



BOARD OF TRUSTEES

November 10, 2020

6:30 PM

Regular Meeting

Please click the link below to join the webinar:

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A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Amendments to Agenda
4. Conflict of Interest

B. COMMUNITY PARTICIPATION

1. Public Comment -

C. CONSENT AGENDA

1. Minutes of the September 22, 2020, October 13, 2020 and October 27, 2020 Board of Trustees Meetings
2. Ratifying Resolution No. 38-2020 - A Resolution Referring to the Voters the Initiated Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington

D. ACTION ITEMS

1. Ordinance No. 17-2020 - An Ordinance Approving the Final Plat and Rezone to PUD for Sage Meadows Second Subdivision
 - Staff presentation: Cody Bird, Planning Director
2. Wastewater Treatment Plant Expansion: Wastewater Utility Plan
 - Staff presentation: Dave Myer, Engineer

3. Town Administrator Employment Agreement
 - Staff Presentation: Brad March, Town Attorney
4. Chamber of Commerce Funding Request
 - Presentation: Kristi Cannon
5. Wastewater Treatment Plant Clarifiers Nos. 3 and 4 Recoating Project
 - Staff Presentation: Dave Myer, Engineer II and Mike Flores, WWTP Operator
6. Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana Sales in the Town of Wellington
 - Staff presentation: Brad March, Town Attorney

E. OTHER BOARDS

1. Annual Renewal - Avuncular Bob's T Bar Inn and Brew Pub
 - Staff presentation: Krystal Eucker, Town Clerk

F. REPORTS

1. Town Attorney
2. Town Administrator
3. Staff Communications
4. Board

G. EXECUTIVE SESSION

1. Conferences with an attorney for the Town pursuant to **§ 24-6-402(4) (b)**, for the purpose of receiving legal advice relative to pending suits involving voter initiative matters. The executive session will not be recorded and an attorney certification will be provided as required by C.R.S. §24-6-402(2)(d.5)(II)(B) confirmation that discussions in the executive session constitute privileged attorney-client communications.

H. 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 at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

Board of Trustees Meeting

Date: November 10, 2020

Submitted By:

Subject: Minutes of the September 22, 2020, October 13, 2020 and October 27, 2020 Board of Trustees Meetings

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. 09.22.20 Minutes Draft
2. 10.13.20 Minutes Draft
3. 10.27.20 Minutes Draft



BOARD OF TRUSTEES
September 22, 2020
6:30 PM

Regular Meeting

MINUTES

A. CALL TO ORDER

Mayor Hammon called the meeting to order at 6:30 p.m.

1. Pledge of Allegiance

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

2. Roll Call

Mayor Troy Hammon
Mayor Pro Tem Knutson
Trustee Jon Gaiter
Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

Also Present:

Kelly Houghteling, Interim Town Administrator
Brad March, Town Attorney
Tyler Sexton, Interim Finance Director
Cody Bird, Director of Planning
Bob Gowing, Director of Public Works
Krystal Eucker, Town Clerk

3. Amendments to Agenda

Mayor Hammon asked if there were any amendments to the agenda to which there was none.

4. Conflict of Interest

Mayor Hammon asked if there were any conflicts of interest on this evening's agenda. Mayor Pro Tem Knutson commented that he did have a conflict of interest with Item C.2, Preliminary Plate for Sage Meadows.

B. COMMUNITY PARTICIPATION

1. Public Comment

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

C. ACTION ITEMS

1. Resolution No. 34-2020 Utility Rate Change

Mr. Sexton stated The Town of Wellington contracted with Woodard and Curran to evaluate water, wastewater, and storm water rates. The goal was to develop realistic projections of the full costs associated with operating the utility. Multiple years of utility bills were reviewed to establish a trend in usage. Calculate monthly fixed and volumetric charges necessary to provide for the utility's long-term financial sustainability. The Town was successful in that we accomplished all three goals and narrowed down the three main factors for the necessary rate increase:

1. Utility rates have remained the same since 2016
2. We have seen an increase in water cost.
3. New capital and water treatment loans brought on by the Town

These rates are reflective of that study. Implementation of rate increases for the water will be time consuming and difficult to manage through the transition. Finance staff believes that it would be more efficient to work through the application once rather than repeating the process and then beginning the process all over again three months later. It will also be more cost effective to develop and mail a brochure to assist with explaining why the increase is necessary and spending time with citizens to better understand the information one time. The Town Staff is recommending scenario 3. The small increase should be barely noticeable rather than a 100% increase. We are trying to cut down on the call volume because the Utility billing Clerk is new, so she is training at this time.

Trustee Gaiter stated that he was a little confused on scenario 3 and asked where the small rate change would come in. He asked if the small rate change will begin in January and asked if that is the reason, he was recommending that one.

Mr. Sexton explained that scenario 2 would go from \$35.00 to \$63.00 in January, Scenario 3 is a \$60.00 in October to a \$61.00 in January so it's less than 3% rate increase.

Trustee Kinney stated that she is in favor of option 2. It increases gradually over time which eases the burden. Meaning there will be an increase in October and again at the end of the year. She believes that it is not fair to have the increase all fall right now as people are already struggling with kids at home, increased childcare and uncertainty for the future. Some people might already be behind. Both models accomplish the requirements for bringing the water fund where it needs to be.

Trustee Gaiter shared that he has had a lot of the same questions and comments from the community as Trustee Kinney has. Mr. Gaiter stated that the problem he had with scenario 1 was that there was not going to be a change until next year and with scenario 2 he likes the fact the we can shoulder a little bit of the burden, so not as much of that falls on the citizens at this moment. He would prefer to do scenario 2 even if that does mean more work on our side.

Mayor Pro Tem Knutson reminded the Board that option 2 may have a lower start but it's only for three months and then it would have a higher payment next year over option three. Whether you want to pay more next year or slightly less this year.

Mayor Hamman agrees with Trustee Gaiter and Trustee Kinney as he would like to ease the pain as much as possible. As far as our cost of water that was a rather quick increase that we had to incur. Mayor Hamman thinks we have a good system going forward and thinks we're doing a decent job trying to keep up with this.

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

Mayor Pro Tem Knudson moved to approve Resolution No. 34-2020, Scenario III; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas -Jerome, Macdonald, Knutson

Nays – Gaiter, Kinney, Whitehouse, Hammon

Motion failed.

Trustee Gaiter moved to approve Resolution No. 34-2020, Scenario II; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

2. Preliminary Plat for Sage Meadows 2nd Subdivision

Mr. Bird informed the Board the applicant has submitted a request to plat approximately 36 acres of land for single-family detached residential, single-family attached residential and 2 larger lots along Highway 1 for potential commercial or public/civic use. A rezone request to a Planned Unit Development overlay is also proposed and will be applied for concurrently with the final plat for the subdivision. The PUD is proposed to accommodate the mix of detached and attached residential units, as well as commercial and public/civic development opportunities.

The preliminary plat was advertised for public hearings before the Planning Commission and Board of Trustees. The Planning Commission held the scheduled public hearing on September 14, 2020. No public testimony was presented. Following the close of the public hearing, the Planning Commission voted to approve the preliminary plat and forward the recommendation of approval to the Board of Trustees.

Mayor Hamman commented that he really liked the approach and the way it looks but has a concern about a single access into the site.

Trustee Whitehouse asked if the commercial parcels were going to be on a non-pot system?

Mr. Bird stated the entire land that's proposed as part of this preliminary plat has the capacity to be on the existing non-potable system that's currently in Sage Meadows subdivision.

Trustee Whitehouse inquired about the sidewalks because their size is not standard town code.

Mr. Bird responded that the sidewalks for this proposed subdivision identifies the sidewalks will range from 3 -10 feet. Staff suggested that we would like all the sidewalks to comply with town standards, unless the developers increasing the width of sidewalks or trails.

Trustee Kinney expressed that she was impressed that the Town is considering a diverse look.

Trustee Gaiter voiced his concern on using the land and if we are going to have the opportunity for things other than just the Fire District or commercial property.

Mr. Bird responded that they are trying to provide maximum flexibility for this property as it is predicted that the parcel north of this will develop commercially at some point in the future.

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

Trustee Whitehouse moved to approve the Preliminary Plat for Sage Meadows 2nd Subdivision; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Whitehouse, Hammon

Nays - None

Abstain – Knutson, Macdonald

Motion carried.

3. Main Streets Program Memorandum of Understanding and 2021 Budget Update

Ms. Cooper with Wellington Main Streets Program informed the Board that their total municipal funding request for 2021 is \$77,500. This includes \$75,000 in direct municipal funding and \$2500 for their annual color flower planner support. They have changed their program area, so it no longer includes the east side of 6th Street, but the Board did vote last year to help support that program outside of their area. They are taking a very conservative approach this year and left off fundraising productions and project costs that they would typically include and that is due to COVID. They do not want to prematurely anticipate any funding that is coming in so the project cost estimations are listed separately under their budget and the Main Street Program will work very hard this upcoming year to complete their work plan events and projects as those funds become available to them. Ms. Cooper also informed the Board that the Wellington Main Streets Program submitted an application for graduate status with Colorado Main Streets and they are hoping to hear by the middle to the end of October. The approval of their status change will result in an increase of their annual mini grant dollars from \$5,000 a year to \$10,000 and that would be effective immediately. They have been awarded a five-year contract so from fiscal year 2020 to 2025 they will be guaranteed those mini grant funds. That will also allow them to borrow against those funds and could potentially take out three years at a time, \$30,000 worth as a graduate level program or they can bank those funds year to year. The great thing is that as they head into next year looking at the downtown master plan, that might allow them to retain some of those funds and not have to use them for a project and allow them to collect more funds to do a larger project.

Ms. Cooper brought to the Board a proposed MOU to formalize the verbiage on deliverables from the Main Street Program to the Town and this would be signed on an annual basis, along with their budget approval through the Town of Wellington. This MOU would outline the specific deliverables that they would assist the Town and the Board of Trustees with downtown redevelopment projects that are agreed upon between the two organizations. They would help to maintain an inventory and database of occupied and vacant properties, help to create awareness of the downtown community through promotion of events, social media, quarterly articles and

other media platforms, communicate grant funding and pursue initiatives and opportunities to enhance the appearance of mainstream program area. These are things that they've already been doing. There is also a portion that talks about compensation, which would change year to year. Ms. Cooper said that she would do a quarterly report so the Board can see where they are at in the budget and the projects that they have going on an ongoing basis.

Trustee Macdonald stated that when Main Streets was originally founded, part of the pilot was that there would be a plan eventually in place for them to be self-sufficient financially and inquired if that is what Main Streets is working towards.

Ms. Cooper responded that this year was supposed to be a very pivotal year for them to move towards that financial independence and a lot of those projects and events did not happen due to COVID. Her goal for next year as part of that graduate program status and giving them that dollar flexibility over the next five years. That will be huge for their project costs and they are also starting some other larger events that should be larger revenue producers. The potential of a farmer's market and potentially doing additional events and taking a really close look at direct contribution and support. Corporate sponsorship directly to their organization and really take advantage of the fact that they are a nonprofit organization, and a lot of those fees, and contributions are tax deductible. That is a big consideration for their board of directors moving forward and something that their financial sustainability committee has shifted in and making sure that that is a goal they are working towards.

Trustee Macdonald thanked Ms. Cooper for all that they do even with the COVID pandemic. Mr. March suggested that the Town include in the MOU a provision that provides that the \$75,000 is subject to appropriation. Mr. March also noted that the agreement would be terminal on a 90 days' notice. He was not sure if the \$75,000 was going to be allocated as of January 1 or if it was a monthly disbursement.

Ms. Cooper explained that they present the board with next years budget and then that is taken into consideration as they work through their budget cycle for 2021 and it will be effective as of January 1.

Trustee Gaiter responded that his understanding of the MOU is that the funds are allocated quarterly to the Main Street Program; they present an invoice to the Town on a quarterly basis.

Mr. March commented that if the Board understands that if it's terminated that would have an impact on the compensation so if they are comfortable with that he would suggest that they include an appropriation clause that he can provide.

Trustee Gaiter stated that he appreciated everything that Main Streets has done especially through COVID 19. Their support for the local businesses and talking with business owners has been fantastic.

Mayor Hamman quickly thanked Ms. Cooper and Main Streets for all their hard work and making the connections we needed to make things happen.

Mayor Hamman turned it over for public comment which there was none.

Trustee Kinney moved to approve the Memorandum of Understanding with the additional

appropriations clause; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

4. Annexation Agreement and Development Agreement for Poudre School District Subdivision
Mr. Bird informed the Board that town staff is still negotiating items with school district staff which includes irrigation of an outdoor learning park or courtyard, raw water dedication and off-site road improvements for Highway 1, County Road 9 and County Road 62. The school district staff is convening an executive session tonight with their Board before they can proceed with some of their comments. There is a meeting set up with them that coming Thursday to continue those conversations. Mr. Bird suggested that this item be tabled until the October 13th meeting so those discussions can take place.

Trustee Whitehouse said that he appreciates everyone's dedication to getting this down.

Trustee Whitehouse moved to table the Poudre School District Annexation and Development Agreement to October 13, 2020; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

5. Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington
Mr. March informed the Board that information is applicable to items five through nine and suggested that the Board table these items until the October 13th meeting. On Friday, September 18th an action was filed and the District Court requesting a declaratory judgment; a declaratory judgment is a proceeding by which the District Court can look at certain questions and provide answers. The first component to the declaratory action was a preliminary injunction hearing and the Court has set that preliminary injunction hearing for tomorrow afternoon. The relief requested in conjunction with the preliminary injunction hearing is to prohibit the County Clerk from printing ballots without the Wellington initiatives for the November 3rd election. If that isn't an alternative, they would request that the Court declare that the Wellington Clerk should be required to provide Wellington voters with independent mail ballots for the November 3rd election. As the Board has been advised that is problematic, in light of 31-10-108, Wellington cannot schedule an election unless it's done 60 days prior to the election and that has already passed.
The protest decision the hearing officer was required to issue a ruling on the Wednesday action within five days. She issued that ruling on September 20th which was Sunday. The hearing officer in her determination found that the petition relative to the marijuana sales issues was not sufficient, meaning that it did not meet the requirements of State law, specifically she cited to the facts that she felt that there were administrative components. Also, the hearing officer found that the petition was insufficient because under CRS 13-11, 113, the circulator is required to file a petition at the time the signatures are turned in showing that they have received pay for the signatures and what the circulator has been paid. The hearing officer determined that these were not sufficiently filed and determined that the whole petition was insufficient because of that.

If the petition is found to be sufficient at tomorrow's hearing, the Board is required under CRS 31-11-04 to refer that ordinance to the voters. That referral has to occur no later than 150 days after the determination of sufficiency but cannot occur within 32 days of the general election. That would allow the board to set this matter beginning, December 8, 2020 and as late as January 12, 2020. Since this matter is in litigation, the Board should enter the general policy of simply not commenting on litigation.

Trustee Whitehouse moved to table item C.5 to October 13, 2020; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

6. Proposed Ordinance - An Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado

Trustee Macdonald moved to table item C.6 to October 13, 2020; Mayor Pro Tem Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

7. Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado

Trustee Gaiter moved to table item C.7 to October 13, 2020; Mayor Pro Tem Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

8. Resolution No. 36-2020 - A Resolution Referring a Ballot Question

Mayor Pro Tem Knutson moved to table item C.8 to October 13, 2020 Trustee Whitehouse seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

9. Resolution No. 31-2020 - A Resolution Authorizing the Town Clerk to Appoint Election Judges for the Special Election

Mayor Pro Tem Knutson moved to table item C.9 to October 13, 2020; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

10. Resolution No. 35-2020 - A Resolution Appointing the Town Treasurer

Mr. March informed the Board that this resolution is the appointment of the Town Treasurer. The Town has retained Judith Tippetts as the Financial Director; this is a joint position of Finance Director and Town Treasurer.

Trustee Gaiter inquired if the Board could get a review of the reasons behind having that as one combined position.

Mr. March stated that State statute requires that the town appoint a town treasurer. The finance director has some responsibilities to the Town Administrator, particularly in preparing the budget. The town administrator has the ultimate hiring and firing power of all employee, with the exception of statutory employees. There was a desire not to create a situation that the Town Administrator could terminate the Finance Director, so the Finance Director holds the position of both Finance Director and Town Treasure. This also allows the Finance Director, without running contrary to the Town Administrator, to bring disputes or concerns to the Board

Trustee Gaiter thanked Mr. March and expressed his concerns about having that as a combined position because you do have that person reporting to both. He did not realize that the Town Administrator cannot be dismissed without the action of the board.

Mr. March confirmed that they are both answerable to the Board and has a duty to report to the Board if there were concerns as well, not just the Town administrator.

Mayor Hamman turned it over for public comment which there was none.

Trustee Gaiter moved to approve Resolution 35-2020 to approve Town Treasurer Judith Tippetts; Trustee Jerome seconded the motion. Roll call on the vote resulted as follows: Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hamman

Nays - None

Motion carried.

D. REPORTS

1. Town Attorney – Mr. March had nothing new to share.
2. Town Administrator –
Ms. Houghteling welcomed Judith Tippetts to the Town and thanked Tyler Sexton for all his work in the interim.

Judith Tippetts shared that they have been reviewing concerns that she has heard from the Board on some citizens are behind in their utility bills. She has been reviewing some Cares Grants

language and she has found \$60,000 that is available. Once she gets approval from the Board, she would like to put together a hardship grant application that would allow some of our residents to ask for funding for some of their utility bills. Mr. Sexton helped her put together an aging report, this report shows that out of 3,902 utility customers, 359 of them are at 60 days behind; that 60 days translates into \$11,600 that we are behind. The alarming ones are the ones that are more than 120 days behind and that equates to \$37,000. Ms. Tippetts would like to get the go ahead from the Board to come up with an application for this grant. It would be for billing periods from March 2020 and forward, so if they were behind before those monies would not qualify. Also, she doesn't think that they should disqualify somebody for applying for that just because their current, that does not mean that they have not been struggling.

Ms. Houghteling mentioned that this would be something similar to what they're rolling out right now for our business and nonprofit assistant program. This would also be for all utilities, not just water. They figured that could assist with about \$2000 per household. She thinks it aligns nicely with what they are already attempting to do with our business and nonprofit community.

Judith Tippetts mentioned that they did get a confirmation from DOLA that those funds can be used for utilities as long as they make it plural so they can't exclude electric. Ms. Tippetts thinks it would be a great way to reach out to our utility users.

Trustee Gaiter thinks that it's a great idea and has been approached by several citizens who have concerns being behind and now in conjunction with the rate increase. He thinks it's a great idea to also keep the consideration for those that may have made some pretty major sacrifices to stay current. He would love to see it move forward.

Trustee Whitehouse concurred with Trustee Gaiter and said that that was something he has inquired about in the past; he is in full support.

Trustee Kinney said that she is very excited that our residents can benefit from this.

Mayor Hamman said that this is news he was hoping to hear and thinks that it's great.

3. Staff Communications

a. Treasurer Report

Staff presentation: Tyler Sexton, Assistant Finance Director said he can answer any questions the Board may have on the monthly report.

Trustee Whitehouse mentioned that it seemed like revenues are running greater than anticipated and expenses seem to be running less than anticipated which is certainly better than what they were looking at a few months ago so that was encouraging.

Trustee Gaiter wanted to clarify that the water fund if he was reading it correctly, that we are currently at negative \$1 million at this point?

Mr. Sexton responded that would be based off budget, and they will be anticipating the North Poudre share invoice and they will start seeing that bill next month.

Trustee Whitehouse asked what the projected number for water costs will be.

Mr. Sexton said it will be anywhere from \$1.6 to \$2 million dollars.

Trustee Macdonald asked how far back do the historical billing records go with North Poudre?

Mr. Sexton says they switched to Caselle back in 2009 but he has a file folder of all invoices for that last 10 years.

4. Board

Trustee Gaiter asked Mr. Gowing if he could report on how they were looking at the water treatment plant.

Mr. Gowing reported that the demand is starting to fall off a little bit. There was some cooler weather that had a big impact on outdoor water use, so it is looking better that it did back in August.

Trustee Kinney thanked Mr. Gowing for the work on the green house and that she has enjoyed watching the progress; tt looks great.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:58 p.m.

Krystal Eucker, Town Clerk



BOARD OF TRUSTEES
October 13, 2020
5:15 PM

Regular Meeting

MINUTES

A. CALL TO ORDER

Mayor Hammon called the meeting to order at 5:30 p.m.

1. Roll Call

Mayor Troy Hammon
Mayor Pro Tem Wyatt Knutson
Trustee Jon Gaiter
Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

Also Present:

Kelly Houghteling, Interim Town Administrator
Tyler Sexton, Assistant Finance Director
Judi Tippetts, Finance Director
Cody Bird, Director of Planning
Bob Gowing, Director of Public Works
Dave Myer, Engineer
Krystal Eucker, Town Clerk

B. EXECUTIVE SESSION

1. Pursuant to CRS 24-6-402(4), the town board may enter executive session for the purposes of determining positions as to matters subject to negotiations. relative to selection of finalists for the position of town administrator (but not to address negotiations with any specific applicant), and/or to discuss personnel matters and discuss and receive information related to applicants to fill the position of town administrator, as to applicants who are not current town employees, as allowed by CRS 24-6-402(4)(e) and (f).

Trustee Kinney moved go into executive session pursuant to CRS 24-6-402(4), the town board may enter executive session for the purposes of determining positions as to matters subject to negotiations. relative to selection of finalists for the position of town administrator (but not to address negotiations with any specific applicant), and/or to discuss personnel matters and discuss and receive information related to applicants to fill the position of town administrator, as to applicants who are not current town employees, as allowed by CRS 24-6-402(4)(e) and (f);

Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon

Nays - None

Motion carried.

Upon a motion duly made, the executive session was closed and the regular meeting resumed at 6:40 p.m.

C. ITEMS

1. Pledge of Allegiance

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

2. Amendments to Agenda

Mayor Hammon asked if there were any amendments to the agenda to which there was none.

3. Conflict of Interest

Mayor Hammon asked if there were any conflicts of interest on this evening's agenda to which there was none.

D. COMMUNITY PARTICIPATION

1. Public Comment

Mayor Hammon opened the meeting up for public comment.

Christine Gaiter, 8132 4th Street, Wellington, CO commented that she would like the Board to consider moving from a statutory town to a home rule municipality to allow for some flexibility.

E. CONSENT AGENDA

1. Minutes of the Board of Trustees Meetings for June 9, 2020, August 12, 2020 and August 25, 2020.

Trustee Gaiter moved approve the consent agenda; Mayor Pro Tem Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

F. ACTION ITEMS

1. Clarifier Rehab Construction Contract

Mr. Myer stated that before the Board is a request to approve a construction contract for rehabilitation of one of the clarifiers at the wastewater treatment plant. There are four clarifiers

at the plant and two of those were originally constructed in 2002. Over time, both of those developed problems with their effluent launders which is the inner perimeter around the clarifier. One of the two launders was rehabilitated last year and now the Town would like to rehabilitate the second one the same way. The existing launder will be removed and replaced with a concrete launder. In addition, the project also includes replacement of some of the metal mechanism within the clarifier and all of that equipment has already been purchased by the Town. Hydro will be installing the equipment that has been purchased.

A formal bidding process was held and there were two bids received. Hydro was the lowest qualified bidder and was recommended by the Town's engineer and town staff.

Staff seeks Board approval to move forward with the Hydro contract in a not to exceed amount of \$153,340.00.

Trustee Gaiter inquired about the \$100,000 difference in concrete between the two bids.

Mr. Myer stated he did not have an answer although concrete prices have been very volatile.

