BOARD OF TRUSTEES
May 12, 2020
Meeting to be held electronically
SPECIAL MEETING CALLED BY THE BOARD AND THE MAYOR
Regular Meeting - 6:30 PM

This meeting will be held in accordance with Ordinance 8-2020. Sec. 2-2-85 (Virtual Meetings) of the Wellington Municipal Code, the Mayor has determined that a meeting n person would not be prudent because of the current COVID-19 Emergency. The meeting will be conducted electronically, board members may participate, and the public shall participate in the manner set forth

AGENDA

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Amendments to Agenda
4. Conflict of Interest
5. Join Zoom Meeting
https://zoom.us/j/320850513
Dial by your location
+1 3462487799
Meeting ID: 320 850 513

B. COMMUNITY PARTICIPATION

1. Public Comment
1. Submit their questions ahead of time to the Deputy Town Clerk, sullivcj@wellingtoncolorado.gov
2. Or use the comment box during the live video and staff will monitor the questions. Individuals wishing to participate in Public Comments (non-agenda item) are requested to sign up on the chat. When you are recognized, state your name and address. Please limit comments to three (3) minutes.
2. Presentation
a. Colorado Municipal League
- Guest Speaker: Kevin Bommer, Executive Director

C. CONSENT AGENDA

1. Board of Trustees Minutes for April 28, 2020

D. ACTION ITEMS

1. COVID-19 Update
2. Annexation Agreement for Poudre School District Annexation
- Staff Presentation: Cody Bird, Planning Director

3. Resolution 15 -2020 Appointments to the CAC and PAB

4. Resolution 16-2020 Regarding Signage Pursuant to the Outdoor Advertising Act

5. Agreement for Sale and Purchase of Water Shares

E. REPORTS

1. Town Attorney

2. Town Administrator

3. Staff Communications

4. Board

   a. 4th of July Discussion

F. EXECUTIVE SESSION (If needed)

G. ADJOURN

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements Individuals needing special accommodation may request assistance by contacting the Deputy Clerk at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

# Board of Trustees Meeting

**Date:** May 12, 2020
**Submitted By:** Cynthia Sullivan, Deputy Clerk
**Subject:** Board of Trustees Minutes for April 28, 2020

## EXECUTIVE SUMMARY

## BACKGROUND / DISCUSSION

## STAFF RECOMMENDATION

## ATTACHMENTS

1. Draft Board of Trustee Minutes from April 28, 2020.doc

BOARD OF TRUSTEES
April 28, 2020
LEEPER CENTER – 3800 WILSON AVE.

Regular Meeting - 6:30 PMREGULAR MEETING –

MINUTES

A. CALL TO ORDER

1. Pledge of Allegiance

2. Roll Call

| | |
|---|---|
| TRUSTEES PRESENT: | JOHN EVANS, WYATT KNUTSON, JOHN JEROME, TROY HAMMAN, DANIEL SATTLER, TIM WHITEHOUSE |
| TRUSTEES ABSENT: | None |

PRESIDING : TROY HAMMAN, MAYOR

| | |
|---|---|
| ALSO PRESENT: | KELLY HOUGHTELING, INTERIM TOWN ADMINISTRATOR<br>CYNTHIA SULLIVAN, DEPUTY CLERK<br>CODY BIRD, TOWN PLANNER<br>BOB GOWING, PUBLIC WORKS DIRECTOR<br>VINCE GENTRY, ENGINEER I<br>MIKE CARRANO, WWTP SUPERINTENDENT<br>MICHELLE VANCE, ECONOMIC DEVELOPMENT MANAGER<br>TYLER SEXTON, ASSISTANT FINANCE DIRECTOR<br>BRAD MARCH, TOWN ATTORNEY OFFICE |

3. Amendments to Agenda

4. Conflict of Interest

B. COMMUNITY PARTICIPATION

1. Public Comment

2. Presentation

a. COVID-19 Update

- Guest Speaker: Tom Gonzales, Public Health Director for Larimer County

Tom Gonzales, Public Health Director for Larimer County, reviewed information about the hospitals in Larimer County. Currently 44 COVID-19 patients are being treated and 70% of the ICU hospital beds are occupied. He said they are tracking the ICU numbers and ventilator availability and in use. The hospitals have started doing elective surgeries again. He spoke about testing, results and case contract tracing. Mr. Gonzales reviewed the conditions for the Safer at Home phase with regard to social distancing, hand washing and face covering. He said during this phase the County is still recommending that high risk individuals stay at home.

Mayor Hamman asked about antivirus testing. Mr. Gonzales said the County is waiting for better testing to be developed. They are focusing on the acute and PCR testing.

Trustee Jerome asked about face covering use in public. Mr. Gonzales said the County has required face coverings to be used in businesses by employees and customers and to encourage the use of face coverings when within 6 feet of someone else. Enforcement would be hard. The County has provided signage for the businesses requesting the use of face coverings.

Trustee Jerome asked if the tracing of transmission is still a priority. Mr. Gonzales said contract tracing has been the primary testing emphasis.

Trustee Gaiter asked if timelines existed to reopen churches and houses of worship. Mr. Gonzales said his office has reviewed and approved some plans that have been submitted by churches.
There were several comments in support of the programs that are being provided.

Beth Lipscome, of 8962 Smoke Signal Way, asked about the increased risk level for individuals with Auto Immune Disease and about the opening of playgrounds and dog parks. Mr. Gonzales said that group is at higher risk. Mr. Gonzales said playgrounds need to stay closed, but that his department would review plans to open dog parks.

Trustee Knutson said the charts that have been added since 4/2/20 in SIT reports are very helpful, but presented confusion as it appeared the percentage of hospital beds has increased, but Mr. Gonzales had indicated that the number of cases is down. Mr. Gonzales said his office receives reports from the hospitals daily and some of the hospitals have added beds.

