



## TOWN BOARD WORK SESSION

February 12, 2017 // 5:30 p.m. // First floor conference room  
301 Walnut Street, Windsor, CO 80550

***GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.***

*Members of the Public in attendance are asked to be recognized by the Mayor before participating in any discussions of the Town Board*

### AGENDA

1. Town Board/Manager/Attorney Monthly Meeting
2. Poudre River Flood Resiliency Study Results – W. Willis
3. Update on Bertsch property – I. McCargar
4. Future Meetings Agenda



## MEMORANDUM

**Date:** February , 2016  
**To:** Ms. Garcia, Town Manager  
**From:** Wade Willis, CPRP, Open Space and Trails Manager  
**Re:** Poudre Water Shed Flood Resiliency Study  
**Item #:** Topic

### Background / Discussion

The Coalition for the Poudre River Watershed (CPRW) is a 501(c)3 local nonprofit based in Fort Collins. Their mission is to improve & maintain the ecological health of the Poudre River watershed through community collaboration. CPRW originated as a result of the High Park Fire in which their original efforts related to restoration of the watershed area above the mouth of the Poudre Canyon. CPRW works collaboratively with stakeholders to identify the highest hazards in the watershed in order to target on-the-ground restoration actions. In 2015, the City of Greeley approached CPRW requesting that they consider assisting with flood related issues that the City had been dealing with since the floods of 2013. This prompted CPRW to reach out to other jurisdictions east of the I-25 to see if they had similar concerns & wished to work cooperatively to address them. Based on information gathered from these conversations, CPRW began seeking funding to develop plans for identifying flood recovery & resiliency building needs in the river corridor.

Jen Kovecses, Executive Director for CPRW presented to Town Board in a September 21, 2015 work session seeking support for a Community Block Development Grant – Disaster Recovery to fund a flood resiliency study. The project was for planning documents for the Poudre River from I25 to the Confluence east of Greeley. Pasted below is a letter from then mayor Vazquez regarding Windsor's support:

September 24, 2015

Dear Ms. Kovecses,

Thank you for your presentation to the Windsor Town Board on September 21, 2015 about the Coalition for the Poudre River Water Shed (CPRW). The Town of Windsor would like to be added to the CPRW Board as we recognize the regional significance and importance in participating. We strongly support the development of a floodplain masterplan east of I-25 and are looking forward to participating in this

effort with CPRW and regional partners. We support CPRW in pursuing the Community Block Development Grant to fund this masterplan. Please continue to work directly with Wade Willis as you move forward.

Sincerely,

John Vazquez, Mayor  
Town of Windsor

At your work session on February 12, 2018 Ms. Kovecses will provide a short summary of the process and findings from the completed study specifically as it relates to Windsor. Staff is looking for direction regarding continued involvement with CPRW as it relates to community engagement, planning & design document development and support in applications for grant funding.



## MEMORANDUM

**Date:** February 12, 2018  
**To:** Windsor Town Board  
**From:** Ian D. McCargar, Town Attorney  
**Re:** Town contribution to DDA Bertsch property purchase  
(Work Session item # 2)

### Background / Discussion

Following an executive session on the topic held January 8, 2018, I was directed to negotiate an agreement with the DDA in support of the DDA's purchase of the property located at 512 Ash Street ("Bertsch Property"). The essential terms authorized by Town Board were:

- Contribute \$257,500.00 toward the purchase price at closing;
- Contribute one-half of the cost to demolish the existing building on the Property; and
- Assure that the Town's contribution to the purchase is recovered if the property is not redeveloped as part of an overall redevelopment plan for the DDA Backlots area.

These terms were communicated to DDA representatives. Following a meeting with DDA representatives on the specifics, a draft IGA was prepared and refined, a copy of which is attached. The form of the draft IGA has been accepted by the DDA and its attorney, but its details of the attached have not been presented to the Town Board.