Trustee Gaiter inquired if there is any concern from staff moving forward with Hydro that we would not be receiving a quality product.

Mr. Myer stated he did not believe so as Hydro has proven themselves to be a good contractor.

Trustee Jerome inquired about Stantec's bid for the prior clarifier rehabilitation project they did.

Mr. Myer stated Stantec's bid for the first clarifier rehabilitation project was \$229,000.00.

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

Trustee Kinney moved approve the contract with Hydro Construction Company in a not to exceed amount of \$153,340.00, subject to Town Attorney approval; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

2. Water Treatment Plant Expansion CMAR Contract Amendment

Mr. Myer informed the Board that on May 24, 2018, the Town executed a Construction Manager At-Risk (CMAR) Contract with Hydro Construction Company for the construction of the water treatment plant expansion. In 2019, the Town obtained a State Revolving Fund (SRF) loan for the project. With that federally sourced loan comes the following requirements that must be met by the Contractor:

- Davis Bacon Wage
- American Iron and Steel
- National Term on Suspension and Debarment
- Disadvantaged Business Enterprise (not applicable in this case)
- Equal Employment Opportunity
- Williams Steiger Occupational Safety and Health Act

- Discovery of Archaeological Items

This contract amendment specifies the contractor's adherence to these SRF requirements. Additional amendment items are intended to update language in the original CMAR Contract.

Staff requests approval of the CMAR Contract amendment.

Mayor Hammon inquired about the Davis Bacon Wage and that being an automatic increase; does Hydro understand that.

Mr. Myer stated Hydro does understand that.

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

Trustee Whitehouse moved to approve the CMAR Contract Amendment, subject to Town Attorney Approval; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

3. Space Needs Discussion

Ms. Houghteling stated before the Board this evening is an update on the space needs for town staff. Town staff currently occupy five different buildings around Wellington and the buildings are not longer sufficient for our immediate needs. A permanent solution for a new town hall is being worked on although there is a more immediate need.

Various options have been considered including a modular unit and expanding a building that the Town currently owns. The modular unit would approximately \$106,000 in addition to offsite improvements needed for that building which would house about 4-6 employees.

Another option that has been discussed is expanding the Harrison House that the Town currently owns. There is a one-story and a two-story option that has been drawn up. The cost per square foot does go down with the two-story option. The one-story option is approximately \$207, and the two-story option is \$181 per square foot. The expansion of the Harrison House would impact the downtown area although there is the potential of renting this space when the Town does build a new town hall or the space could be sold. The one-story option could house 19 employees and the two-story option could house 31 employees. There is some conference room space that could be converted to if the need was there. Going with the two-story option could push out the timeline for how quickly a new town hall would be needed. In light of all the other capital projects that are needed, the two-story may be a good option to consider. There have been some questions as to parking and that is included in this design, there would be ADA parking and angled parking around Centennial Park.

Trustee Whitehouse inquired if the Town would have to sell the space once a new town hall is built.

Ms. Houghteling stated there are many options available: it could be sold, rented or hold onto the space.

Trustee Kinney commented that that this space falls in line with the vision and direction of downtown areas. Also, this could allow the time and allow for the Town to be in a financially responsible position for other capital projects that are in need right now.

Trustee Whitehouse inquired as to where the elevator is to the second floor.

Ms. Houghteling stated if the second floor is being used for private office and not for public use, we would not need to install an elevator. If there is a staff member that is unable to access the second floor, there would be accommodations for that staff member on the first floor.

Trustee Macdonald inquired if the modular would be removed in Centennial Park if this two-story option is chosen.

Ms. Houghteling stated if the two-story option was chosen, the staff that currently resides in the modular could be housed in the Harrison House renovation although it has not been determined what direction the modular in the park would go.

Trustee Kinney asked for resale details of the modular unit if that option was chosen.

Ms. Houghteling stated that similar to a vehicle, a modular unit depreciates in value so the Town would not get their money back if it was sold.

Mayor Pro Tem Knutson inquired as to the timeframe of construction.

Ms. Houghteling stated if the Board were to approve either the one-story or two-story option, next would be a contract to bring back to the Board. We would also go through the planning process and present a site plan to the Planning Commission. In terms of construction, they could begin at the end of the year and have something ready to go by the end of spring.

Mayor Pro Tem Knutson inquired as to how the schedule fits with the Town needs.

Ms. Houghteling commented that the schedule is workable as this is a far better solution and there is a number of staff that are working from home.

Mayor Hammon likes the Harrison House option and that the Town will be going through the proper planning process to get it done.

Mayor Hammon opened the meeting for public comment.

Melissa Whitehouse, 3922 Grant Avenue, Wellington, CO commented that she appreciates that this will go through the planning process and would like to make a suggestion of doing a rooftop patio to save some space and add some parking.

The general consensus of the Board is to move forward with the two-story option.

4. Resolution 37- 2020 : A Resolution Granting the Town Administrator the Authority to Purchase Water Shares

Ms. Houghteling informed the Board that it is incredibly difficult to quickly and efficiently acquire water shares. The Town's current purchasing policy limits the Town Administrator to purchase up

to \$30,000 without going back to the Board for approval.

Resolution 37-2020 would give the Town Administrator the ability to purchase water shares within the established per acre foot set forth in Resolution No. 28-2020 which is the cash-in-lieu rates. The Town Administrator would notify the Board when shares do come available. Also, there is a provision that we would not exceed the raw water purchase budget line item unless that was something that was pre-approved by the Board of Trustees.

Trustee Whitehouse inquired if we have determined what the appropriate amount of water is.

Ms. Houghteling stated that is something that would be driven by the building permits and population projections and working closely with the Engineering and Planning Department.

Trustee Gaiter inquired if the cash-in-lieu policy number not to exceed, does that number reflect the expected 40% increase.

Ms. Houghteling stated she believed it does reflect the 40% increase.

Trustee Gaiter inquired as to the roll of the Town Treasurer with this.

Ms. Houghteling stated the Town Treasurer will oversee the budget and ensuring that we are within the annual budget and verify numbers.

Mayor Hammon commented that this resolution would allow the Town Administrator the flexibility to act quickly versus waiting two weeks for a Board meeting.

Ms. Houghteling stated that is correct.

Trustee Macdonald commented that the intent of this is to negotiate in good faith and not set market value at \$280,000 but try and negotiate with what current market value is.

Mayor Hammon stated that is correct; the Board will be notified of the purchases.

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

Mr. March commented that there is one piece of language that may need to be adjusted; the whereas clause that states in part, “the Town Administrator shall notify the Board when shares become available and shall be given authority to negotiate and purchase shares..” What I would prefer the Resolution to state is “the Town Administrator shall have authority to negotiate and purchase shares” as the Resolution itself is giving the Town Administrator the authority to purchase shares with notification being sent to the Board. The Town doesn’t not want to make decisions outside of a Board meeting.

Trustee Macdonald moved approve Resolution No. 37-2020, subject to the recommended language change from the Town Attorney; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

5. Annexation Agreement and Development Agreement for Poudre School District Subdivision

Mr. Bird informed the Board that at the last Board meeting there were some discussions taking

with the school district staff to work out some issues regarding raw water dedication, use of Town water and offsite road improvements.

The draft annexation agreement and draft development agreement were included in packet material. Revisions to the agreements relating to raw water contribution requirements and off-site road costs are included and summary of the changes provided below:

Raw Water Contribution Requirements:

- PSD is requesting a 3-inch water tap for indoor use. The associated water tap and meter fee for a 3-inch meter is included (\$109,843).
- The raw water contribution requirement for the requested 3-inch tap for indoor use only is 5.96 acre-feet.
- PSD will transfer 2 shares of North Poudre Irrigation Company (NPIC) stock shares to satisfy 4.80 acre-feet of the raw water contribution.
- The remaining 1.16 acre-feet (0.48 NPIC shares) will be satisfied by payment of cash-in-lieu in the amount of \$96,000 (0.48 x \$200,000 NPIC market value).
- Outdoor irrigation for the site, including the Learning Park (courtyard) will be irrigated using non-potable water.
- PSD may request to use Town-treated water for irrigation of the Learning Park in the future and may install system improvements with the initial construction that would allow a connection to be made in the future.
- If PSD requests water tap connection for Town-treated water supply for irrigation of the Learning Park in the future, the associated tap fees and raw water contribution would be evaluated and assessed at that time.

Off-site Road Improvements:

- PSD will construct and complete road improvements to County Road 9 and County Road 62E in accordance with plans approved by the Town.
- In addition to the road improvements to County Road 9 and County Road 62E, PSD will also contribute \$200,000 in cash-in-lieu of improvements for future improvements to the intersections of State Highway 1 and County Road 9, and County Road 62E and State Highway 1.
- The \$200,000 contributed by PSD will be ear-marked by the Town for use on design and construction of improvements at the State Highway 1 intersections in the future.
- PSD will not be responsible for design or construction of improvements at the State Highway 1 intersections.
- Payment of the \$200,000 will satisfy the off-site road contribution for Lot 1, Block 1, Poudre School District Subdivision (the middle school/high school currently under construction). Development of future lots within the subdivision that are not currently under construction will be subject to payment of off-site road contributions at the time of development.
- The cash-in-lieu contributions for road improvements is in addition to the road impact fees PSD will pay in accordance with the Town's adopted road impact fee (\$389,844).

Staff recommends approval of the annexation agreement and development agreement for Poudre School District Subdivision in substantially the form presented and authorize the Mayor to execute the agreements due to minor revision that may need to be made and the flexibility to do that. The

school district is looking to take action on the agreements at their October 27, 2020 meeting.

Trustee Gaiter inquired about the changed cash-in-lieu policy and the number in the agreement is 1.16 acre feet is not in line with that policy.

Trustee Whitehouse commented that since this process has been going on prior to the change in cash-in-lieu, it is operating under the terms of the policy when the negotiations began although Mr. Bird would need to confirm or current that comment.

Ms. Houghteling stated she believed that is correct.

Mr. Bird stated the direction that was given to town staff is that we were to operate under the current water policy for cash-in-lieu subject to the market price of water shares. When the Town updated the cash-in-lieu price, there were two water amounts established; one being the market price for North Poudre shares and one was the inflated factor that accounts for administrative and inflation fees for future years. The direction given to staff was to operate the market value price, which was established at \$200,000 in the cash-in-lieu policy as opposed to implementing the cash price we have set for residential new construction.

Trustee Kinney asked for more information on the offsite road improvements.

Mr. Bird stated this particular offsite road improvement for the intersections at Highway 1 and CR 9 and CR 62E, the Town has undertaken a study of these intersections to identify a planning level cost estimate and to further identify who the appropriate parties would be to making those improvements and what percentage share each of those parties would contribute. Since that study is not available, Wellington is agreeing that the school district will pay a sum of \$200,000 for their intersection contribution. In addition, the school district still has public improvements to the roadways that they will be making as part of their project. The \$200,000 that the school district would be paying for offsite improvements does not impact their road impact fee of \$389,884. The school district does not want to be responsible for the design and construction of the intersection improvements and they do not want to be brought back into the design of those improvements nor do they want to be obligated for additional fees for those improvements. The school district is required to make improvements on CR 62E which is part of the agreement. In addition, they are obligated to make improvements that meet the safety objectives of opening the school.

Trustee Macdonald commented that the two numbers total about \$500,000 that the school district is contributing.

Mr. Bird stated \$389,844 is the road impact fee and that is obligated by the developer irrespective of any offsite improvements. That is the fee that pays the Town for maintenance which is different from the offsite improvements of \$200,000.

Trustee Macdonald inquired as to what the road impact fee means for the Town of Wellington.

Mr. Bird stated the road impact fee are used by the Town to make road improvements or maintenance. Those impact fees are generally used by the Town to compensate for the overall impact of developments on the Town's existing network.

Trustee Kinney inquired if PSD staff understand the \$200,000.

Mr. Bird stated that is what staff have been working on with school district staff; this was

actually their proposal that staff reviewed and accepted.

Trustee Macdonald inquired if the school district is having the same agenda on their meeting this evening.

Mr. Bird stated they are having their meeting this evening although they pulled this item off their agenda and opted to move it to October 27, 2020. This is the same version with a couple of revisions that was shared with the Board.

Trustee Gaiter inquired as to the \$200,000 road improvement number and if staff believes that is a reasonable contribution.

Mr. Bird stated staff does feel it is a reasonable number.

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

Trustee Kinney moved approve the Annexation Agreement and Development Agreement with the Poudre School District Subdivision; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

6. Resolution 36-2020: A Resolution Finding Substantial Compliance for Annexation of Property into the Town of Wellington and Establishing a Public Hearing

Mr. Bird informed the Board that the owner of property on the east side of 6th Street, and north of Sveta Dr. has petitioned for annexation of the property into the Town of Wellington. Annexation of property into the municipal Town limits requires the Town to follow a process outlined in State statutes. The first step in the annexation process includes identifying if the petition submitted by owner is in substantial compliance with the statutes and other applicable State and Town requirements. Town staff has reviewed the petition and supporting materials and recommends that substantial compliance is met. A resolution finding substantial compliance and setting the date for a public hearing is attached for the Board's consideration.

There has been some interest in redeveloping this parcel or reusing the existing building with a facelift. The challenge to the site is that it is located in the county and is on a private septic system. The site used to be served by Northern Colorado Water Association and they have indicated they no longer desire to provide water services for this site. They need to annex into the Town to allow us to provide water and sewer services.

The first step in the process of annexation is to determine that the petition for annexation is in substantial compliance with State statutes, including the Municipal Annexation Act of 1965 and other applicable State and Town requirements.

Town staff has reviewed the annexation petition and supporting materials provided and found them to be in substantial compliance with the applicable State and Town requirements.

If the Board finds that the petition is in substantial compliance, the Board will adopt a resolution and set the date for a public hearing to formally consider the petition.

- Town staff and the applicant will provide the required notices, including advertising the public hearing.
- The Planning Commission will be notified of the annexation petition to consider the proposed annexation and make a recommendation to the Board of Trustees.
- The Board will then hold the public hearing on December 8, 2020 to hear any public testimony presented.
- Following the public hearing, the Board may choose to adopt an ordinance annexing the property into the Town of Wellington and enter into an annexation agreement with the property owner.

Trustee Whitehouse inquired if there will be any roadway dedication requirement on the east side of 6th and will this be a transitional zoning or C3 zoning.

Mr. Bird stated those items will be considered as part of the annexation request but I will say in staff's opinion, the right-of-way dedication as well as the easement dedication along 6th Street would be a requirement which has been discussed with the property owner. Based off the current zoning districts, staff is recommending C3 Highway Commercial zoning.

Mr. March inquired about including the issue with Northern Colorado Water in the development agreement.

Mr. Bird stated it can certainly be included in the agreement if that helps tie up the legalities.

Mr. March inquired about the legal descriptions and that they are different in the resolution and the proposed annexation.

Mr. Bird stated he will verify the legal descriptions.

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

Trustee Macdonald moved approve Resolution No. 36-2020 with the legal description being confirmed; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

7. Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

Mr. March stated items F.7, F.8, F.9, F.10 and F.11 be tabled for the time being. The items will be brought back before the Board.

Item F.7 is the initiated ordinance that would allow for the sale of medical and retail marijuana. The Board had the ability to act on that chose not to do so. The retail sales ordinance has been found to be insufficient and is currently pending legal action.

Item F.8 is the marijuana sales tax ordinance which would be presented to the voters at the November 2, 2021 election as it has been found to be sufficient.

Item F.9 is the resolution calling for a special election would need to be reset.

Item F.10 is the resolution referring to election judges would need to be addressed.

Item F.11 is the resolution referring a question to the voters.

Trustee Kinney inquired if the sales tax initiative was determined to be sufficient, why would be table that item.

Mr. March stated it has been a rush and since it is far enough in the future, we are waiting on further guidance from the Court.

Trustee Kinney inquired about the sales tax questions being required to go to the voters.

Mr. March stated it is required that the Board to send it to the voters. The TABOR issue or sales tax, under statutory requirements, cannot be referred to voters until November 2, 2021.

Trustee Kinney inquired if the Board has the power, yes or no to approve the sales tax.

Mr. March stated the Board no longer has the power to approve the sales tax; it has to be done within a certain amount of days and chose not to do so.

Trustee Macdonald commented that this is a complicated issue and feels that splitting up the approvals of these is not the right thing to do.

Trustee Kinney commented that the purpose of the question is for the good faith of understanding our liability to the community and voters, so I don't want the perception to be that tabling these is blowing them off. The sales tax initiative was found to be sufficient although by tableting that item, is not saying it won't go before the voters, it is just saying we need the language correct before we do so.

Mr. March stated under the rules of civil procedure, the hearing officer's decision is able to be appealed for 28 days, that 28 days would expire on October 19, 2020 and the following Board meeting is on October 27, 2020 so it is a little early for a referred question right now.

Mayor Hammon inquired as to why would we refer the marijuana sales tax if there is not anything else approved.

Mr. March stated at this point the Board has not adopted the ordinance and it is determined to be sufficient which then needs to be referred to the voters. That decision that the hearing officer made can be challenged until October 19, 2020.

Trustee Kinney commented that it sounds like we are soliciting protests and that is unfortunate.

Mr. March stated in no means am I suggesting that, there is a protest period that is open.

Trustee Gaiter inquired if the Town of Wellington put the protest period in place or is that something that is a state statute.

Mr. March stated the protest period is set by state statute in which any elector can file a protest to the Town Clerk.

Trustee Gaiter conformed that the Town is not trying to interfere with the process that is going to the voters, we are simply following what is statutorily required by law.

Mr. March stated that is correct.

Trustee Kinney inquired about approving the marijuana initiative and if it was later to be found insufficient, then that would supersede and cancel that action in some kind of way.

Mr. March stated the concern there is the potential of the Town having three elections in 2021. If there was a yes or no vote presented to the voters by the Board for marijuana and if the petitioners were successful in their legal case, you would have similar questions before the voters which could cause some confusion. Then there would be the November 2, 2021 questions to the voters for the marijuana sales tax. It may be more practical to head the ruling of the Court before the Board discusses referring a question to the voters.

Trustee Kinney commented that this is a controversial topic and feels the only way this should be heard is from the voters if whether or not sales of marijuana should happen in Wellington. The perspective is that the Board is blocking this from going to the voters.

Mayor Hammon stated that is an opinion as he has not heard that. There is language that needs to be cleaned up right now.

Trustee Gaiter stated he believes this is an issue that needs to be brought before the voters and is not opposed to putting together a sperate item that is a simple yes or no. There is a concern to the financial portion to run an election as there was an estimate of \$15,000-\$20,000 to run the election which is currently not budgeted. Addressing the issue of the Board intentionally trying to interfere with the voter's rights; the Board and Town are following statutes that are set.

Mr. March is recommending tabling item F.7 to the November 10th meeting, and items F.8, F.9, F.10 and F.11 to the October 27th meeting.

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

Trustee Kinney moved to table item F.7 to November 10, 2020; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon

Nays - None

Motion carried.

8. Proposed Ordinance - An Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado

Trustee Macdonald moved to table item F.8 to October 27, 2020; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Macdonald, Whitehouse, Knutson, Hammon

Nays - Kinney

Motion carried.

9. Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado

Trustee Macdonald moved to table item F.9 to October 27, 2020; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Macdonald, Whitehouse, Knutson, Hammon

Nays - Kinney

Motion carried.

10. Resolution No. 31-2020 - A Resolution Authorizing the Town Clerk to Appoint Election Judges for the Special Election

Trustee Macdonald moved to table item F.10 to October 27, 2020; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Macdonald, Whitehouse, Knutson, Hammon

Nays - Kinney

Motion carried.

(Trustee Kinney fell out of the Zoom meeting prior to roll call vote being taken)

11. Resolution No. 36-2020 - A Resolution Referring a Ballot Question

Trustee Macdonald moved to table item F.11 to October 27, 2020; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Macdonald, Whitehouse, Knutson, Hammon

Nays - Kinney

Motion carried.

G. REPORTS

1. Town Attorney
Nothing additional.
 - a. Citizen Initiative Update
2. Town Administrator
Nothing additional.
3. Staff Communications
Sgt. Rairdon informed the Board that dispatch calls were up 31% in August; officer initiated items were down significantly

Trustee Gaiter inquired about the increase in animal and theft calls.

Sgt. Rairdon stated he would attribute that is due to better reporting by the Neighborhood Services Officer and making sure those calls are being logged by dispatch. There does not seem to be a specific reason as to the increase in theft cases.

Trustee Gaiter inquired about flags and banners being stolen from citizen's properties.

Sgt. Rairdon stated that is in increase in election season and he did post a notice that if you are going onto someone else's property to steal something or cause damage, that is a crime.

Trustee Kinney rejoined the meeting and registered her votes as Nays for F.9, F.10 and F.11.

a. Larimer County Sheriff's Office Report - August 2020

4. Board

Trustee Kinney thanked the Planning Department for their work on the PSD Annexation.

Beginning next week, kids will be going back to school so be aware of pedestrians and bicyclists.

H. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:57 p.m.

Krystal Eucker, Town Clerk



BOARD OF TRUSTEES
October 27, 2020
6:30 PM

Regular Meeting

MINUTES

A. CALL TO ORDER

Mayor Hammon called the meeting to order at 6:30 p.m.

1. Pledge of Allegiance
Mayor Hammon asked that all rise for the pledge of allegiance.
2. Roll Call
Mayor Troy Hammon
Mayor Pro Tem Wyatt Knutson
Trustee Jon Gaiter
Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

Also Present:

Kelly Houghteling, Interim Town Administrator
Brad March, Town Attorney
Judi Tippetts, Finance Director
Cody Bird, Director of Planning
Jim Miller, Streets Superintendent
Hallie Sheldon, Town Intern
Bob Gowing, Director of Public Works
Krystal Eucker, Town Clerk

3. Amendments to Agenda
Mayor Hammon asked if there were any amendments to this evening's agenda to which there was none.
4. Conflict of Interest
Mayor Hammon asked if there were any conflicts of interest on this evenings agenda to which there was none.

B. COMMUNITY PARTICIPATION

1. Public Comment

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

2. Presentation

a. Wellington Main Street Program Quarterly Report

Ms. Cooper, Executive Director of Wellington Main Streets informed the Board she will review the quarterly report for July, August and September.

Current projects

- Publications:
 - “Downtown Wellington Featured in Season 1 of Tastemade’s “Beyond the Block,” published on September 21st
 - “Sustainability in Colorado’s Waterways, Amid Climate Change,” published on September 22nd
 - “City of Wellington moves to highest tier of Colorado Department of Local Affairs’ Main Street program,” published on October 19th
- *Downtown Banners*
 - The new “Welcome to Wellington” banners and “Historic Downtown Wellington” banners were installed on October 19th by Dynamic Image.
- Crosswalk Project / DOLA 2020 Mini Grant
 - After speaking with Jenny Jones with the Public Works Department, the Main Street Program filed for an extension on our 2020 DOLA Mini Grant that will be directed towards the downtown crosswalk project. The extension will be good through June 30, 2021, which is the end of the State's fiscal year.
- *COVID-19 Promotion and Resource Efforts*
 - Back to Business Fridays
 - Hosted July 31st through August 21st
 - 20 local businesses hosted a collection bin for school supplies and offered weekly discounts in exchange for donated items
 - School supplies were split between the three local schools and delivered on Friday, August 28th
 - CARES Act Funding
 - Served on the review committee for the Business Relief Fund
 - Thank you to the Town of Wellington for allocating these funds to support our local business community!

