



## TOWN BOARD REGULAR MEETING

May 11, 2020 - 5:00 PM

Zoom Meeting, Click on the link [https://windsorgov.zoom.us/webinar/register/WN\\_pieYro9KQ-mIrs5TfG\\_Rxw](https://windsorgov.zoom.us/webinar/register/WN_pieYro9KQ-mIrs5TfG_Rxw) OR join by phone 877-853-5247 or 888-788-0099 Webinar ID: 959 8912 1987

### MINUTES

#### A. CALL TO ORDER

Mayor Rennemeyer called the meeting to order at 5:07 p.m.

##### 1. Roll call

Mayor Paul Rennemeyer  
Mayor Pro Tem Ken Bennett  
Scott Charpentier  
Barry Wilson  
Victor Tallon  
David Sislowski

Also Present:

Shane Hale, Town Manager  
Ian McCargar, Town Attorney  
Eric Lucas, Director of Public Services  
Jessica Humphries, Administrative Services Director  
John Thornhill, Director of Community Development  
Dean Moyer, Director of Finance  
Rick Klimek, Chief of Police  
Aaron Lopez, Commander  
Stacy Miller, Director of Economic Development  
Scott Ballstadt, Director of Planning  
Krystal Eucker, Town Clerk

##### 2. Pledge of Allegiance

Mayor Rennemeyer asked that all rise for the pledge of allegiance.

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

**Town Board Member Tallon moved to approve the agenda as presented, Town Board Member Sislowski seconded the motion. Roll call on the vote resulted as follows; Yeas - Bennett, Charpentier, Rennemeyer, Sislowski, Tallon, Wilson; Motion Passed.**

##### 4. Proclamation

- Mental Health Awareness Month

Mayor Rennemeyer read the Mental Health Awareness Month Proclamation.

- Public Works Week Proclamation

Mayor Rennemeyer read the Public Works Week Proclamation.

- Police Week & National Peace Officers Memorial Day, 2020

Mayor Rennemeyer read the Police Week and National Peace Officers Memorial Day

Proclamation.

- Windsor Historic Preservation Month

Mayor Rennemeyer read the Windsor Historic Preservation Month Proclamation.

- A Mayoral Proclamation for the Appointment of Board and Commission Liaisons for Members of the Windsor Town Board

Mayor Rennemeyer read the Mayoral Proclamation for the Appointment of Board and Commission liaisons.

#### 5. Board Liaison Reports

- Town Board Member Charpentier

Town Board Member Charpentier has no report.

- Town Board Member Wilson

Town Board Member Wilson reported the Poudre River Trail is opened back up by Kodak.

- Mayor Pro Tem Bennett

Mayor Pro Tem reported the Water and Sewer Board will meet this Wednesday morning at 6:30 a.m.

- Town Board Member Tallon

Town Board Member Tallon reported he will be attending the Parks, Recreation and Culture meeting tomorrow.

- Town Board Member Sislowski

Town Board Member Sislowski reported he did not attend the Planning Commission meeting although there was a communication regarding the Martin Marrietta plant.

- Mayor Rennemeyer

Mayor Rennemeyer had no report.

#### 6. Public Invited to be Heard

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

### B. CONSENT CALENDAR

1. Minutes of the April 13, 2020 Regular Meeting, Minutes of the April 27, 2020 Regular Meeting and Minutes of the April 28, 2020 Special Meeting - K. Eucker
2. Report of Bills April 2020

**Town Board Member Sislowski moved to approve the consent calendar as presented, Mayor Pro Tem Bennett seconded the motion. Roll call on the vote resulted as follows; Yeas - ; Motion Passed.**

### C. BOARD ACTION

1. Ordinance No. 2020-1607 - An Ordinance of the Town Board of the Town of Windsor, Colorado, Approving the Amended and Restated Service Plan for the Future Legends Sports

Park Metropolitan District Nos. 1-2, and Authorizing the Execution of an Amended and Restated Intergovernmental Agreement Between the Town and the Districts

Per Mr. McCargar, before the Board is Ordinance 2020-1607 on second reading and introduced Special Counsel, Ms. Carolyn Steffl, as she will be presenting to the Board this evening.

Per Ms. Steffl, an application to approve an Amended and Restated Service Plan for Future Legends Metropolitan District Nos. 1-2 (the "Amended Service Plan"). The service plan for Future Legends Metropolitan District Nos. 1-2 (the "Districts") was approved in September 2019 (the "Original Service Plan").

