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event ... over which the person taking a risk has no control....” § 18-10-102(2), C.R.S. Colorado courts have not yet directly considered whether the activity offered at sweepstakes cafés would meet this standard. However, every state court that has directly considered this question has found that, under comparable definitions, the activity offered at sweepstakes cafés

constitutes illegal gambling. Similarly, under existing Colorado law, the activity offered at sweepstakes cafés constitutes illegal gambling activity.

*Question 3:* Would an amendment to the Colorado constitution be required to authorize Internet-based or on-site server-based games offered for play at sweepstakes cafés in Colorado?

*Answer 3:* Yes. Because the activity engaged in at sweepstakes cafés constitutes gambling, such activity could only be authorized by constitutional amendment. Such activity would be an expansion of gambling beyond what is currently authorized by Article XVIII, Sections 2 and 9 of the Colorado Constitution.

## BACKGROUND

Article XVIII, Section 2 of the Colorado Constitution (“Section 2”) prohibits lotteries and other games of chance, except for non-profit bingo or lotto and a state-supervised lottery.<sup>1</sup> Notwithstanding Section 2, in 1990, the voters approved Section 9, authorizing limited gaming in three locations in Colorado.<sup>2</sup>

In 1992, the voters approved a referred amendment to Section 9 requiring a local vote in favor of limited gaming in any city, town, or county which is granted constitutional authority on or after November 3, 1992 to conduct such gaming.<sup>3</sup> In 2008, the voters approved an initiated amendment to Section 9 which authorized local elections in the cities of Central, Black Hawk, and Cripple Creek to revise existing limits on the hours, types of games, and wager amounts involved in permissible limited gaming.<sup>4</sup>

Under current Section 9, the use of slot machines, the card games of blackjack and poker, and the games of roulette and craps may lawfully occur only within the commercial districts of the cities of Central, Black Hawk, and Cripple Creek.<sup>5</sup>

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<sup>1</sup> Colo. Const. art. XVIII, § 2(1)-(4), (7); *see also* § 18-10-101, et seq., C.R.S. (generally prohibiting gambling and related conduct).

<sup>2</sup> Colo. Const. art. XVIII, § 9(1), (3)(a), (4)(b).

<sup>3</sup> Colo. Const. art. XVIII, § 9(6).

<sup>4</sup> Colo. Const. art. XVIII, § 9(7).

<sup>5</sup> Colo. Const. art. XVIII, § 9(3)(a), (4)(b), (7)(a)(II).

With respect to the expansion of limited gaming beyond that authorized in the original amendment, Section 9 imposes two requirements. First, an expansion must be approved by a statewide vote amending the constitution.<sup>6</sup> Second, any such expansion must be approved by an affirmative vote of the majority of the electors of the city, town, or county in which limited gaming will occur.<sup>7</sup> To date, only the cities of Central, Black Hawk, and Cripple Creek have been granted constitutional authority for limited gaming.<sup>8</sup>

On December 13, 2013, the Colorado Attorney General issued Formal Opinion No. 13-02 which concluded unequivocally that an amendment to the Colorado Constitution would be required to authorize any on-line/Internet gambling in the state of Colorado.

The current questions to be addressed in this opinion regard the legality of the activity taking place at sweepstakes cafés<sup>9</sup>, whether those games are Internet based or whether such activity utilizes on-site servers. Essentially, a sweepstakes café operates as follows: the café nominally sells a product, such as a telephone calling card or minutes of Internet time. *See, e.g., United States v. Davis*, 690 F.3d 330 (5th Cir. 2012) *cert. denied*, 133 S. Ct. 1283 (U.S. 2013) and *cert. denied*, 133 S. Ct. 1296 (U.S. 2013) (internet time); *Midwestern Enterprises, Inc. v. Stenehjem*, 625 N.W.2d 234 (N.D. 2001) (telephone cards). However, each unit of product purchased (e.g. each phone card) also includes an entry into a “sweepstakes.” A pre-set fraction of these entries are pre-programmed as “winning entries.” *Davis*, 690 F.3d at 333.

To reveal if a given sweepstakes entry is a “winner,” customers have several options, such as asking the café staff to reveal their entry’s status. *See, e.g., Lucky Bob’s Internet Cafe, LLC v. Cal. Dep’t of Justice*, 11-CV-148 BEN JMA, 2013 WL 1849270 (S.D. Cal. May 1, 2013). However, in what appears to be the vast majority of cases, patrons choose to reveal their entry’s “winning” status via computer terminals that, to varying degrees, simulate, look, sound and operate like casino slot machines. *See, e.g., People ex rel. Lockyer v. Pac. Gaming Techs.*, 82 Cal. App. 4th 699, 700-01 (2000) (“The VendaTel looks like a slot machine. It acts like a slot machine. It sounds like a slot machine...In our view, if it looks like a duck, walks like a duck, and sounds like a duck, it is a duck”). The “casino simulation”

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<sup>6</sup> Colo. Const. art. XVIII, § 9(6)(a).

<sup>7</sup> *Id.*

<sup>8</sup> Colo. Const. art. XVIII, § 9(1), (3)(a).

<sup>9</sup> This Opinion uses the term “sweepstakes café” for convenience, but the term includes any establishment offering the gaming activities addressed herein.

software that reveals the winning status may be housed on the local computer itself, or it may be housed on a remote terminal accessed via Internet connection. *See, e.g., G2, Inc. v. Midwest Gaming, Inc.*, 485 F.Supp. 2d 757, 773 (W.D. Tex. 2007). At times, these terminals also provide the option to engage in other non-gaming programs, such as access to social networking websites or email. *See Barber v. Jefferson Cnty. Racing Ass'n, Inc.*, 960 So.2d 599, 605 (Ala. 2006).

In either case, a sweepstakes café customer holding a winning sweepstakes entry is provided with a “credit” payout. This credit is redeemable for cash — or for more “reveals” at the café’s terminals. *See, e.g., Trainer v. State*, 930 So.2d 373, 376 (Miss. 2006).

Notably, sweepstakes cafés almost always provide procedures by which the sweepstakes can be entered without making a purchase (or using the reveal terminal). In a typical example, customers are instructed that:

To enter without a purchase: (a) ask the participating retailer for an official game piece request form and legibly hand print all the information requested on the form; or (b) call 800–603–3223 to request an official game piece request form; or (c) on a sheet of white paper no smaller than 3” by 5”, legibly print your name, address, city, state, zip code, age, the name of the promotion for which you are requesting a game piece, and the name and address of the retail establishment at which you will redeem the game piece if it is a winning game piece.

*Face Trading Inc. v. Dep't of Consumer & Indus. Servs.*, 270 Mich. App. 653, 657 (2006). However, such “non-purchase” participants are generally limited to a very small number of entries per day. *See, e.g., Midwestern Enterprises, Inc.*, 625 N.W.2d at 240 (“Midwestern offers one free Lucky Strike game piece per mailed request”).

In recent years, states have responded to this phenomenon in different ways. Some, such as North Carolina<sup>10</sup> and Massachusetts,<sup>11</sup> have created statutory bans

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<sup>10</sup> N.C. Gen. Stat. Ann. § 14-306.4(b) (“...it shall be unlawful for any person to operate, or place into operation, an electronic machine or device to do either of the following: (1) Conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize (2) Promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.”)

specifically aimed at these sweepstakes cafés. Others, such as North Dakota,<sup>12</sup> California,<sup>13</sup> and Alabama,<sup>14</sup> have prosecuted these operators under existing anti-gambling laws similar to those currently in force in Colorado (discussed more fully in Part II).

As with much of gambling activity, this enterprise is constantly evolving. Accordingly, there are conceivable variations on this basic model.

## ANALYSIS

### I. Do the games offered for play at sweepstakes cafés in Colorado comply with Colorado’s legal requirements for sweepstakes?

Section 6-1-802(10), C.R.S. defines “sweepstakes” as follows:

(10) “Sweepstakes” means any competition, giveaway, drawing, plan, or other selection process or other enterprise or promotion in which anything of value is awarded to participants by chance or random selection that is *not otherwise unlawful under other provisions of law*; except that “sweepstakes” shall not be construed to include any activity of licensees regulated under article 9 or article 47.1 of title 12, C.R.S., or part 2 of article 35 of title 24, C.R.S.

§ 6-1-802(10), C.R.S. (emphasis added).<sup>15</sup> Further, section 6-1-803(16), C.R.S. provides that the prohibited practices associated with sweepstakes “are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.”

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<sup>11</sup> Mass. Gen. Laws Ann. ch. 271, § 5B(b) (“It shall be unlawful for any person to knowingly possess with the intent to operate, or place into operation, an electronic machine or device to: (1) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize; or (2) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.”)

<sup>12</sup> See *Midwestern Enterprises, Inc. v. Stenehjem*, 625 N.W.2d 234 (N.D. 2001) (holding that Sweepstakes Cafe-type device was an “illegal gambling apparatus”).

<sup>13</sup> *People v. Nasser*, F066645, 2014 WL 906798 (Cal. Ct. App. Mar. 10, 2014), unpublished/non-citable (Mar. 10, 2014), review granted (June 25, 2014) \*8.

<sup>14</sup> *Barber v. Jefferson Cnty. Racing Ass’n, Inc.*, 960 So.2d 599, 614 (Ala. 2006).

<sup>15</sup> It should be noted that Colorado’s sweepstakes statute applies only to direct mail sweepstakes promotions conducted via the US mail. See § 6-1-802(5) and 802(9).

Thus, even if the activities of one of these cafés could arguably qualify as a “sweepstakes” under the above definition, it could still be illegal under other provisions of Colorado law. Notably, at least two other states’ sweepstakes statutes include such “illegality clauses” in their definitions of a “sweepstakes”: Alabama and California. California defines sweepstakes to mean:

[A]ny procedure for the distribution of anything of value by lot or by chance that is *not unlawful under other provisions of law* including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 320 of the Penal Code.

Cal. Bus. & Prof. Code § 17539.5(12).

Alabama defines a “sweepstakes” as “a *legal* contest or game where anything of value is distributed by lot or chance.” Ala. Code § 8-19D-1(4).

As in Colorado, compliance with more specific sweepstakes requirements cannot save a contest that is illegal under another law. Because of this, it is unsurprising that neither Alabama nor California courts analyzed sweepstakes cafés under their respective sweepstakes codes; instead, both states looked solely to anti-gambling laws in their respective decisions to ban the cafés. *Barber v. Jefferson Cnty. Racing Ass'n, Inc.*, 960 So.2d 599 (Ala. 2006); *Lucky Bob's Internet Cafe, LLC v. California Dep't of Justice*, 11-CV-148 BEN JMA, 2013 WL 1849270 (S.D. Cal. May 1, 2013).

Moreover, in assessing the legality of sweepstakes cafés, we are aware of no state appellate court that has held that compliance with the technical requirements for a “sweepstakes” has rendered the activity legal. To the contrary, these states — most of which have elaborate sweepstakes requirements — uniformly decline to analyze compliance or non-compliance with such requirements. Instead, these states have looked to broader anti-gambling statutes to hold that the activity conducted at the sweepstakes cafés — whether or not it constituted a “sweepstakes” — is nonetheless illegal activity.