Events

- *Food Drive*
 - The Wellington Food Drive started on October 1st and will run through October 31st. All items will be donated to the Wellington Food Bank. Donation bins are located at Thistle, Soul Squared Brewing, Trim Salon, The Cakery, Kinzli REMAX Real Estate, Owl Canyon Coffee and at the MRock Creative office in the Historic Wellington hotel.
- *Trick or Treat Down Main Street*
 - Saturday, October 31st from 4:00 – 5:30 pm in downtown Wellington

- 40 business are registered to participate in this year's Trick or Treat Down Main Street event
- We have purchased 1000 trick or treat bags for attendees that were sponsored by our local businesses, totaling \$1600
- We have 21 volunteers signed up to help us facilitate this event and direct attendees
- *Shop Small Saturday / Elf Hunt*
 - The Main Street Program will host our second annual Downtown Elf Hunt starting on Saturday, November 28th (Shop Small Saturday). The hunt will run through December 19th. Participants who find all 10 elves will be entered in to win a prize from the Main Street Program.
- *Annual Dinner / Board of Directors Applications*
 - The Main Street Annual Dinner will be held on Friday, November 13th
 - The MS Program Area will be able to submit their votes at the dinner or via email by 5:00 pm on Thursday, November 12th for the 2021 Board of Directors

Other:

- *Tastemade "Beyond the Block"*
 - The Fort Collins/Wellington episode of "Beyond the Block" aired on September 24th
 - Watch parties were held at the Wellington Grill and Sparge Brewing
 - The episode can still be viewed on the Tastemade website: <https://www.tastemade.com/shows/beyond-the-block> and on Amazon Prime Video.
- *Graduate Status:*
 - The Main Street Program was notified on October 6th that we have been advanced to the top tier of the Colorado Main Street Program.
 - This makes our program one of just six other communities across the State to reach this level.
 - As a Graduate Program, we are awarded \$10,000/year in mini-grant funds through the State of Colorado Department of Local Affairs. These funds have been awarded through 2025.
- *New Office*
 - The Main Street Program has moved to our new office location in the Historic Wellington Hotel building (3725 Cleveland Ave Ste D)
- *Funding*
 - We received a PPP Loan for \$9,375.00 to cover payroll expenses in August, September, and October.
 - The Main Street Program has applied for \$15,000 in grant funding through the Energize Colorado Gap Fund to help cover the loss in fundraising dollars due to cancelled events this year. Applications close on October 26th. Applications are reviewed by a committee and funds are distributed based on need.

Mayor Hammon commented that he appreciates the work that Main Streets is doing by keeping activity alive in Town and keeping businesses in mind as well.

Trustee Kinney commented that she is impressed with Main Streets and their dedication to the community.

Trustee Whitehouse also commented that he is impressed with Main Streets and thanked them for their work.

C. CONSENT AGENDA

1. Minutes of the August 18, 2020, September 8, 2020 and September 15, 2020 Board of Trustees Meetings.

Mayor Pro Tem Knutson moved approve the consent agenda; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

D. ACTION ITEMS

1. Intergovernmental Agreement for COVID-19 Test Funding

Ms. Houghteling informed the Board that the item before them is an intergovernmental agreement for increased testing capacity for COVID-19. This is in partnership with Larimer County and Colorado State University. Population was used to determine how each community would pay their proportionate share, so Wellington is being asked to contribute \$20,000 from the CARES Funding. This is a good regional effort to do testing as it continues to increase throughout the county.

Trustee Jerome inquired if there will be any type of drive through testing and if there will be testing in Wellington.

Ms. Houghteling stated bringing testing to Wellington has not been discussed although there have been some discussion mobile testing centers.

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

Trustee Kinney moved approve the Intergovernmental Agreement for COVID-19 Testing; Mayor Pro Tem Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

2. Crack Seal Contract Award

Mr. Miller informed the Board that the crack seal project is part of a maintenance project that is done every year although this year the Town only received two bids. It is getting late enough in the year that the Town needs to move forward with the project. Staff is requesting approval of the crack seal contract so Public Works can move forward with the maintenance.

Mayor Hammon inquired if any of the companies are ones that the Town has used in the past..

Mr. Miller stated the Town used Affordable last time and SNS has been used in the past.

Mayor Hammon inquired if the numbers are comparable to those in the past.

Mr. Miller stated they are a decent price.

Trustee Gaiter inquired as to how the work of these companies has held up in the past.

Mr. Miller stated the work has been done extremely well.

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

Trustee Gaiter inquired as to the price difference between the contracts and if it is the same thing that is being quoted by both companies.

Mr. Miller stated they are not the same as what we had done; last year's information was left on the contract and it should have been removed.

Trustee Macdonald moved approve the Crack Seal Contract Award to Affordable in a not to exceed amount of \$67,400; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

3. Resolution No. 30-2020 - A Resolution of the Board of Trustees Calling a Special Election

Mr. March informed the Board that there were two initiated ordinances filed with the Clerk and then there were protest filed on those initiated ordinances with the Clerk. Having had the protest hearings, the Hearing Officer determined the initiated ordinance pertaining to the sales tax of marijuana and marijuana products to be sufficient and the sales of marijuana to be insufficient. As a result of the insufficient finding, the matter is being appealed in District Court and that is ongoing.

The appeal period after the Hearing Officer's ruling on the sales tax ordinance ended on October 19, 2020. Due to that ordinance being found sufficient, the resolution before the Board is referring the sales tax question to the voters on November 2, 2021. The TABOR statutes allow certain times that a sales tax question can be referred to the voters and the next time to be able to do so is November 2, 2021.

Trustee Whitehouse inquired about a third court filing.

Mr. March stated the sales tax ordinance was found to be sufficient so it can move forward. The ordinance related to sales of marijuana is in ongoing litigation.

Trustee Kinney asked that the we confirm and reiterate, for the record the next possible date for a special election for the sales tax ordinance.

Mr. March stated that date would be November 2, 2021.

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

Trustee Kinney moved approve Resolution 30-2020; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None
Motion carried.

4. Resolution No. 38-2020 - A Resolution Referring to the Voters the Initiated Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington

Mr. March informed the Board that Resolution 38-2020 is improperly numbered and it should be 36-2020 which would be referring the sales tax ordinance to the voters. There is no longer an ability for the initiative to be challenged.

Trustee Whitehouse inquired as to the language of the resolution not being the same as the initiative for items like the 3.5% sales tax.

Mr. March stated the resolution references the initiative which allows a sales tax up to 5% in the future.

Mayor Hammon inquired as to when the sales tax could be increased to 5%.

Mr. March stated that would be up to the Board although Wellington can start at 3.5%.

Trustee Whitehouse inquired if the increase to 5% would need to go back to the voters because of TABOR.

Mr. March stated he did not believe so as the voters would vote on the sales tax up to 5%. More research would need to be done before changes are made.

Trustee Macdonald inquired as to the language of the initiative dedicating the sales tax amount to a recreation center and if that is something that the Board can change.

Mr. March stated the ordinance does provide that the sales tax is used for a recreation center although I don't believe the Board is bound to dedicate the tax for that use.

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

Trustee Kinney moved approve Resolution No. 36-2020; Trustee Whitehouse seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Whitehouse, Knutson, Hammon

Nays - Macdonald

Motion carried.

Mr. March informed the Board that the resolution appointing elections judges was not included on the agenda as that matter is a year away.

Mayor Hammon closed the regular meeting at 7:11 p.m. and opened the Liquor License Review Board.

E. OTHER BOARDS

Roll Call

Mayor Troy Hammon

Mayor Pro Tem Wyatt Knutson

Trustee Jon Gaiter

Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

1. Liquor License Review Board - Annual Renewal for Big T Ventures LLC, d/b/a Cantina Liquors
Mr. March informed the Board that the renewal for Cantina Liquors is a standard renewal and staff does not see any concerns with their renewal.

Trustee Gaiter inquired about police reports being included with the renewals in the past; was there not a police report because there was nothing to report.

Ms. Eucker stated the reports received from the Larimer County Sheriff's Office did not include any violations that were directly related to the licensee. There were reports of DUI's in the parking lot and that would not affect their license directly.

Trustee Whitehouse moved approve the annual renewal for Big T Ventures LLC, d/b/a Cantina Liquors; Trustee Jerome seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

2. Liquor License Review Board - Annual Renewal for Kum & Go LC, d/b/a Kum & Go #934
Mr. March informed the Board that there are no concerns from staff regarding the annual renewal for Kum & Go. It appears the company is in the process of an ownership change although that has not been completed at this point.

Trustee Gaiter inquired if we know or not if the business is in the process of being sold.

Mr. March stated it is his believe that the sale has not been completed and they are in the process. Once their change of ownership is completed, they will file the necessary paperwork with the State of Colorado. With Kum & Go having numerous locations, they more than likely have a master file with the State and Wellington will get notice from the State that the changes have been completed.

Mayor Pro Tem Knutson inquired if this would be the same as the change of ownership that another local establishment completed.

Mr. March stated it would be similar although Kum & Go would complete theirs through the State.

Trustee Jerome commented that it would be similar to when Loaf N Jug changed.

Mr. March stated that is correct.

Mayor Pro Tem Knutson moved approve the Annual Renewal for Kum & Go LC, d/b/a Kum & Go #934; Trustee Jerome seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon

Nays - None

Motion carried.

Mayor Hammon closed the Liquor License Review Board at 7:17 p.m. and resumed the regular meeting.

F. REPORTS

1. Town Attorney

None.

2. Town Administrator

Nothing additional.

3. Staff Communications

a. Treasurer Report

Staff Presentation: Judith Tippetts, Finance Director, Treasurer

Ms. Tippetts stated the revenues and expenditures are at 75% of the year.

Trustee Gaiter inquired if the negative 38% on the water funds is prior to impact fees.

Ms. Tippetts stated it was.

4. Board

Trustee Jerome asked if there was a way to clean up the snow on Main Street for the Trick or Treaters on Saturday.

Mr. Miller stated it can be cleaned up, sometimes that is a bit of an issue with CDOT if we work there without a permit. Since there is warmer weather coming, we can let it turn to slush and move it out.

Trustee Gaiter inquired if there is any way to talk with CDOT about the pile of snow that is left in the middle of the road.

Mr. Gowing stated that is something that they have talked with CDOT about many times and that is CDOT's standard approach; in the past they have not been willing to change that approach.

Trustee Gaiter inquired about snow control on streets other than Cleveland as they were pretty bad.

Mr. Gowing stated staff is still working on plowing.

Mr. Miller stated when the snow started Sunday morning the pavement was hot, so we ended up having slush. When those lanes were moved, it froze. The same thing happened Monday morning so it was decided to let the snow lay until the black top could be exposed because the black top will melt the snow faster. Staff did attempt at keeping the snow level for people to drive on as the wind was blowing it back on the roads.

Trustee Kinney mentioned the absence of crosswalks and if that could be looked into.

Mayor Hammon commented that that is worthy of a discussion as we don't have signs right now.

Trustee Whitehouse inquired about the CDOT approved base and pole that Vince Gentry was

researching; has there been any success in finding those.

Mr. Gowing stated they had a meeting with CDOT and the new Regional Director and inquired if they knew where Wellington could find any and they did not know as this is a statewide problem. The one firm that creates these is not able to keep up.

Mayor Hamman commented that he would like to get with Mr. Gowing to work with the State regarding these poles.

Trustee Kinney volunteered to help draft a letter as well.

G. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:29 p.m.

Krystal Eucker, Town Clerk



Board of Trustees Meeting

Date: November 10, 2020
Submitted By: Krystal Eucker, Town Clerk
Subject: Ratifying Resolution No. 38-2020 - A Resolution Referring to the Voters the Initiated Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

At the October 27, 2020 Regular Board Meeting, the Board of Trustees approved a resolution referring an initiated ordinance regarding marijuana sales tax to the voters. The motion to approve that resolution was for Resolution No. 36-2020 which was incorrect. This agenda item is correcting the Resolution No. to 38-2020. There have been no changes to the Resolution since October 27, 2020.

STAFF RECOMMENDATION

Staff recommends approving Resolution No. 38-2020 to reflect the correct number.

ATTACHMENTS

1. Resolution 38-2020

**TOWN OF WELLINGTON
RESOLUTION 38-2020
A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
WELLINGTON, COLORADO REFERRING TO THE VOTERS THE INITIATED
ORDINANCE CONCERNING RETAIL MARIJUANA SALES TAX IN THE TOWN OF
WELLINGTON, COLORADO**

WHEREAS, pursuant to C.R.S. § 31-11-104(1) a petition to impose a retail marijuana sales tax in the Town of Wellington was submitted to the Wellington Town Clerk (the “Special Sales Tax Petition”), and

WHEREAS, on August 20, 2020, the Town Clerk, in accordance with C.R.S. §31-11-109, issued her statement of sufficiency finding that a sufficient number of signatures had been submitted in support of the Special Sales Tax Petition, and

WHEREAS, on September 8, 2020, two C.R.S. §31-11-110 protests were timely filed protesting the sufficiency of the Special Sales Tax Petition and a companion Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores; and

WHEREAS, on September 20, 2020 the C.R.S. §31-11-110 hearing officer dismissed one protest and determined that the second protest did not protest the Special Sales Tax Petition, and

WHEREAS, the Haring Officer found the companion Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores to not be sufficient and that ordinance is therefore not submitted to the voters but the Hearing Officer’s determination has been appealed; and

WHEREAS, the time to appeal the Hearing Officer’s findings as allowed by Colorado Rule of Civil Procedure 106(b) expired on October 19, 2020; and

WHEREAS, with the expiration of the C.R.C.P 106(b) appeals period there has been a final determination of petition sufficiency as required by to C.R.S. § 31-11-104(1) as to the Special Sales Tax Petition, and

WHEREAS, C.R.S. § 31-11-104 requires that the Town Board to publish the proposed ordinance as other ordinances are published and to refer the proposed ordinance, in the form petitioned for, to the registered electors of the Town at a regular or special election; and

WHEREAS, the Town Board may not itself adopt the Special Sales Tax Petition as the Special Sales Tax Petition is required to be adopted by the Town’s voters by the Colo. Const. art. X § 20 (4) (“TABOR”) and by C.R.S. § 29-2-115; and

WHEREAS, TABOR at Colo. Const. art. X § 20 (3)(a), requires that the Sales Tax Petition, must be “decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years.” (the “TABOR Timing Requirements”); and

WHEREAS, to meet the TABOR Timing Requirements, the earliest that the Sales Tax Petition can be submitted to the registered electors of the Town is on Tuesday November 2 2021, and

WHEREAS, pursuant to C.R.S. 31-11-104, the ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, THAT:

The Special Sales Tax Petition is referred captioned as an **Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado**, adding a new Article 15 Chapter 2 of the Wellington Municipal Code entitled "Retail Marijuana Sales Tax," is, as required by C.R.S. §31-11-104(1), referred by Town Board of Trustees of the Town of Wellington Colorado, in the form petitioned for, to the registered electors of the Town to be voted on at a special election to be held on November 2, 2021.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 27th day of October, 2020.

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk

Board of Trustees Meeting

Date: November 10, 2020
Submitted By: Cody Bird, Planning Director
Ordinance No. 17-2020 - An Ordinance Approving the Final Plat and Rezone to PUD for Sage Meadows Second Subdivision
Subject:

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

EXECUTIVE SUMMARY

The owner of approximately 36 acres of land located east of Highway 1 between Jefferson Ave. and G.W. Bush Ave. has submitted a request to plat the property for single-family detached residential, single-family attached residential and 2 larger lots along Highway 1 for potential commercial or public/civic use. A rezone request to a Planned Unit Development Overlay District (PUD) is also proposed. The PUD is proposed to accommodate the mix of detached and attached residential units, as well as commercial and public/civic development opportunities.

The final plat and rezone to PUD was advertised for public hearings before the Planning Commission and Board of Trustees. The Planning Commission held the scheduled public hearing on November 2, 2020. No public testimony was presented. Following the close of the public hearing, the Planning Commission voted to approve the final plat and rezone to PUD and forward the recommendation of approval to the Board of Trustees.

No written or verbal comments were received by Town staff at the time of this report. The Board of Trustees will need to consider any testimony presented during the public hearing.

BACKGROUND / DISCUSSION

The property proposed for platting and zoning to PUD was annexed into the Town in 2016 and was concurrently zoned R-2 Residential Single-family, Medium Density. The master plan presented for the property at the time of annexation demonstrated the property would be a continuation of Sage Meadows Subdivision.

All lots within the original annexation master plan were identified for single-family detached residential development. At the Town's urging, the applicant has provided 2 commercial/public/civic parcels along Highway 1. These parcels are important to the development of Highway 1 as a commercial corridor. Providing the 2 larger tracts on the proposed plat allows a transition from the scale of existing single-family homes to the higher intensity commercial development anticipated to the north. To further transition from the larger commercial/public/civic properties to the single-family detached residential properties, the applicant was asked to provide single-family attached units (4-plexes). Attached dwelling properties are provided and transition on the rear or side property lines from the adjacent commercial or detached dwellings to limit the visual impacts of the different housing types.

The Planning Commission conducted a public hearing to review the final plat and rezone to PUD on November 2, 2020. The Commission voted to recommend approval of the final plat and rezone, subject to comments and corrections identified in the staff report to the Commission. The corrections identified in the staff comments are required to be corrected on the final plat mylars. By recommending approval of the final plat and rezone,



the Commission determined that the plat and zoning is consistent with the Town's Comprehensive Plan and that the plat conforms to the Town's subdivision regulations except as modified by the PUD.

The Parks Advisory Board reviewed the subdivision plat at its meeting on October 14, 2020 and voted to accept the open space dedications and trail layout as presented. The Parks Advisory Board also recommended accepting fees in-lieu of land dedication for parks due to the proximity of the development to existing Viewpointe Park.

The Town Board's consideration of the final plat and rezone to PUD requires a public hearing. Following the public hearing, if the final plat and rezone to PUD is approved by the Board of Trustees, the applicant may proceed with the final plat mylars and final zoning map mylars.

Approval by the Board of Trustees is valid for a period of one year. The final plat, final zoning map and ordinance must be recorded with the Larimer County Clerk and Recorder's Office within the one-year time limit, unless an extension is approved by the Board.

A development agreement is also required with the final plat. Details of a development agreement are being discussed with the owner and will be provided for Board of Trustees review at an upcoming meeting. Final plat and zoning to PUD approval is recommended contingent upon execution and recording of a development agreement.

STAFF RECOMMENDATION

Adopt an ordinance approving the plat of Sage Meadows Second Subdivision and approving a Planned Unit Development Overlay District contingent upon corrections identified by the Planning Commission and contingent upon execution of a development agreement, and authorize the Mayor to execute the plat and zoning map.

ATTACHMENTS

1. Location Map
2. Ordinance
3. Subdivision Plat
4. PUD Zoning Map

Location Map
Sage Meadows Second Subdivision



ORDINANCE NO. 17-2020

AN ORDINANCE RELATING TO PLAT APPROVAL FOR SAGE MEADOWS SECOND SUBDIVISION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO, AND REZONING THE SAME BY ESTABLISHMENT OF A PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT AND AMENDMING THE OFFICIAL ZONING MAP OR MAPS OF THE TOWN TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE MUNICIPAL CODE OF THE TOWN.

WHEREAS, SH Holdings Hwy 1, LLC, 395 Delozier Drive #110, Fort Collins, CO 80524 has requested approval of the subdivision plat of Sage Meadows Second Subdivision in the Town of Wellington, Colorado; and

WHEREAS, SH Holdings Hwy 1, LLC, 395 Delozier Drive #110, Fort Collins, CO 80524 has requested to establish a Planned Unit Development Overlay District (PUD) for the subdivision plat of Sage Meadows Second Subdivision in the Town of Wellington, Colorado; and

WHEREAS, the property requested to be rezoned by establishing a PUD is currently zoned R-2 Residential District, medium density; and

WHEREAS, the notices for the subdivision plat and the rezone to PUD have been given and the public hearings required by the Wellington Municipal Code have been held; and

WHEREAS, the Planning Commission by motion and vote on November 2, 2020 recommended approval of the plat and recommended approval of rezoning the property by establishing a PUD for the Sage Meadows Second Subdivision; and

WHEREAS, the Board of Trustees of the Town of Wellington has found the application to be in substantial compliance with the requirements of the Wellington Municipal Code.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO:

SECTION 1: The final plat of Sage Meadows Second Subdivision, located in the Southwest Quarter of Section 4, Township 8 North, Range 68 West of the 6th Principal Meridian, Town of Wellington, County of Larimer, State of Colorado, is hereby approved as a final plat in accordance with the Wellington Municipal Code, except as may be specifically modified by this ordinance.

SECTION 2: Having received the recommendation of the Town Planning Commission and the Town Board of Trustees having acted, following notice and hearing thereon as provided by law and pursuant to the Municipal Code of the Town of Wellington, Colorado, the zoning of the following described real property is hereby amended by establishment of a Planned Unit Development Overlay District for development of the property for single-family dwelling units and commercial development:

A tract of land located in the Southwest Quarter of Section 4, Township 8 North, Range 68 West of the 6th Principal Meridian, Town of Wellington, County of Larimer, State of Colorado and being more particularly described as follows:

THE SW 1/4 OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

EXCEPTING THEREFROM THOSE PARCELS DESCRIBED IN DEEDS RECORDED OCTOBER 8, 1906 IN BOOK 212 AT PAGE 248 AND APRIL 5, 1956 IN BOOK 1015 AT PAGE 371 AND APRIL 20, 1964 IN BOOK 1244 AT PAGE 314 AND DECEMBER 31, 1992 AT RECEPTION NO. 92084441

Being more particularly described as:

Considering the West line of the Southwest Quarter of Section 4 as bearing North 00°35'48" West and with all bearings contained herein relative thereto:

COMMENCING at the West Quarter Corner of Section 4; thence along the North line of the Southwest Quarter of Section 4, South 89°17'42" East, 31.99 feet to the POINT OF BEGINNING; thence continuing along said North line, South 89°17'42" East, 1236.31 feet to the Northwesternly line of Sage Meadows Subdivision; thence along said Northwesternly line the following 2 courses and distances: South 00°34'33" West, 1270.04 feet; thence, North 89°17'56" West, 1220.00 feet to the East Right-of-Way line of Colorado Highway 1; then along said East line, North 00°09'36" West, 1270.26 feet to the POINT OF BEGINNING.

SECTION 3: The zoning regulations of the Town of Wellington, Colorado and the official zoning map of the Town of Wellington, Colorado are hereby amended in accordance with Section 2 of this Ordinance.

SECTION 4: Prior to recording the plat and PUD, a Development Agreement for public improvements signed by the Owner and the Town is required.

SECTION 5: Repealer. All ordinances, resolutions and motions of the Board of Trustees of the Town of Wellington, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby superceded and repealed; provided that such repeal shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

SECTION 6: Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.

SECTION 7: Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.

SECTION 8: Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies available for inspection by the public during regular business hours. Furthermore, the Mayor's signature shall be affixed to the plat and attested by the Town Clerk.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON AND ORDERED TO BECOME PUBLISHED THIS _____ DAY OF _____, 20____ AND ORDERED TO BECOME EFFECTIVE 30 DAYS FROM THE DATE OF PUBLICATION.

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk

PUBLISHED BY TITLE THIS _____ DAY OF _____, 20____ IN "THE COLORADOAN."