A special district is required to amend its service plan if there are any material modifications, defined as "changes of a basic or essential nature, including but not limited to the following: . . . a decrease in the financial ability of the district to discharge the existing or proposed indebtedness . . ." Sec. 32-1-207(2)(a), C.R.S. In this case, the Districts are facing some decreased financial ability to discharge the proposed indebtedness due to: a) decreased projected assessed valuation at full build-out and b) increased interest rates in the bond market. Therefore, they have proposed a service plan amendment that would increase the maximum debt service mill levy, without raising the overall debt cap, to ensure that the Districts have the financial ability to discharge the proposed indebtedness. Other changes are proposed as well. This memorandum summarizes the major changes to the service plan and the statutory criteria for approval or disapproval of the Amended Service Plan.

**Proposed Service Plan Revisions**

1. Inclusion Property Added Under the Original Service Plan, the District boundaries include approximately 100 acres. The Amended Service Plan would allow the Districts to include an additional 22 acres of property (Lot 1, Block 3, Diamond Valley Subdivision), which is owned by Future Legends, LLC, the developer of the Districts. The attorney for the Districts explained that the inclusion property is expected to be developed with ball fields, so the inclusion is not likely to have a big impact on the public infrastructure costs nor the future assessed valuation. This proposed change is consistent with the Special District Act and the Town Code.
2. Changes to Preliminary Infrastructure Plan (Exhibit D) The Amended Service Plan includes an updated Preliminary Infrastructure Plan, as a result of changes in the overall project financing. The developer originally planned that public infrastructure would be financed in part by the Districts and in part under the C-PACE program. Now, the C-PACE funding has been replaced with proposed funding by a Business Improvement District ("BID"). As a result, the amount of District funding for each type of public improvement has shifted. The District's estimated costs for water, sewer and stormwater infrastructure have decreased (as some costs would be financed by the BID), and the District has estimated for a new category of improvements - site electrical, communications (telephone) and raw water. Overall, the estimated costs of the District's public improvements decreased from approximately \$32.5 Million in the Original Service Plan to \$30 Million in the Amended Service Plan, but the overall debt limit has stayed the same at \$40,750,000. The proposed Public Improvements may be financed by the Districts under the Special District Act, and the Financial Plan shows the ability to finance these improvements, with the amendments noted below. The Amendment's proposed Maximum Debt Mill Levy of 50 mills exceeds the Town's standard limitation of 34 mills, per Town Code Secs. 19-1-20(h) and 19-1-30(a) and the model service plan. Likewise, the unlimited Operations and Maintenance Mill Levy and Aggregate Mill Levy varies from the standard limits of 39 mills set forth in Town Code Sec. 19-1-20(h) and the model service plan. The Town Board has discretion to approve such deviations from the Town Code's Service Plan policy. Section 19-1-10 of the Town Code states "This policy is intended as a guide only. Nothing in this Article is intended, nor shall it be construed, to limit the discretion of the Town Board, which retains full discretion and authority regarding the terms and limitations of all district service plans." The Town Board can weigh the public benefits to be provided by the Districts versus the limits contained in the Town Code. The Districts plan to serve commercial developments, which tend to have more sophisticated owners who can evaluate the risks / benefits of purchasing land within the

Districts. Therefore, the Town Board may be comfortable with relaxing some limitations intended to protect residential property owners, if the Board finds that there is a big public benefit provided by the Districts. Representatives of the District will be present at the Board meeting on April 27th to present evidence to support the larger Debt Mill Levy and the unlimited Operations and Maintenance Mill Levy.