## **II. Do the Internet or on-site server-based games offered for play at sweepstakes cafés in Colorado constitute illegal gambling?**

Even if sweepstakes cafés comply with some of Colorado’s technical requirements for sweepstakes contests, the activity is illegal under the state’s anti-

gambling laws. The General Assembly has declared a policy “to restrain all persons from seeking profit from gambling activities in this state.” § 18-10-101(1), C.R.S. The provisions of the criminal gambling statute “shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out [the enumerated policies].” § 18-10-101(2), C.R.S.

Gambling is defined as:

[R]isking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event ... over which the person taking a risk has no control....

§ 18-10-102(2), C.R.S.

To constitute gambling, the activity must involve three elements: (1) consideration exchanged (“risking any . . . thing of value”); (2) for a chance to win (“contingent . . . upon lot, chance, or the happening of an event); and (3) prize (“gain”). *Sniezek v. Colo. Dep't of Revenue*, 113 P.3d 1280, 1282 (Colo. App. 2005). Thus, in weighing the legality of the activity taking place in Colorado sweepstakes cafés, each of the three elements must be considered in turn.

Notably, the definition of gambling found in § 18-10-102(2)(c), C.R.S., includes an exception for an act or transaction “expressly authorized by law.” However, the sweepstakes cafés generally and the activity offered at the sweepstakes cafés specifically are not expressly authorized anywhere in the Colorado Constitution or the Colorado Revised Statutes. Other activities, i.e. limited stakes gaming, non-profit bingo and a state-supervised lottery, are expressly authorized. Because gambling is illegal by constitution unless it is expressly authorized, such exception must be narrowly construed to any illegal activity until it has been so expressly authorized through an amendment to the constitution.

### **A. Consideration**

The first question is whether the sweepstakes cafés feature the exchange of “consideration” for the chance at winning, that is “risking any. . . thing of value for gain contingent ...upon...chance.” § 18-10-102(2), C.R.S. (emphasis added). The key inquiry here is whether the money paid by sweepstakes café users has been paid “for” the chance to gamble.

As noted, the basic premise of the activity offered at a sweepstakes café is that payment is being made not for the chance to gamble, but rather for a different product, such as Internet time,<sup>16</sup> phone cards,<sup>17</sup> or coupon books.<sup>18</sup> In other states, sweepstakes café owners have argued that the consideration element is lacking because customers are paying money in consideration for receiving the product. For example, they claim that the cafés are no different from the McDonald's or Pepsi sweepstakes, in which consideration is exchanged for soda or fast food, but customers are also given a “bonus” chance to win a prize.<sup>19</sup>

Courts have rejected this argument, finding that the activity taking place at the cafés constitutes the exchange of consideration for gambling — not for the underlying product. In reaching this result, courts have adopted a number of approaches. One of the most common perspectives is to focus on the substance, and look to whether the consumers were actually exchanging consideration for the product, or actually exchanging consideration for the chance to win. This inquiry has often been resolved on the basis of investigations or other fact gathering. In *U.S. v. Davis*, the Fifth Circuit considered whether the evidence that sweepstakes café activity constituted gambling was sufficient to uphold a criminal conviction. The Court concluded that it was. In doing so, it noted with approval that the trial court:

[S]tated that “consideration regarding lotteries should be measured by the same rule as in contracts,”... and determined on the facts presented that a reasonable jury could have found the presence of consideration beyond a reasonable doubt, ...

*Davis*, 690 F.3d at 338,(internal citations omitted). The trial court explained that its decision turned on “whether the sweepstakes was intended to promote the sale of telephone cards or whether the telephone cards were there as an attempt to legitimize an illegal gambling device.” *Id.* Driving the court's finding that the telephone cards were an attempt to legitimize an illegal gambling device, and that therefore the consideration requirement was satisfied, were the following facts: the telephone cards cost much more per minute than the market cost of telephone

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<sup>16</sup> *Barber v. Jefferson Cnty. Racing Ass'n, Inc.*, 960 So.2d 599, 604 (Ala. 2006).

<sup>17</sup> *Sun Light Prepaid Phonecard Co., Inc. v. State*, 360 S.C. 49, 50 (2004).

<sup>18</sup> *PJY Enterprises v. Kaneshiro*, (D. Haw., Apr. 30, 2014), Docket CIVIL NO. 12-00577 LEK-KSC, \*3.

<sup>19</sup> *See, e.g., State v. Vento*, 286 P.3d 627, 630 (N.M. Ct. App. 2012) *cert. granted*, 296 P.3d 1208 (N.M. 2012) *cert. quashed*, 313 P.3d 251 (N.M. 2013).

time; there was testimony that the telephone cards did not work; there was evidence that players did not value the telephone cards, and that some players did not know they even were telephone cards; there was testimony that the employees were aware that the customers did not value the telephone cards; there were no signs on the outside of the building advertising or indicating that telephone cards were sold at the store; and no employee tried to sell customers on the telephone cards. *Id.*<sup>20</sup>

As the *Davis* opinion shows, a fact-based inquiry into the nature of the “product” ostensibly being sold indicated that even if the “form” of consideration was for the product, the substance was clearly for gambling.

Other examples of this substance over form based approach to consideration are manifest. In *Barber*, the Alabama Supreme Court held that:

To be sure, MegaSweeps “delivers something of value,” namely, cybertime, on the basis of something “other than chance.” Upon the tender of a minimum payment, consumers invariably receive four minutes of cybertime, in addition to 100 MegaSweeps entries. The owners contend that the consideration is paid *for the cybertime*, and, consequently, that the MegaSweeps entries are *free*. This argument does not pass statutory muster, however, if, looking through the form of the operation to its substance, consumers are *paying for the entries, in whole or in part*, regardless of the cybertime acquired in conjunction with those entries. See § 13A-12-20(11) (“[a]ny money or property” paid or received is consideration). In other words, if they are paying to play the readers, rather than to acquire, *or in addition*

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<sup>20</sup> See also *id.* at 339-40 (“Here, as in *Jester*, there is legally sufficient evidence from which a reasonable fact-finder could infer that the sale of Internet time at the defendants’ cafés was an attempt to legitimize an illegal lottery. Customers’ receipts indicating over 300,000 minutes of Internet time remaining were evidence that the customers did not value the Internet time they had purchased. Further evidence that customers did not value their Internet time was the investigating police officers’ uniform testimony that during each of their visits to a café, all of the people there were only engaged in playing the sweepstakes — not accessing the Internet or using any of the other services provided. In addition to the customers’ apparent disregard for the value of Internet time, there was evidence which casts doubt upon the defendants’ claim that they intended to be legitimate, full-service Internet, faxing, copying, and word-processing vendors.”)

to acquiring, cybertime, the element of consideration set forth in § 13A-12-20(10) and (11) is satisfied.<sup>21</sup>

Similarly in *Midwestern Enterprises, Inc.*, the North Dakota Supreme Court held that:

Despite *Midwestern's* characterization of the Lucky Strike game as a promotional sweepstakes with the purpose to increase the sales of phone cards, people continued to play even when phone cards were available free of charge. People were not paying their dollars for phone cards but rather, were paying their dollars for a chance to win up to \$500 in cash. The element of consideration is not missing from the Lucky Strike game.

*Midwestern Enterprises*, 625 N.W.2d at 240.

In *People ex rel. Lockyer v. Pac. Gaming Technologies*, a California appellate court considered a machine that looked significantly like a slot machine and gave users an opportunity to win a “sweepstakes” each time they purchased a phone card.<sup>22</sup> Here, the court looked to the California precedent of *Trinkle v. Stroh*, 60 Cal.App.4th 771, 70 Cal.Rptr.2d 661 (3d Dist. 1997). In *Trinkle*, the court examined a “Match 5” Jukebox; the Jukebox would play a song each time money was put in, but it would also afford a chance to win money if customers matched 5. Quoting *Trinkle*, the *Lockyer* Court observed that:

[t]he owners insisted that their Match 5 Jukebox was exempt under section 330.5 “because in every case the customer gets what he or she pays for — songs.” (*Trinkle v. Stroh*, *supra*, 60 Cal.App.4th at p. 781.) The ABC [Alcoholic Beverage Control], in turn, said the customers did *not* get what they paid for “‘in every case,’ because some customers got more than what they paid for — the jackpot.” (*Id.* at p. 782.) *Trinkle* agreed with the ABC, adopting the trial court's finding that, “‘once the elements of chance and prize are added to a vending machine, the consideration paid from the player-purchaser's perspective is no longer solely for the product.’ ” (*Ibid.*) Put another way, “[a]n otherwise illegal machine does not become legal merely because it plays music, gives a person's weight, vends food, etc.” (*Ibid.*)

*Lockyer*, 82 Cal. App. 4th at 705.

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<sup>21</sup> *Barber v. Jefferson Cnty. Racing Ass'n, Inc.*, 960 So.2d 599, 611 (Ala. 2006).

<sup>22</sup> *People ex rel. Lockyer v. Pac. Gaming Technologies*, 82 Cal. App. 4th 699 (2000).

Based upon this precedent, the court concluded that because “[b]y the insertion of money and purely by chance (without any skill whatsoever), the user may receive or become entitled to receive money” in addition to the telephone card, the element of consideration is added and people are no longer paying just for the product; therefore, the VendaTel machine was an illegal slot machine under the plain language of the penal code. *Id.* at 703, 707.

Colorado courts have not directly considered this question. However, existing Colorado case law suggests that a “functionalist” view of gambling devices would be adopted, and thus that consideration would be found. In 1942, the Colorado Supreme Court considered the argument that because a set of pinball machines had a “non-gambling mode” that operators could elect, the machines were not “gambling devices.” *Approximately Fifty-Nine Gambling Devices v. People ex rel. Burke*, 110 Colo. 82, 86-87 (1942). Rejecting this argument, the Court held that:

The flaw in this argument is that at the time the machines were seized and demonstrated in court they were set to function for gambling purposes. The test was not whether there was a possibility of their being used for amusement purposes, but their *reasonably intended use and their inherent tendency to stimulate the gambling instinct latent in many people.*

*Id.*

This logic suggests a functionalist definition — even if there is a “possibility” of workstations at sweepstakes cafés being used for non-gaming purposes (such as Internet time), the fact that they are “reasonably intended” to induce gambling behavior is sufficient to meet the consideration component.

In *Sniezek v. Colorado Dep't of Revenue*, 113 P.3d 1280 (Colo. Ct. App. 2005), a shop owner sued for the return of various “ad-tab” dispenser machines that had been seized by the state as gambling devices. For one dollar, patrons purchased paper tickets that contained a coupon on one side and a cash prize game on the other; the cash prize game contained a combination of symbols that were revealed when the purchaser opened the tabs; various combinations of symbols resulted in differing levels of prizes, with the prizes ranging from one dollar to five hundred dollars; the purchaser of a “winning” Ad-Tab could redeem the ticket for a cash prize by presenting it to an employee of the establishment where it was purchased; and a game piece could also be obtained from F.A.C.E. [the operator] by requesting one via the mail. *Id.* at 1281.