Mayor Hamman asked about the conversion of the County Ranch event complex for use as a care facility. Mr. Gonzales said acute care is available at the Ranch and there are currently 200 beds ready with the potential of 800 additional beds. The County will explore medical over site for the project in the next couple of weeks.

b. Wellington Main Streets Program - Quarterly Report

- Guest Speaker: Kallie Cooper, Executive Director, Wellington Main Streets Program

Kallie Cooper, Wellington Main Streets Program Director, gave the quarterly report for the Main Streets Program. She gave an overview of who they are, who is on their Staff and Board and purpose. She reviewed the programs they have for the businesses. Ms. Cooper gave an update on the status of the yearly events and community projects.

C. CONSENT AGENDA

1. Amended Special Board Meeting Minutes from March 26, 2020
2. Special Board Meeting Minutes from March 31, 2020
3. Board of Trustees Minutes from April 14, 2020
4. Work Session Summary for April 21, 2020

TRUSTEE JOHN JEROME MOVED, AND TRUSTEE JOHN EVANS SECONDED to approve the consent agenda. Motion passed unanimously.

D. CHANGING BOARD MEMBERS

Mayor Hamman recognized the contributions that Mr. Sattler and Mr. Evans have made to the community during their tenures on the Board and thanked them for their service.

Mr. Sattler congratulated the new board members. He looked forward to continuing working with the town in the future.

Mr. Evans said he enjoyed his time on the Board and will continue to participate in the community. He also congratulated the newly elected Trustees.

1. Oath of Office for Trustees

Ms. Sullivan gave the oath of office to Jon Gaiter, Rebekka Kinney and Ashley Macdonald.

E. ACTION ITEMS

1. Resolution 10-2020- Officers, Boards and Commission Appointments 2020.

Mayor Hamman said the Board would not be looking at filling all empty positions at this time and that as noted in the resolution vacancies continued to exist. The resolution would fill the required appointments and would insure a quorum on the Board of Adjustments.

Trustee Macdonald asked about the appointment of town officers. Mr. March said that item was taken off the agenda to allow further review by the Board and advised that the Board had 30 days to consider the appointment of officers.

Mr. March reviewed an updated resolution that was sent to the board and noting that Eric Sartor had resigned from the Parks Advisory Board and had previously been appointed as a member of the Planning Commission and noted the renewal of terms of members of the Board of Adjustment.

Trustee Kinney asked where information related to vacancies and openings is published and about the process for filling vacancies. Ms. Houghteling said there is an application available on the town website and when filled out applications are collected reviewed and sent to the Board for approval. Staff will work to update the information on the website.

Mr. March reviewed the vacancies and the Board appointments.

Trustee Gaiter suggested that future appointments be action items not consent agenda items.

Melissa Whitehouse, of 3922 Grant, asked for clarification of members on the planning commission and their terms. Mr. March said that Eric Sartor was added to the Planning Commission to replace Bonnie Dowdy and his term ends in 2025.

TRUSTEE JON GAITER MOVED, AND TRUSTEE ASHLEY MACDONALD SECONDED to approve Resolution 10-2020 Boards and Commission Appointments 2020. Motion passed unanimously.

2. Resolution 11 -2020 - Appointing Mayor Pro Tem

Mayor Hamman opened the floor for nominations.

TRUSTEE JOHN JEROME MOVED, AND TRUSTEE ASHLEY MACDONALD SECONDED to nominate Wyatt Knutson as Mayor Pro Tem. Motion passed unanimously.

3. Purchase Request: Crosswalk Safety Project

- Staff Presentation: Vincent Gentry

Bob Gowing reviewed the purchase request for the Crosswalk Safety Project. The town has purchased 10 reboundable signs. Three have been installed near the schools and six will be placed on Cleveland Avenue once CDOT permits Town staff to work in the right-of-way. This request is for the purchase of remaining RRFB units for placement at 5th and 3rd Streets where they intersect Cleveland Avenue. There is an additional cost for the signs at 3rd for the Fire Department, which the Fire Department is considering and will contribute. The Wellington Main Streets Program is contributing $5,000.00. The total cost would be $75,144 including a 5% contingency.

Trustee Kinney asked about a satellite button for the RRFB lights and how many poles would be located at each intersection. Vince Gentry said there will be four poles with one controller with 3 satellite controls.

Trustee Jerome asked how the town could expedite the installation of the lights. Mr. Gentry said we have to receive the equipment before CDOT can schedule installation. He agreed that a letter from the Board could be helpful. Ms. Houghteling said staff could draft a letter for the Board to sign.

Trustee Gaiter asked for clarification of the breakdown for the lights. Mr. Gentry explained that two bases are needed for each type of light. Third Street would require six poles and 5th street would require 4 poles.

Public Comment. A local Girl Scout troop is also donating to the project.

Trustee Kinney was concerned about where the funds for this project would come from. Mayor Hamman said that would be part of the discussion for Item E5 Authorization of Capital Improvement Fund Allocation.

TRUSTEE REBEKKA KINNEY MOVED, AND TRUSTEE TIM WHITEHOUSE SECONDED to authorize staff to purchase all the remaining intersection safety improvement material in the a not-to-exceed amount of $75,144 with the total cost plus 5% contingency. Motion passed; Trustee Macdonald abstained.

4. Purchase Request: Dump Truck

- Staff Presentation: Bob Gowing

Mr. Gowing said there was a budgeted amount of $159.000 for the purchase of one dump truck. It is felt that staff might be able to purchase two trucks for the same amount. This request is to have the Board to authorize the purchase of two used dump trucks in the not to exceed amount of $159,000.

TRUSTEE TIM WHITEHOUSE MOVED, AND TRUSTEE JOHN JEROME SECONDED to approve the Purchase Request of two used Dump Trucks in an amount not to exceed $159,000. Motion passed unanimously.

5. Authorization of Capital Improvement Fund Allocation

- Staff Presentation: Tyler Sexton

Mr. Sexton reviewed the previous Board approvals for the crosswalk safety equipment and the intersection design of State Highway 1 and County Road 9/County Road 62E. The Board had asked for funding options that did not reduce the fund reserves. The funding options proposed are to transfer funds from the Downtown Master Plan Project and the Economic Development Study.