The attached IGA contains the foregoing essential terms, with the following nuances:

- The Town's recovery of its contribution is set at \$257,500, and does not include any sum related to demolition. This amount recognizes that there is some benefit to the Town to having the Bertsch Property owned by the DDA and having the existing building demolished. See Section D (1).
- If the DDA "flips" the property without incorporating it into the overall redevelopment plan for the Backlots, the Town's recovery will occur in a lump sum due on sale. See Section D (1) (a) and (2).
- The Town's recovery will be repaid over ten years if, after ten years following closing, the Backlots redevelopment project does not commence by issuance of a building permit for construction on any of the Backlots properties. See Section D (1) (b) and (3).

- Before the repayment obligation actually kicks in, the DDA will have the option to request a 90-day grace period, during which the parties will explore alternatives and possibilities, taking into account a variety of circumstances. See Section E (1) – (3).

### **Financial Impact**

Not budgeted for 2018; DDA request arrived after the Town's 2018 Budget was adopted.

### **Relationship to Strategic Plan**

Prosperous local economy; Safe, Well-Planned Community.

### **Recommendation**

If IGA terms are acceptable, instruct Town Attorney to submit for approval by Resolution during the February 26 Regular Meeting. If not acceptable, provide further direction to negotiators, either in a public session or a confidential executive session.

### **Attachments**

Draft Intergovernmental Agreement for Property Acquisition and Related Financial Assistance.

INTERGOVERNMENTAL AGREEMENT FOR PROPERTY ACQUISITION  
AND  
RELATED FINANCIAL ASSISTANCE

THIS INTERGOVERNMENTAL AGREEMENT FOR PROPERTY ACQUISITION AND RELATED FINANCIAL ASSISTANCE (“Agreement”) is entered into this \_\_\_\_ day of January, 2018, between THE TOWN OF WINDSOR, a Colorado home rule municipal corporation (“Town”) and THE WINDSOR DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic (“DDA”).

**A. RECITALS AND CONTEXT.**

- (1) The Town and the DDA have a long history of cooperation in furtherance of their mutual desire to bring economic prosperity to the Town’s downtown area.
- (2) Both the Town and the DDA own real property in the downtown area.
- (3) With the support and encouragement of the Town, the DDA has engaged the services of a professional development consulting group for the purpose of arriving at a development plan for the property identified as *Backlot Property* in the attached Exhibit A, incorporated herein by this reference.
- (4) The parties anticipate that a plan for Backlot Property development and redevelopment (“Master Redevelopment Plan”) will be formulated, negotiated and adopted by the DDA during 2018.
- (5) The parties anticipate that all or portions of the Master Redevelopment Plan will be undertaken within a reasonable time thereafter, depending on economics, phasing and participation of third parties yet to be identified.
- (6) The DDA has entered into a contract for the purchase of the property located at Lot 23, Burlington Subdivision, also known as 512 Ash Street, Windsor, Colorado (“Bertsch Property”).
- (7) The DDA has requested financial assistance from the Town for both the cost of Bertsch Property acquisition and post-acquisition demolition costs.
- (8) The Town has indicated its willingness to contribute to the Bertsch Property acquisition and demolition costs, subject to the terms of this Agreement.

**B. TOWN CONTRIBUTION TO ACQUISITION COSTS, CLOSING PROTOCOLS.**

- (1) On or before the date of closing for the Bertsch Property, the Town will tender the sum of Two-Hundred-Fifty-Seven-Thousand-Five-Hundred Dollars (\$257,500.00) via direct wire transfer to the closing agent designated by the DDA (“Town

Contribution”). If the closing of the Bertsch Property does not occur within ten (10) days of the Town’s wire transfer, the parties agree that all Town funds transferred under this sub-section B (1) shall be returned to the Town, unless otherwise agreed in writing.

- (2) The DDA will provide all remaining funds required to close the Bertsch Property acquisition without further contribution from the Town pursuant to this Agreement.
- (3) The DDA will take title to the Bertsch Property in its sole name. However, the Town may record a copy of this Agreement with the Weld County Clerk and Recorder as evidence of its secured status as further set forth below.