APPROVED AS TO FORM

March & Olive, LLC
Town Attorney

By: _____
J. Brad March

PLAT OF
SAGE MEADOWS SECOND SUBDIVISION
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH,
RANGE 68 WEST OF THE 6TH P.M., TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO

LEGAL DESCRIPTION:

A tract of land located in the Southwest Quarter of Section 4, Township 8 North, Range 68 West of the 6th Principal Meridian, Town of Wellington, County of Larimer, State of Colorado and being more particularly described as follows:

THE SW 1/4 OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

EXCEPTING THEREFROM THOSE PARCELS DESCRIBED IN DEEDS RECORDED OCTOBER 8, 1906 IN BOOK 212 AT PAGE 248 AND APRIL 5, 1956 IN BOOK 1015 AT PAGE 371 AND APRIL 20, 1964 IN BOOK 1244 AT PAGE 314 AND DECEMBER 31, 1992 AT RECEPTION NO. 92084441

Being more particularly described as:

Considering the West line of the Southwest Quarter of Section 4 as bearing North 00° 35' 48" West and with all bearings contained herein relative thereto:

COMMENCING at the West Quarter Corner of Section 4; thence along the North line of the Southwest Quarter of Section 4, South 89° 17' 42" East, 31.99 feet to the **POINT OF BEGINNING**; thence continuing along said North line, South 89° 17' 42" East, 1236.31 feet to the Northwesterly line of Sage Meadows Subdivision; thence along said Northwesterly line the following 2 courses and distances: South 00° 34' 33" West, 1270.04 feet; thence, North 89° 17' 56" West, 1220.00 feet to the East Right-of-Way line of Colorado Highway 1; then along said East line, North 00° 09' 36" West, 1270.26 feet to the **POINT OF BEGINNING**.

The above described tract of land contains 1,559,853 square feet or 35.809 acres more or less and is subject to all easements and rights-of-way now on record or existing.

DEDICATION OF PUBLIC PROPERTY

The owner of the real property described in this Plat has caused the real property to be surveyed, laid out and subdivided under the name and style of **SAGE MEADOWS SECOND SUBDIVISION**, and does hereby sell, grant, dedicate and convey to the Town of Wellington in fee simple, free and clear of all liens and encumbrances, and set apart all of the streets, roads, alleys, easements and other public ways and places as shown on the accompanying plat to the use of the public forever. The owner shall be responsible for construction and maintenance of all improvements of said streets, alleys, easements, public ways and places, until acceptance of maintenance therefore by the Town as provided in the Wellington Municipal Code.

CERTIFICATE OF OWNERSHIP

I/We certify that _____ is the owner of the property, and hereby consent to this plat and join in the conveyance and dedication of all streets, roads, alleys, easements, public ways, and places shown hereon.

OWNER: SH Holdings Hwy 1, LLC

NOTARIAL CERTIFICATE:

STATE OF COLORADO)ss.

COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of SH Holdings Hwy 1, LLC.

Witness my hand and official seal.

My commission expires: _____

Notary Public

LIENHOLDER:

NOTARIAL CERTIFICATE:

STATE OF COLORADO)ss.

COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

PLANNING COMMISSION CERTIFICATE

Approved this _____ day of _____, 20____, by the Town Planning and Zoning Commission, Wellington, Colorado.

Chairman

BOARD OF TRUSTEES CERTIFICATE

Approved this _____ day of _____, 20____, by the Board of Trustees, Wellington, Colorado. This approval is conditioned upon all expenses involving necessary improvements for all utility services, paving, grading, landscaping, curbs, gutters, street lights, street signs and sidewalks shall be financed by other and not the towns.

Mayor

ATTORNEY'S CERTIFICATION

I, _____, an attorney licensed to practice law in the State of Colorado, certify to the Town of Wellington, Colorado, that I have examined the title to the property being subdivided and being dedicated to the Town of Wellington, Colorado, and that all owners and proprietors as defined by CRS 31-23-111 have signed or ratified this plat.

Attorney: _____

Address: _____

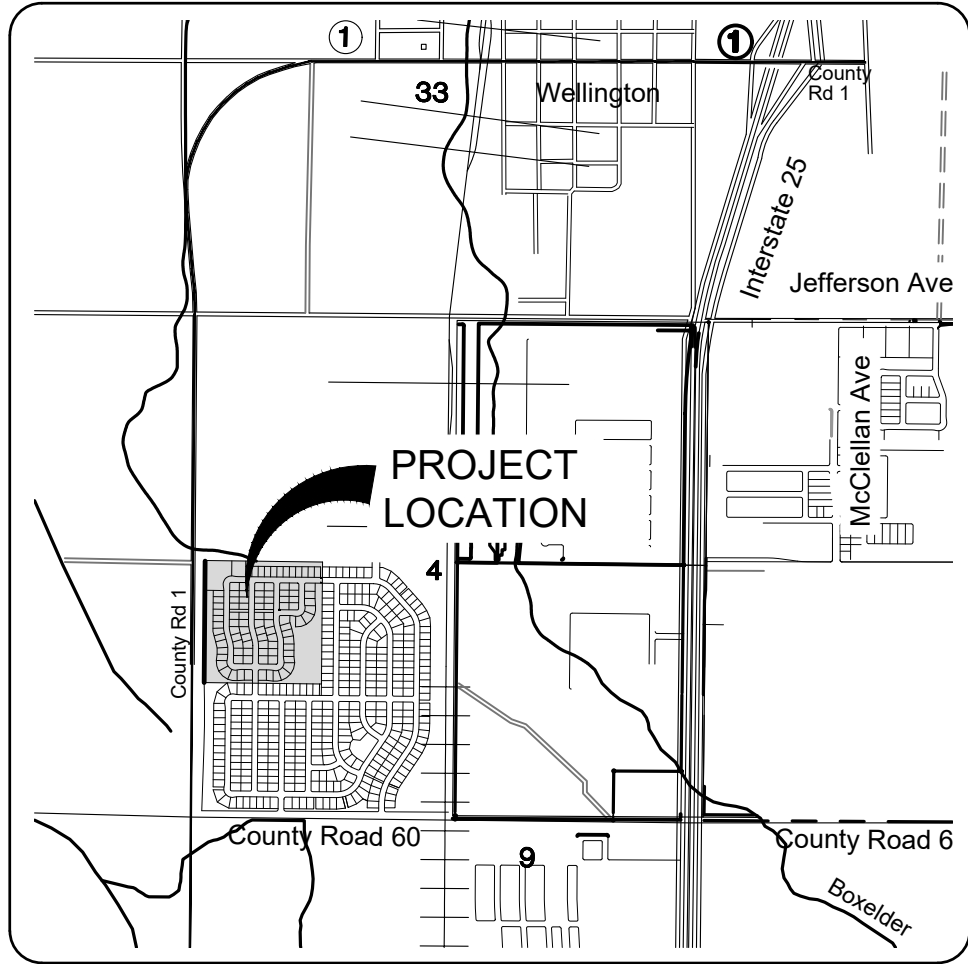
Registration No.: _____

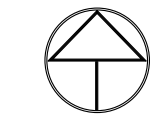
NOTES:

- 1) The lineal unit of measurement for this plat is U.S. Survey Feet.
- 2) Basis of Bearings is the West line of the Southwest Quarter of Section 4-8-68 as bearing North 00° 35' 48" West and monumented as shown on drawing (assumed bearing).
- 3) For all information regarding easements, right-of-way or title of record, Northern Engineering relied upon Title Commitment Number _____ prepared by _____ dated _____.
- 4) A copy of the title commitment and the documents contained therein were provided to the owner, attorney and client and those entities listed hereon for their use and review. It is the surveyor's understanding that said owner, attorney, client and entities have reviewed said documents and understand their impact, if any, on the subject property.
- 5) Northern Engineering or the Professional Land Surveyor listed hereon, does not have the expertise to address mineral rights, and recommends the owner retain an expert to address these matters. Northern Engineering or the Professional Land Surveyor listed heron assumes no responsibility for the mineral rights upon the subject property.
- 6) Not all documents listed in the title commitment are plottable or definable by their terms. All easements that are definable by their descriptions are shown hereon with sufficient data to establish their position. Owner, Client and others should refer to the title commitment and those documents listed therein for a true understanding of all rights of way, easements, encumbrances, interests and title of record concerning the subject property.
- 7) Easements and other record documents shown or noted hereon were examined as to location and purpose and were not examined as to restrictions, exclusions, conditions, obligations, terms, or as to the right to grant the same.
- 8) For easements created by separate document and shown hereon refer to record document for specific terms.
- 9) Adjacent property owner information per the Larimer County Land information Locator.
- 10) Underground Utilities should be verified prior to any design and or construction.

11) The word "certify" or "certification" as shown and used hereon is an expression of professional opinion regarding the facts of the survey, and does not constitute a warranty or guaranty, expressed or implied. DORA Bylaws and Rules (4 CCR 730-1).

12) Per CRS 38-51-105 (3)(a), (3)(b), (4)(b), (4)(c), & 5, the Developer/Owner of the subdivision plat has the requirement of providing monumentation of the interior corners created by this platting procedure within one year of the effective date of a sales contract. The Surveyor of record of said subdivision plat has only the required responsibility of providing for the on the ground monumentation of the external boundary of the subdivision plat.



 NORTH VICINITY MAP
1"=2000'

OWNER/APPLICANT/
DEVELOPER

SH Holdings HWY 1, LLC
395 Delozier Drive, Unit 16
Fort Collins, CO 80521

SITE ENGINEER

Northern Engineering Services, Inc.
301 North Howes Street, Suite 100
Fort Collins, Colorado 80521
(970) 221-4158

SURVEYOR

Northern Engineering Services, Inc.
301 North Howes Street, Suite 100
Fort Collins, Colorado 80521
(970) 221-4158

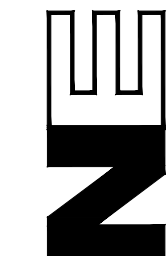
SURVEYOR'S CERTIFICATE

I, Robert C. Tessely, a duly registered professional land surveyor in the State of Colorado, do hereby certify that this plat of **SAGE MEADOWS SECOND SUBDIVISION** was prepared by me or under my direct supervision, and that this plat has been prepared in compliance with all applicable laws of the state of Colorado at the time of this survey and within my control and to the best of my knowledge, information and belief.

Robert C. Tessely
Colorado Registered Professional Land Surveyor No. 38470
For and on behalf of Northern Engineering Services, Inc.

NOTICE:
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SECTION:
4
TOWNSHIP:
8N
RANGE:
68 W of the 6th PM

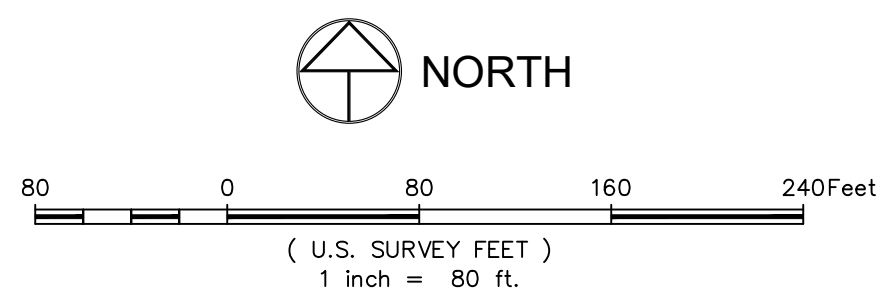
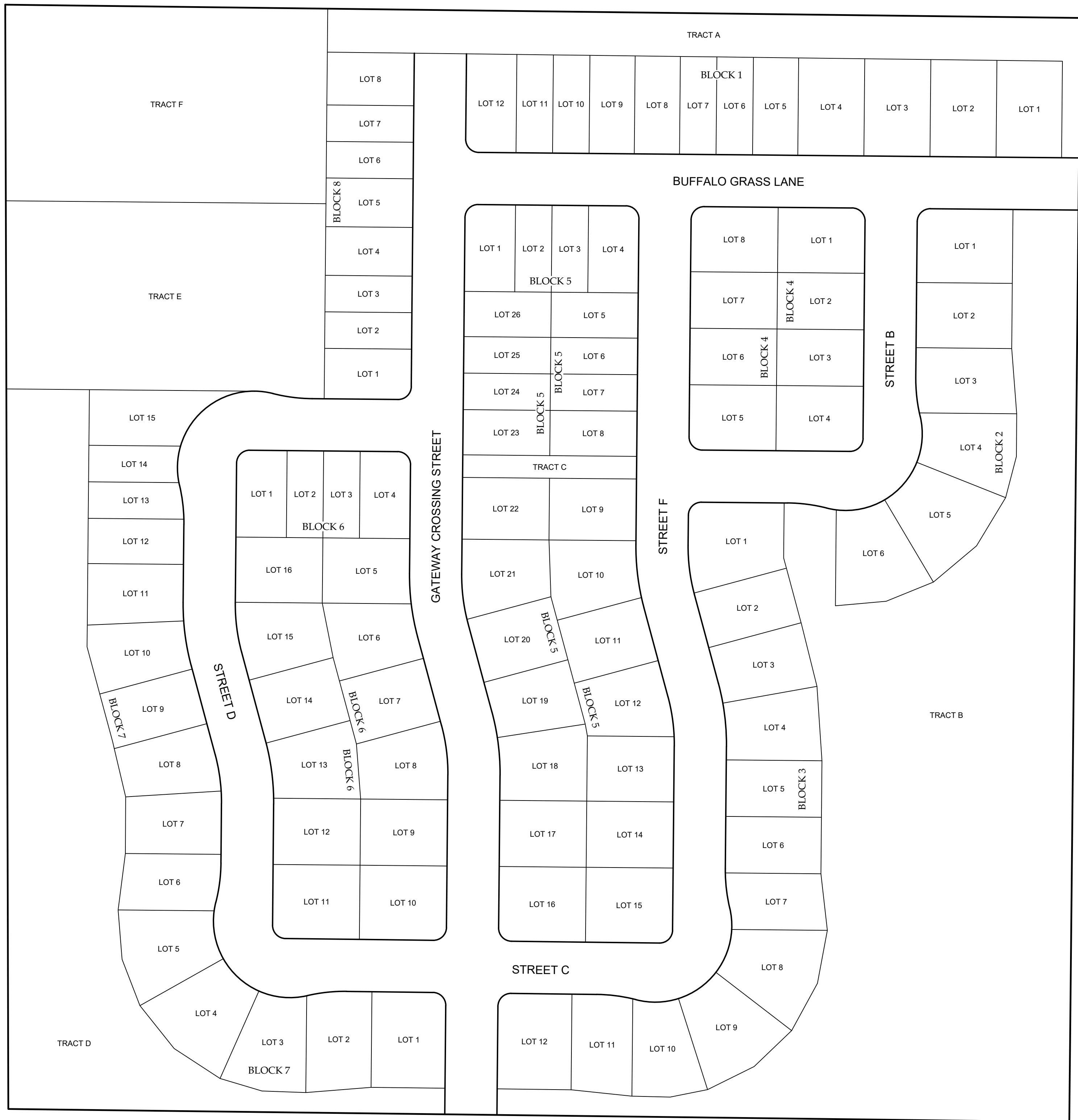
**NORTHERN
ENGINEERING**

FORT COLLINS 301 North Howes Street, Suite 100, 80521
GREELEY 820 8th Street, 80633
970.221.4158
northernengineering.com

PROJECT:
992-004
CLIENT:
Sage Homes
DRAWN BY:
L. Smith
DATE:
9/29/20
SCALE:
As shown
REVIEWED BY:
R. Tessely

PLAT OF SAGE MEADOWS SECOND SUBDIVISION
TOWN OF WELLINGTON
STATE OF COLORADO

Sheet
1
Of 4 Sheets

PLAT OF
SAGE MEADOWS SECOND SUBDIVISION
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH,
RANGE 68 WEST OF THE 6TH P.M., TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO



CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	BEARING	CHORD
C1	90°00'00"	50.00'	78.54'	S45°31'32"W	70.71'
C2	15°36'13"	240.00'	65.36'	S07°16'34"E	65.16'
C3	15°35'53"	240.00'	65.34'	S07°16'45"E	65.13'
C4	89°49'08"	50.00'	78.38'	S44°23'22"E	70.60'
C5	90°10'52"	50.00'	78.70'	N45°36'38"E	70.82'
C6	15°35'53"	240.00'	65.34'	N07°16'45"W	65.13'
C7	15°36'13"	240.00'	65.36'	N07°16'34"W	65.16'
C8	90°00'00"	50.00'	78.54'	N45°31'32"E	70.71'
C9	15°36'13"	240.00'	65.36'	S07°16'34"E	65.16'
C10	15°35'53"	240.00'	65.34'	S07°16'45"E	65.13'
C11	90°00'00"	15.00'	23.56'	N45°31'32"E	21.21'
C12	13°48'13"	189.00'	45.53'	N06°22'34"W	45.42'
C13	117°36'26"	88.00'	180.63'	N45°31'32"E	150.55'
C14	13°48'13"	189.00'	45.53'	S82°34'21"E	45.42'
C15	90°00'00"	15.00'	23.56'	N45°31'32"E	21.21'
C16	15°36'13"	210.00'	57.19'	N07°16'34"W	57.01'
C17	15°35'53"	270.00'	73.50'	N07°16'45"W	73.28'
C18	13°48'13"	189.00'	45.53'	N06°22'55"W	45.42'
C19	117°47'19"	88.00'	180.91'	N45°36'38"E	150.69'
C20	13°48'13"	189.00'	45.53'	S82°23'49"E	45.42'
C21	90°10'52"	15.00'	23.61'	S44°23'28"E	21.25'
C22	89°49'08"	50.00'	23.51'	S44°23'22"E	21.18'
C23	13°48'13"	189.00'	45.53'	N83°47'57"E	45.42'
C24	117°25'34"	88.00'	180.35'	S44°23'22"E	150.41'
C25	13°48'13"	189.00'	45.53'	S07°25'18"W	45.42'
C26	15°35'53"	210.00'	57.17'	S07°16'45"E	56.99'
C27	15°36'13"	270.00'	73.51'	S07°16'34"E	73.30'
C28	13°48'13"	189.00'	45.53'	S08°22'34"E	45.42'
C29	117°36'26"	88.00'	180.63'	S45°31'32"W	150.55'
C30	13°48'13"	189.00'	45.53'	N82°34'21"E	45.42'
C31	90°00'00"	15.00'	23.56'	S44°28'28"E	21.21'
C32	90°00'00"	15.00'	23.56'	S45°31'32"W	21.21'
C33	90°00'00"	15.00'	23.56'	N44°28'28"W	21.21'
C34	90°00'00"	15.00'	23.56'	N45°31'32"E	21.21'
C35	90°00'00"	15.00'	23.56'	S44°28'28"E	21.21'
C36	15°36'13"	270.00'	73.53'	S07°16'34"E	73.30'
C37	15°35'53"	210.00'	57.17'	S07°16'45"E	56.99'
C38	90°10'52"	15.00'	23.61'	S45°36'38"W	21.25'
C39	89°49'08"	50.00'	23.51'	N44°23'22"W	21.18'
C40	15°35'53"	270.00'	73.50'	N07°16'45"W	73.28'
C41	14°21'48"	210.00'	52.64'	N06°39'32"E	52.51'
C42	90°00'00"	15.00'	23.56'	N45°31'32"E	21.21'
C43	15°36'13"	210.00'	57.19'	S44°28'28"E	21.21'
C44	13°48'13"	270.00'	73.53'	S07°16'34"E	73.30'
C45	15°35'53"	210.00'	57.17'	S07°16'45"E	56.99'
C46	90°10'52"	15.00'	23.61'	N45°36'38"W	21.25'
C47	89°49'08"	50.00'	23.51'	N44°23'22"W	21.18'
C48	15°35'53"	270.00'	73.50'	N07°16'45"W	73.28'
C49	15°36'13"	210.00'	57.19'	N07°16'34"W	57.01'
C50	90°00'00"	15.00'	23.56'	N45°31'32"E	21.21'

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	BEARING	CHORD
C51	12°33'25"	189.00'	41.42'	N05°45'11"W	41.30'
C52	1°14'48"	189.00'	1.11'	N12°39'17"W	4.11'
C53	34°59'25"	88.00'	53.74'	N40°13'02"E	52.91'
C54	37°40'14"	88.00'	57.86'	N40°32'51"E	56.82'
C55	37°40'03"	88.00'	57.85'	N78°13'00"E	56.82'
C56	7°16'43"	88.00'	11.18'	S79°18'36"E	11.11'
C57	11°15'54"	210.00'	55.71'	N07°04'25"W	55.55'
C58	0°24'18"	210.00'	1.48'	N14°52'32"W	1.48'
C59	4°58'18"	270.00'	23.03'	N12°35'32"W	23.42'
C60	10°37'35"	270.00'	50.48'	N04°47'36"W	50.00'
C61	1°26'01"	189.00'	4.73'	N00°11'49"W	4.73'
C62	12°22'13"	189.00'	40.81'	N07°05'55"W	40.73'
C63	16°10'21"	88.00'	24.84'	N05°11'51"W	24.76'
C64	34°42'11"	88.00'	53.30'	N20°14'25"E	52.49'
C65	34°42'32"	88.00'	53.31'	N54°56'46"E	52.50'
C66	32°12'15"	88.00'	49.46'	N89°24'10"E	48.81'
C67	1°09'49"	189.00'	3.84'	S76°04'37"E	3.84'
C68	12°38'24"	189.00'	41.70'	S82°58'44"E	41.61'
C69	13°00'19"	270.00'	61.29'	S05°58'38"E	61.16'
C70	2°35'54"	270.00'	12.24'	S13°46'44"E	12.24'
C71	12°40'54"	210.00'	46.48'	S08°44'14"E	46.39'
C72	2°54'59"	210.00'	10.69'	S00°56'18"E	10.69'
C73	9°15'16"	270.00'	43.61'	S04°02'27"W	43.56'
C74	6°20'36"	270.00'	29.89'	N11°54'23"W	29.88'
C75	1°14'25"	210.00'	4.55'	N14°27'28"E	4.55'
C76	14°21'48"	210.00'	52.64'	N06°39'22"E	52.51'
C77	7°24'51"	270.00'	34.94'	S03°10'53"E	34.91'
C78	8°11'22"	270.00'	38.59'	S10°59'00"E	38.56'
C79	1°28'31"	270.00'	6.95'	N00°13'04"W	6.95'
C80	13°36'34"	270.00'	64.13'	N07°45'37"W	63.98'
C81	0°30'47"	270.00'	2.42'	N14°49'17"W	2.42'
C82	0°29'09"	88.00'	0.75'	N77°08'25"E	0.75'
C83	36°34'22"	88.00'	56.17'	S84°19'49"E	55.22'
C84	36°39'45"	88.00'	56.31'	S47°42'46"E	55.35'
C85	37°10'06"	88.00'	57.09'	S10°47'51"E	56.09'
C86	6°32'12"	88.00'	10.04'	S11°03'15"E	10.03'
C87	4°00'17"	210.00'	14.68'	S01°28'57"E	14.68'
C88	11°35'36"	210.00'	42.49'	S09°16'53"E	42.42'
C89	2°00'33"	88.00'	3.07'	S12°16'40"E	3.07'
C90	11°05'48"	270.00'	52.29'	S01°31'47"E	52.21'
C91	4°30'28"	270.00'	21.24'	S01°43'41"E	21.23'
C92	1°50'48"	189.00'	6.09'	S00°23'52"E	6.09'
C93	11°57'25"	189.00'	39.44'	S07°17'59"E	39.37'
C94	74°10'24"	88.00'	113.92'	S45°26'20"W	106.13'
C95	90°00'00"	150.00'	23.56'	N44°28'28"E	21.21'
C96	27°37'46"	88.00'	42.44'	S02°31'15"W	42.03'
C97	90°00'00"	15.00'	23.56'	S45°31'32"W	21.21'
C98	13°48'13"	88.00'	21.20'	N82°34'21"W	21.15'

LAND USE TABLE						
PARCEL	DESCRIPTION	DEDICATION	AREA		PERCENT	INTENDED OWNERSHIP/MAINTENANCE BY
TRACT A	Open Space	Drainage, Utility & Access Easement	45,498 S.F.	1,044 AC.	2.92%	HOA
TRACT B	Open Space	Drainage, Utility & Access Easement	236,388 S.F.	5,427 AC.	15.15%	HOA
TRACT C	Open Space	Drainage, Utility & Access Easement	5,200 S.F.	0.119 AC.	0.33%	HOA
TRACT D	Open Space	Drainage, Utility & Access Easement	1,111,855 S.F.	2,589 AC.	7.17%	HOA
TRACT E	Open Space	Drainage, Utility & Access Easement	79,795 S.F.	1,832 AC.	5.12%	HOA
TRACT F	Open Space	Drainage, Utility & Access Easement	83,119 S.F.	1,906 AC.	5.33%	HOA
ROW	Public Use		281,702 S.F.	6,467 AC.	18.06%	Town of Wellington
LOTS (103)	Private Residence		716,296 S.F.	16,444 AC.	45.92%	Property Owner
TOTAL			1,559,853 S.F.	35,809 AC.	100.00%	

LOT & BLOCK TABLE	
BLOCK	# OF LOTS
1	12
2	6
3	12
4	8
5	26
6	16
7	15
8	8
TOTAL LOTS	103

PRELIMINARY
Robert C. Tessely
Registered Professional Land Surveyor
Colorado Registration No. 38470
For and on behalf of Northern Engineering & Surveying, Inc.