Ms. Vance said the Downtown Master Plan and the Economic Development study would be pushed back to next year. The town is currently gathering data for the comprehensive plan which is needed to move forward with the Downtown Mater Plan. Staff is looking at doing the Economic Development Action Plan in-house.

Trustee Gaiter questioned if this item should have been Resolution 12. Ms. Sullivan explained that Resolution 12 had been taken off the agenda.

Trustee Gaiter asked for the total amount that would be transferred. Mr. Sexton said it would be $145,840.35.

TRUSTEE JON GAITER MOVED, AND TRUSTEE REBEKKA KINNEY SECONDED to authorize the transfer of funds in an amount not to exceed $145,840.35 for the purpose of paying for the Crosswalk Safety Equipment and the the intersection design at State Highway 1 and County Rds 9 and 62E, transferred funds will come from Downtown Master Plan Project and Economic Development Study. Motion passed unanimously.

6. Resolution 13-2020 - Emergency Declaration

Ms. Houghteling said the previous emergency declarations followed the State and County timelines during the "Stay at Home" phase. Now that the Town is moving into the 2nd phase of "Safer at Home" it could streamline the process by not setting an end date but to allow the Mayor or Board to discontinue the emergency declaration.

Trustee Gaiter understood the request but felt it should not be open ended.

Trustee Macdonald was comfortable with the resolution as written.

Trustee Jerome asked if this would affect the need to have the weekly meetings. Mr. March said the meeting scheduling was not addressed in this resolution. Ms. Houghteling said the Board can call further special meeting(s) if needed. Mr. March said there had been a specific termination date for the extra/special meetings.

Trustee Gaiter asked if the ordinance allowing the virtual meeting was part of the emergency declaration and asked if virtual meetings would be discontinued if the emergency declaration is no longer needed. Mr. March said that virtual meetings were only allowed in emergency circumstances.

Trustee Jerome said the resolution does not have any policing powers for the Mayor or Board.

Trustee Rebekka asked if there were any other requirements for an emergency resolution. Mr. March said no.

Trustee Whitehouse agreed with the extension to allow for the town to apply for funding.

TRUSTEE JOHN JEROME MOVED, AND TRUSTEE TIM WHITEHOUSE SECONDED to approve Resolution 13-2020 Extending Emergency Declaration Declaring Local Disaster Emergency. Motion passed. 6 for and Trustee Jon Gaiter voted against.

F. REPORTS

1. Town Attorney

2. Town Administrator

3. Staff Communications

a. Larimer County Sheriff's Office Report for March

Sergeant Rairdon reviewed the report from March. He noted that ad of April 27 the desk deputy will be back in the office, but public access will be by appointment only.

b. Treasurer’s Report

Mr. Sexton reviewed the Treasurer’s Report.

Trustee Gaiter asked for the total amount in the Water Reserves. Ms. Houghteling had the information.

4. Board

Jon Gaiter said he does a live stream production on Sundays and would like to have Ms. Houghteling as a guest. Mayor Hamman said Mr. Gaiter’s live stream is a good thing, but he had issues with the detail of the issues presented. He felt an overview was acceptable, but detailed discussion needed to be in the Board Meetings.

G. EXECUTIVE SESSION

Mr. March advised that the board would convene in executive session pursuant to 24-6-402(4)(e)(1) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators relative to possible water acquisition. A 2/3rds vote of the quorum is required to go into executive session. No action will take place in the executive session. The executive session will be kept for 30 days.

TRUSTEE ASHLEY MACDONALD MOVED, AND TRUSTEE TIM WHITEHOUSE SECONDED to go into executive session. Motion passed unanimously.

TRUSTEE TIM WHITEHOUSE MOVED AND TRUSTEE JOHN HEROME SECONDED to come out of executive session. No action was taken and not decision binding on the Town were made, item discussed; conference with negotiators for the Board of Trustees as allowed pursuant to § 24-6-402(4)(e) (I) for the purpose of determining positions related to matters that may be subject to negotiations; developing strategy for negotiation; and instructing negotiators relative to possible water acquisition. Motion passed unanimously.

H. ADJOURN

# Board of Trustees Meeting

**Date:** May 12, 2020
**Submitted By:**
**Subject:** COVID-19 Update

## EXECUTIVE SUMMARY

## BACKGROUND / DISCUSSION

## STAFF RECOMMENDATION

## ATTACHMENTS

None

# Board of Trustees Meeting

**Date:** May 12, 2020

**Submitted By:** Cody Bird, Planning Director

**Subject:** Annexation Agreement for Poudre School District Annexation

- **Staff Presentation: Cody Bird, Planning Director**

## EXECUTIVE SUMMARY

A draft annexation agreement for the Poudre School District Annexation has been prepared. PSD is reviewing the draft agreement, and will need approval from their Board. The draft agreement presented to the Town Board of Trustees may be approved in substantially the form submitted to allow for minor revisions, or the agreement may be tabled to a future meeting to allow revisions to be considered by the Board.

## BACKGROUND / DISCUSSION

The Town and Poudre School District (PSD) have coordinated on annexation of approximately 132 acres of land at the northwest corner of County Road 9 and County Road 62E for the purpose of constructing a new combination middle/high school.

The Town Board of Trustees held a public hearing on January 28, 2020 and adopted Ordinance 4-2020 annexing the property into the Town. Execution of an annexation agreement is a condition of approval of the ordinance, and the annexation agreement must be executed and recorded along with the annexation map before the ordinance is effective.

A draft annexation agreement is attached. The agreement contains obligations the developer must meet, including the requirements to:

- Subdivide/develop the property under the Town's subdivision regulations;
- Enter into a development agreement which outlines details for construction of public improvements, infrastructure costs, and details for any cost sharing on required public improvements;
- Install all public infrastructure improvements in accordance with Town standards, including approval of construction plans;
- Pay for undergrounding of all utility infrastructure installation;
- Pay all applicable development impact fees;
- Pay/escrow a proportionate share of costs for HWY1/CR9/CR62E intersection improvements as determined by study;
- Contribute water shares or pay cash-in-lieu of shares as may be agreed to in the development agreement;
- Convey all nontributary water rights to the Town. Tributary groundwater rights associated with wells on the property will be retained by the owner for irrigation.

