



TOWN BOARD REGULAR MEETING
June 22, 2015 - 7:00 P.M.
Town Board Chambers
301 Walnut Street, Windsor, CO 80550

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

MINUTES

A. CALL TO ORDER

Mayor Vazquez called the regular meeting to order at 7:02 p.m.

- | | | |
|--------------|---------------|----------------------|
| 1. Roll Call | Mayor | John Vazquez |
| | Mayor Pro Tem | Myles Baker |
| | | Kristie Melendez |
| | | Robert Bishop-Cotner |
| | Absent | Jeremy Rose |
| | Absent | Christian Morgan |
| | Absent | Ivan Adams |

- | | | |
|---------------|--|----------------|
| Also Present: | Town Manager | Kelly Arnold |
| | Town Attorney | Ian McCargar |
| | Communications/Assistant to Town Manager | Kelly Unger |
| | Town Clerk/Assistant to Town Manager | Patti Garcia |
| | Chief of Police | John Michaels |
| | Director of Parks, Recreation & Culture | Melissa Chew |
| | Assistant Town Attorney/ Town Prosecutor | Kim Emil |
| | Director of Engineering | Dennis Wagner |
| | Director of Finance/IT | Dean Moyer |
| | Deputy Town Clerk | Krystal Eucker |

2. Pledge of Allegiance

Town Board Member Bishop-Cotner 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

Mayor Pro Tem Baker would like to discuss postponing Items 2 and 3, Resolution numbers 2015-38 and 2015-39 as three board members are not present.

Mr. Vazquez inquired as to the impact of postponing the agenda items.

Mr. Arnold stated elements of the project have been tentatively scheduled assuming the resolutions would be approved.

After further discussion, board members were in favor of moving forward with the agenda as presented.

Town Board Member Melendez motioned to approve the agenda as presented; Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Melendez, Bishop-Cotner, Vazquez; Nays- None; Motion passed.

4. Proclamation – Parks and Recreation Month (July)

Mayor Vazquez read the Parks and Recreation Proclamation.

5. Board Liaison Reports

- Mayor Pro Tem Baker – Water & Sewer Board; North Front Range/MPO alternate
Mayor Pro Tem Baker had no report from the Water and Sewer Board.
- Town Board Member Morgan – Parks, Recreation & Culture; Great Western Trail Authority
Town Board Member Morgan was absent
- Town Board Member Melendez – Downtown Development Authority; Chamber of Commerce
Town Board Member Melendez had no report for DDA or Chamber of Commerce. Ms. Melendez provided a reminder and invitation to the annual Chamber of Commerce Dinner scheduled for June 22, 2015 at the Island at Water Valley.
- Town Board Member Rose – Clearview Library Board
Town Board Member Rose was absent .
- Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission
Town Board Member Bishop-Cotner had no report at this time.
- Town Board Member Adams – Tree Board; Poudre River Trail Corridor Board
Town Board Member Adams was absent.
- Mayor Vazquez – Windsor Housing Authority; North Front Range/MPO
Mayor Vazquez had no report for from the Windsor Housing Authority and the North Front Range MPO will be meeting July 2, 2015.

6. Invited to be Heard

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

B. CONSENT CALENDAR

1. Minutes of the June 8, 2015 Regular Town Board Meeting – K. Eucker
2. Resolution No. 2015-37 - A Resolution Ratifying, Approving and Confirming the Terms of an Intergovernmental Agreement (“IGA”) for the Exchange of Legal Services - K. Emil
Mayor Pro Tem Baker motioned to approve the consent calendar as presented; Town Board Member Melendez seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Melendez, Bishop-Cotner, Vazquez; Nays- None; Motion passed.

C. BOARD ACTION

1. Windsor High School After Prom Committee – Short form grant request
 - Presentation: Amy Simmons

Amy Simmons, Chair of the Windsor After Prom Committee addressed the Town Board. Ms. Simmons reported the Windsor High School’s mission is to host a fun and safe activity for student after prom. The high school has been hosting the event for 23 years providing games, food and prizes. Many of the items needed for the after prom event are donated and others

are purchased through fundraising efforts. Many of the fundraising activities will start soon including the fruit fundraiser which is the reason for the grant request. With the grant request, a larger order can be placed ahead of time. This time of year the after prom budget is low because prom was a short time ago. The 2015 school year, 80% of the junior and senior students attended. Students will register ahead of time but event is free. The Windsor High School After Prom has been a model for other schools in the area.