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SECTION:
4

TOWNSHIP:
8N

RANGE:
68 W of the 6th PM

NE | **NORTHERN
ENGINEERING**

PROJECT: 992-004	DATE: 9/29/20
CLIENT: Sage Homes	SCALE: 1"=80'
DRAWN BY: L. Smith	REVIEWED BY: R. Tessely

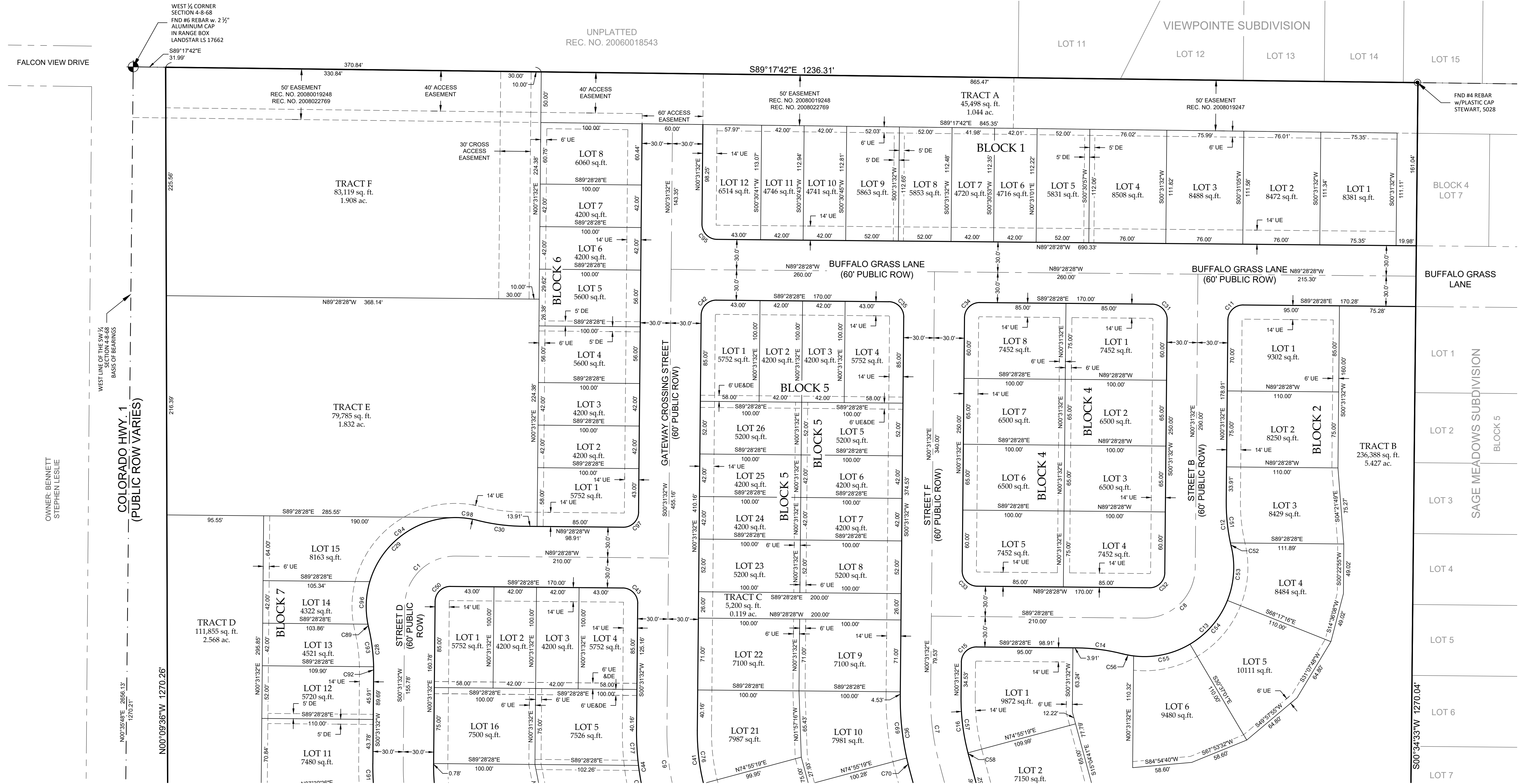
TOWN OF WELLINGTON
STATE OF COLORADO

Sheet

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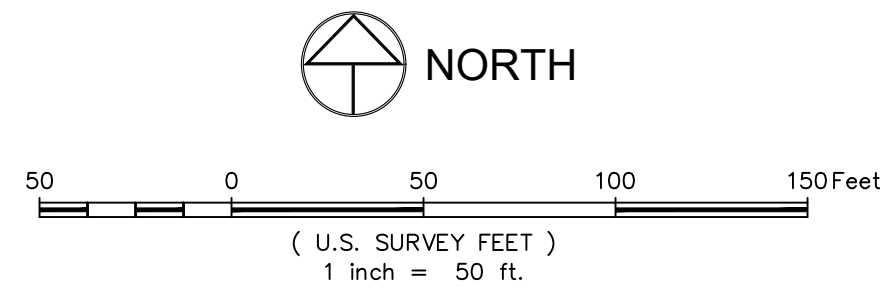
Of 4 Sheets

PLAT OF
SAGE MEADOWS SECOND SUBDIVISION
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH,
RANGE 68 WEST OF THE 6TH P.M., TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO



LEGEND

- SECTION LINE
- EASEMENT LINE
- CENTERLINE
- RIGHT-OF-WAY LINE
- PLATTED BOUNDARY LINE
- LOT LINE
- EXISTING LOT LINE
- FOUND CORNER AS DESCRIBED
- SET #4 18" REBAR w/1" BLUE PLASTIC CAP, PLS 38470
- SECTION CORNER
- UTILITY EASEMENT
- DRAINAGE EASEMENT



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SECTION:	4
TOWNSHIP:	8N
RANGE:	68 W of the 6th PM

NORTHERN ENGINEERING

970.220.4158
nortnengr.com

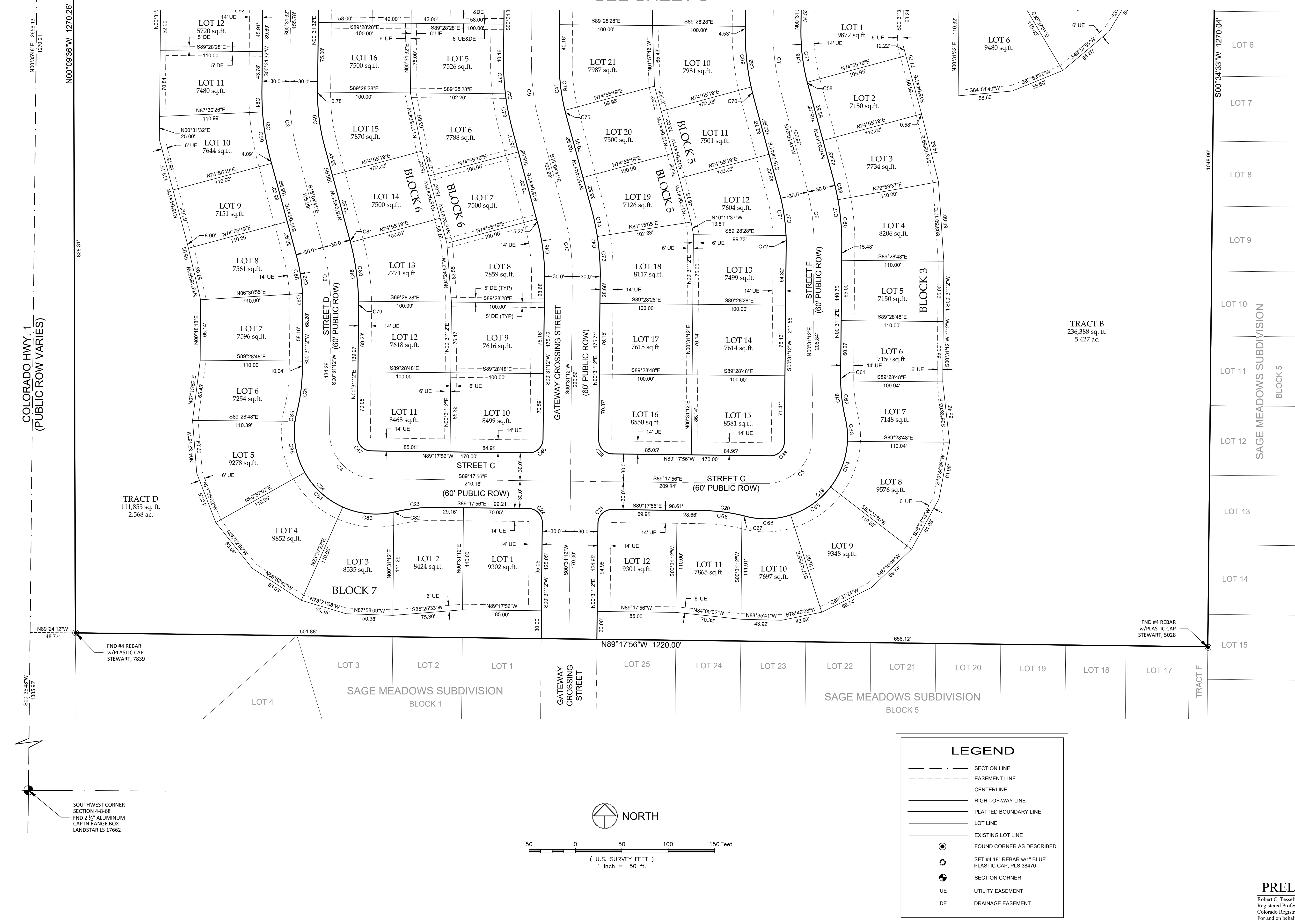
DATE:	9/29/20
SCALE:	1"=50'
REVIEWED BY:	R. Lessey
DRAWN BY:	L. Smith

PLAT OF SAGE MEADOWS SECOND SUBDIVISION
TOWN OF WELLINGTON
STATE OF COLORADO

PRELIMINARY
Robert C. Tessely
Registered Professional Land Surveyor
Colorado Registration No. 38470
For and on behalf of Northern Engineering Services, Inc.

PLAT OF
SAGE MEADOWS SECOND SUBDIVISION
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH,
RANGE 68 WEST OF THE 6TH P.M., TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO

SEE SHEET 3



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SECTION:	4
TOWNSHIP:	8N
RANGE:	68 W of the 6th PM

NORTHERN ENGINEERING

FOR COLINS 301 North Hards Street, Suite 100, 80621
Greeley, 820 88 Street, 80631

PROJECT:	992-004	DATE:	9/29/20
CLIENT:	Sage Homes	SCALE:	1"=50'
DRAWN BY:	L. Smith	REVIEWED BY:	R. Tressley

PLAT OF SAGE MEADOWS SECOND SUBDIVISION

TOWN OF WELLINGTON

STATE OF COLORADO

Sheet
4
Of 4 Sheets

PRELIMINARY
Robert C. Tressley
Registered Professional Land Surveyor
Colorado Registration No. 38470
For and on behalf of Northern Engineering Services, Inc.

ZONING MAP FOR SAGE MEADOWS SECOND SUBDIVISION

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 68 WEST
OF THE 6TH P.M., TOWN OF WELLINGTON, COUNTY OF LARIMER, STATE OF COLORADO

LEGAL DESCRIPTION

A tract of land located in the Southwest Quarter of Section 4, Township 8 North, Range 68 West of the 6th Principal Meridian, Town of Wellington, County of Larimer, State of Colorado and being described as follows:

THE SW 1/4 OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO

EXCEPTING THEREFROM THOSE PARCELS DESCRIBED IN DEEDS RECORDED OCTOBER 8, 1906 IN BOOK 212 AT PAGE 248 AND APRIL 5, 1956 IN BOOK 1015 AT PAGE 371 AND APRIL 20, 1964 IN BOOK 1244 AT PAGE 314 AND DECEMBER 31, 1992 AT RECEPTION NO. 92084441

Being more particularly described as:

Considering the West line of the Southwest Quarter of Section 4 as bearing North 00° 35' 48" West and with all bearings contained herein relative thereto:

COMMENCING at the West Quarter Corner of Section 4; thence along the North line of the Southwest Quarter of Section 4, South 89° 17' 42" East, 31.99 feet to the POINT OF BEGINNING; thence continuing along said North line, South 89° 17' 42" East, 1236.31 feet to the Northwesterly line of Sage Meadows Subdivision; thence along said Northwesterly line the following 2 courses and distances: South 00° 34' 33" West, 1270.04 feet; thence, North 89° 17' 56" West, 1220.00 feet to the East Right-of-Way line of Colorado Highway 1; then along said East line, North 00° 09' 36" West, 1270.26 feet to the POINT OF BEGINNING.

The above described land contains 1,559,853 square feet or 35.809 acres more or less and is subject to all easements and rights-of-way now on record or existing.

APPROVAL CERTIFICATES

PLANNING COMMISSION CERTIFICATE

Approved this _____ day of _____, 20____, by the Town Planning and Zoning Commission, Wellington, Colorado.

Chairman

BOARD OF TRUSTEES CERTIFICATE

Approved this _____ day of _____, 20____, by the Board of Trustees, Wellington, Colorado. This approval is conditioned upon all expenses involving necessary improvements for all utility services, paving, grading, landscaping, curbs, gutters, street lights, street signs and sidewalks shall be financed by other and not the towns.

Mayor

OWNER: FULKROD
RONALD E

OWNER: BENNETT
STEPHEN LESLIE

OWNER: NIXON EDDIE
L. VIOLA ELAINE

OWNER: JOHNSTON
FREDERICK W &
JOHNSTON LAURA M

OWNER: ORCUTT
TERRY

W 1/4 COR. S4-T8N-R68W
FND #6 REBAR w/
2 1/2" ALUM. CAP
LS 17662, LANDSTAR
(P.O.C.)

S89°17'42"E
31.99
FND #4 REBAR
NO CAP, BENT
NOT ACCEPTED. N87°10'36"W, 12.05'
FROM ACCEPTED POSITION

OWNER: LOUDEN
THEODORE L/
BARBARA J TRUST

S89°17'42"E 1236.31'

LOT 11

VIEWPOINT SUBDIVISION

LOT 16

FND #4 REBAR
W/CAP LS 5028
STEWART

FND #4 REBAR
W/CAP LS 5028
STEWART

BLOCK 4
LOT 7

LOT 15

LOT 14

LOT 13

LOT 12

LOT 11

LOT 10

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Board of Trustees Meeting

Date: November 10, 2020
Submitted By: Dave Myer, Engineer
Wastewater Treatment Plant Expansion: Wastewater Utility Plan
Subject:

- Staff presentation: Dave Myer, Engineer

EXECUTIVE SUMMARY

The Clean Water Act (CWA), first passed in 1972, and later amended in 1977 and 1987, is the primary federal law which regulates the quality of surface waters in the United States. This act establishes the need for water quality planning which includes regional water quality planning as outlined in section 208. A Utility Plan approved by the North Front Range Water Quality Planning Association (NFRWQPA) fulfills the CWA section 208 requirements. The mission of the NFRWQPA is as follows:

To use collaborative regional planning, facilitation, and review to ensure that present and future wastewater needs are met economically and with a focus on water quality protection.

Preparation of a Wastewater Utility Plan is a Federal and State regulatory requirement for Wellington's Wastewater Treatment Plant Expansion and needed for an SRF loan application and prerequisite for CDPHE approval of Design.

BACKGROUND / DISCUSSION

During the September 15 Board work session, an update on the Wastewater Treatment Plant (WWTP) Master Plan was presented where Jacobs outlined the next steps for the plant expansion. These included permitting (regulatory) requirements involving preparation of a Wastewater Utility Plan and a Preliminary Effluent Limit (PEL) application. The intention herein is to request Board approval for execution of a contract with Jacobs for preparation of the Wastewater Utility Plan and assistance with the Town's PEL application.

Assuming the Town finances the construction of the Wastewater Treatment Plant Expansion with a State Revolving Fund (SRF) loan through the Colorado Water Resources and Power Development Authority, several State regulatory and funding requirements are necessary. Additionally, the Colorado Department of Public Health and Environment (CDPHE) requires several permitting and design review steps. The various State requirements are summarized in Table 1 (attached). The Wastewater Utility Plan and the PEL application are critical precursors to other documents that must be prepared.

The proposed Wastewater Utility Plan scope of work is in accordance with the NFRWQPA's Wastewater Utility Plan Guidance Manual (current version January 2020). The tasks outlined in Jacobs' scope are based upon the Guidance Manual's format checklist for ease of review by NFRWQPA reviewers. The scope was also developed from prior work performed by Jacobs on the Wastewater Master Plan and the Town's Comprehensive Plan be written currently by Logan Simpson. Additional items in Jacobs' scope include assisting the Town with its PEL application, assistance with the Town's SRF pre-application form, and attendance at the SRF loan preapplication meeting in Denver with CDPHE. A contract draft with Jacobs' scope is attached.



Based on what was previously presented to the Board, the anticipated schedule for the WWTP Expansion remains as follows:

- October 2020 – March 2021 (extended as needed): Funding & Regulatory Steps
- December 2020 – December 2021: Engineering Design
- January 2022 – May 2022: Finalize Project Financing and Regulatory Approvals
- May 2022 – Early 2024: Construction

Financial/Sustainability Considerations

Funding for this project is included the budget “WWTP Expansion Design” (GL No. 211-80-4061) with concurrence from the Town’s Finance Department.

STAFF RECOMMENDATION

Authorize execution of contract with Jacobs Engineering Group in the not to exceed amount of \$115,815 for preparation of the Wastewater Utility Plan for the Town’s Wastewater Treatment Plant Expansion.

ATTACHMENTS

1. Table 1 Regulatory & Funding Requirements
2. Wellington Wastewater Utility Plan Contract DRAFT
3. Wellington Wastewater Utility Plan Contract DRAFT

Table 1
Wellington Wastewater Treatment Plant Expansion
Regulatory and Funding Requirements

Item		Agency	Fees ₁	Notes
Regulatory	Preliminary Effluent Limit (PEL)	CDPHE	\$6,300	Critical! Precursor for many of below. Can take 180 days.
	Wastewater Utility Plan	NFRWQPA	--	Critical! Must be completed prior to Site Application.
	Site Application	NFRWQPA & CDPHE	\$22,658	PEL required. Site application needed prior to SRF loan application.
	Process Design Report (PDR)	CDPHE	\$14,396	PDR is needed prior to SRF loan application.
	Plans and Specifications	CDPHE	--	Submitted to CDPHE by design engineer during design.
			<i>Total = \$43,354</i>	
Funding	RFQ for Engineering	CDPHE (SRF)	--	In progress by staff. SOQs received on 10/20/20 are under review.
	Engineering Firm Selection & Contract	CDPHE (SRF)	--	Anticipated staff recommendation to Board on Dec 8.
	SRF Pre-Qualification Form	CDPHE (SRF)	--	Can be submitted any time.
	Pre-Application Meeting	CDPHE (SRF)	--	Meeting with Town, design engineer, and CDPHE.
	Public Meeting	CDPHE (SRF)	--	Includes advertising & submission requirements.
	Project Needs Assessment (PNA)	CDPHE (SRF)	--	Final environmental determination needed in PNA. Needed prior to SRF loan application.
	Environmental Review	CDPHE (SRF)	--	CatEx, Environmental Assessment, or Environmental Impact Statement.
	SRF Loan Application	CDPHE (SRF)	--	Application due dates are Jan 15 or June 15. Several precursors required.
	SRF Loan Execution	CDPHE (SRF)	--	Final CDPHE design approval required.
	Construction		--	Construction may begin after environmental clearance and loan execution. Must include SRF requirements for American Iron and Steel, Davis Bacon Wages, etc.

1. Fees to State must be paid up front.

Color Key

Town task
Part of Jacobs Wastewater Utility Plan Scope
Part of design contract with engineer



TOWN OF WELLINGTON
3735 CLEVELAND AVENUE
P.O. BOX 127
WELLINGTON, CO 80549
PUBLIC WORKS (970) 568-0447
TOWN HALL (970) 568-3381

WELLINGTON WASTEWATER TREATMENT PLANT EXPANSION WASTEWATER UTILITY PLAN

CONSULTANT CONTRACT FOR SERVICES, GL No. 211-80-4061

Parties: The parties to this Contract are the Town of Wellington, 3735 Cleveland Avenue, Wellington, Colorado 80549 (Town) and Jacobs Engineering Group Inc., 200 East 7th Street, Loveland, Colorado, 80537 (Consultant).

Purpose of Contract: The purpose of this Contract is for the Town of Wellington to retain the services of the Consultant to render certain technical or professional services hereinafter described.

Term of Contract and Required Approvals: This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from the Effective Date through December 31, 2021. All services shall be completed during this term. If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within this Contract period, the Consultant may be granted an extension of time upon submission of evidence of the causes of delay satisfactory to the Town.

Responsibilities of the Consultant:

Scope of Services: The scope of services shall be as defined within the Consultant's proposal and any further stipulation of the terms specified in Attachment A.

The Consultant shall perform the specific services required under this Contract in a satisfactory and proper manner. The standard of care for the Consultant under this Contract will be the care and skill ordinarily used by members of the Consultant's profession providing similar services for projects of similar size, location, scope, and complexity to this project.

Personnel: All services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, licensed, or permitted under state law to perform such services if state law requires such authorization, license, or permit.

Records Administration: The Consultant shall maintain or supervise the maintenance of all records necessary to properly account for the payments made to the Consultant for costs authorized by this Contract. The Consultant shall be responsible and responsive to the Town in its requests and requirements related to the scope of this Contract. The Consultant shall select and analyze all data in a systematic and meaningful manner to contribute directly in meeting the objectives of the project and shall present this information clearly and concisely in a professional and workmanlike manner.

Subcontracts:

(i) Approval Required for Subcontracts: Any subcontractors required by the Consultant in connection

with the services, work performed or rendered under this Contract will be limited to such individuals or firms as were specifically identified in the proposal and agreed to during negotiations or are specifically authorized by the Town during the performance of this Contract. During the performance of the Contract, substitutions in or additions to such subcontracts will be subject to the prior approval by the Town. The Consultant shall be responsible for the actions of the subcontractors.

(ii) Billing for Subcontracts: Billings for subcontractor services shall include any mark up as set forth in Attachment A. Subcontract costs shall be documented by attaching subcontractor billings to the Consultant's billing submittals.