PSD has not yet approved this agreement. Additional revisions or comments may be received from PSD. Town staff is recommending that the agreement be approved by the Board of Trustees in substantially the form submitted. If there are substantive changes requested/proposed by PSD, the agreement will be brought back to the Board of Trustees for further consideration.

## STAFF RECOMMENDATION

Move to approve the annexation agreement in substantially the form submitted, and authorize the Mayor to execute the agreement;

-OR-

Move to table the annexation agreement to May 26, 2020.

## ATTACHMENTS

1. Draft Annexation Agreement

# ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this ___ day of _______________, 2020 between the TOWN OF WELLINGTON, COLORADO, a Colorado municipal corporation, hereinafter referred to as the "Town" and POUDRE SCHOOL DISTRICT R-1, 2407 LAPORTE AVE, FORT COLLINS, CO 805212211 hereinafter referred to as the "Owner".

WITNESSETH:

WHEREAS, Owner is the owner of property more fully described on Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner has filed a petition to annex the Property to the Town; and

WHEREAS, the Town passed Ordinance No. 4-2020 annexing the Property with execution of the Annexation Agreement by the Owner and the Town of Wellington a precondition to the Ordinance becoming effective; and

WHEREAS, Colorado's Courts have recognized that the Municipal Annexation Act of 1965 contemplates annexation agreements as a routine step in the annexation process; and

WHEREAS, the parties are desirous of entering into an annexation agreement to set forth various obligations of the parties including obligations for development and use of the property in the future;

NOW, THEREFORE, the parties agree as follows:

1. Dedications. Owner acknowledges that the Development Agreement and subsequent subdivision approvals will require dedication of property necessary to install public improvements as defined in this agreement, on the annexation map and as will be shown on any subsequent subdivision or other plat, Owner warrants title to the same against claims by any party claiming by, through, or under the Owner, subject only to those exceptions accepted by the Town.

2. Infrastructure. Except as set forth in this agreement, Owner agrees to install all infrastructure improvements and make all dedication as necessary for the development of the Property, such improvements and dedications shall include but not necessarily be limited to those improvements and dedications called for in this agreement and as required by the Town at the time of subdivision of the Property and issuance of any building permit for improvements to the Property.

All infrastructure improvements installed by Owner shall be installed in accordance with the direction of the Town Engineer and Public Works Department and the Town's Standard Design Criteria as adopted by the Town dated March 10, 2015 and which may from time to time be amended (the "Standards"). Owner agrees to pay all costs to underground all utilities serving the Property at the time the Property, or any part of the Property, is subdivided or otherwise developed.

Owner acknowledges that fees, including development impact fees and any advances for required off-site improvements, will be payable at the time of final plat, development agreement approval and utility connection and agrees to pay said fees.

3. Landscaping. Owner shall install street trees and landscaping along the perimeter of the Property near the public sidewalk which complies with the landscaping plan to be submitted to the Town as part of the platting process. Regardless of any landscape approvals granted by the Town, Owner, at a minimum shall abide by landscaping standards adopted by the Town from time to time in installing and maintaining street trees.

4. Development Impact Fees. Owner agrees to pay development impact fees imposed by the Town including but not limited to building inspection, parks, water and sewer tap, road impact, storm drainage, administration, library and similar fees. Owner understands that these fees are normally payable at the time of building permit request and fees may by modified by the Town from time to time. Owner acknowledges the obligation to pay all applicable review fees and other applicable expenses including as required by the town's D-5 agreement, which Owner agrees to sign, and which requires payment of review expenses.

Notwithstanding the foregoing, Owner Poudre School District R-1 will not be assessed building inspection fees because the School District receives the building inspections and certificate of occupancy through the State of Colorado per CRS 22-32-124(1)(c). Owner Poudre School District R-1 will pay all applicable fees by ____________________, 2020, or upon final approval of the final plat, whichever is later.

5. Water Contributions.

A. Raw water: The Town's Land Use Code requires developers to contribute Raw Water at the time of issuance of a building permit or allows the Town at its discretion and according to the Town's rate schedule to accept cash-in-lieu of payments. Unless otherwise modified by mutual agreement at the time of subdivision/development, Owner shall convey water rights to the Town, as negotiated by the parties.

B. In-Building Water Supply. Notwithstanding paragraph A. above, the Town has no obligation to provide water to the Property, if the Town agrees to provide water to the Property, the Owner Poudre School District R-1 shall provide and convey to the Town such raw water or raw water rights as is required to supply the improvements to be constructed by the School District on the Property. The amount of water required shall be determined at the time of final plat approval or at such other time as may be agreed upon in writing by the parties hereto. The water resources to be contributed may or may not already be adjudicated for municipal use at the time of contribution, provided that there are no known impediments to the legal or physical availability of such water resources for use in and delivery to and from the Town's water system.

C. Irrigation by Tributary Water. Notwithstanding subsection B above, Owner shall retain all tributary water rights including all wells and tributary groundwater rights appurtenant to said wells located on the Property (including as needed all areas of the Property dedicated to the Town) , and any ditch company shares that may be associated with such land, and to the Town will cooperate in allowing the irrigation of the turf grass and landscaped areas of the Property with non-potable tributary water supplies, notwithstanding C.R.S. § 37-90-137(8) or any other law. Owner will convey to the Town all nontributary groundwater rights, including all nontributary groundwater rights in the Muddy Sandstone, Entrada Sandstone and Dakota Sandstone aquifers underlying and appurtenant to the Property. If excess irrigation water exists beyond that necessary to irrigate the Property, Developer will, so long as legally permissible allow use of such excess by the Town and will cooperate in approval of such excess water use.