3. Changes to Financial Plan (Exhibit F) The Districts have revised their Financial Plan to reflect updated plans for development of the property and new projected assessed valuation at full build-out. Overall, the projected assessed valuation of the property within the District decreased from \$43,652,702 in the Original Service Plan to \$37,100,173 in the Amended Service Plan. In order to establish that the Districts can repay the debt with the lower assessed valuation, the Amended Financial Plan shows that the debt will be repaid through a mill levy of 50 mills (instead of 34) and higher developer-imposed Project Retail Fees (1.75% instead of 1%) and project Lodging Fees (6% instead of 3%). With the changes proposed, the Financial Plan shows that the Districts would have the ability to repay the debt with a large annual surplus, which may mean that actual mill levies or fees could be lower than the projected rates.
4. Increase in Maximum Debt Mill Levy Rate and Removal of Maximum Operations and Maintenance Mill Levy and Aggregate Mill Levy The Amended Service Plan proposes to increase the Maximum Debt Mill Levy from 34 mills to 50 mills. Even though the overall debt limit remains unchanged at \$40,750,000, the District is asking for an increase in the Debt Mill Levy limit to repay the same amount of debt due to a decrease in projected valuation of property within the District after full build-out (from \$43,652,702 in the Original Service Plan to \$37,100,173 in the Amended Service Plan) and increased cost of borrowing. In addition, the Amended Service Plan proposes to allow the Districts to impose unlimited mill levies for operation and maintenance expenses, by removing the Maximum Operations and Maintenance Mill Levy and the Maximum Aggregate Mill Levy. The Original Service Plan contains a Maximum Operations and Maintenance Mill Levy of 39 mills and a Maximum Aggregate Mill Levy of 39 mills. The Districts' attorneys have explained that they do not know what amount of funds will be required for operations, maintenance, repair and replacement of the many ball fields and public facilities, so they want to provide maximum flexibility to the Board of Directors of the Districts to set the mill levies as needed.

Statutory Criteria Based on my review of the Amended Service Plan, it meets the requirements of the Special District Act, Sec. 32-1-101, et seq., C.R.S.

The Board will have a policy decision whether to approve the increased mill levies, deviating from the standard mill levy caps set forth in the Town Code, and other changes. The Board must consider the following criteria:

1. There is sufficient existing and projected need for organized service in the area to be served by the proposed Districts;
2. The existing service in the area to be served by the proposed Districts is not adequate for present and projected needs;
3. The proposed Districts are capable of providing economical and sufficient services to the area they intend upon serving;
4. The area to be included within the proposed Districts has, or will have the financial ability to discharge the proposed indebtedness on a reasonable basis.

Only criteria 4 is implicated by the proposed amendment, and the amended Financial Plan shows the financial ability to discharge the proposed indebtedness, if the Town Board approves the increase to the Maximum Debt Service Mill Levy.

Mr. Sislowski inquired if the Town imposes a lodging tax in the future, that would be on top of the 6%.

Per Ms. Steffl, that is correct.

Mr. Rennemeyer opened the meeting up for public comment to which there was none.

**Mayor Pro Tem Bennett moved to approve Ordinance 2020-1607, Town Board Member Sislowski seconded the motion. Roll call on the vote resulted as follows; Yeas - Bennett, Charpentier, Rennemeyer, Sislowski, Tallon, Wilson; Motion Passed.**

2. Ordinance No. 2020-1608 - Declaring the Organization of the Future Legends Sports Park Business Improvement District, Describing the Boundaries and Service Area of the District, Giving it the Corporate Name Specified in the Petition, Establishing and Appointing a Board Of Directors, and Approving the 2020 Operating Plan and 2020 Budget

Having been accepted upon introduction, state law permits the creation of the BID by ordinance.

Per Mr. McCargar, Ordinance No 2020-1608 is before the Board on second reading.

Per Ms. Steffl, the Town has received a petition for organization of a Business Improvement District ("BID") (a special financing district created by a municipality for commercial areas) submitted by the owner of the sports park property, Future Legends, LLC. That owner recently learned that the County will not be providing C-PACE funding, so it would like to organize a BID as an alternative funding mechanism.

#### Key Features of Proposed Future Legends BID

The Town has the authority to organize a BID, upon receipt of a petition from the property owners and after holding a public hearing. The Future Legends BID would be a quasi-municipal corporation and political subdivision of the state organized and operating under the Business Improvement District Act, §§ 31-25-1201 through 31-25-1228, C.R.S.

The Petitioner has proposed that the initial boundaries of the District include approximately 61 acres of property within the Future Legends Sports Park Metropolitan District Nos. 1 and 2 (the "Metro Districts"). Future Legends, LLC purchased an additional 22 acres of property that cannot be within the initial boundaries of the BID because it is zoned agricultural; however, it will be in the service area of the BID and will be automatically added to the BID if it is rezoned to anything other than residential or agriculture. § 13-25-1208(3), C.R.S.