Responsibilities of the Town:

Data to be Furnished: Information, data, drawings, reports, maps, as are available to the Town and necessary for the carrying out of the scope of services shall be furnished to the Consultant without charge, prior to the Consultant beginning work or on request and the Town shall cooperate with the Consultant in the carrying out of the project.

Report Reviews and Criteria: The Town shall examine all studies, reports, sketches, drawings, opinions of costs, and other documents presented by the Consultant and shall render the Town's decisions pertaining thereto in a timeframe as defined in this Contract or as agreed to by the Parties. The Town shall provide all criteria and full information regarding its requirements for the project.

General Provisions:

Amendments: Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument executed by all parties to this Contract.

Assignment Prohibited and Contract Shall Not Be Used as Collateral: Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Consultant shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

Audit and Access to Records: The Town shall have access to any books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Contract. The Consultant shall, upon receiving reasonable written notice from the Town, make available to the Town and its independent auditor or accountant, all books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Contract.

Authority: Provisions of this Contract are pursuant to the authority set forth in the Town of Wellington Municipal Code and applicable state and federal regulations also apply.

Colorado Governmental Immunity: The Town is entitled assert rights under the Colorado Governmental Immunity Act, C.R.S. Title 24, Article 10 and waives no rights that it may have thereunder.

Compliance with Laws: The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

Confidentiality: Each party shall retain as confidential all information and data furnished to it by the other party which are designated in writing by such other party as confidential at the time of transmission and are obtained or acquired by the receiving party in connection with this Contract, and said parties shall not reveal such information to any third party. However, nothing herein is meant to preclude either disclosing and/or otherwise using confidential information (i) when the confidential information is actually known to the receiving party before being obtained or derived from the transmitting party; or (ii) when confidential information is generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; or (iii) where the confidential information is obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereof; or (iv) is required by law, including the Colorado Open Records Act, or court order to be disclosed.

Conflicts of Interest: The Consultant stipulates that none of its officers or employees are officers or employees of the Town of Wellington unless disclosure has been made in accordance with Town ordinances and policies. Furthermore, the Consultant certifies that it has not offered or given any gift or compensation prohibited by local, state, or federal law, to any officer or employee of the Town of Wellington to secure favorable treatment with respect to being awarded this Contract. The Consultant shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the Town or a disclosure which would adversely affect the interests of the Town. The Consultant shall notify the Town of any potential or actual conflicts of interest arising during this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to the Town or its designee. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists. A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the Town or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition, or quo warranto.

Contract Jurisdiction, Choice of Law, and Venue: The provisions of the Contract shall be governed by the laws of the State of Colorado. The parties will submit to the jurisdiction of the courts of the State of Colorado. Venue shall be Larimer County, Colorado.

Contract Renegotiation, Modifications and Award of Related Contracts: This Contract may be amended, modified, or supplemented only by written amendment to the Contract, executed by the parties hereto, and attached to the original signed copy of the Contract. The Town may undertake or award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Consultant shall cooperate fully with other contractors and the Town in all such cases. The Town, at its sole discretion and through duly authorized contract amendments, may request the Consultant to complete additional phases beyond the scope of services included in this Contract.

Disbarment: The Consultant certifies that neither it nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. If the Consultant cannot certify this statement, a written explanation for review by the Town shall be provided.

Entirety of Contract: This Contract, consisting of eighteen (18) pages, inclusive of Attachment A, represents the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.

Equal Opportunity Clause: The Consultant agrees to abide by the provisions under Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on a basis of race, religion, color, or national origin. This includes abiding to Executive Order 11246 which prohibits discrimination on the basis of sex, and 45 CFR which prohibits discrimination on the basis of age, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of a disability.

Force Majeure: Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays.

Indemnification: The Consultant agrees to indemnify, save harmless, and release the Town of Wellington and all of its officers, agents, volunteers, and employees from and against any and all loss, damage, injury, liability, suits, and proceedings arising out of the performance of this Contract to the extent caused by the negligence or intentional misconduct of the Consultant's officers, agents, volunteers, or employees, but not for claims from the Town's negligence.

Independent Contractor: The Consultant shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Town for any purpose and as such, have no authorization, express or implied to by the Town of Wellington, to any agreements, settlements, liability or understanding whatsoever, and agrees not to

perform any acts as an agent for the Town except as expressly set forth herein. The Consultant shall be responsible for the payment of all income tax and social security amounts due because of payments received from the Town. Persons employed by the Town and acting under the direction of the Town shall not be deemed to be employees or agents of the Consultant. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents or employees to act as an agent or representative or to incur any obligation of any kind for or on behalf of the Town. The Consultant agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to Town employees will inure to the benefit of the Consultant or the Consultant's agents or employees because of this Contract.

Insurance Coverage: The Consultant shall not commence work under this Contract until it has obtained all the insurance required by the Town. The Consultant shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth below and shall provide the Town with proofs of these insurance upon request:

(i) Automobile Liability Insurance: The Consultant shall maintain automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000 each accident combined single limit.

(ii) Commercial, General Liability Insurance: The Consultant shall maintain commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as stated below. The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (a) \$1,000,000 each occurrence;
- (b) \$1,000,000 personal injury and advertising injury;
- (c) \$2,000,000 general aggregate; and
- (d) \$2,000,000 products and completed operations.

(iii) Professional Liability or Errors and Omissions Liability Insurance: The Consultant shall maintain professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Consultant's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as stated below.

- (a) \$1,000,000 each claim; and
- (b) \$2,000,000 general aggregate.

(iv) Unemployment Insurance: The Consultant shall be duly registered with the Colorado Department of Labor and Employment and obtain such unemployment insurance coverage as required.

(v) Workers' Compensation and Employer's Liability Insurance: Employees hired in Colorado to perform work under this Contract shall be covered by workers' compensation coverage per the Colorado Department of Labor and Employment's Workers' Compensation program as statutorily required. Employees brought into Colorado from Consultant's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the same or other state or private workers' compensation insurance approved by the

Colorado Department of Labor and Employment as statutorily required.

Insurance Requirements:

(i) During the term of this Contract, the Consultant shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage above.

(ii) All policies (except for Workers' Compensation and Professional Liability) shall be primary over any insurance or self-insurance program carried by the Consultant or the Town. All policies (except for Professional Liability) shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Consultant or the Town, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

(iii) The Consultant shall provide Certificates of Insurance to the Town, verifying each type of coverage required herein.

(iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Town. A copy of the policy endorsement shall be provided with the Certificate of Insurance.

(v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Town may, at the Town's option, obtain and maintain, at the expense of the Consultant, such insurance in the name of the Consultant, or subcontractor, as the Town may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Consultant under this Contract.

(vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.

(vii) The Town reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

Limitation of Liability: Excluding the Consultant's liability for bodily injury or damage to the property of third parties, the total aggregate liability of the Consultant arising out of the performance or breach of this Contract shall not exceed the compensation paid to the Consultant under this Contract. Notwithstanding any other provision of this Contract, the Consultant shall have no liability to the Town for contingent, consequential, or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility downtime, however the same may be caused. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of the Consultant, its employees, or subconsultants.

Notice of Sale or Transfer: The Consultant shall provide the Town with notice of any sale, transfer, merger, or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Town determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Consultant's obligations under this Contract, then the Town may, at its discretion, terminate or renegotiate the Contract.

Ownership of Documents and Information: The Town owns all documents, data compilations, reports, computer programs, photographs, drawings, data, and other work provided to or produced by the Consultant in the performance of this Contract. Upon termination of services for any reason and payment to Consultant, the Consultant agrees to return all such original and derivative information and documents to the Town in a useable format. Any use or reuse other than for the purposes set forth herein shall be at the Town's sole risk and liability.

Patent or Copyright Protection: The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Consultant or its subcontractors will violate any such restriction. The Consultant shall defend and indemnify the Town for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Severability: A declaration by any court or any other binding legal source that any provision of this contract is illegal and void shall not affect the legality and enforceability of any provision of this Contract unless the provisions are mutually dependent.

Taxes: The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

Termination of Contract: This Contract may be terminated with cause by either party in advance of the specified termination date upon written notice being provided by the other party. Unless the Town determines a default is not remediable, there have been prior violations with notice, or a default is determined to be detrimental to public safety, the party in violation will be given thirty (30) working days after notification to correct and cease the violations after which the Contract may be terminated for cause. This Contract may be terminated without cause in advance of a specified expiration date by either party upon thirty (30) days prior written notice being given by the other party.

Prohibition Against Employing Illegal Aliens: This paragraph shall apply to all Consultants whose performance of work under this Contract does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Consultant represents and agrees that:

- (i) As of the date of this Contract:
 - (a) Consultant does not knowingly employ or contract with an illegal alien; and
 - (b) Consultant has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to confirm the employment eligibility of all newly hired employees.
- (ii) Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Contract.
- (iii) Consultant shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every

three (3) calendar months thereafter, until Consultant is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

(iv) Consultant is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(v) If Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Consultant shall:

(a) Notify such subcontractor and the Town within three days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Consultant violates a provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Consultant shall be liable for actual and consequential damages to the Town arising out of Consultant's violation of Subsection 8-17.5-102, C.R.S.

(viii) The Town will notify the Office of the Secretary of State if Consultant violates this provision of this Contract and the Town terminates the Contract for such breach.

Project Requirements:

Final Deliverables and Stamping: The Consultant shall use the Contract Scope of Services as the outline for draft and final reports or technical memoranda so that Consultant compliance with Contract provisions can be verified. If the final report or technical memoranda contain information of an engineering nature, the cover of the final report, memoranda, all plates, and any executive summary must be stamped and signed by a Professional Engineer licensed in the State of Colorado.

In addition to the paper submittal, the Consultant shall provide the final documents and related materials in a digital format. This digital report shall be contained on CD(s), USB drive(s), or other media as approved by the Town and shall be in Adobe Acrobat (PDF) format.

Project Access: The Consultant shall be responsible for obtaining access as required for project tasks.

Stand-By Time: The Town will not reimburse the Consultant for stand-by time charges for the Consultant's supervisory personnel.

Payment and Billing:

Reimbursement of Expenses: Subject to annual appropriation by the Town Board, The Town agrees to pay the Consultant an amount based on the approved hourly rates and reimbursable expenses for the duration of this Contract for the services described in Attachment A. Payment shall be made directly to the Consultant. The Consultant shall maintain hourly records of time worked by its personnel. Total payment under this Contract shall not exceed one hundred fifteen thousand eight hundred fifteen dollars and no cents (\$115,815.00).

Project Budget: The anticipated project budget for the task(s) included in Attachment A is as stated below. The amounts shown for each task are not to be exceeded unless authorized by the Town. The Contract total amount is controlling.

<u>Task</u>	<u>Estimated Cost</u>
Task 1 Executive Summary	\$ 4,900.00
Task 2 Introduction.....	\$ 1,000.00
Task 3 Existing Conditions	\$ 24,320.00
Task 4 Future Conditions	\$ 9,570.00
Task 5 Receiving Stream Water Quality	\$ 7,550.00
Task 6 Wastewater Treatment/Collection System Improvements	\$ 8,790.00
Task 7 Service Area Improvements.....	\$ 9,730.00
Task 8 System Management and Financial Plan	\$ 4,550.00
Task 9 NFRWQPA 208 Regional Data Summary	\$ 4,610.00
Task 10 Appendices and Final Report Production	\$ 18,430.00
Task 11 Meetings.....	\$ 9,460
Task 12 Preliminary Effluent Limit (PEL) Application	\$ 2,100.00
Task 13 State Revolving Fund Loan Preapplication Meeting.....	\$ 4,355.00
Task 14 Project Management.....	\$ 6,450.00
Total Project Cost	\$ 115,815.00

Billing Statements: Billing statements shall be submitted no more often than monthly, on or before the 10th calendar day of each billing month, for activities and costs accrued since the last billing report and shall be made on forms approved by the Town. Each billing statement must include written justification of the cost items contained in the billing statement by task, including names, hours, etc. as requested by the Town. Billing statements shall be transmitted electronically to the Town's project manager: Dave Myer, myerdk@wellingtoncolorado.gov.

Monthly Progress Reports: The Consultant shall submit a brief monthly progress report outlining the project status, progress, and activities within the billing period, regardless of whether a billing statement is submitted, on or before the 10th calendar day of each month. The monthly progress report may be used as the justification for the billing statement if all cost items covered in the billing statement are addressed in the progress report. Monthly progress reports shall be transmitted electronically to the Town's project manager: Dave Myer, myerdk@wellingtoncolorado.gov.

Payment Procedures: Subject to appropriation, the Town shall pay the Consultant upon receipt of billing reports as the services are performed for the task(s) outlined in Attachment A. The Town will initiate the payment process upon the receipt of a verified statement of services, and payment shall be made within thirty (30) days following receipt of billing.

Money Withheld: If the Town has reasonable grounds to believe that the Consultant will be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the Town may withhold payment of such portion of any amount otherwise due and payable to the Consultant reasonably deemed appropriate. These amounts may be withheld until the cause for the withholding is cured to the Town's satisfaction or this Contract is terminated per the General Provisions above. No interest shall be payable by the Town on any amounts withheld under this provision.

Withholding of Payment: If a work element has not been received by the Town by the dates established in Attachment A, the Town may withhold all payments beginning with the month following that date until such deficiency has been corrected.

Final Payment: The final payment shall be made upon acceptance of the final work product and receipt of the final billing.

Draft
Not for signing

Signatures:

The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this Contract. The Effective Date of this Contract is the date of the signature last affixed to this page.

TOWN OF WELLINGTON

Signature

Date

Printed Name

Title

Primary Contact Printed Name

Contact Info. (email, phone, etc.)

Witness Signature (if required)

Date

Printed Name

Title**JACOBS ENGINEERING GROUP INC.**

Signature

Date

Printed Name

Title

Primary Contact Printed Name

Contact Info. (email, phone, etc.)

Witness Signature (if required)

Date

Printed Name

Title

Scope of Services:

The Town accepts the scope of services and fees as defined within the Consultant's proposal attached to this Contract with the exception and further stipulation of the following terms:

1. None.

Draft
Not for signing



Town of Wellington Wastewater Utility Plan Update Scope of Services

Jacobs Engineering Group Inc. (the Consultant) agrees to furnish the Town of Wellington (the Town) engineering services based on the following task descriptions. The Consultant's basis for estimating engineering costs for the project is based on the elements included in task descriptions and the level of effort as defined by the labor hours in the project budget discussed below.

It is understood that the Town will designate Dave Myer, Town Engineer, as the primary point of contact with respect to the work performed under this Agreement, with authority to transmit instructions, receive information, interpret and define Town policies and decisions relative to elements pertinent to the work covered by this Agreement.

The Consultant proposes to perform the Services under the prevailing and negotiated professional service agreement terms and conditions that the Town and Consultant have used on prior contracts.

Wastewater Utility Plan

The purpose of this project is to prepare a Wastewater Utility Plan (Utility Plan) in accordance with the North Front Range Water Quality Planning Association's (NFRWQPA's) Wastewater Utility Plan Guidance Manual (Guidance Manual), current version as of January 2020. The tasks described below follow the outline of and are based upon the Guidance Manual's format checklist for ease of review by NFRWQPA reviewers. The Utility Plan will be developed from prior work performed by Consultant on the Wastewater Master Plan (currently being developed by Jacobs) and the Town's Comprehensive Plan be written currently by Logan Simpson. The tasks below identify the section numbering that will be used in the Utility Plan.

Task 1 – Executive Summary

An executive summary will be written for the Utility Plan to summarize the main focus areas of the report and near-term capital improvement projects that are recommended.

Task 2 – Introduction

An Introduction for the Utility Plan will be written as described below:

- 201 Background – The Consultant will develop this section that will include a general discussion about the history and location of the Town and Utility Plan's purpose.

- 202 Facilities Plan Summary – The Consultant will develop this section that will include a general discussion about the Town’s current wastewater planning considerations. The City’s past planning efforts will also be discussed.
- 203 Summary of Utility Plan Structure – The Consultant will develop this section that will include a list of the Utility Plan’s contents.

Task 3 – Existing Conditions

The Existing Conditions section of the Utility Plan will be written as described below:

- 301 Current Planning Service Area – The Consultant will develop this section that will describe the Town’s wastewater utility service area (WUSA), growth management area (GMA), and current 208 service area boundary. This section will be based upon the Town’s Comprehensive Plan currently being developed as well as the NFRWQPA 208 Area Water Quality Management Plan (AWQMP). Town staff will provide service area boundaries for the 20-year planning period. A single geographic information system (GIS) map will be developed by the Consultant showing the WUSA, GMA, and 208 service area boundaries along with the edges of any surrounding 208 service areas. The Consultant will present the Town’s population forecasts in this section.
- 302 Current Wastewater Flows and Loads – The Consultant will develop this section to describe current wastewater flows and loads to the Town’s wastewater treatment plant (WWTP) based on data from the past three years. The following will be included:
 - Flow and load peaking factors.
 - An assessment of Infiltration and inflow (I/I) and per capita wastewater flows.
 - Nitrogen and phosphorus loading on the WWTP.
 - Current effluent limitations.
 - Preliminary Effluent Limits (PELs) obtained from the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment (CDPHE).
- 303 Current Wastewater Treatment System - The Consultant will develop this section that will describe the Town’s treatment facilities. The following subsections shall be developed:
 - Description of Existing System.
 - Current Process Flow Schematic.
 - Current Site Plan.
 - Performance of Existing System.
 - Existing Air Quality Permit. The Consultant will review CDPHE requirements for air quality permits for the WWTP. The Town will provide a copy of applicable existing permits.

- Existing Site Stormwater Management Plan. The Consultant will review CDPHE requirements for a stormwater permit for the WWTP site. The Town does not currently have a stormwater management plan for the WWTP site.
 - Existing Site Characterization. The Consultant will develop this section that will include a brief discussion about floodplains in the vicinity of the existing WWTP site. The Consultant will use FEMA floodplain maps to illustrate the floodplain and its proximity to the WWTP.
 - Existing Facility Emergency Response Protocols.
 - Existing Biosolids Management Program.
 - Condition Assessment of Existing Treatment System and Needs Recommendations. Consultant will use information gathered from prior site visits to the WWTP and conversations with Town staff as summarized in the Wastewater Master Plan.
- 304 Existing Wastewater Collection System - The Consultant will develop this section that will describe the Town's wastewater collection system. The following subsections shall be developed:
 - Description of existing system including layout and inventory of pipe sizes and materials.
 - Description of existing lift stations including capacity and features.
 - Condition Assessment of Collection System. The Town's most recent condition assessment report and plan of operation will be included as an appendix. I/I information on the existing system will be presented from the Town's Wastewater Master Plan.
 - Pretreatment Program – The Consultant will develop this section that will describe the Town's existing Pretreatment Program. This section will be based upon program information provided by the Town. It is assumed that an analysis of the program or a pretreatment investigation will not be required. Consultant will prepare a brief discussion on future pretreatment-related needs due to growth.
 - Recommendations for Collection System Improvements for existing facilities. Consultant will develop this section based on recommendations in the Wastewater Master Plan.
 - 305 Existing Service Area Nonpoint Source Contributions - The Consultant will develop this section that will describe the Town's nonpoint source contributions to Boxelder Creek. The following subsections shall be developed:
 - Description of existing nonpoint sources and stormwater collection system. Consultant will identify, locate on a map from the Town's GIS system, and characterize (to the extent data are readily available) or estimate nonpoint sources of pollution which may include agriculture, livestock operations, urban stormwater outside of a Municipal Separate Storm Sewer System (MS4), mining

related activity, and/or other effects. The Town will provide information on their stormwater system from the Town's GIS. Consultant will review Colorado State University's eRAMS database (<https://erams.com/>) for information on nonpoint sources within the Town's service area.

- Consultant will identify recommended best management practices (BMPs) to control nonpoint source pollution. Estimate load reductions which may reasonably be achieved through BMP implementation over the 20-year planning period.

Task 4 – Future Conditions

The Future Conditions section of the Utility Plan will be written as described below:

- 401 Population and Land Use Projections – The Consultant will develop this section based on information from the Town's Comprehensive Plan and the AWQMP. The Town's projected population growth along with growth in its GMA and WUSA will be presented.
- 402 Wastewater Flow and Load Projections – The Consultant will develop this section that will describe the Town's wastewater flow and load projections for a 20-year period. This section will be based upon the population projections from the task above and as documented in the Town's Wastewater Master Plan.
- 403 Projected Wastewater Flow Characterization – The Consultant will develop this section to discuss projected I/I and per capita loadings from residential, commercial, and industrial sources for future planning.
- 404 Future Interceptor and Lift Station Collection System Alignments – The Consultant will develop this section that will address future capacities of the Wastewater Collection Interceptors and Lift Stations for a 20-year planning period.
- 405 Future Service Area Nonpoint Source Contributions – The Consultant will develop this section that will briefly discuss future stormwater infrastructure needs to address nonpoint sources for a 20-year planning period. The Town does not have a Town-wide stormwater management plan. The Consultant will not be producing a Town-wide stormwater management plan as part of the Utility Plan.

Task 5 — Receiving Water Quality

The Water Quality Characterization section of the Utility Plan will be written as described below:

- 501 Watershed Identification – The Consultant will develop this section that will include a discussion about Boxelder Creek water quality. The constituents of concern and the source of water-quality-limited designations (e.g., CDPHE 303(d) list, CDPHE 305(b) report) will be identified. Segments of Boxelder Creek with WWTP and stormwater outfalls will be identified.
- 502 Total Maximum Daily Loads (TMDLs) and/or Wasteload Allocations – The Consultant will develop this section that will include identification of existing TMDLs or wasteload allocations for the Boxelder Creek segments with Town-owned outfalls if any.

- 503 Level of Treatment Required (Existing Permit Limits or Projected Permit Limits) – The Consultant will develop this section that will address effluent discharge quality. The discussion will identify projected effluent limitations based on: 1) Colorado state standards, receiving water classifications, and established water quality standards and 2) discharge requirements necessary to meet TMDLs or wasteload allocations. Preliminary Effluent Limits (PELs) developed by CDPHE will be referenced in this section.
- 504 Point and Nonpoint Contributions on the Basin – This section will contain discussion regarding point source versus nonpoint source loadings on Boxelder Creek.
- 505 Consideration for Modification of Standards – This section will contain discussion regarding consideration for modification of CDPHE water quality standards for Boxelder Creek as they pertain to WWTP discharge limits. It is assumed that no modifications to standards will be required and no documentation or meetings will be required by Consultant to propose changes to CDPHE.

Task 6 — Wastewater Treatment and Collection System Improvements

The Wastewater Treatment and Collection System Improvements section of the Utility Plan will be written as described below:

- 601 Development and Screening of Treatment and Collection System Improvement Alternatives – This section will include discussion of alternatives for improvements to the wastewater treatment and collection system and will include the following:
 - Discussion of feasibility of optimizing the performance of the existing facility to meet future requirements.
 - Discussion of consolidating wastewater treatment with another nearby utility (City of Fort Collins or Colorado State University).
 - Discussion of wastewater reuse as an alternative for meeting future water quality standards.
- 602 Treatment and Collection System Evaluation Matrix – This section will include discussion of screened alternatives for improvements to the wastewater treatment and collection system (up to two each) and will include the following:
 - Description of alternatives.
 - Monetary Costs [capital and annual operation & maintenance(O&M)].
 - Energy Costs.
 - Performance with respect to PELs.
 - Ease of implementation.
 - Environmental issues.
- 603 Treatment and Collection System Alternative Selection – This section will include recommendation of selected alternatives for improvements to the wastewater treatment and collection system and will include the following:

- Discussion of selected alternatives and any green elements to be incorporated into the projects. The term “green” refers to alternative technologies which result in water or energy efficiencies for the treatment facilities.
- Discussion of emergency standby power needs.
- Odor control considerations.
- Future air quality requirements.
- Site stormwater management plan requirements.
- Floodplain and geotechnical site characteristics. A prior geotechnical report from the WWTP site will be utilized.
- Listing of National Environmental Protection Act (NEPA) Components for State Revolving Fund (SRF) loan program which will be required.
- Record of public participation for SRF program.