The Colorado Court of Appeals rejected the plaintiff's argument that because the Ad-Tab coupon had a cash value greater than one dollar, consideration had been exchanged for purchase of the coupon (as opposed to the chance to win a prize). The court was particularly struck by the fact that:

[T]he items to be purchased with the coupons are not displayed anywhere near or on the machine, nor does a customer know what the coupon is for before purchasing the Ad-Tab. Thus, the customer does not know what product the coupon will enable him or her to purchase, what the price for the product will be, or whether more Ad-Tabs must be purchased to qualify. Hence, the customer takes a risk upon the purchase of the Ad-Tab. In addition, the machine advertises the chance to win money, and the emphasis in the advertisement is the "win cash" slogan, as opposed to the purchase of merchandise.<sup>23</sup>

The court then distinguished the ad-tabs from other, traditional "national promotions" such as the McDonald's sweepstakes, on the grounds that:

[P]laintiffs' machines involve the promotion of a prize with the product being unrelated to their business as the promoter or distributor, and the customer does not know what product is being purchased. As noted above, plaintiff F.A.C.E. is not in the business of selling either merchandise or advertising. Accordingly, because the game feature on the Ad-Tabs does not promote another primary business of either plaintiff, it is not analogous to the specified types of national promotions.<sup>24</sup>

The court concluded that plaintiffs' machine was designed to promote the sale of the "win cash" feature of the Ad-Tab, not the coupon feature, and that the coupon was merely incidental to the game portion of the ticket. *Id.* Accordingly, the Court held that the devices at issue were, in fact, gambling devices under the meaning of Colorado's statutes.

Notably, the fact that sweepstakes cafés offer the possibility of free entries has not saved the sweepstakes in other jurisdictions. In *Midwestern Enterprises, Inc.*,<sup>25</sup> for example, the North Dakota Supreme Court considered the argument that "there is no consideration because there is no purchase necessary to play the game. Upon sending the postage-paid postcard or making a written request to the

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<sup>23</sup> *Id.* at 1282.

<sup>24</sup> *Id.* at 1283.

<sup>25</sup> 625 N.W.2d 234 (N.D. 2001).

address on the side of the machine, a person can get one free game piece per request.”<sup>26</sup> However, the Court rejected this argument, finding that:

the limited availability of free play does not exempt the Lucky Strike game from being defined as gambling. Sweepstakes that are commonplace as marketing promotion tools are significantly different than the Lucky Strike game. The high pay-out rate of the Lucky Strike game is a distinguishing feature because it goes to the true purpose of the game. Midwestern offers one free Lucky Strike game piece per mailed request and on this basis claims, because no purchase is necessary, it is as acceptable as a retail promotional sweepstakes. However it does not follow that simply because low-stakes, temporary promotional sweepstakes with pay-out rates of one-half of one percent that offer free play are not pursued as lotteries, we must conclude high-stakes, permanent games with pay-out rates of sixty-five percent are immune from the definition of a lottery because they also offer limited free play. North Dakota has not established, by either legislation or judicial ruling, an exception to the gambling and lottery definitions for promotional sweepstakes. A number of states, rather than finding gambling is acceptable because it has one characteristic of limited free play in common with promotional sweepstakes, have concluded retail promotions violate gambling and lottery statutes despite the availability of limited free play.

625 N.W.2d at 239-40; *see also Boyd v. Piggly Wiggly S., Inc.*, 115 Ga. App. 628, 155 S.E.2d 630 (1967); *Kroger Co. v. Cook*, 24 Ohio St.2d 170, 265 N.E.2d 780 (1970); *State ex rel. Schillberg v. Safeway Stores, Inc.*, 75 Wash.2d 339, 450 P.2d 949 (1969).

Similarly, in *Black N. Associates, Inc. v. Kelly*,<sup>27</sup> a New York appellate court noted that “petitioner contends that, because no purchase is necessary to participate, the sweepstakes do not constitute gambling activity.” However, the court rejected this argument on the grounds that “the evidence establishes that, while the distribution of free promotional game pieces was limited to one per person per day “while supplies last,” players of the Lucky Shamrock Vending Machine could increase their chances of winning by making multiple purchases. Indeed, the machine was designed to encourage such multiple purchases, since it accepted bills ranging from \$1 to \$20 and it did not give change.”<sup>28</sup>

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<sup>26</sup> *Id.* at 239.

<sup>27</sup> 281 A.D.2d 974, 975 (N.Y. App. Div. 2001).

<sup>28</sup> *Id.*

Additionally, the location of the activity, whether on remote servers or “in-store,” has yet to preclude a finding that the activity at sweepstakes cafés constitutes gambling.<sup>29</sup>

Likewise, in *Sun Light Prepaid Phonocard Co., Inc. v. State*, 360 S.C. 49, 56 (2004), the South Carolina Supreme court held that a phone card machine that gave users an opportunity to win a “sweepstakes” each time they purchased a card constituted a gambling device.

Such games induce gambling behavior and because consideration is given by a patron, at least in part, to participate in a chance for a larger payout, the games offered at sweepstakes cafés meet the consideration element for gambling under Colorado statute.

## **B. Chance**

The next element, chance, turns on whether the gain sought is “contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event ... over which the person taking a risk has no control.” § 18-10-102(2), C.R.S.<sup>30</sup>

Colorado’s statute states that the test for “chance” turns on the perspective of the user, not the café operators. Even if the sweepstakes tickets have been pre-determined, this pre-determination is an outcome of an event “over which *the person taking* the risk has no control.” § 18-10-102(2), C.R.S. (emphasis added).

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<sup>29</sup> *Telesweeps of Butler Valley, Inc. v. Kelly*, 3:12-CV-1374, 2012 WL 4839010 (M.D. Pa. Oct. 10, 2012) *aff’d sub nom. Telesweeps of Butler Valley, Inc. v. Attorney Gen. of Pennsylvania*, 537 F. App’x 51 (3d Cir. 2013) (“finite pool of entries is predetermined in advance of the start of the game promotion and only stored in the [on-site] server for delivery to the PC); *Barber v. Jefferson Cnty. Racing Ass’n, Inc.*, 960 So.2d 599, 607 (Ala. 2006) (although the actual sweepstakes is determined by an off-site server, the café activity in question still constituted gambling); *People v. Nasser*, F066645, 2014 WL 906798 (Cal. Ct. App. Mar. 10, 2014), unpublished/non-citable (Mar. 10, 2014), review granted (June 25, 2014) (holding that a sweepstakes café constituted impermissible gambling even though it was part of an “integrated system that forms a network of computers and [off-site] servers”).

<sup>30</sup> Many courts and litigants have simply assumed or asserted that “chance” is present within the simulated slot machine devices and not analyzed this point. In several courts, however, it has been argued that if the sweepstakes entries are pre-determined as winners or losers before the game has even begun, chance is inapplicable.

Thus, the language of the statute provides that chance would still be present, despite whether the tickets have been pre-determined.

This conclusion was also adopted by those courts that have considered the “chance” argument in detail. In *Telesweeps of Butler Valley, Inc. v. Kelly*, for example, a Pennsylvania appellate court noted that chance is defined from the perspective of the player, and that “[f]rom the player's perspective, ... every outcome is a random outcome,’ so a player would perceive a slot machine and an internet sweepstakes as the same.”<sup>31</sup> Likewise, in *People v. Nasser*, F066645, 2014 WL 906798 (Cal. Ct. App. Mar. 10, 2014), unpublished/non-citable (Mar. 10, 2014), review granted (June 25, 2014), a California appellate court expressly found that “even though all sweepstakes entries were previously arranged in batches (or pools) that had *predetermined* sequences, that fact does not change our opinion of this issue (*i.e.*, the chance element) because the results would still be unpredictable and random from the perspective of the user.”<sup>32</sup> In *Barber v. Jefferson County Racing Ass’n, Inc.*, the Alabama Supreme Court found that, even where computer terminals were merely “reading” predetermined results, “the element of chance is satisfied at the point of sale — before the readers are activated.”<sup>33</sup>

Accordingly, the games offered for play at sweepstakes cafés in Colorado satisfy the “chance” prong of section 18-10-102(2), C.R.S.

### C. Prize

The final element, prize or “gain,” is also present in the sweepstakes café model. To date, every state court that has considered the question has found that the devices offer the potential for such gain, whether the prize is monetary or non-monetary,<sup>34</sup> and indeed, no sweepstakes café owner has disputed that gain is present.

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<sup>31</sup> *Telesweeps of Butler Valley, Inc. v. Kelly*, 3:12-CV-1374, 2012 WL 4839010 (M.D. Pa. Oct. 10, 2012) *aff'd sub nom. Telesweeps of Butler Valley, Inc. v. Attorney Gen. of Pennsylvania*, 537 F. App'x 51 (3d Cir. 2013) (internal citation omitted).

<sup>32</sup> *People v. Nasser*, F066645, 2014 WL 906798 (Cal. Ct. App. Mar. 10, 2014), unpublished/non-citable (Mar. 10, 2014), review granted (June 25, 2014) \*8.

<sup>33</sup> *Barber v. Jefferson County Racing Ass’n, Inc.*, 960 So.2d 599, 610 (Ala. 2006).

<sup>34</sup> *See, e.g., United States v. Davis*, 690 F.3d 330, 335 (5th Cir. 2012) *cert. denied*, 133 S. Ct. 1283 (U.S. 2013) and *cert. denied*, 133 S. Ct. 1296 (U.S. 2013) (noting cash prizes were won); *MDS Investments, L.L.C. v. State*, 138 Idaho 456, 464 (2003) (noting prizes were available); *Hest Technologies, Inc. v. State ex rel. Perdue*, 366 N.C. 289, 293 (2012) *cert. denied*, 134 S. Ct. 99 (U.S.N.C. 2013).

Because all three elements: consideration, chance, and prize are present, under Colorado law, the activity occurring at sweepstakes cafés in Colorado constitutes illegal gambling.

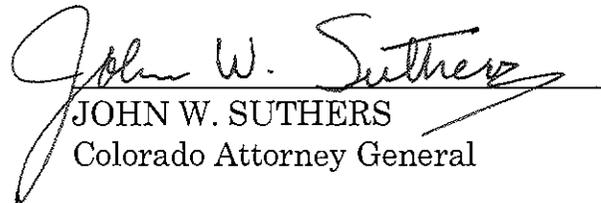
**III. Would an amendment to the Colorado Constitution be required to authorize Internet-based or server-based games offered for play at sweepstakes cafés in Colorado?**

An amendment to Colorado's Constitution would be required before Internet-based games or server-based games could be offered for play at sweepstakes cafés in Colorado. Article XVIII, Section 2 of the Colorado Constitution ("Section 2") generally prohibits lotteries and other games of chance, except for non-profit bingo or lotto and a state-supervised lottery.<sup>35</sup> A subsequent amendment, Section 9, requires that with the exception of the limited gaming cities of Central, Black Hawk, and Cripple Creek, any subsequent expansion of gambling must be approved by a statewide vote amending the constitution.<sup>36</sup> Any such expansion must also be approved by an affirmative vote of the majority of the electors of the city, town, or county in which limited gaming will occur. Thus, neither Internet-based games nor server-based games offered for play in sweepstakes cafés could be authorized in Colorado without a constitutional amendment.