Mr. Vazquez asked how much is being requested.
Ms. Simmons stated \$500.

Mr. Bishop-Cotner asked why an extra \$500 is being requested now based on last year's revenues and expenses as opposed to last year.
Ms. Simmons stated shows and gifts are purchased ahead of time. Some shows need to be reserved well in advance.

Mr. Vazquez asked if Ms. Simmons was aware of grant program in the past.
Ms. Simmons stated she was not aware.

Ms. Simmons stated the fruit sales are the fundraising effort that raises the most dollars. Individuals have already made phone calls to inquire about the fruit sales and an effort to get an order form set up on a website is in the works.

Mr. Vazquez asked how much of a loss is expected from spoilage.
Ms. Simmons stated they usually have more customers than fruit. Occasionally an individual will pay for a case and not pick it up. Cases that are not picked up are then donated.

Town Board Member Bishop-Cotner motion to support a grant for the Windsor High School Prom Committee in the amount of \$1,000 with the expectation of financials to be provided; Mayor Pro Tem Baker seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Melendez, Bishop-Cotner, Vazquez; Nays- None; Motion passed.

2. Resolution No. 2015-38 - A Resolution Making Certain Findings of Fact, Authorizing the Town Attorney to Undertake Eminent Domain Proceedings with Respect to the Acquisition of Easements Upon Real Property Owned by Pinecrest Associates, Necessary for the Completion of the Law Basin West Tributary Improvements Project, and Granting Full Plenary Authority in Association Therewith
 - Legislative action
 - Staff presentation: Ian D. McCargar, Town Attorney

Town Board Member Melendez motioned to approve Resolution No. 2015-38; Town Board Member Bishop-Cotner seconded the motion.

Town Attorney Ian McCargar addressed the Town Board and provided an overview of the agenda item. Mr. McCargar stated what is being presented for consideration is a resolution to allow the town attorney to file eminent domain proceeding to acquire easements for the Law Basin West Tributary Project from property owned by Pinecrest Associates. The town's project

is an important storm water project that will legally and physically separate storm water from a ground water collection system, known as the Davis Sheep Pipeline constructed in 1919 and 1920. Over the years with the amount of surface water that has entered the pipe, Anderson Consulting Engineers recommended the storm water be separated from the ground water pipe. That recommendation was given to Windsor a few years ago as a result of some water issues within a neighborhood. From that, Anderson Consulting Engineers has been working with Windsor to develop a design to separate the storm water from the ground water and present the design to the property owners whose property would be affected by the project. Numerous attempts to discuss appraisals, offers and design information with Pinecrest Associates have warranted no response. The Pinecrest property is essential to the West Tributary Project.

Eminent domain proceeding have not been utilized in the Town of Windsor since 2005. The town has also not had a situation where the landowner has not been willing to discuss the acquisition of easements. In this case there is no other choice than to go forward with a lawsuit that names not only the property owner but also any other owners of record whose interest might be affected with the project. Once all those individuals are in a courtroom, some will disclaim participation. The remaining property owners and Windsor will need to work out an arrangement for temporary and permanent easements rights. Under the statute, Windsor can ask the court for immediate possession which allows Windsor to commence work on the project while the issues of permanent compensation and easements are worked through the eminent domain process. The eminent domain process will determine what the reasonable amount to compensate the land owner for the easement and it also gives Windsor the authority to go onto the property early.

Ms. Melendez asked what would happen if proceedings move forward and there is no response.
Mr. McCargar stated once they are served, they have a certain number of days to respond. If there is no response, Windsor can apply to the court for default judgment.

Mr. Vazquez mentioned eminent domain proceedings are not without fair market value compensation and determined through the process that will include a third party.

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

3. Resolution No. 2015-39 - A Resolution Making Certain Findings of Fact, Authorizing the Town Attorney to Undertake Eminent Domain Proceedings with Respect to the Acquisition of Easements Upon Real Property Owned by Windsor Industrial Park, LLC, Necessary for the Completion of the Law Basin West Tributary Improvements Project, and Granting Full Plenary Authority in Association Therewith
 - Legislative action
 - Staff presentation: Ian D. McCargar, Town Attorney

Town Board Member Melendez motioned to approve Resolution No. 2015-39; Town Board Member Bishop-Cotner seconded the motion.