6. Development agreement. As a condition to construction of any structure on the Property, a memorandum of agreement for public improvements or similar development agreement ("development agreement") shall be executed by the Owner and Town in a form acceptable to the Wellington Town Board of Trustees. Such agreement shall address the dedication and improvement of roads including sidewalks, signage and traffic control, the installation and maintenance of water and sewer services, including lift stations and related facilities, the installation and maintenance of storm drainage facilities and, if applicable, provisions for the construction and maintenance of bridges and similar structures and provisions for the payment of off-site improvement expenses. Owner Poudre School District R-1 and the Town have entered into a Memorandum of Understanding (the "MOU") which sets forth certain agreements concerning public improvements. The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the MOU and also will execute such additional amendments to the MOU or other documents as necessary to effectuate the same. Notwithstanding the foregoing, it is expressly understood and agreed that the School District may proceed with overlot grading of the Annexed Property without any further notice to, or approval by, the Town.

7. Road construction. All roads and road improvements upon or related to the Property shall be constructed as agreed to herein, or as may be agreed to in the required development agreement.

The Town has requested, and the Owner has agreed to dedicate road right-of-way at the northwest corner of the intersection of County Road 9 and County Road 62E for future intersection improvements, such additional right-of-way to be dedicated on the final plat.

At the time of this agreement, the Town has contracted for traffic analysis of the intersections of State Highway 1 and County Road 9, State Highway 1 and County Road 62E, and County Road 9 and County Road 62E (collectively, the "Intersection Improvements"). The analysis will result in selection of a conceptual design for future construction of Intersection Improvements, a planning level cost estimate, and funding recommendations identifying parties responsible for participating in costs, and each parties' proportionate share of the funding for the Intersection Improvements. The Owner agrees to pay their proportionate share of Intersection Improvements as determined by the analysis.

Owner Poudre School District R-1 shall pay to the Town its proportionate share of the Intersection Improvements, which amount may be escrowed by the Town pending further development, by ___________________, 2020, or upon final approval of the final plat, whichever is later.

8. Water/Sewer improvements. Owner shall install water and sewer improvements and related facilities as may be necessary to serve the Property which improvements shall be further defined by the development agreement. The Town shall not be obligated to provide water or sewer service to any portion of the Property and in no event will the Town approve water service until it is confirmed that the Town has adequate water and sewer capacity to serve the Property. All water and sewer mains and appurtenant facilities shall be constructed in accordance with applicable Town ordinances, rules, regulations, Standards and engineering specifications as may be in effect at the time of development, and upon completion and acceptance by the Town, any such improvements shall be conveyed to the Town, and the Town shall thereupon assume the responsibility for the maintenance, repair, and replacement of said mains and facilities. Each Owner will pay all costs associated with obtaining water and sewer service for its portion of the Property and will grant, without cost, all necessary easements for construction and maintenance of any sewer or water improvements necessary serve the Property.

**THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED THAT THE NORTHERN COLORADO WATER ASSOCIATION WILL NOT PROVIDE DOMESTIC WATER SERVICE TO THE PROPERTY AND THAT THE NORTHERN COLORADO WATER ASSOCIATION HAS CONSENTED TO THE TOWN PROVIDING WATER SERVICE TO THE PROPERTY.**

9. Non-municipal Dedications. Owner agrees to provide appropriate and standard easements or rights-of-way for non-municipal utilities as recommended by the Town Engineer including easements for gas, electric, cable TV and irrigation water service.

10. Storm Drainage Improvements. Owner shall construct and maintain such storm drainage improvements identified in the MOU and as may be required during subdivision/development of the Property in accordance with applicable Town regulations and Standards. Unless it otherwise consents, the Town shall not be obligated to provide storm drainage improvements for any portion of the Property.

11. Agricultural use. As of the date of this Agreement, portions of the Property are being used for agricultural purposes. The Property may continue agricultural uses legally existing at the time of annexation including grazing livestock and maintenance of fences (including barbed wire fences) until the earlier of commencement of construction of any structural improvement on the property or approval of a development agreement or subdivision/final plat. Thereafter, the Owner shall discontinue agricultural uses of the Property unless otherwise agreed to in writing by the Town. The Town and other governmental authorities have adopted certain weed control, dust control and other nuisance standards. If the Property is not farmed or Owner does not otherwise ensure that sources of weed, dust and nuisance violations are addressed, the Town shall have the right to address the sources of such violations and shall have a lien against the Owner's Property to ensure reimbursement of any costs the Town incurs in addressing such violations.

12. Initiative/Referendum. If the annexation of the Property, or any portion thereof, is challenged by initiative or referendum, all provisions of this Agreement, together with the duties and obligations of each party (including payment of all taxes imposed by the Town and enforcement of any Town ordinances on the Property), shall be suspended pending the outcome of the referendum election. If the initiative/referendum challenge results in disconnection of the Property from the Town, then this Annexation Agreement and all provisions contained herein shall be null and void and have no further effect. If the initiative/referendum challenge fails, then Owner and the Town shall continue to be bound by all the terms and conditions of this Annexation Agreement.

If any citizen-initiated or referred ordinance becomes effective in the Town within eleven (11) months after the effective date of the annexation ordinance, which substantially alters or limits Owner's right to use its portion of the Property as contemplated by this Agreement, then the Town, upon the written request of Owner, will proceed to take all necessary action to disconnect the Property from the Town.

The provisions of this section 12 are subject to the laws and rights, authority, and prerogatives of Poudre School District R-1 pertaining to the location of public schools only on portions of the Property owned by Poudre School District R-1.

13. Disconnection. Owner may not petition the Town to disconnect any portion of the Property if the effect of that disconnection would be that any other property in the Town would no longer have the contiguity to the Town. Absent approval by Town, Owner waives any right to disconnect the Property for failure on the part of the Town to provide services as would otherwise be allowed by C.R.S. §31-12-119. If Owner properly disconnect any portion of the Property as provided for herein, this Agreement

shall continue to bind the Owner and Property to the extent that the Town has incurred obligations in reliance on this Agreement and the annexation petition.