**CONCLUSION**

Based on the foregoing analysis, I conclude that the activity occurring at sweepstakes cafés constitutes illegal gambling under Colorado law, whether Internet-based or server-based. Such activity is an unauthorized expansion of gambling, is illegal, and cannot be allowed without a state-constitutional amendment specifically authorizing such activity.

Issued this 9<sup>th</sup> day of October, 2014.

  
JOHN W. SUTHERS  
Colorado Attorney General

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<sup>35</sup> Colo. Const. art. XVIII, § 2.

<sup>36</sup> Colo. Const. art. XVIII, § 9(6).

## 2014 MONTHLY FINANCIAL REPORT

### Special points of interest:

- Highest September sales tax collection on record at \$657,352.
- Single Family Residential (SFR) building permits total 192 through September. This is down from the September 2013 number of 285.
- 42 business licenses were issued in September, 22 of which were sales tax vendors.

### Highlights and Comments

- \* We recorded our highest gross sales tax collection for the single month of September.
- \* September 2014 year-to-date gross sales tax increased 21.26% over September 2013.
- \* Construction use tax through September is at 65.29% of the annual budget at \$1,142,369.



#### Chimney Park Pool Deck Resurfacing

The Chimney Park Pool deck resurfacing is virtually finished and ready for next spring's opening, with the exception of a few replacement items. Filters will be added next spring and all will be complete on time. Cost for complete project is \$292,000 which includes the later addition of \$16,577 for the pool filters.

### Inside this issue:

Sales, Use and Property Tax	2
Year-to-Date Sales Tax	4
Monthly Sales Tax	5
All Fund Expenditures	6
General Fund Expenditures	7

### Items of Interest

- See a list of Town projects at our website under Our Community/Town Projects.
- Town Board budget retreat held Saturday October 11 at the CRC.
- Visit us at [www.windsorgov.com](http://www.windsorgov.com) and look for live streaming of Town Board and Planning Commission meetings.

**Sales, Use and Property Tax Update****September 2014**

Benchmark = 75%	Sales Tax	Construction Use	Property Tax	Combined
Budget 2014	\$5,944,547	\$1,749,737	\$4,146,285	\$11,840,569
Actual 2014	\$5,995,157	\$1,142,369	\$3,991,090	\$11,128,616
% of Budget	100.85%	65.29%	96.26%	93.99%
Actual Through September 2013	\$4,943,868	\$1,493,298	\$3,982,709	\$10,419,875
Change From Prior Year	21.26%	-23.50%	0.21%	6.80%

Ideally through the ninth month of the year you would like to see 75% collection rate on your annual budget number. We have reached that benchmark in two of the three tax categories, and are very close on the third.

At this point last year we had collected \$3.9M in property taxes, or 97.2% of the annual budget.

**Building Permit Chart****September 2014**

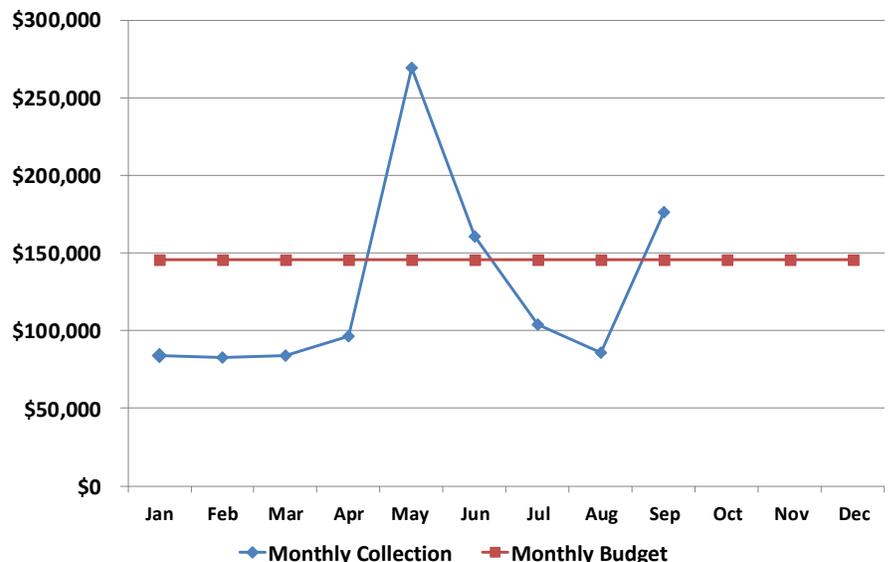
	SFR	Commercial	Industrial	Total
Through September 2014	192	3	3	198
Through September 2013	285	3	12	300
% change from prior year				-34.00%
2014 Budget Permit Total				373
% of 2014 Budget				53.08%

**Building Permits and Construction Use Tax**

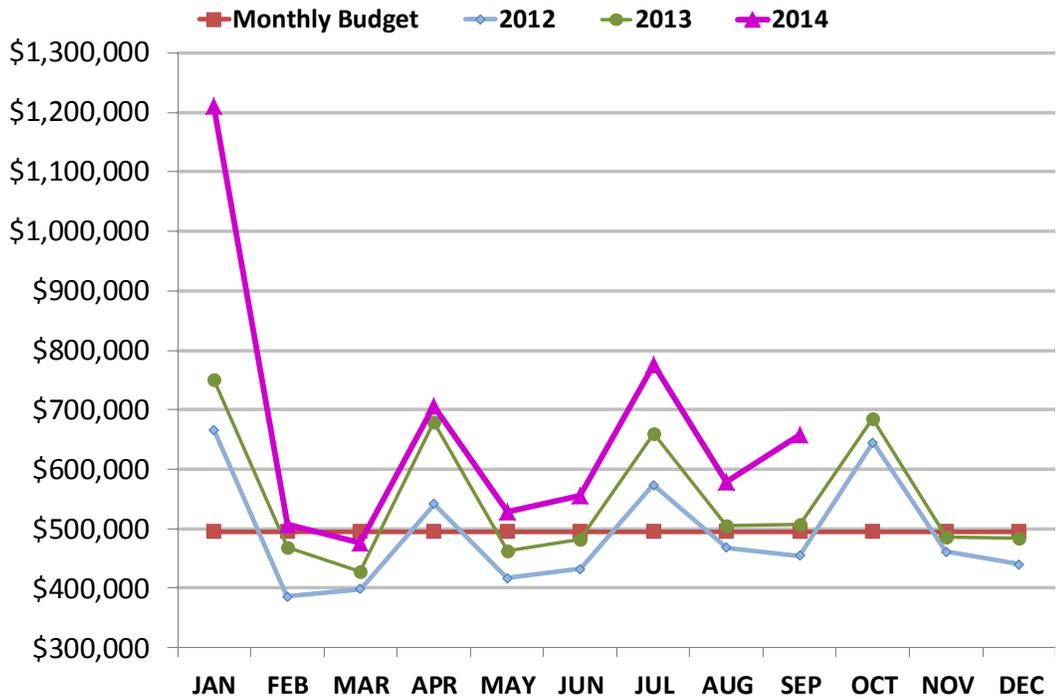
We are showing a 34% decrease in number of permits as compared to September 2013. We issued 192 SFR permits through September 2014 as compared to 285 through September of 2013.

Construction use tax is above our required monthly collection for the third month this year.

We issued 16 SFR permits in the month of September. Through nine months in 2014 we are averaging 21 SFR permits per month. Through September 2013 we averaged 32 SFR permits per month.

**Construction Use Tax Collections**

### Sales Tax Collections in Dollars



*Gross Sales tax collections for September 2014 were approximately \$150,000 higher than September 2013.*

### September Facts

September is a “single collection” month, meaning that the collections are for sales made in August. September produced a strong collection month, surpassing the two previous years in collections as well as our monthly budget collections requirement.

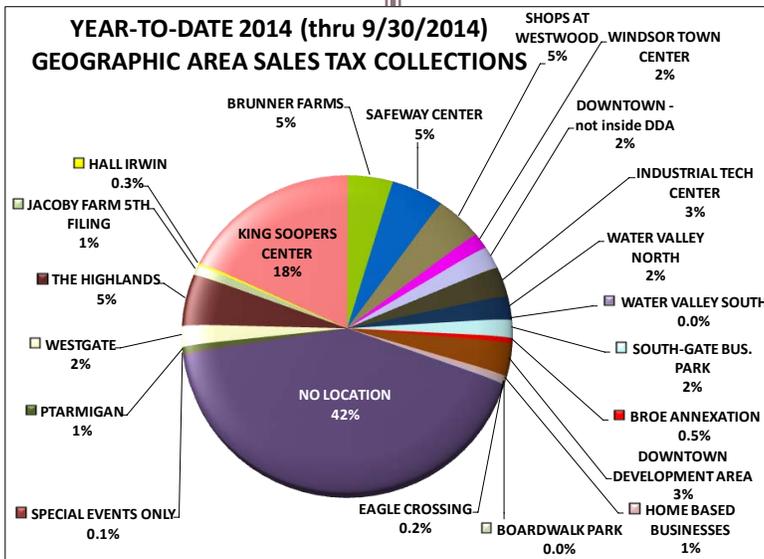
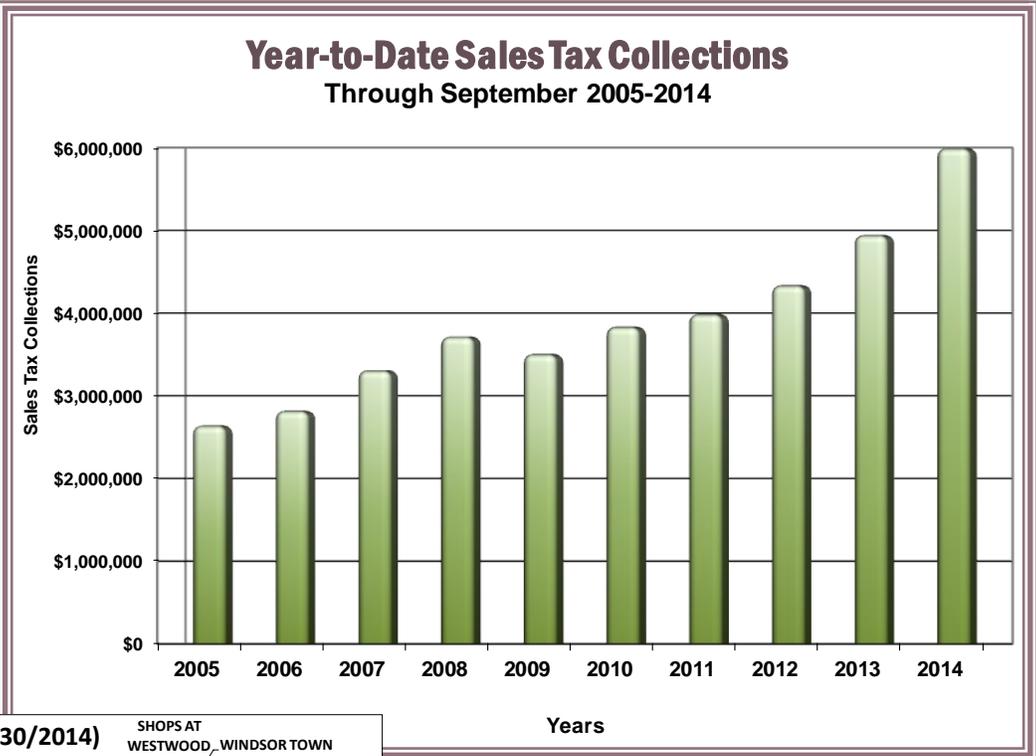
We did not receive any voluntary compliance or audit payments in September, adding strength to the positive indicator of higher collections than last year.