Town Attorney Ian McCargar addressed the Town Board and provided an overview of the agenda item. Mr. McCargar stated this resolution has to do with the same project presented in

agenda item 2. This parcel is different as staff has had numerous conversations with the landowner representative over a lengthy period of time. Over a two year period, issues have been raised regarding items such as where the easement would be located on the property. Windsor contacted Anderson Consulting Engineers to develop a redesign that would have pushed the project to the north, due east and then to the southeast. After presenting the redesign to the landowners, the landowners preferred the original diagonal route. Windsor presented the appraised valuation to the landowner and Windsor was asked to pay for a second opinion which was completed. The second opinion was \$0.15 lower per square foot than the original appraised valuation. Negotiations have continued based on the original land appraisal.

New concerns from the landowners include access concerns and soil stockpiling which are outside the scope of what is attempting to be accomplished. The concern is if negotiations continue, the situation could extend for some time. Another concern is the party with whom Windsor is engaged in negotiations with is one representative of a number of interest holders in the limited liability company that is the owner of the property. It is unknown what level of authority that has been given to the representative. Negotiations have been ongoing with this property for two years.

Mr. Vazquez asked if the legal negotiations have been in good faith on the land owners part.

Mr. McCargar stated he does not feel Windsor has been mistreated in negotiations but it does seem there is always another angle to the negotiations.

Mr. Vazquez asked if the parties involved are using this project to vest particular land uses without going through a formal land use application.

Mr. McCargar stated that is not something he is sure about but there have been access issues and some other issues tied to site planning or subdivision of the properties.

Mr. Vazquez asked if a timely resolution is not foreseen, the eminent domain process would allow the project to remain on schedule.

Mr. McCargar stated the eminent domain process has its advantages and one of them being timing.

Mr. Baker asked if the seepage pipe is currently on property.

Mr. McCargar stated that it does run diagonally parallel to the designed location for the West Tributary Project.

Ms. Melendez inquired if this property will benefit in the long run.

Mr. McCargar stated the property will have a storm drainage system that will drain to river on the property.

Mr. McCargar stated there are other subdivisions that are undergoing development in the vicinity of this property that are waiting until the West Tributary project is complete so they can stop what has been required for temporary storm water drainage, complete permanent storm water drainage projects and connect to the West Tributary Project. At least two subdivisions are under temporary storm water drainage arrangements that are very costly.

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

4. Resolution No. 2015-40 - A Resolution Concurring in an Amendment to the Clearview Library District Board of Trustees Bylaws with Respect to Town Board Participation in the Process of Filling Library District Board Vacancies
 - Legislative action
 - Staff presentation: Ian D. McCargar, Town Attorney

Town Board Member Melendez motioned to approve Resolution No. 2015-40; Town Board Member Bishop-Cotner seconded the motion.

Town Attorney Ian McCargar addressed the Town Board and provided an overview of the agenda item. Mr. McCargar stated he was approached by the attorney for the Clearview Library District to change the bylaws. The bylaws were revised a few years ago and an interview committee was created to help with filling vacancies on the board. Since the bylaw change, when there is a vacancy the library district contacts the Town Board and according to the bylaws as they exist today, take two board members plus a community member who lives within the library district and appoint them to the interview committee; the school district also does the same. Of the two boards, there are six individuals that are asked to participate in reviewing the applications and making recommendations to the library board. The library board has considered that may be asking too much from too many people.

What is being asked is to decrease the number from two board members from the Town Board and two members from the School Board down to one member per board.

Ann Kling, Clearview Library District stated the help in the past to select board members has been much appreciated. The committee is so large that not all individuals on the committee could get together until January after starting the process in October. The hope is with fewer individuals to contact and schedule, the committee will be able to meet sooner since board terms expire on December 31st.

Mr. Baker asked what the reasoning was behind having two Town Board members on the selection committee.

Mr. Bishop-Cotner stated when the bylaws were redone they came up with two. Scheduling seven individuals for a committee is very difficult to do.