A petition to form a new BID must be signed by the owners of at least 50% of the assessed valuation of real and personal property in the service area of the District and at least 50% of the acreage in the boundaries of the District. Future Legends, LLC meets both conditions.

#### Board of Directors

The Town Board serves as the ex officio Board of a BID unless it organizes a separate Board of Directors for the BID, consisting of electors of the BID. § 31-25-1209(1), C.R.S. BID electors are defined as individuals who are U.S. citizens, residents of Colorado, and over 18 years old, and also reside in the BID or own or lease taxable real or personal property within the BID or are the designee of a corporate owner or lessee of taxable property. § 31-25-1203(4)(a), C.R.S.

If the Town Board organizes a BID Board of Directors, the Town Board appoints each Director (if possible, no more than one-half of the BID Directors may be affiliated with one owner or lessee of property in the BID.) The BID Directors serve at the pleasure of the Town Board, which may remove a Director or the entire BID Board for inefficiency, neglect of duty or misconduct in office, after notice and an opportunity to be heard. § 31-25-1209(1)(e), C.R.S.

The Petitioner for the Future Legends BID proposed that the Town Board organize a Board of Directors for the BID which would consist of five electors appointed by the Town Board. The Petitioner suggested that the original Directors be the same as the Directors for the Metro Districts, and it will confirm the eligibility of all such individuals to serve on the BID Board before the Town Board's second reading of the ordinance. Future Legends, LLC is planning to lease a small amount of undeveloped property to each proposed Director to qualify him/her as an elector. The BID electors can petition the Town Board to allow them to elect their own Directors (instead of Town Board appointment), and Petitioner's attorney has indicated that it will consider making that request in the future.

#### Operating Plan and Budget

Each year, the BID is required to submit a proposed Operating Plan and budget for the next year to the Town Board by September 30th. Then, the Town Board reviews and approves or

disapproves the Operating Plan and budget within 30 days. § 31-25-1211, C.R.S. The BID cannot impose taxes or fees or issue bonds until an Operating Plan has been approved. The Petitioner submitted a proposed 2020 Operating Plan and Budget for the Town Board. BIDs do not have a Service Plan, like the Metro Districts, so the mill levy caps and limitations are contained in the Operating Plan. The Ordinance organizing the Future Legends BID would also approve the 2020 Operating Plan and Budget. Under the 2020 Operating Plan, the Future Legends BID can issue up to \$40,750,000 of debt, the same amount authorized for the Metro Districts. The debt can be repaid through a mill levy up to 50 mills, which will be in addition to the mill levy imposed by the Metro Districts. The Operating Plan estimates the cost of the public improvements at approximately \$22,500,000, but the Petitioner asks for a debt cap of \$40,750,000 to provide flexibility. The 2020 Operating Plan includes a financial projection that demonstrates the ability of the BID to repay debt of \$40,750,000, with a mill levy of 50 mills, assuming that the development projections are accurate. The 2020 Operating Plan contains no limit on the mill levy imposed for operations and maintenance costs.

#### Powers

A BID has the power to construct, finance, operate and maintain public improvements, including but not limited to: streets, sidewalks, curbs, gutters, pedestrian malls, streetlights, drainage facilities, landscaping, decorative structures, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, rest rooms, information booths and public meeting facilities. § 31-25-1203(5), C.R.S.

In addition, a BID can provide services, including: consulting with respect to planning or managing development activities, promotion or marketing of district activity, organization, promotion, marketing, and management of public events, activities in support of business recruitment, management, and development, security for businesses and public areas located within the district, snow removal or refuse collection, and providing design assistance. § 31-25-1212, C.R.S.

A BID may finance its services through property taxes or special assessments, with approval from the Town, and, if needed, TABOR elector approval.

The Petitioner proposes that the Future Legends BID have all of the statutory powers, subject to limitations in the Operating Plan approved each year.

#### Dissolution

BIDs have perpetual life, unless extinguished by ordinance after all debt is retired. § 31-25-1225, C.R.S.

#### Criteria for Approval of Organization of BID

The Town Board will be asked to take several actions, through the draft ordinance: a) approving organization of the BID, b) establishing a Board of Directors for the BID and (per the 2020 Operating Plan) appointing the initial Directors, c) approving the 2020 Operating Plan, d) approving the 2020 Budget, and e) finding that the service area of the District is a location for new business or commercial development (a statutory requirement for areas that are not already developed per § 31-25-1203(10), C.R.S.).