### Looking Forward

We budgeted \$6M in sales tax for 2014, making our average monthly collection requirement \$500,000. We were above that mark for the eighth month out of nine for this year. In January we received a large “outlier” payment from a local manufacturer of \$319,175. Reducing January’s collection by this amount down to \$891,348, through the first nine months of 2014 we are averaging \$666,129 in collections per month. If we maintain this average through the end of the year, we will come in at \$7.5-\$8.0M in collections.

Through September we have collected \$6M in sales tax.

This is roughly \$1,000,000 higher than through September 2013.



*The King Soopers Center remains the largest local driving force in sales tax collections.*

## Year-to-Date Sales Tax

Our sales tax base has not changed a great deal over the past decade, with groceries and utilities leading our industry sectors in sales tax collection. Some of this increase can be attributed to an overall increase in prices and cost of living, estimated at 3% for the first half of 2014 in the Denver/Boulder/Greeley area.

- Groceries, liquor, general merchandise, utilities, entertainment and auto parts all increased collections over September 2013.
- Our current year to date collections through September of \$5,995,157 have surpassed the entire year of collections for 2012. It also exceeds each of the individual annual collections of all of the years preceding 2012.
- The Highlands sales tax area surpassed the Safeway Center in terms of year to date sales tax collections. This area encompasses the Highland Meadows Golf Course, Wagner Equipment and other businesses

## All Funds Expense Chart

September 2014

Benchmark = 75%

<u>General Government</u>	<u>Current Month</u>	<u>YTD Actual</u>	<u>2014 Budget</u>	<u>% of Budget</u>
General Fund	\$1,025,043	\$9,620,028	\$12,716,127	76%
Special Revenue	\$65,401	\$839,359	\$2,439,201	34%
Internal Service	\$156,544	\$2,196,396	\$3,104,165	71%
Other Entities(WBA)	\$12,090	\$108,815	\$145,080	75%
<b>Sub Total Gen Govt Operations</b>	<b>\$1,259,078</b>	<b>\$12,764,598</b>	<b>\$18,404,573</b>	<b>69%</b>
<b><u>Enterprise Funds</u></b>				
Water-Operations	\$347,114	\$2,383,505	\$3,467,536	69%
Sewer-Operations	\$75,745	\$1,197,109	\$1,591,886	75%
Drainage-Operations	\$29,149	\$324,970	\$402,276	81%
<b>Sub Total Enterprise Operations</b>	<b>\$452,008</b>	<b>\$3,905,584</b>	<b>\$5,461,698</b>	<b>72%</b>
<b>Operations Total</b>	<b>\$1,711,086</b>	<b>\$16,670,182</b>	<b>\$23,866,271</b>	<b>70%</b>

*plus transfers to CIF and Non-Potable for loan*

*Operations expenditures are on track as a whole, expending 70% of the annual budget compared to the benchmark of 75%.*

<u>General Govt Capital</u>	<u>Current Month</u>	<u>YTD Actual</u>	<u>2014 Budget</u>	<u>% of Budget</u>
Capital Improvement Fund	\$762,773	\$3,241,139	\$5,339,148	61%
<b><u>Enterprise Fund Capital</u></b>				
Water	\$870,792	\$5,969,642	\$7,134,081	84%
Sewer	\$447	\$8,534	\$512,875	2%
Drainage	\$18,760	\$156,822	\$1,894,231	8%
<b>Sub Total Enterprise Capital</b>	<b>\$889,999</b>	<b>\$6,134,998</b>	<b>\$9,541,187</b>	<b>64%</b>
<b>Capital Total</b>	<b>\$1,652,772</b>	<b>\$9,376,137</b>	<b>\$14,880,335</b>	<b>63%</b>
<b>Total Budget</b>	<b>\$3,363,858</b>	<b>\$26,046,319</b>	<b>\$38,746,606</b>	<b>67%</b>

*Through September, operating and capital expenditures combined to equal 67% of the 2014 Budget.*

## All Funds Expenditures

We are behind our general capital benchmark but slightly ahead in the water fund capital expenditures. This is driven mostly by the purchase of the Kyger property in early March. In October we paid several large ticket projects completed during the summer construction season. Our capital budget should catch up to the benchmark at that time.

Operations expenditures should slow for the rest of the year as our summer operations are finished for the year.

**General Fund Expense Chart**

Department		Current Month	YTD Actual	2014 Budget	% of Budget
410	Town Clerk/Customer Service	\$47,694	\$443,562	\$612,550	72.4%
411	Mayor & Board	\$30,466	\$316,235	\$477,796	66.2%
412	Municipal Court	\$1,576	\$12,783	\$19,930	64.1%
413	Town Manager	\$25,542	\$237,381	\$322,910	73.5%
415	Finance	\$40,398	\$485,708	\$606,852	80.0%
416	Human Resources	\$28,136	\$274,535	\$409,870	67.0%
418	Legal Services	\$35,846	\$275,353	\$329,869	83.5%
419	Planning & Zoning	\$54,987	\$436,438	\$610,990	71.4%
420	Economic Development	\$60,678	\$203,766	\$193,297	105.4%
421	Police	\$221,142	\$2,133,278	\$2,853,407	74.8%
428	Recycling	\$3,112	\$26,626	\$42,770	62.3%
429	Streets	\$65,252	\$746,733	\$1,009,692	74.0%
430	Public Works	\$31,148	\$317,702	\$430,818	73.7%
431	Engineering	\$38,943	\$464,267	\$618,026	75.1%
432	Cemetery	\$7,159	\$89,995	\$118,590	75.9%
433	Community Events	\$7,636	\$110,716	\$113,566	97.5%
450	Forestry	\$20,283	\$210,011	\$324,531	64.7%
451	Recreation Programs	\$157,686	\$1,380,649	\$1,708,136	80.8%
452	Pool/Aquatics	\$10,102	\$166,287	\$186,568	89.1%
454	Parks	\$100,989	\$902,188	\$1,206,005	74.8%
455	Safety/Loss Control	\$1,195	\$2,553	\$16,760	15.2%
456	Art & Heritage	\$16,402	\$202,248	\$264,560	76.4%
457	Town Hall	\$18,671	\$181,014	\$238,634	75.9%
<b>Total General Fund Operations</b>		<b>\$1,025,043</b>	<b>\$9,620,028</b>	<b>\$12,716,127</b>	<b>75.7%</b>

**General Fund Expenditures**

The general fund operations are right at the budget benchmark as we finished the summer season.

As one would expect through September, operations connected with community events and aquatics have almost completed their entire budget.

Finance is slightly ahead of the benchmark due to contract payments made to sales tax auditors.

Economic Development is ahead of the pace due to the \$50,000 payments for participation in the RTA.

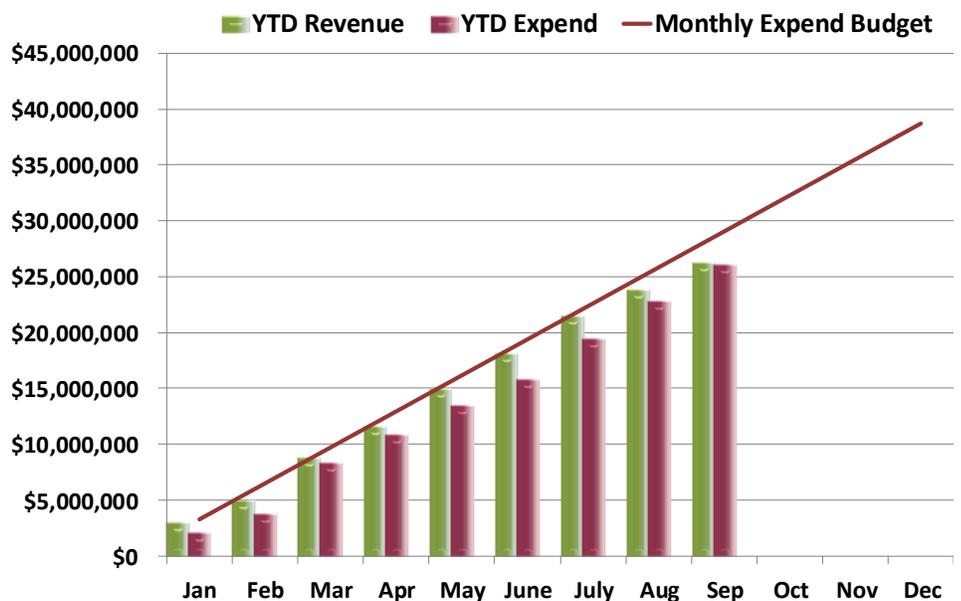
**Revenue and Expenditure**

The chart on the right shows monthly revenue compared to monthly expenditure as well as a trend line showing the total 2014 budget expended equally over twelve months.

Our monthly budgeted total expenditures equal \$3,228,884. In September we collected \$2,384,500 in total revenue. The chart on the right reflects our actual results through September.

September YTD revenue total exceeded expenditures by roughly \$111,000.