14. Court Action. If the annexation of all or any portion of the Property is voided by action of any court (excluding any action arising as a result of an initiative or referendum) the Town and Owner shall cooperate to cure any legal defect which resulted in disconnection and upon cure this Agreement shall be deemed an agreement to annex such property to the Town as provided for by C.R.S. §31-12-120. Owner shall reapply for annexation with the property becomes eligible for annexation as determined by the Town.

15. Town's Ordinances. Development of the Property shall be governed by the Town's ordinances, resolutions, standards, fees and policies currently in effect and as may be adopted or amended in the future. Except as set forth in this Agreement, land use issues remain subject to the police power and legislative authority of the Town; provided, however, that development of the Property by Poudre School District R-1 shall be subject to CRS §22-32-124.

16. Enforcement. This Agreement shall be specifically enforceable by a court of competent jurisdiction. In the event of a material breach of any material provision of this Agreement, the nonbreaching party may ask a court of competent jurisdiction to enter a writ of mandamus, temporary or permanent restraining orders, temporary or permanent injunctions, or orders of specific performance to compel the breaching party to perform its duties under this Agreement and to grant such other relief as may be afforded by law, it being the intent of this provision to supplement the law of remedies.

17. Further agreements. The parties agree to sign any further documents reasonably required by Owner or the Town to carry out the terms of this Agreement.

18. Recordation. This Agreement and any amendments to this Agreement may be recorded with the Larimer County Clerk and Recorder and shall be binding upon and inure to the benefit of the heirs, transferees, successors, and assigns of the Owner. Upon conveyance of any interest in the Property, the previous Owner shall be released of any future obligation hereunder as to the portion of the Property conveyed. This Agreement shall constitute a covenant running with the Property.

19. Entire agreement. Subject to the Town code and other properly adopted authority, this Agreement represents the entire agreement between the parties. Any amendments to this Agreement to be affective shall be in writing.

20. Vesting. The Town's ordinance 16-1999 defines site specific development plans and provides that vested property rights are only created if properly requested at the time of approval of a development agreement or final subdivision plat. This Annexation agreement does not give rise to any claim of vested rights related to the Property.

21. Counterparts. This Agreement may be executed by any number of counterparts and by any number of counterpart signature pages, each of which shall be an original with the same effect as if each of the signatures were affixed to the same instrument.

22. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt. All notices by mail shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

| | |
|---|---|
| Notice to Town: | Town Administrator<br>Town of Wellington<br>Post Office Box 127<br>Wellington, Colorado 80549 |
| With a copy to | Wellington Town Attorney<br>Attn. Brad March<br>March and Olive, LLC<br>1312 S. College Avenue<br>Fort Collins, CO 8024 |
| Notice to Owner: | Poudre School District R-1<br>2407 LAPORTE AVE<br>FORT COLLINS, CO 805212211 |

23. Election. Owner agrees that they are voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to C.R.S. § 31-12-112, as amended, to impose terms and conditions upon the Annexed Property, Owner owns 100 percent of the Annexed Property, excluding public streets and alleys, and would vote to approve all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the terms and conditions hereof.

24. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

25. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Larimer County, Colorado.

26. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

27. Legal Authority of School District. Except as set forth herein to the contrary, this Agreement shall not limit or alter the Poudre School District R-1's legal rights and authority with regard to the location, construction, reconstruction, or expansion of any school or school-related building or structure as provided in CRS § 22-32-124, or any other law

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

**THIS AGREEMENT CREATES OBLIGATIONS FOR VARIOUS PROPERTY OWNERS AND MAY CREATE OBLIGATIONS TO MAINTAIN CERTAIN ROADS ON THE PROPERTY, LIENS OR OTHER RIGHTS AGAINST OWNERS AND THE PROPERTY. IT HAS BEEN RECOMMENDED TO EACH OWNER THAT THIS AGREEMENT BE REVIEWED WITH LEGAL COUNSEL.**

TOWN OF WELLINGTON, COLORADO

By: ______________________________________
Troy Hamman, Mayor

ATTEST:

______________________________
Kelly Houghteling, Interim Town Administrator/Clerk

APPROVED AS TO FORM

March & Olive, LLC
Town Attorney

By: ________________________
J. Brad March

PSD Signatures Page

EXHIBIT "A"

Description:

[Insert Legal]

TOWN OF WELLINGTON

# Board of Trustees Meeting

**Date:** May 12, 2020
**Submitted By:**
**Subject:** Resolution 15 -2020 Appointments to the CAC and PAB

## EXECUTIVE SUMMARY

This Resolution is to replace the section of Resolution 10-2020 referring to the appointments on the Parks Advisory Board and the Community Activities Commission.

## BACKGROUND / DISCUSSION

## STAFF RECOMMENDATION

To approve appointments to the PAB and CAC.

## ATTACHMENTS

1. Res -2020 PAB and CAC appointment resolution 2020

# TOWN OF WELLINGTON

## RESOLUTION NO. 15-2020

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON APPOINTING AND CONFIRMING APPOINTMENTS TO THE WELLINGTON COMMUNITY ACTIVITIES COMMISSION AND WELLINGTON PARKS ADVISORY BOARD.

**WHEREAS,** the Board of Trustees of the Town of Wellington, Colorado (the "Board") has adopted and reenacted the Wellington Municipal Code (the "Code"); and

**WHEREAS,** the Code provides for appointment of a Community Activities Commission and a Wellington Parks Advisory Board as called for by Article 2, Titles 7 and 13.

**WHEREAS,** Ordinance 4-2018 adopted February 13, 2018, amended Article 2, Titles 7 and 13.

**WHEREAS,** Section 2-7-20(a) of the Code provides the Community Activities Commission shall consist of five (5) to seven (7) members appointed by the Mayor and approved by the Board of Trustees. One (1) or more members of the Board of Trustees may be appointed by the Mayor and approved by the Board of Trustees to serve as representatives to the CAC.

Members must be eighteen (18) years of age and must meet at least one of the following criteria:

(1) Residency within a seven-mile radius of the Town; or
(2) Ownership of a business which operates in the Town and holds a valid business license issued by the Town; or
(3) Employment within the Town by a business holding a valid business license issued by the Town; or
(4) Employment or enrollment by a school operated by the Poudre R-1 School District and situated within the boundaries of the Town.