The Town Board may approve organization of the Future Legends BID if it finds that:

1. It appears that an organization petition has been duly signed and presented in conformity with the Business Improvement District Act. The Petition for organization of the Future Legends BID contains the required information per § 31-25-1205, C.R.S. The petition must be signed by the owners of at least 50% of the assessed valuation of real and personal property in the service area of the proposed District and at least 50% of the acreage in the legal boundaries of the proposed District. § 31-25-1205(2), C.R.S. Future Legends, LLC owns all of the property within the proposed boundaries and the proposed service area and, therefore, meets the 50% thresholds.
2. The allegations of the organization petition are true. The allegations in the organization petition appear to be true.
3. The types of services or improvements to be provided by the proposed district are those services or improvements that best satisfy the purposes of the Business Improvement District Act; and The purpose of the Business Improvement District Act is to allow for

BIDs that will: a) serve a public purpose; b) promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof, the property owners therein, and all the people of the state; c) promote the continued vitality of commercial business areas within municipalities; and d) be of special benefit to the property within the boundaries of any district created. § 31-25-1202(1), C.R.S. The Petitioner has explained that the BID will provide needed funding for public infrastructure for the improvement of the property, so there is sufficient support to make this finding.

4. The Town Board has jurisdiction to organize the BID. Per § 31-25-1204, C.R.S., “[t]he governing body of every municipality is hereby vested with jurisdiction to create and establish one or more districts within the boundaries of the municipality.” The property within the proposed boundaries and service area of the Future Legends BID is within the boundaries of the Town of Windsor, so the Town has jurisdiction.

#### Criteria for Approval of the Operating Plan and Budget

The statutes do not set forth specific criteria for approval of the annual Operating Plan and Budget. The Town Board will want to review both to make sure that they are comfortable with the proposed taxes and fees because a BID may not impose such taxes and fees without the Town Board’s approval of an Operating Plan. In addition, the Town Board will want to be comfortable that the BID will have the financial ability to discharge the proposed indebtedness and that the Operating Plan is in the best interests of the Town and its residents and property owners. The Town Board will also want to review the proposed structure and nominees for the Board of Directors of the District.

Mr. Rennemeyer opened the meeting for public comment to which there was none.

**Town Board Member Tallon moved to approve Ordinance 2020-1608, Town Board Member Wilson seconded the motion. Roll call on the vote resulted as follows; Yeas - Bennett, Charpentier , Rennemeyer, Sislowksi, Tallon, Wilson; Motion Passed.**

3. Resolution No. 2020-37 -- A Resolution Re-Appointing Ken Bennett to Serve as the Mayor Pro Tem of the Town of Windsor, Colorado

Section 3.2.C of the Home Rule Charter provides for the appointment of a Mayor *pro tem* to “...perform the responsibilities of the Mayor when the Mayor is absent or is otherwise unable to perform the responsibilities of the Mayor”. The Charter provides that the term of office for Mayor *pro tem* is two years. Ken Bennett has served as Mayor *pro tem* since 2018, and has expressed interest in continuing in this capacity.

The Charter requires that appointment of the Mayor *pro tem* must be by a two-thirds affirmative vote of the Town Board in office. Given the current vacancy in District 4, the two-thirds requirement is met by four (4) affirmative votes.

Mr. Barry feels this should have been a group decision and he does not feel that it had been.

**Town Board Member Sislowksi moved to approve Resolution 2020-37, Town Board Member Tallon seconded the motion. Roll call on the vote resulted as follows; Yeas - Bennett, Charpentier , Rennemeyer, Sislowksi, Tallon; Nays - Wilson; Motion Passed.**

#### D. COMMUNICATIONS

1. Communications from Town Attorney  
None.
2. Communications from Town Staff
  - a. Site Plan Review - Eagle Crossing Subdivision 6th Filing, Lot 2 - Taco Bell

3. Communications from Town Manager
  - a. Monthly Envisio Report
4. Communications from Town Board

None.

E. ADJOURN

**Town Board Member Wilson moved to adjourn, Town Board Member Tallon seconded the motion. Roll call on the vote resulted as follows; Yeas - Bennett, Charpentier , Rennemeyer, Sislowski, Tallon, Wilson; Motion Passed.**

The meeting was adjourned at 6:18 p.m.



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Krystal Eucker, Town Clerk