**Combined Revenue and Expenditures**



**TOWN OF WINDSOR 2014 MAJOR CAPITAL PROJECT STATUS**  
*arranged by reporting department*



**As of OCTOBER 1, 2014**

2014 Projects	2014 Budget	Spent YTD	Dept.	Multi-Yr	Est. Start Process	Actual Start	% Complete	Est. Complete	Actual Complete
IT Financial Mgmt Software Upgrade	\$280,000	\$193,754	Fin CG	2014	Jan	Jan	75%	Nov	
IT Unified Communications upgrade	\$91,000	\$91,493	Fin CU	2014	Feb	Feb	100%	end May	June
GIS Development Management Software	\$210,000	\$117,955	Fin ST	2014	begin Mar	Mar	75%	Nov	
Kyger Pit Non-Potable Reservoir w/CWCB loan	\$5,700,000	\$3,447,356	Fin/Eng	2014-2015	Mar 4	4-Mar	70%	EOY	
Street Maintenance (overlay, crack seal, chip seal)	\$1,407,000	\$347,469	Eng CT	2014	Apr 1	Apr 1	85%	Sept 15	
WCR 19/ Hwy 392 Turn Lane	\$150,000	\$305,550	Eng	2014	Jun 1	Jun 1	95%	Oct 1	
WCR21 Bridge Replacement w/grant	\$584,270	\$468,062	Eng JE	2013-2014	Feb 1	Feb 1	50%	May 15	
Eastman Pk/Cornerstone Roundabout Construct	\$621,500	\$561,514	Eng JE	2013-2014	Jun 15	Jun 30	95%	Oct 1	
County Line Road ditch erosion mitigation design	\$50,000	\$0	Eng	2014-2015	May 1		0%	Sep 1 design	
Replace Railing on 7th St/Poudre Riv Bridge	\$33,000	\$16,344	Eng	2014	Oct 1	June	100%	Dec 1	1-Jul
Poudre River dredging at WCR 13	\$50,000	\$0	Eng	2014	mid Sep		0%	mid Oct	
3 M gal. Water Tank w/grant	\$1,150,000	\$1,335,392	Eng	2012-2015	Mar 15	Mar 15	44%	Mar 2015	
Replace Force Main to Gravity Sewer w/grant	\$380,000	\$8,534	Eng CT	2013-2014	Oct 1		15%	EOY	
Law Basin Master Plan Channel - design/acquisition w/ 69% PDM Grant - 2012-2015	\$904,959	\$86,048	Eng DR	2012-2015	Feb 15	Feb 15	0%	Oct 1 design	
Law Basin West Tributary Channel - 2013-2015	\$989,272	\$70,774	Eng DR	2013-2015	Oct 1		20%	Apr 2015	
Coyote Gulch Park Dvpmt Design	\$40,000	\$16,546	Pks/Rec	2014-2015	Apr 1	Apr 1	98%	mid Jul	
Windsor Trail Windsor West Connection planning	50,000	\$0	Pks/Rec	2014	Mar 1	Mar 1	10%	EOY	
Poudre Trail Concrete at 3 Bells	\$25,000	\$0	Pks/Rec	2014	Jun 15		0%	Nov 1	2015
Poudre Trail from Westwood Village	\$250,000	\$2,760	Pks/Rec	2014	Aug 15		10%	end Nov	2015
Windsor Trail South 7th St w/grant	\$219,796	\$811	Pks/Rec	2013-2014	end Mar	end Mar	100%	Aug 15	1-Oct
Chimney Park Pool - Deck Resurfacing	\$232,350	\$950	Pks/Rec	2014	Aug 15	7-Jul	20%	Dec 1	
Cemetery irrigation, design & engineering	\$329,547	\$241,563	Pks/Rec	2014	end Feb	end Feb	100%	Sep 1	1-Jun
Non-Potable Water- Construction of pipe encasement through Universal Forest Products	\$195,000	\$0	Pks/Rec	2013-2014	mid Nov		15%	Dec 1	
Museums - Interpretive Landscape	\$58,138	\$0	Pks/Rec	2014	mid Aug	1-Sep	25%	Oct 1	
Windsor West Park replace irrigation system	\$120,000	\$4,425	Pks/Rec	2014	early Sept	1-Sep	30%	Nov 15	
ADA Compliance Projects	\$70,955	\$2,848	Pks/Rec	2012-2014	Jan	Jan	50%	mid Dec	
Install pump at Covenant Park	\$49,000	\$2,981	Pks/Rec	2014	Jun 1		30%	Oct 1	2015
Poudre Plan corrections & Town Hall connection to Main Park	\$30,000	\$0	Pks/Rec	2014	Jun 1		20%	EOY	
RR xing Improvements/ Repairs-15th & CR72	\$30,000	\$28,500	P Wks	2014	Jun 30	30-Jun	100%	Jul 5	1-Aug
Facilities - cooling tower for Town Hall	\$80,000	\$76,545	P Wks	2014	Jan 1	Jan	100%	Mar 3	March
Facilities - sand & restripe floor at CRC	\$30,000	\$19,897	P Wks	2014	Jun 1	30-Jun	100%	Aug 1	1-Aug
Water Line Replacement	\$400,000	\$466,663	P Wks	2014	Jul 1	1-Jul	90%	Nov 1	
Sewer Line Rehab	\$82,875	\$0	P Wks	2014	Jul 15		0%	Sep 1	
Sewer Nutrient Study w/grant	\$72,000	\$37,864	P Wks	2014	end Jan	Jan	100%	Jun 1	1-Jun
Repl. #2,5,11,18,23,25,31,75,108,109,112,113,123 & lease 35, 94, 52, 19, and 22,	\$620,050	\$434,994	P Wks	2014	Jan 1	Jan	99%	Oct	
New Utility & PD Vehicle/equipped	\$70,000	\$74,850	P Wks	2014	Jan 1		99%	Oct	
Color key for funds =	PIF	CTF	CIF	WF	NPWF	SF	FF	ITF	

As requested at the budget retreat, this monthly report contains our monthly capital improvement plan update. Comments on future presentations of this information are welcome.

## Our Vision:

WINDSOR'S hometown feel fosters an energetic COMMUNITY SPIRIT AND PRIDE that makes our town a special place in Northern Colorado.

WINDSOR has a STRONG LOCAL ECONOMY with diverse business sectors that provide jobs and services for residents.

WINDSOR promotes QUALITY DEVELOPMENT.

WINDSOR residents enjoy a friendly community with a VIBRANT DOWNTOWN, HOUSING OPPORTUNITIES, CHOICES for LEISURE, CULTURAL ACTIVITIES, RECREATION, and MOBILITY for all.

WINDSOR is a GOOD ENVIRONMENTAL STEWARD.



### *2014 Monthly Financial Report*

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Town of Windsor  
301 Walnut Street  
Windsor, CO 80550

Phone: 970-674-2400  
Fax: 970-674-2456

*The Town of WINDSOR strengthens community through the fiscally responsible and equitable delivery of services, support of hometown pride, and encourages resident involvement.*

*The 2014 Budget continues to focus on fiscal responsibility while building a long-term sustainable community through strategic investments and emphasizing the maintenance of existing infrastructure. In order to achieve these goals, the 2014 Budget emphasizes the importance of funding the key day-to-day tools that lead to success. These tools are employees, technology, and providing services most highly rated by citizens.*

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**We're on the Web**

[www.windsorgov.com](http://www.windsorgov.com)

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## MEMORANDUM

**Date:** October 27, 2014  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
**From:** Kelly Unger, Management Assistant  
**Re:** 125<sup>th</sup> Anniversary Update  
**Item #:** D - Communications

**Background / Discussion:**

The Town of Windsor was incorporated on April 2, 1890. The year 2015 is the Town's 125<sup>th</sup> Anniversary. In order to properly celebrate this milestone, Town staff hired the marketing firm Slate Communications. They will assist with developing a year-long public outreach effort. This may include developing a logo and/or tagline for the recognition, piggybacking on existing events or developing limited new events. The idea is to brand the year and keep the celebration forefront in the public's view.

In the next sixty (60) days, Slate Communications and Town Staff will be meeting with community stakeholders to get input, hear ideas, and seek partnerships for the 125<sup>th</sup> Anniversary.

Below is the schedule of upcoming public outreach meetings:

- Parks & Recreation & Culture Advisory Board
  - November 4<sup>th</sup>, 7:00 PM
- Historic Preservation Commission
  - November 12<sup>th</sup>, 5:00 PM
- Downtown Development Authority
  - November 19<sup>th</sup>, 7:30 AM
- Weld RE-4
  - TBD
- Clearview Library Board
  - TBD

Town Staff and Slate Communications will hold a meeting with Town Board on November 24<sup>th</sup>, 2014 to discuss results from our outreach meetings and receive direction from Town Board.



October 21, 2014

Town of Windsor  
Attn: Dean Moyer  
301 Walnut Street  
Windsor, CO 80550

Dear Dean,

This letter is to advise you of the change in control of Safeway Inc. ("Safeway Stores 45, Inc. & Safeway Stores 46, Inc.") a Delaware corporation and the parent company of certain stores located in Colorado and operated under the "Safeway" banner. On March 6, 2014, AB Acquisition LLC (the "Ultimate Parent") entered into an Agreement and Plan of Merger with Safeway Inc., a Delaware corporation ("Safeway"), pursuant to which an indirect wholly-owned subsidiary of the Ultimate Parent will merge with and into Safeway (the "Merger"). As a result, Safeway will no longer be a publicly-traded company.

Notwithstanding the Merger, all of Safeway's daily business and operations will continue to be conducted essentially as they are today, albeit with a different corporate owner but under the Safeway banner as they are today. Additionally, other than in the ordinary course of business, the transaction will not result in any changes to in-store management or operations, pharmacy physical plant, pharmacist in charge or other staff at the store locations that will be operated by Safeway. In light of the fact that the Safeway stores will maintain operational continuity, we are hopeful that you will determine that it is not necessary for the parties to undergo the significant costs, administrative burdens and potential delays associated with the process of re-licensing the Safeway stores.

We currently plan to close this transaction in the fourth quarter of 2014. The parties appreciate the opportunity to make this submission and look forward to your decision regarding this matter.

Please do not hesitate to contact Jacqui Rush, Merger Licensing Coordinator, with any questions or requests for additional information concerning the corporate structure of this transaction. Jacqui Rush can be reached by phone at 623-869-4443 or by e-mail to [Jacqui.Rush@safeway.com](mailto:Jacqui.Rush@safeway.com).

Sincerely,

*Jacqui Rush*



**EAST COLORADO** *Small Business Development Center*

Stacy Johnson  
Development Manager  
Town of Windsor  
301 Walnut Street  
Windsor, CO 80550

23 August 2014 Business

Stacy

First, I want to express my appreciation to you for your past support and commitment to the East Colorado Small Business Development Center (SBDC)(new name). Windsor has always been very supportive and appreciative of our services. Your sponsorship along with others has allowed us to provide a substantial impact to businesses in your community. Over the last 4½ years EASTCO has worked with 2271 distinct existing and start up businesses to create 814 new jobs, retained 697 Jobs, had economic impact including loans obtained and sales increases of \$74M. During this period of time we have conducted 8067 sessions with clients for a total of 13156 hours of counseling and 108 new businesses have started. Without our sponsors these numbers would be substantially lower because we have to depend upon our communities and private sector to allow us to provide local counseling. As has been mentioned in the past all sponsorship money provided from your community stays in your community and is used directly to pay for the counselor who works there.

Second by way of information, the funding make up for the EASTCO SBDC comes first from a base grant from the Small Business Administration (SBA) and supplemented by our host institution, the Montfort College of Business at the University of Northern Colorado. This provides us with 32% of the money needed to run the program. The remainder of the funds, 68%, needs to come from sponsorships. So this is why our sponsors are so vital to our success, and through our sponsorships we have been able to take the SBDC services to the businesses in our region with our satellite locations. It has been a real plus to the business owner to have a local SBDC consultant known and present within their community. Those relationships turn into long-term relationships where the business owner sees value in having a free business consultant to help them at any time with outcomes maximizing their business potential.