**WHEREAS**, Section 2-7-20(b) of the Code provides that membership terms of members of the Community Activities Commission shall be conterminous with a Board of Trustee member's term and non-Trustee members shall serve staggered three (3) year terms.

**WHEREAS,** Section 2-13-20(a) of the Wellington Town Code provides the Parks Advisory Board shall consist of five to seven members appointed by the Mayor and approved by the Board of Trustees. One (1) member of the Board of Trustees shall be appointed by the Mayor and approved by the Board of Trustees.

**WHEREAS,** Section 2-13-20(b) of the Code provides that membership terms of members of the Parks Advisory Boar shall be conterminous with the Board of Trustee member's term and non-Trustee members shall serve staggered three (3) year terms.

**NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD APPOINTS OR CONFIRMS THE FOLLOWING PERSONS TO SERVE AS MEMBERS OF THE COMMUNITY ACTIVITIES COMMISSION AND THE PARKS ADVISORY BOARD:**

1. The Mayor appoints or confirms, and the Board approves the following persons to serve as Members of the Community Activities Commission:

| Member | Term expires |
|---|---|
| Richard Bacon | Jan 2021 |
| Diana Freeman | Jan 2021 |
| Steve Sarno | Jan 2022 |
| Linda Kinzli | Jan 2023 |
| Linda Stoddard | Jan 2023 |
| Natalie Triplett | Jan 2023 |
| Jon Gaiter (appointed Trustee) | |

2. The Mayor appoints or confirms and the Board approves the following persons to serve as Members of the Parks Advisory Board:

| Member | Term expires |
|---|---|
| James Cox | 2021 |
| Sarah Rice | 2023 |
| Lorilyn Bockelman | 2022 |
| Kathy Wydallis | 2020 |
| Kevin Bringinger | 2022 |
| Vacancy | 2023 |
| John Jerome (appointed Trustee) | |

PASSED AND ADOPTED AT A REGULAR MEETING OF THE TOWN BOARD OF THE TOWN OF WELLINGTON, COLORADO, THIS 12th DAY OF May, 2020.

TOWN OF WELLINGTON, COLORADO

____________________________________

Troy Hamman, Mayor

ATTEST:

____________________________________

Kelly Houghteling, Interim Town Administrator/Clerk

# Board of Trustees Meeting

**Date:** May 12, 2020
**Submitted By:** Ashley Macdonald
**Subject:** Resolution 16-2020 Regarding Signage Pursuant to the Outdoor Advertising Act

## EXECUTIVE SUMMARY

Local community member Jami Sterkle is working on a way to recognize the graduating class of 2020 that live in our community. Jami has developed and is working to showcase these students and their hard work by highlighting them along main street on banners. We have reached out to Excel and CDOT and believe that this opportunity fits within the terms of the agreements the Town has in place already. In order to help accomplish this project, we need the support of our Town Board. I have attached a proposed resolution from a CDOT template in order to do so.

## BACKGROUND / DISCUSSION

## STAFF RECOMMENDATION

I would like to respectfully request we add this item to a future agenda for approval. We have worked out a majority of the logistics involved and believe that we can make this happen. Can we help support Jami and the showcase opportunity she is providing for the graduating class of 2020? If so, please let me know what we can do or what else you will need in order to make this happen. Jami is willing to be available for a future presentation or to answer questions.

## ATTACHMENTS

1. Resolution 16-2020 - Regarding Signage Pursuant to the Outdoor Advertising Act

**TOWN OF WELLINGTON**
**RESOLUTION 16-2020**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON REGARDING PUBLIC SERVICE POLE ATTACHMENTS TO COMPLY WITH THE OUTDOOR ADVERTISING ACT**

**WHEREAS**, the Colorado "Outdoor Advertising Act", C.R.S., Section 43-1-401 et seq., and the regulations duly enacted thereunder, provided for the erection of Official advertising devices, meaning any advertising device erected for a public purpose authorized by law, but not including advertising for any private business in areas adjacent to state highways, and

**WHEREAS**, the Town of Wellington, Colorado (the 'Town') and Public Service Company of Colorado (PSCO) have entered into a JOINT USE AGREEMENT REGARDING STREET LIGHT POLES OWNED BY PUBLIC SERVICE COMPANY OF COLORADO (the "Joint Use Agreement"), for a term of ten years, ending in July of 2025, for the purpose of allowing the Town to attach ornamental banners, planters, way finding signs, holiday lights and other seasonal decorations meeting specific criteria and specifications to specific PSCO utility poles on Cleveland Avenue/Highway 1 in the Town (the "Attachments"), and

**WHEREAS**, it is the intent of the Board of Trustees to authorize the erection of Attachments, including ornamental banners serving promoting public purposes and events within and benefiting the Town, and

**WHEREAS**, the Attachments authorized by this resolution will be the property of the Town of Wellington; to be purchased, erected and maintained by the Town of Wellington at the above designated locations, at no cost to the Colorado Department of Transportation (CDOT); and

**WHEREAS**, the placement of the said Attachments may be used to beautify the Town, enhance the Cleveland Avenue Streetscape and to achieve the public purpose of increasing the awareness of Wellington's Community Events.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Trustees the Town of Wellington, Colorado as follows:

Section 1. The Town of Wellington is authorized to erect and maintain the above described Attachments at the locations along Cleveland Avenue for the stated purposes, in accordance with the Joint Use Agreement and in compliance with, the Colorado "Outdoor Advertising Act" and the regulations duly enacted thereunder.