Mr. McCargar stated this bylaw change is focused on a bylaw amendment that was a few years back from citizen outcry for greater accountability for the library district. The library district is a taxing authority but the tax payers don't elect the board of directors as it is all done through the appointment process.

Mr. Vazquez mentioned there was discussion on having the library board be elected officials but unable to do so per statutes.

Ms. Melendez asked if the selected community member is under the current bylaws, or is that new to this bylaw.

Mr. McCargar stated that has always taken place under the current bylaws and the clerk's office works with the two board members to select a community member. Ms. Garcia stated the last time a situation like this occurred, the community member was not available the night that interviews were scheduled but the interviews went on so business could be done.

Ms. Melendez inquired if it could be a board member or a community member and not both. Mr. McCargar stated that is possible but what has been presented to is to decrease the number of board members.

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

5. Resolution No. 2015-41 - A Resolution Approving the Quiet Zones Improvements Installation Agreement Between Great Western Railway Of Colorado, LLC, and the Town of Windsor, Colorado
 - Legislative Action
 - Staff presentation: Ian D. McCargar, Town Attorney

Town Board Member Melendez motioned to approve Resolution No. 2015-41; Mayor Pro Tem Baker seconded the motion.

Town Attorney Ian McCargar addressed the Town Board and provided an overview of the agenda item. Mr. McCargar stated this is a resolution approving the form of an agreement but not a specific agreement. Windsor is operating under a Public Utilities Commission deadline of June 30th to file a signed agreement. This is pertaining to the quiet zone project in Windsor including improvements to 13 rail crossing and updating equipment at 11 of the 13 crossings. The project is being funded under a TIGER V grant that Windsor applied for a couple of years ago and was approved by the United States Department of Transportation. Windsor and Great Western Railroad have been working closely to make certain that the ideas that Windsor had would work with the railroad's system. Early on in this process, Windsor asked the railroad for a formal agreement since the Public Utilities Commission would be requesting it. The draft included in the packet is now two drafts removed from where it stands today. Since that draft, the recognition between the town and the railroad are that there are other prior agreements that govern the maintenance of rail equipment and the roadway approaches to these crossings has been removed. The railroad agreed that there needed to be reference to those agreements and honor them in this agreement.

Flagging services, which is a portion of the \$117,000 figure will cover personnel on site for traffic control. Another portion of the \$117,000 is the railroad will be compensated for testing and commissioning the rail crossings so the Federal Rail Road Administration will sign off and Windsor can go forward utilizing the quit zone crossing.

An unexpected financial issue that has risen is the railroad's requirement that the town, on an annual basis, pay a sum of money to inspect and certify the crossing equipment. The figure for those services is not currently at a reasonable amount.

Mr. Arnold stated the railroad is requesting \$18,000 annually. Two weeks ago Windsor requested an explanation on what that entails. Great Western Railroad is going to prove what it will cost to operate quiet zones which could include an additional staff member. The railroad is saying this is going to be the cost to Windsor for the operations of the 13 mechanized systems. Mr. Arnold requested the Town Board to give him the authority to review the justification up to \$18,000 in order to move forward. If the amount is not justifiable, it will then be presented to the Town Board.

Mr. Vazquez asked if there is a master service agreement so Windsor has an expectation of what the \$18,000 will cover annually.

Mr. Arnold stated the new agreement has some reference to standards that are administered by the Federal Rail Road Administration.

Mr. McCargar stated the idea is that Windsor will hold the railroad to the Federal Railroad Administration standards for safety at the quiet zone crossings.

Mr. Vazquez asked if there is any clause or verbiage about when a crossing needs to be repaired.

Mr. McCargar stated this arrangement does not deal with the crossings per se, this arrangement deals with the roadway approaches and the equipment. There is an agreement from 2005 that deals with the condition of the crossing, not the issue of safety at the crossings.

Mr. Arnold stated one of the goals for next year's budget is for planned improvements.

Mr. Vazquez asked if the resolution is seeking approval of the form and to have some room for negotiations so the agreement can be executed and not have to come back before the board.

Mr. Arnold stated not to exceed \$18,000.

Mr. Vazquez stated he is in agreement with \$18,000 if it can be justified. If it can't be justified it will need to come back to Board.

Ms. Melendez asked if it is possible to revisit this. If the \$18,000 can be justified, what will happen if in the unforeseen future the costs do go down?