Again, Thank you for your sponsorship in 2014 of \$5000, we very much appreciate it. For the upcoming year 2015 we would like to have you maintain your sponsorship at \$5000.. Your investment in the program will assist in continuing to provide the necessary services to small businesses in your community while providing an opportunity to advertise your commitment to small business development. As mentioned above the funds provided by The Town of Windsor will be directly applied to services that are provided in your community. Financial contributions and professional business assistance provided to the EASTCO SBDC have generated significant results in the communities it serves, and with your help we will see more profitable small businesses, fewer bankruptcies or failures, new economic growth and a more dynamic community.

Again, thank you for your past support and we look forward to the ongoing relationship in the future. If you have any questions please contact me via email or phone.

Sincerely,

A handwritten signature in blue ink that reads "R. Pickett".

Richard Pickett  
*Executive Director*



# Windsor Severance Fire Rescue

100 7<sup>th</sup> Street, Windsor, Colorado, 80550

970-686-2626

[www.wsfr.us](http://www.wsfr.us)

October 2, 2014

Town of Windsor  
301 Walnut St.  
Windsor, CO 80550

Chief John Michaels -Windsor Police Department  
Melissa Chew - Director, Parks, Recreation, and Culture

Dear Chief Michaels and Ms. Chew,

On behalf of Windsor Severance Fire Rescue I want to thank you and commend your respective staff for going above and beyond during the fire emergency yesterday at 610 Hemlock Drive. Fire in a nursing / assisted living facility no matter how minor is stressful for its residents, staff, and family members, and can easily evolve into a potentially life threatening situation.

In this particular incident the staff of the facility, the alarm systems, and fire response operated as designed limiting damage to a single room and contents, however the required evacuation during a significant thunder storm made the situation very challenging. The ten residents ranged from one fully bed confined with family present facing an emotional end-of-life situation, to those with limited mobility requiring medical monitoring, to fully mobile yet understandably anxious clients.

Without hesitation Windsor PD officers assisted us with finding the best intermediate muster location near the garage, and then called in the resources of the Recreation Center staff and busses while ensuring the best possible comfort and safety of everyone concerned. I witnessed compassion, professionalism, cooperation, and innovation on the part of all officers and staff to transport these residents either to the homes of their family, a waiting ambulance, or the police station via Windsor Rec Center busses. Many were drenched in the down pour while protecting the residents.

I have worked in communities larger and smaller in similar situations and can say Windsor is consistently THE BEST when it comes to cooperation and having an engaged staff that will do whatever is necessary to mitigate risk to our citizens regardless of their official job description. Because of the assistance provided by the Town staff we were able to do a shift recall and handle several other emergencies that were occurring simultaneously on I-25 and elsewhere while working to get most of the facility back up and running within a few hours.

I began this letter attempting to list the Town employees who were assisting, but surely I would have left someone off. Please pass along our gratitude to everyone involved.

Regards,

Herb Brady  
Fire Chief  
Windsor Severance Fire Rescue  
Cc Kelly Arnold, WSFR Board of Directors

Pace and McCoy Families  
c/o John and Sherry McCoy

To: Mayor John Vazquez, and the Town Board, Town of Windsor Colorado

From: Noel & Joanne Pace  
Sherry & John McCoy  
Brad Pace  
Rod & Nina Pace

Date: October 27, 2014

RE: Proposed Pace Property Enclave Annexation by the Town of Winsor  
Proposed Annexation Ordinance 2014-1483

The Pace family has lived in northern Colorado for over fifty-two years. Our family bought the property in question nearly thirty-five years ago. When our parents bought the property there was no development, no new homes in sight. We were surrounded by open space. When we bought the land we knew we were buying the minerals too, and the value of minerals in northern Colorado is no secret.

During the last eleven years our family has watched while the adjoining lands have been developed. The neighboring property owners have capitalized on the population movement to northern Colorado. Our family did not voice any opposition to the development. We have respected our neighbors' rights to develop their private property, and did not object as the open space changed, and development surrounded our land. There is no question the development changed our property, and that our Property has been burdened by easements and public installations that benefit our neighbors.

The Town recently has told us they have the right to annex our property without our consent. It looks like the Town could have exercised this right years ago. Instead, our property was overlooked when area improvements were installed for the benefit of our neighbors. The Pace property essentially was ignored by the Town, until now. Now, the Town of Windsor wants to annex our land through a forced enclave annexation. With just over a month to consider the implications we have been told the property our family owns for 35 years will be annexed, without our consent. Our family was not consulted when the decision to annex was made. Our voice has been lost in the demands of our new neighbors who want to dictate the development of our private property, and our concerns seem to have been overridden by the Town's desire to receive income from our land.

The possibility of annexation was first discussed publically at a Town meeting in September. While we were startled by the rushed process, we have tried to cooperate

with the Town. At the first meeting we let the Town know we needed more time to understand the impact of annexation.

The Town initially explained the annexation was prompted by the Town's desire to have the income from any wells drilled on our property, and the tax revenue if our minerals are developed. The benefit to the Town is apparent, but our family did not then, and does not now, understand how annexation benefits our property. No one has explained what Town services would be extended to our property, or why being included in the Town of Windsor is good for the Pace property. Instead, the forced annexation has forced us to seek legal counsel to understand what is happening to our real property rights. The annexation ordinance states zoning must occur within 90 days, a process that often takes months, if not years, when planning is carefully considered. We have not received a single letter about how the annexation will impact our land, or how the required zoning will be implemented.

We have wanted to believe that the Town was not trying to deprive us of any rights associated with our property ownership. Unfortunately, our level of comfort with the process has declined in recent weeks. Since the first meeting even more questions have come up. The Town of Windsor recently worked through Larimer County to delay the Colorado Oil and Gas Conservation Commission oil and gas permitting process. The Town did not inform us these steps were taken. Instead, we found out about this action on October 15, by reading the newspaper. That was only two weeks ago.

We also now know that this is the first time ever the Town has annexed an enclave. This is not a small parcel of land without significant value. The rushed attempt to annex using a process never before used in this Town would alarm any landowner. We are genuinely concerned that the Town will use annexation as a way to stop the development of our minerals. It is important for us to speak up. We hope the Town will think it is just as important to listen to us, the real property owners, as it is to listen to our neighbors.

Because of these questions, and the limited time for review, we are asking the Town to delay annexation to allow adequate time to analyze and discuss the impact of annexation, including how zoning will be addressed. Our family already has said we do not object to annexation in theory, but until the impacts are considered we must object to the rush of this abnormal process.

When it comes to oil and gas development we think it will be important to make sure that the Town's current best practices are followed if wells are drilled on our property. If the proposed annexation is aimed at something other than receiving income from development on our property, and instead as means to indirectly stop mineral development our mineral rights will lose their value. The Town already has admitted minerals developed from the Pace property have significant potential value. If we lose our right to develop who will pay for this loss?

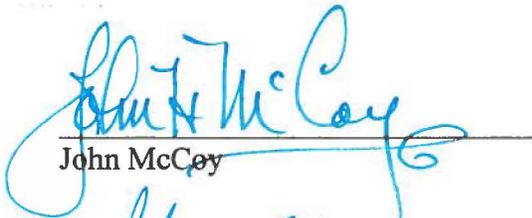
Thirty days for annexation is not reasonable considering the lack of interest the Town of Windsor has had in our property over the last 35 years. We understand that the Town of

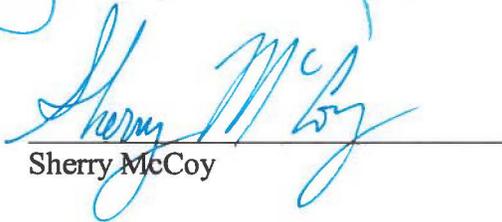
Windsor is looking out for the neighbors in the surrounding developments. We ask too that the Town hear our voice as well.

The delay we are asking for will give time to plan, and will cost the Town of Windsor nothing. It can benefit everyone involved. More importantly, this is our real property and the answers we are seeking are no different from the answers the Town has required for every other annexation it has ever considered. Please consider our rights of the property owners and delay the annexation in order to work with us to annex our property on a reasonable basis.

Sincerely,

The Pace Family  
The McCoy Family

  
John McCoy

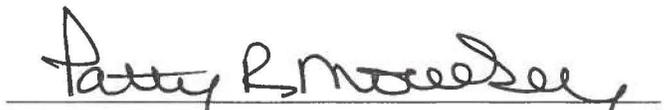
  
Sherry McCoy

STATE OF COLORADO     )  
  ) ss  
COUNTY OF Larimer     )

**ACKNOWLEDGMENT**

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of October, 2014, by John McCoy.

Witness my hand and official seal.

  
Notary Public  
Address: 3001 Sagebrush Dr  
Ft Collins, CO 80525

PATTY R MOWREY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19934015254  
MY COMMISSION EXPIRES NOVEMBER 2, 2017

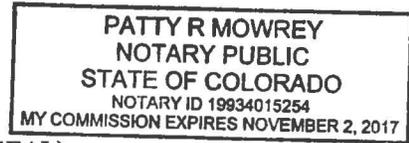
(SEAL)  
My Commission Expires:  
11/02/2017

**ACKNOWLEDGMENT**

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of October, 2014, by Sherry McCoy.

Witness my hand and official seal.

Patty R Mowrey  
Notary Public  
Address: 3001 Sagebrush Dr  
Fort Collins, CO 80525



(SEAL)

My Commission Expires:

11/02/2017

**VISANI • BARGELL LLC**  
*attorneys*

**PO Box 2377**  
**Dillon, Colorado 80435-2377**

**Cynthia L. Bargell, Esq.**

**Telephone: (970) 262-9055**  
**E-mail: [cindy@visanibargell.com](mailto:cindy@visanibargell.com)**

October 27, 2014  
*via Hand Delivery*

Town of Windsor Colorado  
301 Walnut Street  
Windsor, Colorado 80550

Attention: Hon. John Vazquez, Mayor, Windsor Town Board and  
Mr. Ian D. McCargar, Esq., Town Attorney

RE: Pace Annexation Proposal  
Township 6 North, Range 68 West, 6<sup>th</sup> P.M.  
Section 25: SE1/4NE1/4  
Larimer County, Colorado  
Proposed Town Ordinance 2014-1483

Dear Board Members and Mr. McCargar,

Our firm recently has been retained to represent Sherry and John McCoy, children of Noel and Joanne Pace, and the Pace family members, in connection with the proposed enclave annexation of the Pace family property described above (the "Pace Property").

The Pace Property has been in the family for thirty-five years. Earlier this year the Town of Windsor advised the Pace family that the Town was considering the unilateral annexation of the Pace Property in connection with possible oil and gas operations proposed by Great Western on the property. Last month the Pace family became aware that the Town was moving forward with the annexation. The family did not receive actual notice of the annexation, but instead heard about the annexation only days before the first meeting, and continues to read about it in the newspaper.