RESOLVED AND PASSED THIS ___________ day of May 2020

TOWN OF WELLINGTON, COLORADO

___________________________________
Troy Hamman, Mayor

Attest:

_________________________________

Kelly Houghteling, Town Clerk

# Board of Trustees Meeting

**Date:** May 12, 2020
**Submitted By:**
**Subject:** Agreement for Sale and Purchase of Water Shares

## EXECUTIVE SUMMARY

## BACKGROUND / DISCUSSION

## STAFF RECOMMENDATION

## ATTACHMENTS

1. Wellington PSA - McGraw trust

**AGREEMENT FOR SALE AND PURCHASE OF NORTH POUDRE IRRIGATION COMPANY WATER SHARES**

This agreement is made and entered into this _____ day of May, 2020, by and between the following parties:

**SELLER**: First Western Trust Bank as Trustee of the Beryl B. McGraw Trust. ("Seller")
Phone: Direct 970-229-4718 | Main 970-484-9222, Fax 970-229-4768,
Email: Banner.Combs@myfw.com

**PURCHASER**: Name: The Town of Wellington, Colorado (sometimes the "Town"), a Colorado Statutory Municipality
Address:
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
Phone: 970-568-3381
Email: houghtkm@wellingtoncolorado.gov

**WITNESSETH**

Seller is the holder of ten (10) shares of the common capital stock of the North Poudre Irrigation Company (NPIC) hereinafter referred to as the "Shares." The Town agrees to purchase from the Seller and Seller agrees to sell to the Town free and clear of all liens and encumbrances, except as stated herein, according to the following terms and conditions; the following described Shares:

1. **PURCHASE PRICE**. The purchase price of the Shares shall be two hundred one thousand dollars ($201,000.00) per Share, for a total purchase price of two million ten thousand dollars ($2,010,000.00). Payable as follows: Wire transfer as directed by Seller.

2. **REPRESENTATION.** The parties recognize that the law firm of March and Olive, LLC has represented the Seller Trust and serves as Town Attorney for the Town. All parties have been urged to seek separate representation as necessary and have waived any conflict of interest claims that exist.

3. **NPIC TRANSFER FEES**. Town shall pay any transfer fees when due as requested by the NPIC.

4. **WATER USE**. Seller has paid all assessments due including for the 2020 irrigation season, and all prior year's assessments. The Town will reimburse Seller for 2020 assessments in the amount of $1,800 at closing. Further, Seller hereby agrees to execute all documentation required by NPIC, to provide the Town with use of this Water for the 2020 water year and all subsequent years.

**5. COPY OF CERTIFICATE / OWNERSHIP AND ENCUMBRANCE REPORT (O&E)**. The Seller shall provide Town with copies of the Share certificate(s) and written proof that Seller owns the Shares and the Shares are not encumbered by any deed of trust, lien, security agreement, financing statement, leases, first rights of refusal, or any other document which may/shall in any way cloud the marketability of this said title, or shall provide written statements from all lenders having a security interest, lien or encumbrance in said property or Shares stating under what terms and conditions the lender shall release said Shares from any mortgage, deed of trust, or other security instrument, no later than ten (10) days before payment of the Purchase Price. Seller hereby agrees to pay the cost for the report.

6. **TOWN BOARD APPROVAL.** This agreement is contingent on the Board of Trustees of the Town voting within ten days of the date of this agreement to approve the purchase of the Shares. If the Town Board of Trustees fails to approve this agreement within the ten days, either party may terminate the contract and neither party shall have further liability or rights hereunder.

7. **TRANSFER.** Seller shall provide Town with a reasonably acceptable bargain and sale deed and stock transfer and deliver to Town the original NPIC Stock certificate(s) properly endorsed in a form acceptable to NPIC to properly transfer the Shares and the Town shall pay the consideration for the Shares on approval of transfer of the Shares by NPIC, at the time of closing, being on or before seven days from the date of Town Board's approval of the purchase.

8. **DEFAULT**. Time is of the essence hereof, if any payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

A. If Town is in default,

i. Seller may elect to treat this Agreement as being in full force and effect or Seller shall have the right to an action for specific performance or damages, but not both.

B. If Seller is in default,

i. Town may elect to treat this Agreement as terminated, in which case all payments and/or things of value received hereunder shall be returned to Town and Town may recover damages as may be proper, or

ii. Town may elect to treat this Agreement as being in full force and effect or Town shall have the right to an action for specific performance or damages, but not both.

C. Anything to the contrary notwithstanding, in the event of any arbitration or litigation arising out of this Agreement, the court may award the prevailing Party all reasonable costs and expenses, including commissions and attorney's fees.

9. ~~**WARRANTIES**. Seller, warrants that title to the said Shares hereto, will be conveyed free and clear of any and all liens, prior to preemptive rights to purchase, encumbrances,~~

~~assessments, leases, other pending sales agreements, first-rights of refusal, or any other document/action which may/shall in any way cloud the marketability of this said title to the Shares.~~
~~All representations, warranties, disclosures and covenants made herein shall survive the closing and conveyance of the Shares hereunder and remain enforceable thereafter. This agreement embodies the complete agreement of the parties hereto and cannot be varied, modified or terminated except by the written agreement of the parties.~~

10. **ADDITIONAL PROVISIONS**. None.

11. **GOVERNING LAW**. This Agreement is the legal document, construed, and governed under the laws of the State of Colorado.

12. **ASSIGNMENT**. This Agreement may be assigned by the Town to a third party wishing to purchase the Shares for contribution to the Town. If assigned, the Town shall remain liable on the contract and may close on the sale in the Town's name if the assignee fails to close.

13. **COUNTERPART AND FAX SIGNATURE.** This agreement may be executed by any number of counterparts and by any number of counterpart signature pages, each of which shall be an original with the same effect as if each of the signatures were affixed to the same instrument. A facsimile signature on a copy of this agreement, transmitted electronically by telephone lines, shall be accepted as an original signature for all purposes.

Seller and the Town accept the above proposal this agreement effective the ______ day of May, 2020.

**SELLER:**

First Western Trust Bank, as Trustee of the Beryl B. McGraw Trust

By: Banner J Combs
Banner J. Combs Vice President and Trust Officer

Town accepts the above proposal this 6 day of May, 2020.
**PURCHASER/TOWN**

Town of Wellington, Colorado

By: Kelly Houghteling
Kelly Houghteling, , Interim Town Administrator/Clerk