Task 7 — Service Area Nonpoint Source Improvements

The Service Area Nonpoint Source Improvements section of the Utility Plan will be written as described below.

- 701 Nonpoint Source Service Area Improvements — This section will include a description of alternatives for improvements to the Town’s stormwater system for controlling nonpoint sources of pollutants.
- 702 Service Area Nonpoint Source Alternatives Evaluation of Best Management Practices (BMPs) — This section will include discussion of alternatives for stormwater BMPs. Consultant will evaluate alternative BMPs to control nonpoint source pollution, based on publicly available information and tools, and factors which may include considerations of cost (capital, O&M, 20-year net present value cost), energy cost, performance relative to water quality standards and protective uses, constructability, and environmental issues. Consultant will estimate costs, water quality performance, environmental consideration, and constructability (access, right of way, materials, feasibility of construction) of alternative BMPs (up to three will be evaluated). Consultant will provide support for opportunities for public review and comment in the process of selection of the preferred BMP and plan. It is assumed that Town staff will lead public processes and that for efficiency and expediency, the Town’s public processes may address other requirements in parallel with the Utility Plan. This task will provide support for up to two (2) brief virtual public meetings, including preparation of up to 5-10 PowerPoint slides, and taking notes of public comments and discussions.
- 703 Service Area Nonpoint Source Alternatives Plan Selection — This section will include discussion of alternatives for improvements to the wastewater treatment and collection system and will include the following: Document the alternatives analysis in a matrix/table. Prepare a description of the selected plan including treatment capabilities, anticipated load reductions or increases, green infrastructure elements, and the public participation in the process of selecting the preferred plan.

Task 8 — System Management and Financial Plan

The Management and Financial Plans section of the Utility Plan will be written as described below.

- 801 Wastewater Management Plan— Consultant will develop this section that will include a general discussion about the Town’s wastewater management plan with information provided by the Town. Operations requirements per CDPHE will be discussed. An implementation schedule for upcoming capital projects identified in the Utility Plan will be presented.
- 802 Arrangements for Implementation— Evidence of site ownership for the WWTP site will be presented along with applicable active intergovernmental agreements needed for the upcoming projects.
- 803 Financial Management Plan— The Town will develop this section which will address the following:
 - Rate and charge structures.
 - Financial solvency should growth not occur.
 - Institutional arrangements to guarantee payment of charges from large connectors and from other governmental connectors.
 - Interest in applying for an SRF loan to finance infrastructure or improvements.
 - Significant industrial users under pretreatment regulations.
 - Proposed method of financing recommended projects.
 - Impact of recommended projects on current typical residential monthly rates and plant investment fees.

Task 9 — NFRWQPA 208 AWQMP Data Summary

The Consultant will provide discussion of the following items to support the 208 AWQMP:

- 901 Agency Summary Data Table 4 and 5 per the NFRWQPA Utility Plan Guidance Document.
- 902 eRAMS Center for Comprehensive, Optimal and Effective Abatement of Nutrients (CLEAN) Dashboard Report.
- 903 eRAMS Watershed Assessment.

Task 10 — Appendices and Final Utility Plan Report Production

The Consultant will prepare draft and final Utility Plan reports for the Town’s review. The report will include all sections as described in Tasks 1 through 9 above plus necessary appendices to support the above sections.

The Town will provide consolidated written comments on the draft and final Utility Plan report within two weeks of receipt. The Consultant will appropriately address comments on

the sections prepared by the Consultant and the Town will appropriately address comments on the sections prepared by the Town.

Consultant will appropriately address comments from NFRWQPA on the draft Utility Plan. Draft and final documents will be provided in PDF format.

Task 11 — Meetings Regarding Draft Utility Plan

The Consultant will attend the following meetings with Town staff and the NFRWQPA representatives as noted below and in the attached fee estimate:

1. One project initiation meeting with Town.
2. Up to six progress meetings with Town via phone.
3. One meeting to discuss Utility Plan review with NFRWQPA Utility Planning Committee.
4. One meeting to discuss Utility Plan revisions following review with NFRWQPA Utility Planning Committee.

Task 12 – Preliminary Effluent Limit (PEL) Application

The Consultant will work with the Town staff to fill out the PEL application form for CDPHE to initiate the PEL process.

Task 13 – SRF Loan Preapplication Meeting

The Consultant will attend one loan preapplication meeting with Town staff and the representatives from the State of Colorado SRF Program (CDPHE and other entities) in Denver. Consultant will assist the Town in submitting the preapplication form for starting the loan process.

Task 14 — Project Management

The Consultant's project manager will prepare, implement, monitor, and update the project work plan as required throughout the project. Consultant's project manager will manage, administer, coordinate, and integrate the work of the Consultant's team as required to deliver the project within budget and on schedule. Deliverables for this task will be monthly invoices and project status reports.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that the City's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates.

It is assumed that data provided by others is accurate, complete, and will be provided in a timely fashion. Correction of data provided by others is not included herein.

Schedule and Deliverables

The project schedule is presented below. The development of PELs by CDPHE has taken 6 months in recent years. The schedule for submission of the draft Utility Plan to NFRWQPA is dependent on the assumption that the application for PELs will be submitted by November 28, 2020 to CDPHE and receipt of PELs from CDPHE will occur by May 28, 2021. The schedule will need to be adjusted accordingly based on the CDPHE PEL review process.

October 28, 2020 – Notice to Proceed

February 28, 2021 – Submit Draft Utility Plan to Town for Review

June 1, 2021 – Submit Draft Utility Plan to NFRWQPA for Review

June 24, 2021 – NFRWQPA Meeting

July 20, 2021 – Submit Final Utility Plan to NFRWQPA

August 1, 2021 – Approval of Utility Plan by NFRWQPA

Compensation

Compensation will be on a time and expense basis with labor rates as presented below. The hourly billing rates will include allowances for salary, benefits, overhead, and profit. Other expenses will include travel, printing, mailing, copying, supplies, and other similar costs incurred in performance of the work. The Consultant will make reasonable efforts to complete the work within this budget and will keep the Town informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. The project will be managed to the total budgetary amount, and underruns and overruns at the subtask level are acceptable. The Consultant will not exceed the total budgetary amount without prior written approval from the Town.

Town of Wellington Wastewater Utility Plan Update

Task Description	Kile Snider, Project Manager	Pat Nelson, Regulatory Specialist	Heather Stewart, Project Engineer	Tiffany McEachen, Sr Water Resources Engineer	Madalyn Murphy, Project Engineer	Richard Saxton, QA/QC	Jim Walker, Graphics	Office/Administration	Labor Hours	Jacobs Labor	Jacobs Expenses	Total
2020 Rate ¹	\$215.00	\$215.00	\$135.00	\$200.00	\$135.00	\$200.00	\$135.00	\$95.00				
Task 1 - Executive Summary	4	0	16	0	4	4	4	0	32	\$4,900	\$0	\$4,900
Task 2 - Introduction	0	0	6	0	0		0	2	8	\$1,000	\$0	\$1,000
Task 3 - Existing Conditions	14	2	110	2	8	6	22	4	168	\$24,320	\$0	\$24,320
Task 4 - Future Conditions	8	4	22	2	8	10	4	0	58	\$9,570	\$0	\$9,570
Task 5 - Receiving Stream Water Quality	4	8	18	0	8	0	8	4	50	\$7,550	\$0	\$7,550
Task 6 - Wastewater Treatment/Collection System Improvements	10	4	36	0	0	0	4	4	58	\$8,790	\$0	\$8,790
Task 7 - Service Area Improvements	2	0	0	18	28	0	12	0	60	\$9,430	\$300	\$9,730
Task 8 - System Management and Financial Plan	8	0	16	0	0	2	2	0	28	\$4,550	\$0	\$4,550
Task 9 - NFRWQPA 208 Regional Data Summary	2	0	28	0	0	2	0	0	32	\$4,610	\$0	\$4,610
Task 10 - Appendices and Final Report Production	16	6	60	4	12	8	0	14	120	\$18,180	\$250	\$18,430
Task 11 - Meetings	15	2	16	9	7	4	0	0	53	\$9,360	\$100	\$9,460
Task 12 - Preliminary Effluent Limit (PEL) Application	6	0	6			0	0	0	12	\$2,100	\$0	\$2,100
Task 13 - State Revolving Fund Loan Preapplication Meeting	11	0	14	0	0	0	0	0	25	\$4,255	\$100	\$4,355
Task 14 - Project Management	24	0	0	0	0	4	0	2	30	\$6,150	\$300	\$6,450
Project Total	124	26	348	35	75	40	56	30	734	\$ 114,765	\$ 1,050	\$ 115,815

¹ Hourly rates will be held constant through the completion of the project assuming completion by August 1, 2021.



Board of Trustees Meeting

Date: November 10, 2020
Submitted By: Brad March, Town Attorney
Town Administrator Employment Agreement
Subject: • **Staff Presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

The Board of Trustees hired Peckham & McKenney Inc., Executive Search Firm, to facilitate the Town Administrator recruitment. This recruitment resulted in a very competitive pool of national applicants. After the initial rounds of interviews, the Board of Trustees invited four finalists to interview on October 30. The Board of Trustees selected Patti Garcia to serve as Town Administrator and attached is the Employment Agreement.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. EMPLOYMENT AGREEMENT

TOWN ADMINISTRATOR EMPLOYMENT AGREEMENT

THIS TOWN ADMINISTRATOR EMPLOYMENT AGREEMENT (“Agreement”) is made this ____ day of November, 2020, between the TOWN OF WELLINGTON, COLORADO, a Colorado statutory municipality (the "Town"), and PATTI GARCIA ("Garcia").

A. RECITALS.

1. The Town requires the services of a professional administrator to perform the duties of Town Administrator as provided by the C.R.S. §31-4-304 and the Wellington Municipal Code (the “Town Code”), including at Section 2-3-20.
2. Garcia has represented that she has the requisite skill, knowledge, education, experience and interest in performing the services required by the Town.
3. Garcia desires to accept the appointment as Town Administrator of the Town in accordance with the terms of this Agreement and the Town Code. The Personnel Policy Manual of the Town (the “Personnel Manual”) is applicable to Garcia’s employment only to the extent the Personnel Manual applies to Garcia by its terms or is made applicable to Garcia’s employment by this Agreement.
4. The parties wish to memorialize their understandings with respect to the appointment of Garcia to serve as the Wellington Town Administrator and performance of their respective duties in association therewith.

B. AGREED TERMS.

NOW, THEREFORE, the parties agree as follows:

1. **POSITION.** So long as the Wellington Town Board of Trustees (the “Town Board”) takes official action to appoint Garcia as Town Administrator, the Town retains Garcia as its Town Administrator and Garcia agrees to serve as Town Administrator in accordance with the duties described in the Town Code, including as set forth at Section 2-3-20. Garcia also shall perform duties as otherwise delegated to her from time to time by the Town Board. The position of Town Administrator shall be a full-time position, requiring Garcia to devote her attention exclusively to her duties as Town Administrator. The parties recognize that Garcia must devote a great deal of time outside normal office hours to the business of the Town and will necessarily be engaged in work during evening and weekend hours, which may include participation in professional organizations and volunteer programs consistent with the responsibilities of a professional public administrator. It is understood by Garcia that additional compensation and compensatory time shall not be required for such additional expenditures of time. Garcia's service as Town Administrator will be deemed an exempt position under the Fair Labor Standards Act (FLSA).

2. **TERM.** Garcia shall serve at the pleasure of the Town Board. Subject to approval by the Town Board, this Agreement shall commence on December 1, 2020 (the “Hire Date”). This Agreement shall terminate on December 31, 2021, but unless otherwise terminated renew annually on December 31st of each year for an additional one-year term. At any time prior to November 15th of any renewal year, beginning in 2021, the Town Board may elect not to renew this Agreement and if the Town Board votes not to renew, this Agreement shall terminate on December 31st of the year in which the non-renewal occurs, subject to this Sections 8 and 9

of this Agreement.

It is understood that the Town Administrator's position by statute and by the Town Code is an appointed position that requires reappointment every two years. This agreement is subject to required reappointment. The failure of the Town Board to reappoint the Town Administrator after any Town election shall not constitute termination for cause nor shall the failure to reappoint the Town Administrator preclude the Town Administrator from receipt of severance pay if otherwise payable by Section 8 of this Agreement.

Garcia agrees to remain in the exclusive employment of the Town and to neither accept nor become employed by any other employer until termination of this Employment Agreement, as hereinafter provided.

Death of Garcia shall terminate this agreement in the same manner as a termination with cause, permanent disability of Garcia that prevents Garcia from carrying out the essential job functions of the position of Town Administrator resulting in termination shall be treated in the same manner as a termination without cause.

3. COMPENSATION. The Town shall pay Garcia a base annual salary of One-Hundred-Forty-Five Thousand Dollars (\$145,000.00), which salary shall commence as of the Hire Date. The salary shall be payable in accordance with pay periods established by the Town and as customary for all other Town employees. The description of an annual salary under this Section shall not create any contractual rights to continued employment inconsistent with the Town Board's authority.

4. BENEFITS. In addition to the foregoing base salary, the Town shall provide Garcia the same holidays, medical, dental, life insurance, and disability insurance as is available to all other Town regular full-time employees. Eligibility to participate in such benefits shall be determined as of the Garcia's Hire Date.

The Town agrees that it will annually contribute an amount equal to six percent (6%) of Garcia's base salary for deposit into a retirement account for the benefit of Garcia. In addition Garcia shall be eligible to participate in the Town's standard 401A Money Purchase Plan and Section 457 Deferred Compensation Plan so long as allowed by the plan, including by making salary reduction contributions upon the same terms as other regular full-time Town employees. The Town if directed by Garcia will deposit the Town's (6%) contribution of Garcia's base salary into an account of Garcia's choice, including an ICMA-RC, 401(a)/457(b) account if such an account is properly maintained by Garcia and Garcia properly directs deposit to such account.

5. VACATION AND SICK LEAVE. Garcia shall be credited on beginning her employment with eighty (80) hours of vacation leave and shall accrue vacation leave at the rate of fourteen (14) hours per month. Garcia shall further be credited on beginning her employment with two days sick leave and shall otherwise accrue sick leave as currently provided for by Section 5.3 of the Personnel Manual and as the Personnel Manual may be amended in the future.

Garcia may be entitled to a cash payment for accrued vacation hours up to the maximum carry-over allowed, if applicable, at the conclusion of her employment. Garcia shall not be entitled to any cash payment for unused sick leave at the conclusion of her employment.

Garcia shall receive all holiday vacation days afforded by the section 4.78 of the Town's Personnel Manual.

6. AUTOMOBILE MILEAGE REIMBURSEMENT. In addition to base salary, Garcia shall be eligible to receive reimbursement at the then-applicable IRS rate for use of her personal automobile for Town business. Garcia shall provide appropriate mileage and other records to the Finance Director/Town Treasurer. Garcia shall be responsible for obtaining and maintaining liability, property damage, and comprehensive insurance for her vehicle and for the purchase, operation, maintenance, repair, and replacement of her automobile. Garcia shall have access to the Town motor pool to the extent a Town vehicle is available and if a vehicle is provided by the Town mileage reimbursement shall not be due, however fuel, maintenance and insurance for the vehicle shall be paid for by the Town.

8. BUSINESS EXPENSES/PROFESSIONAL DUES AND TUITION. Garcia shall be reimbursed for normal business expenses and professional dues related to Garcia's reasonable travel and subsistence expenses, registration fees for professional and official travel, meetings and occasions adequate to continue the professional development of Garcia and to adequately pursue necessary official and other functions for the Town. Such reimbursement shall include, but not be limited to, the Annual Conference of the International City Management Association ("ICMA"), the ICMA Mountain Plains/West Coast Regional Summit, the Annual Conference of the Colorado Municipal League, the Winter Conference of the Colorado City/County Management Association, and such other national, regional, state and local government groups and committees thereof on which Garcia serves as a member and are related to her employment position as approved by the Town from time to time.

9. ANNUAL PERFORMANCE AND COMPENSATION EVALUATION. In accordance with Section 2-3-20(f)(1) of the Town Code, Garcia shall be given an annual performance evaluation. Nothing herein shall be construed to alter the authority of the Town Board to remove Garcia including as provided by state statute and the Town Code. This Agreement may be renewed, modified and extended upon such terms as may be later agreed and as shall be expressly approved by resolution adopted by the Town Board.

10. TERMINATION WITHOUT CAUSE, RESIGNATION, SEVERANCE COMPENSATION. Garcia may be terminated at any time with or without cause, termination without cause includes if Garcia becomes incapable of performing essential job functions due to disability or illness. If Garcia resigns at the request of the Town or is terminated other than for cause by the Town and if at such time Garcia is willing and able to perform the duties of Town Administrator, the Town agrees to pay Garcia a continuation of her then-approved base salary for a period of six (6) months, to be paid out in installments with deductions only for legally-required tax withholding during the Town's customary pay periods (not as a lump sum), from the date of termination. In the event of voluntary resignation by Garcia, Garcia shall not be entitled to severance compensation, unless specifically agreed to in writing at the time of Garcia's resignation. If Garcia voluntarily resigns her position at any time during the term of this Agreement, Garcia shall give the Town no less than sixty (60) calendar days' written notice in advance. The parties further agree and acknowledge that the Town has established and shall maintain an adequate present cash reserve held for future payments if required in an amount sufficient to pay any severance compensation required by this Agreement. For the purpose of the notification requirements of COBRA, Garcia's last day of employment shall be an effective date fixed by the parties at the time of termination and shall not include the extended period of any severance compensation.

11. TERMINATION FOR CAUSE. If Garcia is terminated for cause, the Town shall have no obligation for the payment of severance compensation as provided in Section 9 above. As used herein, "cause" shall mean:

- (a) Garcia commits an act of gross negligence or malfeasance in office as reasonably determined by the Town Board.
- (b) Garcia is convicted of or tenders a plea of guilty or no-contest to any offense classified as a felony or an offense involving fraud, deceit or dishonesty, or any offense related to governmental operations under Article 6 of Title 18 of the Colorado Revised Statutes, as amended;
- (c) Garcia commits an act of moral turpitude or personal gain to herself at the expense of Town, or willfully neglects her duties, or refuses to perform duties as he is required by law to perform, or commits fraud or makes a material misrepresentation with respect to her duties as Town Administrator, all as reasonably determined by the Wellington Town Board in its sole discretion;
- (d) Garcia makes a material misrepresentation or omits a material fact in connection with information provided by Garcia to the Town or the Town's agents in conjunction with the Town Administrator hiring process. All such information, whether provided in writing, verbally or otherwise, is hereby acknowledged by Garcia to be an intentional inducement to the Town's decision to employ Garcia as Town Administrator.

C. MISCELLANEOUS.

1. CHOICE OF LAW, VENUE. This Agreement shall be construed and interpreted according to the laws of the State of Colorado and any action enforce or interpret this Agreement shall be maintained in the state courts of Colorado sitting in the County of Larimer.
2. INDEMNIFICATION. In the event that the Town's insurance policies in effect at any given time do not provide full liability coverage for Garcia in regard to any claim or action brought against her arising from or in connection with her conduct as Town Administrator, the Town agrees to defend and hold harmless Garcia against any and all liability, costs, attorney's fees and/or damages as may be incurred or assessed as a result of such claim or actions; provided, however, that the conduct giving rise to any claim or action was not the result of willful or wanton acts or omissions on the part of Garcia or undertaken outside the scope of her official employment duties.
3. ASSIGNMENT. This Agreement is for personal services predicated upon Garcia's special abilities or knowledge. Garcia shall not assign this Agreement in whole or in part.
4. ANNUAL APPROPRIATION. Notwithstanding anything herein contained to the contrary, the Town's obligations under this Agreement are expressly subject to annual appropriation and legal availability of funds. In the event sufficient funds shall not be appropriated for the payment of sums due to or to become due to Garcia hereunder, and Garcia's services are not terminated by official action of the Town Board, this Agreement may be terminated by either party without penalty or further liability. The Town's obligations under this Agreement shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other fiscal obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado or the Town Code.
5. WAIVER. The failure of either party to exercise any of their rights under this

Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving such rights.

5. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior representations or understandings relating to its subject matter.

6. SEVERABILITY. In case one or more of the provisions contained in this Agreement, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement and the application hereof shall not in any way be affected or impaired thereby.

7. NO ADVERSE INFERENCE. This Agreement shall not be interpreted or construed against either party on the basis that such party drafted this Agreement. Both parties stipulate and agree that they had the opportunity to participate fully in the drafting of this Agreement.

8. BINDING EFFECT. The provisions of this Agreement with regard to compensation shall be binding upon and shall inure to the benefit of Garcia's heirs at law and personal representatives.

9. ATTORNEY FEES. In the event either party brings suit to enforce or interpret this Agreement, each party shall bear her or its own attorney fees, regardless of "prevailing party" status.

10. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date first appearing above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed on the day of and year first written above.

TOWN OF WELLINGTON, COLORADO:

ATTEST:

Troy Hamman, Mayor

Krystal Eucker, Wellington Town Clerk

GARCIA

Patti Garcia

**ATTACHMENT 1 TO EMPLOYMENT AGREEMENT
PATTI GARCIA/TOWN OF WELLINGTON**

Sec. 2-3-20. - Town Administrator/Clerk.

(a) Appointment. The Board of Trustees, by majority approval, may appoint an Administrator or Town Clerk, and may combine the positions of Administrator or Clerk into a single position, the Town Administrator/Clerk. If the positions are not combined, the Town Administrator shall perform the functions to be filled by the Town Administrator/Clerk, or the Board of Trustees may by resolution define the responsibilities of the Town Clerk. If not defined by the Board of Trustees, the Town Administrator may delegate responsibilities of the Town Administrator/Clerk to the Town Clerk. The Town Administrator/Clerk shall:

- (1) Hold office at the pleasure of a majority of the Board of Trustees.
- (2) Be selected solely on the basis of his or her executive and administrative qualifications with special reference to his or her training and experience.
- (3) Have a bachelor's degree in business or public administration or equivalent.
- (4) Be compensated for his or her services as the Board of Trustees may determine or as may be stipulated by contract.

(b) Oath and bond. Before entering office, the Town Administrator/Clerk shall take an oath of office and be bonded in the amount of fifty thousand dollars (\$50,000.00) conditioned upon the faithful discharge of duties as Town Administrator/Clerk.

(c) Functions and duties.

(1) Administration. The Town Administrator/Clerk shall perform the following duties:

- a. Manage, direct, control and supervise all departments, agencies and services of the Town.
- b. Attend all Board of Trustees meetings and be permitted to participate in discussion of items before the Board of Trustees.
- c. Attend all Planning Commission meetings and be permitted to participate in discussion of items before the Planning Commission.
- d. Attend, when reasonably possible, the meetings of standing Board of Trustees committees and duly elected or appointed boards and commissions of the Town to provide staff support thereto.
- e. Provide information to the Board of Trustees and make recommendations to the governing body as deemed necessary for the good and efficient operation of the Town and its services.
- f. Initiate investigations and conduct inquiries related to citizen complaints concerning the conduct of employees or the quality of municipal services.
- g. On behalf of the Mayor or Board of Trustees, speak before public and private groups to explain functions and operations of the Town's government.