**C. TOWN CONTRIBUTION TO DEMOLITION COSTS.**

- (1) The DDA will retain a qualified contractor or contractors to undertake demolition of the structure currently occupying the Bertsch Property (“Existing Building”). The DDA will seek sealed competitive bids for demolition services, and will choose the lowest responsive and responsible bidder following review of all qualifying proposals.
- (2) The DDA has presented a good faith estimate that the total demolition costs for removal of the Existing Building will be approximately One-Hundred-Thousand-Dollars (\$100,000.00), although the parties do not intend that this estimate will be a limitation on the actual costs of demolition.
- (3) Upon request by the DDA, the Town will provide the DDA with funds equal to fifty percent (50%) of costs attributable to demolition of the Existing Building. The DDA may invoice the Town periodically or in a lump sum upon completion at the DDA’s option. The Town will render payment within fourteen (14) days following invoicing.
- (4) The Town will not be responsible for paying any portion of penalties, late fees, finance charges or other costs not directly attributable to the demolition of the Existing Building.
- (5) The DDA will be responsible for all demolition costs not reimbursed by the Town as set forth in this Section C.

**D. TOWN PARTIAL RECOVERY OF TOWN CONTRIBUTION.**

- (1) The Town will be entitled to recover the sum of Two-Hundred-Fifty-Seven-Thousand-Five-Hundred Dollars (\$257,500.00) (“Town Recovery”) from the DDA only upon the occurrence of either of the following events:

(a) The DDA transfers title of the Bertsch Property to a third party unaffiliated with the Town or DDA, unless such transfer is for the express purpose of development of the Bertsch Property in accordance with the Master Redevelopment Plan.

or

(b) On or before January 1, 2028, no building permit has been issued for construction in furtherance of the Backlot Property Master Redevelopment Plan on any parcel included in the Backlot Property as described in Exhibit A hereto.

(2) In the event of a DDA transfer of title as contemplated in sub-section D (1) (a) above, the Town Recovery will be due on sale and assessed as a secured encumbrance out of the closing by the closing agent.

(3) Under circumstances described in sub-section D (1) (b) above, the Town Recovery shall be paid as follows:

(a) The Town, after January 1, 2018, may withhold Twenty-Seven-Thousand-Five-Hundred Dollars (\$25,750.00) annually for ten (10) consecutive years from any direct financial support owed by the Town to the DDA pursuant to any agreements then in effect between the Town and the DDA.

(b) In the event the Town is not contributing an amount equal to or in excess of Twenty-Seven-Thousand-Five-Hundred Dollars (\$25,750.00) to the DDA on an annual basis through then-effective agreements, the DDA shall render payment to the Town, in an amount that ensures the Town receives no less than Twenty-Seven-Thousand-Five-Hundred Dollars (\$25,750.00) on an annual basis for a period of ten (10) consecutive years through a combination of payments or withholding as provided in this sub-section D (3).

(c) Any payments under this sub-section D (3) may be made at the DDA's discretion, from its operating funds or from the DDA tax increment fund, or any combination thereof.

#### **E. NEGOTIATION PERIOD, DDA OPTION, AMENDMENTS.**

(1) Prior to any payment or withholding of the Town Recovery, at the DDA's sole election, the Town and the DDA shall for a period of no less than ninety (90) days engage in good-faith negotiations to defer or delay the Town's collection of the Town Recovery ("Negotiation Period"). Such good-faith discussions shall take into account local, regional and national economic conditions, other DDA initiatives undertaken with Town support or contribution, the Town's fiscal status and strategic plan, and the DDA's projected revenues from all sources. The DDA shall issue written notice of its election to initiate the Negotiation Period to the Town, per the requirements of Section F(1) below.



- (2) In the event the parties reach understandings that depart from the requirements herein during the Negotiation Period, the parties will memorialize such understandings in writing, affirm such understandings by official action, and only thereafter such understandings will be deemed an amendment to this Agreement.
- (3) Nothing herein shall be deemed to require the Town to renegotiate the terms herein during the Negotiation Period. The Negotiation Period is in essence a ninety-day grace period for the collection of the Town Contribution during which the parties will engage in good-faith negotiations.