Mr. McCargar stated there are other crossing agreements with the rail road where they are expected to be paid yearly. Over time, the annual payment arraignments have been reduced to a fixed lump sum.

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

6. Financial Report May 2015

- Staff Presentation: Dean Moyer, Director of Finance

Mr. Moyer provided an overview of the financial report included in the Town Board packet and noted that May sales tax collections were at a record high.

- Year to date sales tax collections are up by 2.04%.
- Construction use tax through May is at 39.8% of the annual budget at \$545,980.
- The CRC expansion sales tax collections surpass budget requirements for the 4th consecutive month.

- Single family residential building permits total 125 through May 2015 compared to 104 through May of 2014.
- 32 business licenses were issues in May, of which 18 were sales tax vendors.

Mr. Moyer stated the bond sale took place on June 16, 2015. The town's rating for the bond issue was "AA-" and a five year call provision. During the order period, approximately \$78.38 million of orders were submitted for the town's \$16.1 million issue. That being the case, the bonds were repriced in turn saving points on interest overall. The \$16.1 million were sold at a premium bringing the project account to \$16.7 million. The true interest is 3.84% with a total repayment of \$25,632,464.00 and the average annual payment of \$1,330,000.00

Mr. Vazquez asked if there is a shortfall if the summary for the sale was for \$16.1 million when the budget costs for the project found a number that was \$16.7 million.

Mr. Arnold stated a meeting that took place with Pinkert was very positive and the project is staying on budget.

D. COMMUNICATIONS

1. Communications from the Town Attorney

Mr. McCargar thanked the Town of Windsor and its citizens for sending him and Kim Emil to CML.

2. Communications from Town Staff

Mr. Wagner stated Windsor should be past the peak of spring runoff. Data collected and compiled together shows the amount of water calculated that has come through Windsor this year in the spring runoff is by far higher than any other year in the last 25 years. There has not been the amount of flow with the extended duration like it was this year. In 2014, the river peaked at 4,000 CFS which is high but it almost peaked at 4,000 CFS this year also. Historically, 7th Street at Riverplace would have over topped at 3,000 CFS; 23 days this year the river has been at or above 3,000 CFS which would have caused road closures without the Eaton Flood Gate.

Mr. Arnold asked what the CFS was in 2013.

Mr. Wagner stated it was almost 10,000 CFS.

Mr. Arnold stated inquiries have been received from property owners to show and talk to Mr. Wagner about the changes that have occurred to their properties.

Mr. Vazquez asked if there is a way to construct a side spill structure off the Whitney into the detention pond at Poudre Heights.

Mr. Wagner stated that was the original plan but property owner to the east didn't like that it.

3. Communications from the Town Manager

Mr. Arnold has RSVP'd to the NISP BBQ on July 2, 2015 and encouraged others to attend.

Mr. Vazquez stated he talked to a representative at CML regarding the Colorado water plan and the NISP Project came up as a discussion item. The information received was a record decision is expected in the early part of 2016.

Mr. Arnold also extended his thanks for being able to attend the CML Conference. There was an expectation that discussion at CML regarding the construction defects would take place but since there was not, a work session will be scheduled to discuss that issue.

Mr. Vazquez stated there is a webinar that is being put together for what Lakewood has done relative to construction defects.

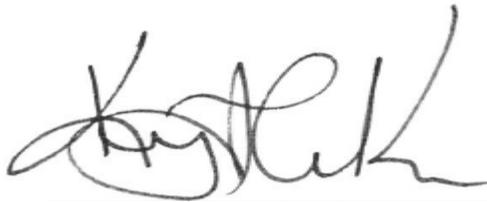
4. Communications from Town Board Members

Mr. Vazquez also thanked the tax payers for being able to attend the CML conference.

E. ADJOURN

Town Board Member Bishop-Cotner motioned to adjourn; Mayor Pro Tem Baker seconded the motion. Roll call on the vote resulted as follows: Yeas – Baker, Melendez, Bishop-Cotner, Vazquez; Nays- None; Motion passed.

The meeting was adjourned at 8:55

A handwritten signature in black ink, appearing to read 'Krystal Eucker', written over a horizontal line.

Krystal Eucker, Deputy Town Clerk