When the annexation proposal was first presented the Pace family asked for more time to better understand how annexation will impact their real property. They would like a voice in how the Town handles the annexation of the property they have owned for over three decades, and respectfully ask the Town to defer a decision on Annexation until the plans for development for the property have been adequately addressed.

The Pace family has been honest with the Town regarding their desire to see their mineral interest responsibly developed. Much to their dismay, this basic real property right recently has

become the center of controversy in Windsor, with everyone from neighbors to activists weighing in on what should happen with the Pace Property. Everyone, except the Pace family.

The Paces initially were advised the annexation was motivated by the passage of HB 14-1371 to make sure the Town benefits from the taxes associated with oil and gas revenue generated from the Pace Property surface facilities. This however make little sense to the Pace family as production has yet to be established, and moreover, they are agreeable to annexing voluntarily provided the parties can work together on development issues.

More recently it has become clear the annexation of the Pace Property comes at the request of neighboring property owners that want to exercise to control over when, and if, the Pace minerals are developed. This twist to the process gives rise to significant concern about the ultimate goal of annexation, and whether the real intent is to deprive the Pace family of their real property rights through regulation. While they hope this is not the case, allowing sufficient time to examine the proposed mineral development, and to work with the Town and the potential operator is the most honest and direct manner to handle this issue.

In this regard, our Firm has researched the Windsor Town Code and the obligations that typically arise in connection with annexation. We note that Enclave annexation is not addressed in Chapter 15, Annexations and Master plans. The Town Code is however comprehensive in its handling of petitions for Annexation, requiring advance consultation with the Planning Department, consideration of special conditions and input from numerous local government agencies. Annexation petitions must be submitted to telecommunications utilities; gas and electric utilities; the Town Engineer; Windsor-Severance Fire Rescue; water and sewer utilities; the Colorado Department of Transportation; the Town Recreation department; the impacted school district; and cable television provider (Windsor Town Code § 15-1-30 (3)). Input from these entities is critical to planning for annexation of real property. The Pace family has not received input or comment from any of these entities critical to the future development of their real property. Instead, it appears all of the responsible planning required for annexation has been by-passed in favor of a quick decision, primarily to benefit nearby property owners.

In contrast to this quick action, the Town asked the County to request the Colorado Oil and Gas Conservation Commission extend the comment timeframe for review of pending Oil and Gas permits. The COGCC accommodated the Town's request made through the County, allowing additional time for input on the pending permits. At the exact same time the Town has rushed the Pace's through the annexation and zoning processes.

The Pace family is aware that the neighboring subdivisions may be intent on stopping operations on the Pace property, suggesting instead that the location be moved 150' across Larimer County Road 13. While this suggestion may be fiscally neutral to the Town, if both properties are included within the Town limits, there are clear winners and losers to this proposition. The Pace's come out on the losing end, deprived of the value of their minerals. This is significant. Information available on the Town website supports the conclusion the loss could easily be in the millions of dollars (See Presentation by Lind & Ottenhoff, LLP, dated August 22, 2011, Oil and Gas 101- Basics, available on the Town website). It also has become clear through our investigation that the property owner across County Road 13 potentially benefits from the

proposed annexation, effectively controlling the neighbors' preferred location for oil and gas operations. Preferring one surface owner over another, based on 150 foot difference, seems to the Pace family to be an arbitrary exercise of Town power.

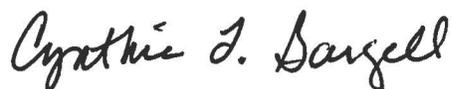
The Pace family would like to clear up another misperception as well. Recently, a local newspaper reported that Great Western did not intend to adhere to the Town of Windsor's Conditional Use Grant stipulations. This concerned the family, and the Pace's contacted the operator. In connection with this proceeding, the Pace family received a copy of a letter from Great Western Energy that again confirms the Company has voluntarily included every one of the Town of Windsor's special use permitting requirements with its COGCC permit applications. In addition, Great Western has agreed to build a berm and sound wall that exceed current requirements, showing a commitment to work with the Town.

The Pace family wants to be good neighbors, and to ensure all of the Town Code's Conditional Use Grant stipulations are followed (and then some) but they can't agree that the adjoining property owners should dictate their development rights. What the Pace family now requests is additional time to understand the annexation, and to plan for development of the Pace Property. There is no cost to the Town to delay annexation of this Property. If the intent is to prevent development of their real property interest under the guise of annexation and zoning it is fair for them to know this is the case.

We appreciate your consideration of this request and look forward to working with the Town to provide for responsible development of the Pace Property, and potential annexation to benefit the Town of Windsor.

Sincerely,

Visani Bargell, LLC



Cynthia L. Bargell

cc: The Pace Family, c/o John and Sherry McCoy

**Testimony for Windsor Town Board Meeting**  
October 27, 2014

National Association of Royalty Owners – Colorado  
Michelle Smith, President  
[NARO.Rockies.CO@gmail.com](mailto:NARO.Rockies.CO@gmail.com)  
720-318-2763

*Re: Town of Windsor Ordinance No. 2014-1483 – An ordinance annexing certain real property pursuant to the enclave annexation powers granted municipalities under the Colorado Municipal Annexation Act of 1965*

Good evening Windsor Town Board:

We are submitting this testimony on behalf of The National Association of Royalty Owners (NARO), Colorado, whose mission is to encourage and promote exploration and production of minerals in the United States while preserving, protecting, advancing, and representing the interests and rights of mineral and royalty interest owners through education, advocacy, and assistance to our members, to NARO chapter organizations, to government bodies, and to the public.

It has come to our attention that the Town of Windsor is considering annexing the property owned by the Pace family, who have been in negotiations with Great Western Oil and Gas to drill a well on their land. This property has been in the family for over 35 years and the family has anticipated the privilege of exercising their real property right to have their minerals developed, which can be substantial and life-changing for a family.

Minerals in this area are very valuable. In June 2014, a Netherland Sewell & Associates study commissioned by NARO found that future cash flows from an acre of property in a similar area in the Wattenburg Field would range from \$30,375 per acre to \$100,329 per acre. With the Pace's nearly 40 acres, a reverse condemnation lawsuit could cost the city of Windsor somewhere between \$1.2 million and \$4 million in damages alone. Read more about the study here:  
<https://www.scribd.com/doc/229378760/Netherland-Sewell-Assoc-NARO-Study>.

The property in question is surrounded by the Town of Windsor. The annexation could force Great Western's proposed oil and gas operations off the Pace land and onto land across the highway. As a result, the Pace family's minerals would be stranded and become worthless as the property would no longer be included in the drilling and spacing unit for the well.

While NARO encourages municipalities to work with land and mineral owners as well as producers in the negotiation of Memorandum of Understanding to protect residents, NARO Colorado cannot support any action that wastes this resource, and denies a mineral owner his or her constitutional right to develop minerals.

The forced annexation and zoning of a property that the Pace family has held for 35 years, in order to move a well 150 feet across the road, should outrage property rights owners everywhere. Mineral rights in Colorado are real property rights, and at least equal to surface rights. Preventing property owners from developing their real property without just compensation is an attack on all property rights, which should deeply concern every Coloradan.

It is our sincere hope that the Town Board will take into consideration the adverse effect this annexation will have on the Pace family, who have owned this property for over 35 years with the express expectation of benefitting from its mineral and surface value.

Warm regards,

Michelle Smith  
President  
NARO-Colorado  
[NARO.Rockies.CO@gmail.com](mailto:NARO.Rockies.CO@gmail.com)  
720-318-2763

## Bruce Roome

---

**From:** Kelly Arnold  
**Sent:** Monday, October 27, 2014 10:45 AM  
**To:** Ian McCargar; Joe Plummer; Scott Ballstadt; Bruce Roome  
**Subject:** FW: Online Form Submittal: Town Board Email

Kelly Arnold  
Town Manager | Town of Windsor  
Off: 970-674-2400 | [www.windsorgov.com](http://www.windsorgov.com)

Follow Us [www.windsorgov.com/socialmedia](http://www.windsorgov.com/socialmedia)

-----Original Message-----

**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com) [mailto:[noreply@civicplus.com](mailto:noreply@civicplus.com)]  
**Sent:** Monday, October 27, 2014 10:43 AM  
**To:** TownBoard; Kelly Arnold  
**Subject:** Online Form Submittal: Town Board Email

The following form was submitted via your website: Town Board Email

Your name:: Rick Campbell

Your Address:: 8435 Blackwood Drive

Phone Number:: 970-290-7254

Email Address:: [racamp32256@gmail.com](mailto:racamp32256@gmail.com)

Please confirm Email Address:: [racamp32256@gmail.com](mailto:racamp32256@gmail.com)

Message:: I am a Windsor resident who is in favor of annexing the Pace property located just west of WCR 13, the proposed site of a MAJOR oil and gas developed project being proposed by Great Western Oil and Gas company. I find it inconceivable that anyone would allow a HEAVY INDUSTRIAL site of this nature to be located so close to two highly desirable residential neighborhoods and believe that anything that can be done to mitigate the effects of such a development, including the annexation of this property is PARAMOUNT to the overall well being of our community.

Additional Information:

Form submitted on: 10/27/2014 10:42:34 AM

Submitted from IP Address: 50.183.57.202

Referrer Page: <http://windsorgov.com/forms.aspx>



Great Western Operating  
Company, LLC  
1801 Broadway, Suite 500  
Denver, CO 80202

303.398.0302  
866.742.1784 Fax  
info@gwogco.com  
www.gwogco.com

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October 27, 2014

Town of Windsor  
ATTN: Mayor, John S. Vazquez and Town Attorney Ian McCargar  
301 Walnut Street  
Windsor, Colorado 80550

RE: Town of Windsor – Proposed Ordinance No. 2014-1483

Dear Mayor Vazquez and Mr. McCargar,

Please accept this letter from Great Western Oil & Gas Company, LLC (“Great Western”) as a general comment on the Town of Windsor’s (“Town”) Proposed Ordinance No. 2014-1483 (“Proposed Ordinance”) up for review at the Town Council’s Monday, October 27, 2014 hearing. Great Western remains neutral on the Proposed Ordinance, however, believes that it is important to reiterate its position and actions of voluntarily applying each of the Town’s required Conditional Use Grant stipulations to each of the applicable state permits that Great Western has filed with the Colorado Oil & Gas Conservation Commission (“COGCC”).

To confirm, each of the Town’s Conditional Use Grant stipulations have been included on each Form 2 (Application for Permit to Drill) and the Form 2A (Oil and Gas Location). Along with Great Western’s inclusion of the Town’s stipulations, Great Western has gone above the required COGCC and Town stipulations with additional mitigation measures on the Pace Property (i.e. use of sound walls, etc.).

Great Western recognizes the sensitivity of the concerns surrounding the Pace Property and looks forward to continuing discussions with the Town regarding Great Western’s development of the Pace location. Thank you for the opportunity to submit these comments prior to the October 27, 2014 Town Council meeting.

Sincerely,

Rich Frommer  
President & CEO

cc: Town Council Members  
Mayor John S. Vazquez  
Mr. Ian McCargar  
Cindy Bargell – Counsel for Pace Family