**F. MISCELLANEOUS.**

- (1) **Notices.** All notices to be given to parties hereunder shall be in writing and shall be sent by certified mail to the addresses specified below:

If to the DDA: Windsor Downtown Development Authority  
Attn: Chairperson  
P.O. Box 381  
Windsor, CO 80550

With a copy to: Liley Law Offices, LLC  
Attn: Lucia A. Liley, Esq.  
419 Canyon Ave., Ste.220  
Fort Collins, CO 80521

If to the Town: Town of Windsor  
Attn: Town Manager  
301 Walnut Street  
Windsor, CO 80550

With a copy to: Windsor Town Attorney's Office  
Attn: Town Attorney  
301 Walnut Street  
Windsor, CO 80550

- (2) **Governing Law.** This Agreement shall be governed by, and its terms construed under the laws of the State of Colorado.
- (3) **Third Party Beneficiaries.** It is the mutual intent of the parties hereto that this Agreement shall inure to the benefit of only the parties hereto. Accordingly, nothing in this Agreement shall be construed as creating any right or entitlement which inures to the benefit of any third party.

- (4) **Annual Appropriation.** All financial obligations of the Town or the DDA arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the Town Board of the Town, in its discretion, and/or the Board of Directors of the DDA, in its discretion, as applicable.
- (5) **Benefit, Binding Effect, Covenant.** The parties hereto recognize that there are legal constraints imposed upon them by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by their respective governing statutes, charters, ordinances, rules and regulations, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the parties be obligated hereunder to exercise any power or take any action that is prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.
- (6) **2016 IGA.** It is the intention of the parties that this IGA shall not supersede the Amended and Restated Intergovernmental Agreement Between the Town of Windsor, Colorado and the Windsor Downtown Development Authority Regarding Continuing Town Support of the Windsor Downtown Development Authority dated March 14, 2016.

IN WITNESS WHEREOF, the parties have executed this IGA the day and year first above written.

TOWN OF WINDSOR, COLORADO, a  
municipal corporation

By: \_\_\_\_\_  
Patti Garcia, Acting Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Ian McCargar, Town Attorney

WINDSOR DOWNTOWN  
DEVELOPMENT AUTHORITY, a body  
corporate and politic

By: \_\_\_\_\_  
Dan Stauss, Chairperson

DRAFT

Exhibit "A"  
[Map of DDA Backlot Property]

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## FUTURE TOWN BOARD MEETINGS

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February 19, 2018 6:00 p.m.	President's Day Town Hall closed
February 26, 2018 6:00 p.m.	Town Board Work Session Brush/Recycling relocation and consolidation discussion Brush site fee review
February 26, 2018 7:00 p.m.	Town Board Meeting
March 5, 2018 5:00 p.m.	Town Board Work Session Candidate Orientation
March 12, 2018 5:30 p.m. /1 <sup>st</sup> floor conference room	Board/Manager/Attorney Monthly Meeting Weld RE-4 Building Permit Fee Waiver Discussion
March 12, 2018 7:00 p.m.	Town Board Meeting Kern Board Meeting
March 19, 2018 6:00 p.m.	Town Board Work Session Town Manager Candidates – meet & greet
March 26, 2018 6:00 p.m.	Town Board Work Session Park Development Fees
March 26, 2018 7:00 p.m.	Town Board Meeting
April 2, 2018 6:00 p.m.	Town Board Work Session Preliminary review of water rate study
April 9, 2018 5:30 p.m. /1 <sup>st</sup> floor conference room	Board/Manager/Attorney Monthly Meeting
April 9, 2018 7:00 p.m.	Town Board Meeting
April 16, 2018 6:00 p.m.	Town Board Work Session
April 23, 2018 6:00 p.m.	Town Board Work Session
April 23, 2018	Town Board Meeting

7:00 p.m.

**Additional Events**

February 15, 2018

CML 2018 Legislative Workshop; attending: Scheuerman, Rennemeyer,

**Future Work Session Topics**

- Road Improvement Plan Prioritization - Planning
- Code Update meeting with Planning Commission (next code section in series) - Planning
- Primary Work Force Housing (subject to direction from two December 2017 work sessions) - Planning
- Raindance/LaBue Land Acquisition