(2) ...

(3) Finance. The Town Administrator/Clerk shall perform the following duties:

- a. Countersign all checks and warrants drawn on the Town treasury.
- b. Prepare and submit a recommended annual budget to the Board of Trustees.
- c. Keep the Board of Trustees fully, completely and timely advised as to the financial condition of the Town.
- d. Exercise general supervision and control over all Town purchases and

expenditures in accordance with the budget and such policies as may be established by the Board of Trustees.

e. Serve as coordinator for the Town's economic development activities with related federal, state and local agencies and with private individuals, groups, businesses and foundations.

f. Recommend to the Board of Trustees a schedule of capital purchases.

g. Cause to have conducted such internal audits as required and necessary.

h. Maintain current knowledge of state and federal grant programs, advising the Board of Trustees and Mayor of the same; and to prepare, submit and monitor financial grants and applications.

(4) Personnel. The Town Administrator/Clerk shall perform the following duties:

a. Appoint and terminate employees necessary for the efficient performance of responsibilities listed in this Section. All employees shall serve at the pleasure of the Town Administrator/Clerk.

b. Subject to direction by ordinance or resolution adopted by the Board of Trustees, and subject to state statutes, supervise, direct and assign the duties of all appointive officers and employees in accordance with responsibilities listed in this Section.

c. Recommend to the Board of Trustees a schedule of salaries for all officers and employees.

d. Perform other such duties as the Board of Trustees may direct.

(d) Recognition of Town Administrator/Clerk as Town Clerk. The Town Administrator/Clerk shall be recognized as the Town Clerk in any legal reference to the Town Clerk position by state statutes, municipal ordinances or municipal resolutions.

(e) Administrative organization. The Town Administrator/Clerk shall propose a plan of administrative organization to the Board of Trustees within ninety (90) days after his or her appointment, which, if approved by the Board of Trustees, shall be adopted by resolution. The administrative plan shall provide for such departments and employees as may be deemed necessary for the efficient administration of the Town. All such employees shall be appointed by the Town Administrator/Clerk with approval of the Board of Trustees.

(f) Relationship of Board of Trustees to Town Administrator/Clerk:

(1) Not less than once a year, the Board of Trustees shall review the performance of the Town Administrator/Clerk in relation to duties outlined above and the attainment of Board goals and objectives. The Board of Trustees may increase the Town Administrator/Clerk's base salary or benefits.

(2) Except for the purposes of inquiry, the Mayor and the Board of Trustees shall deal with the Town Administrator/Clerk solely through the Board of Trustees, and neither the Mayor nor the Board of Trustees shall give direction to any subordinate of the Town Administrator/Clerk.

(g) Intent. Nothing in this Section shall impair the responsibility of the Board of Trustees for the overall operation of the Town government as required by state law.



Board of Trustees Meeting

Date: November 10, 2020

Submitted By: Chamber of Commerce Funding Request

Subject: • **Presentation: Kristi Cannon**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Town of Wellington Request Nov 2020
2. Final-Costs and expenses to Move Chamber Office one year's expenses (1) (2)



To: Kelly Houghteling, Interim Town Administrator for Wellington

From: Kristi Cannon, Chair Elect, Representing the Wellington Area Chamber of Commerce

Date: November 4, 2020

Subject: Financial Considerations Impacting the Wellington Area Chamber of Commerce

We want to ask the Town for a couple of areas of consideration that would help support the Wellington Area Chamber of Commerce.

- 1) With the recent end of the MOU by the Town's decision, we had to relocate to a different location for our Chamber's Headquarters. We have attached an excel file showing the full financial impact of this move. In summary, it is costing us an incremental \$7015.00 to leave the town building on Harrison Avenue and relocate to another location. *Any financial assistance or consideration to help us with this unexpected expenses would be most appreciated.*
- 2) Last year, the Town of Wellington partnered with us to provide a \$10,000 grant that would be used specifically for small to mid-size companies in Wellington (with revenues/sales at a minimum of \$200,000) to scale up to a larger operations by utilizing specialized consulting services offered through SBDC (Small Business Development Center). This \$10,000 grant would help fund 9 to 11 different companies located in the Wellington area. To date, 4 companies are underway actively with customized consulting services on topics such as marketing and sales strategic plans and financial operations. The Chamber is not handling any of these funds as the invoices are sent directly from SBDC to the Town of Wellington. The Chamber is primarily responsible for marketing this service as a business growth and succession tactic to help local businesses grow and prosper. *We are asking for an extension of these funds into 2021 so we are still able to leverage the remaining funds out of the original \$10,000 that was set aside for it.*

Thanks you for your continued support and partnership as we finish the 2020 calendar year and look forward to a strategic and stronger relationship going into 2021. Thank you for your consideration in advance.

Respectfully,

Kristi Cannon
Wellington Area Chamber of Commerce, Chair-Elect and Board of Directors

BOARD OF DIRECTORS:

Chair: Jon Slutsky - Past Chair: Heather A. Zadina – Chair Elect: Kristi Cannon - Treasurer: Katie Whitman
Community Events Committee: Jason Bustos Chair, Business Development Committee: Ben Parsons - Chair, By Laws Committee: Mary Council
Chair, Business After Hours & Annual Dinner Committee: Linda Kinzli – Board Member: Jami Sterkel – Board Member: Tracey Jensen
Board Member: Ashlee Lease – Board Member: Anita Hardy

Current Expenses at Town office on Harrison

Rent*	\$0.00
Printer Lease <u>WACC share</u> per year (split with WMSMP)	\$1,238.22
Internet-	\$0.00
Furniture	\$0.00

Total	\$1,238.22
Extra cost (one year) for WACC to move to new office	

Difference in Expenses for one year including moving costs

*Rent to Chamber and Printer Lease to town balanced each other out -\$200/Month each

New Expenses at new location-Cleveland	
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Difference per year

Rent-300.00 per month	\$3,600.00	\$3,600.00
Printer	\$1,650.96	\$412.74 Blue Pine construction paying \$825.48 per year
Internet-Phone	\$1,340.88	\$1,340.88
Furniture-one time cost	\$1,241.67	\$1,241.67
Phone/internet Installation	\$100.00	\$100.00
Cost to move and connect PrinterTo and from Harrison St	\$320.00	\$320.00
	\$8,253.51	

\$7,015.29

Board of Trustees Meeting

Date: November 10, 2020
Submitted By: Dave Myer, Engineer, Mike Flores
Wastewater Treatment Plant Clarifiers Nos. 3 and 4 Recoating Project
Subject: • **Staff Presentation: Dave Myer, Engineer II and Mike Flores, WWTP Operator**

EXECUTIVE SUMMARY

Metal components of two clarifiers at the WWTP need repainting.

BACKGROUND / DISCUSSION

Two clarifiers at the wastewater treatment plant (nos. 3 and 4) were drained in spring of 2019. Upon inspection, plant operators found the protective coating on all the under-water equipment was peeling and flaking off. Recoating is needed to protect the equipment in the clarifiers.

The plant operators reached out to six different paint companies during the past 4-5 weeks. Two quotes were received from painting contractors willing to complete the work (attached).

Financial/Sustainability Considerations

Funding for this project is included in the 2020 CIP budget “WWTP Clarifier 3 & 4 Rehabilitation Project” (GL No. 211-80-4033)

STAFF RECOMMENDATION

Authorize execution of contract with M&M Tank Coating Company in the not to exceed amount of \$70,000 for recoating services on clarifiers 3 and 4 at the wastewater treatment plant.

ATTACHMENTS

1. Clarifiers Recoating Quote M&M
2. Clarifiers Recoating Quote MAXIMUM PAINTING



M&M Tank Coating Company

102 North 8th Avenue

Greeley, CO 80631

PH: (970)356-7438

FAX: (970)356-2122

<http://www.mandmtankcoatingcompany.com/>

October 13, 2020

Town of Wellington

Mr. Joe Lynn Plant Operator

Wellington Water Reclamation Facility

Wellington, Colorado

Email: lynnjr.@wellingtoncolorado.gov

RE: Clarifiers Rehabilitation

Mr. Lynn,

We are pleased to quote the following for the rehabilitation of the clarifiers.

Scope of Work:

M&M Tank Coating Co Inc will supply the following labor, equipment, materials, insurance, and workman's compensation. Bonds can be provided at normal rates if necessary.

Surface preparation of the steel rake arms, tub interior and exterior, piping and accessories. These will be sand blasted to a SSPC SP-10 NACE No. 2 Near White Metal Finish Steel profiled to 1-2 mils. Coatings applied will be a three-coat system. Tnemec series N-69-DFT 3.0 to 5.0 mils. Intermediate Coat Tnemec Series 104 DFT 4.0 to 10 mils. Finish Coat Tnemec Series N-69 DFT 4.0 to 6.0 mils.

All the normal tests will be performed profile, wet mil, and dry mil. The results will be submitted upon completion.

Time frame for completion is 30 days. Waste materials will be disposed of offsite. Quote will be good for 30 days. 1-year warranty begins at completion date of the project.

Exclusions for this project are as follows, plumbing pumping of basin, electrical, heat for curing, lead based paint removal or disposal, or anything else that is not included is excluded.

Quote for these services will be **\$70,000.00**

Thank you for your consideration of our company in this matter. If you have any questions, please do not hesitate to contact the office.

Respectfully,

Sid Martindale

October 2, 2020

Project Name: Wellington Waste Water Treatment Plant
Address: 6190 NE Frontage Road, Wellington, CO

Site Visit: 9/24/20 and 9/26/20
Specifications: High Performance

Thank you for the invitation to provide a price for your project. Below, please find our price, scope, exclusions and clarifications.

Base Scope:

- Media blast existing coatings from metal components, excluding catwalk steel
- Prime with Sherwin Williams re-coatable epoxy
- Two topcoats of Macropoxy 646

Sub Total: \$ 35,000.00/ tank

Total for two tanks \$ 70,000.00

Alternate Add:

- Paint I beams and L metals of catwalk with Acrylic DTM, 2 coats, no sandblasting or priming
ADD \$ 4,500.00/ tank—two tanks \$9,000.00

Exclusions:

- Provision of dumpster, electricity and water
- Removal of any fixtures, replacing fixtures, heat, lights, utilities
- Warranty due to extreme conditions to which finishes will be subject

Clarifications:

- An oxygen detector has been requested during operations for safety
- Maximum Painting employees are all fully insured
- Media will be cleaned and removed after blasting
- Tanks need to be dry to facilitate work, especially media blasting
- Temperatures for paint finishes need to be maintained above freezing for 24 hours or longer to maximize cure time

If you have any questions or require further information, please feel free to call.

Regards,

Est. Fort Collins 2002

MAXIMUM PAINTING^{LLC}

Certified Small Business Enterprise



Jenny Rendfrey
Maximum Painting, LLC

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

Full Text of Measure:

Be it enacted by the Town of Wellington:

Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

WHEREAS, in November 2012, Colorado voters approved Amendment 64 to the Colorado Constitution ("Amendment 64"), codified as Section 16 of Article XVIII of the Colorado Constitution, concerning the personal use and regulation of marijuana; and

WHEREAS, Amendment 64 generally allows persons twenty-one years of age or older to consume or possess limited amounts of marijuana and provides for the licensing of marijuana cultivation facilities, product manufacturing facilities, testing facilities and retail stores; and

WHEREAS, Amendment 64 further provides that local governments may adopt their own regulations governing certain aspects of marijuana-related businesses; and

WHEREAS, the Town of Wellington would benefit from the presence of retail and medical marijuana stores so that adults can safely purchase retail and medical marijuana and the Town can generate additional tax revenue.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO OR THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON, COLORADO, THAT:

Section 1. Article 13.6 of Chapter 2 of the Wellington Municipal Code is hereby repealed in its entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 – RETAIL AND MEDICAL MARIJUANA STORES

Sec. 14-10 Purpose.

- A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.
- B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell Retail Marijuana or Medical Marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Section 16 of Article XVIII of the State Constitution and Article 43.4 of Title 12, C.R.S. (the Colorado Retail Marijuana Code) or Article 43.3 of Title 12, C.R.S. (the Colorado Medical Marijuana Code).

Sec. 14-20 Powers and Duties of the Local Licensing Authority.

- A. The Local Licensing Authority shall grant or refuse local Licenses for the sale of Retail Marijuana or Medical Marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.
- B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and sale of Retail Marijuana and for the enforcement of this Article.
- C. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.4 of Title 12 C.R.S. to apply to the issuance of a Retail Marijuana Store License.
- D. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.3 of Title 12 C.R.S. to apply to the issuance of a Medical Marijuana Store License.
- E. On and after January 1, 2021, the Local Licensing Authority shall begin processing applications under this Chapter, and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Chapter so long as the conditions set forth in this Chapter are met and the applicant has paid the operating fee and any other fees required by this Chapter.
- F. Notwithstanding any of the foregoing, if the Local Licensing Authority received any applications submitted to the State Licensing Authority for a Retail or Medical Marijuana store in the Town prior to the effective date of this ordinance, any such applications shall be deemed “received” for purposes of establishing priority under this section, as long as the application either remains active with the State Licensing Authority or is re-submitted in substantially similar form to the State Licensing Authority within 15-days after the effective date of this ordinance.

Sec. 14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in the following provisions: Article XVIII, Section 16 (2) of the Colorado Constitution; the Colorado Retail Marijuana Code, C.R.S. §12- 43.4-101, *et seq.*; Article XVIII, Section 14 (l)(f) of the Colorado Constitution; C.R.S. §25-1.5- 101, *et seq.*; or the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et seq.*.

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

License: A license or registration granted pursuant to this Article.

Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to distribute, or sell Retail Marijuana in accordance with the provisions of the Colorado Retail Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Retail Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

Sec. 14-40 Applications-Licenses.

- A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.
- B. Application Forms. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.
- C. Other Requirements. An applicant shall file, at the time of application for a License, plans and specifications for the interior of the building, and shall also include at the time of application proof of possession of the real property where the building is or will be located.

Sec. 14-50 Denial of Application.

- A. The Local Licensing Authority shall deny a Local License only if the premises on which the applicant

proposes to conduct its business do not meet the requirements of this Article.

- B. If the Local Licensing Authority denies a Local License, the Applicant shall be entitled to a hearing pursuant to this Article. The Local Licensing Authority shall provide written notice of the grounds for denial of the Local License to the applicant.
- C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

Sec. 14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

- A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a State or Local License pursuant to this Article:
 - 1. Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;
 - 2. For a Location in an area where the sale of Retail or Medical Marijuana as contemplated is not permitted under the applicable zoning laws, which restrictions shall be as follows (and the Town's zoning laws shall be amended as follows):

Retail or Medical Marijuana stores shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply: Retail or Medical Marijuana stores shall not be permitted to be located within two-thousand (2,000) feet of: any parcel containing a school; and Retail or Medical Marijuana stores shall not be permitted to be located within five-hundred (500) feet of: parcels zoned P (Public District) or any parcel containing another Retail or Medical Marijuana store; and Retail or Medical Marijuana stores shall not be permitted to be located within two-hundred (200) feet of: parcels zoned R-1 (Residential District), R-2 (Residential District) or R-4 (Residential District).

- B. In addition to the requirements of C.R.S. §12-43.4-301, the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the building in which Retail or Medical Marijuana is to be sold is located within any distance restrictions established by, or pursuant to, this section.
- C. The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

Sec. 14-80 Transfer of Ownership.

- A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. §12-43.4-309.
- B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed \$1,000 to process such transfer.

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-

309 and this Article.

Sec. 14-100 Licensing Renewal.

- A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application.
- B. 1. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License had been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars (\$500.00) to the Local Licensing Authority. A Licensee who files a late renewal application and pays the requisite fees may continue to operate until both the State and Local Licensing Authorities have taken final action to approve or deny the Licensee's Late Renewal Application.
2. Notwithstanding the amount specified for the Late Application Fee, the State and Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, reduce the amount of the fee.

Sec. 14-110 Fees.

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars (\$1,500.00).

Sec. 14-120 Hours of Operation.

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

Sec. 14-130 Disciplinary Actions: Suspension-Revocation-Fines.

- A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard; to suspend or revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.
- B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

- C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:
- a. The public welfare and morals would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
 - b. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and
 - c. The Licensee has not had his or her License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the License.
2. The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.R.S. §12-43.4-901(4)(e).
3. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.
- D. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension. If the fine is paid to a Local Licensing Authority, the governing body of the Authority shall cause the moneys to be paid into the General Fund of the Local Licensing Authority.
- E. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority.

Sec. 14-140 Inspection of Books and Records-Inspection Procedures.

- A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary.
- B. The Licensed Premises, including any places of storage where Retail or Medical Marijuana is stored, sold or dispensed shall be subject to inspection by the Local Licensing Authorities and their investigators, during all business hours for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the Licensees, access shall be required during business hours. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay, and, upon request by authorized representatives of the State or Local Licensing Authority, the Licensee shall open the area for inspection.
- C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 14-150 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only the following Medical and Retail Marijuana Licenses upon payment of a fee and compliance with all Local Licensing requirements to be determined by the Local Licensing Authority as set forth in Article 43.3 and 43.4 of Title 12, C.R.S.:

1. A Medical Marijuana Center License.
2. A Retail Marijuana Store License.

Sec. 14-160 Other Marijuana Licenses Prohibited.

Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

Section 3. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 4. All the provisions of the Wellington Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 5. The Town Clerk shall certify the passage of this Ordinance and cause notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate by name and mailing address two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

- 1. Amie Rakoczy** 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123
- 2. Tim Morgen** 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

INITIATIVE PETITION

Petition Section ____

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SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

1.

Printed last name

Printed first name

Date of Signing

SIGNATURE

Street Address

Wellington / Larimer
City / County

2.

Printed last name

Printed first name

Date of Signing

SIGNATURE

Street Address

Wellington / Larimer
City / County

3.

Printed last name

Printed first name

Date of Signing

SIGNATURE

Street Address

Wellington / Larimer
City / County

4.

Printed last name

Printed first name

Date of Signing

SIGNATURE

Street Address

Wellington / Larimer
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5.

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Date of Signing

SIGNATURE

Street Address

Wellington / Larimer
City / County

6.

Printed last name

Printed first name

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SIGNATURE

Street Address

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9.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
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13.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
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15.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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16.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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19.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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23.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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27.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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30.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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31.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
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32.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
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36.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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37.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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43.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
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44.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
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Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate two persons who shall represent the proponents in all matters affecting the petition and to whom all notices concerning the petition shall be mailed.

1.	Amie Rakoczy	5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123
2.	Tim Morgen	5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

AFFIDAVIT OF PETITION CIRCULATOR

I, _____, hereby certify that:

1. I have read and understand the laws governing circulations of petitions in Colorado;
2. I was eighteen years of age or older at the time this section of the petition was circulated and signed by the listed electors;
3. I circulated this section of the petition;
4. Each signature thereon was affixed in my presence;
5. Each signature thereon is the signature of the person whose name it purports to be;
6. To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector;
7. I have not paid or will not in the future pay and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition; and
8. I currently reside at the following address:

Street Address: _____

City, State, Zip Code: _____

County: _____

FURTHER, Affiant sayeth not.

[printed name of circulator]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by
_____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Memo

March & Olive, LLC

TO: Kelly Houghteling, Interim Town Administrator; Krystal Eucker, Wellington Town Clerk; Wellington Town Board

FROM: Brad March
March and Olive, LLC
1312 S. College Avenue, Fort Collins, CO
[970-482-4322](tel:970-482-4322)(p); [970-482-5719](tel:970-482-5719)(f)

RE: Initiated election petitions

DATE: September 6, 2020

This memorandum is intended to summarize the status of the citizen proposed initiated marijuana ordinances (the Initiated Ordinances) and the election likely required as a result of the filing of the initiative petitions. Unfortunately, it was discovered late Friday (9/4) that one of the timeline dates as set out in CRS § 31-10-108¹, related to scheduling a special election was not met.

The clerk has provided a list of dates which the statute keys to, dates include:

July 30, 2020 – Petition submission date
August 20, 2020 – Statement of sufficiency issued.
Nov 3, 2020 – General election date

Assuming that the Board does not adopt the citizen proposed ordinances, the statutory scheme requires that the ordinances be sent on to the voters. Based on cost considerations a recommendation was made to the board that the town schedule its own special election on the same day as the general election to allow the voters to determine whether the initiated ordinances would be adopted. The statute provides that a special election by mail in ballot may be held at the same time as the general election, but the election must be called at least 60 days before November 3rd². That is, the election needed to be called before September 4th. The clerk prepared resolutions to call the special election to be presented to the Board on September 8th, the date however was unfortunately outside the sixty (60) day limit set by the statute. As the general election date cannot be met, the election date cannot be held until 32 days after the general election or, December 7, 2020. The TABOR election cannot be held until later in 2021 and is discussed further below.

Board action of proposed ordinances or forwarding to voters. CRS 31-11-104 provides that a proposed /initiated ordinance may be adopted by the town board as an ordinance of the town within 20 days of a finding of sufficiency by the clerk. This provision allows the board to adopt the Initiated Ordinance

¹ See clerk memo for text of statute.

² 31-10-108

without alteration on or before September 8th. If the board does not act and the Initiated Ordinance is not adopted, the ordinance must be submitted to the voters not less than 60 days and not more than 150 days after the clerk's statement of sufficiency is issued.³ By y calculation this requires the election to be held no later than January 17, 2021.

Protest. By 21-11-110(1) Any registered elector who resides in the municipality may file, a protest in writing under oath with the clerk, challenge the sufficiency of the petition, setting forth specifically the grounds for such protest. The protest must be filed within 40 days after the initiative petition was originally filed with the clerk. The protest period will expire on September 8th.⁴ The grounds for a protest may include, but are not limited to, failure of the petition or circulator to meet the requirements of the article. A resolution has been prepared and will be submitted to the board on September 8th for approval, designating the municipal judge, rather than the clerk as the hearing officer to hear any protest. If a protest is filed, the hearing officer's decision can be appealed to the Larimer County courts.

Sales tax and TABOR. Colorado law allows municipalities, in addition to charging the municipality's normally charged sales tax and taxes apportioned by the state⁵ to charge a special retail marijuana sales tax.⁶ The second proposed Initiated Ordinance provides that the Town would initially charge a 3.5% special sales tax, which could be increased by the Board to as much as 5% special sales tax. Under TABOR and the terms of the special sales tax statute tax increase measures must be approved by the voters and can only be submitted to the electorate at specified times. The TABOR amendment⁷ at part 3(a) provides:

Ballot issues shall be decided in a state general election⁸, biennial local district election, or on the first Tuesday in November of odd-numbered years. [D]istricts⁹ may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

The special sales tax statutory provision likewise provides:

§ 29-2-115. Retail marijuana sales tax - county - municipality - election - legislative declaration - definition

- (4) (a) Each municipality in the state is authorized to levy, collect, and enforce a municipal special sales tax upon all sales of retail marijuana and retail marijuana products...

- (b) No special sales tax shall be levied pursuant to subsection (4)(a) of this section until the proposal has been referred to and approved by the eligible electors of the municipality in accordance with article 10 of title 31. Any proposal for the levy of a special sales tax in accordance with subsection (4)(a) of this section must be submitted to the eligible electors of the municipality on the date of the state general election, on the first Tuesday in November of an odd-numbered year, or on the date of a municipal biennial election. Any election on the proposal must be conducted by the clerk of the municipality in accordance with the "Colorado Municipal Election Code of 1965", article 10 of title 31.

Because of the 31-10-108 scheduling issue surrounding the special meeting it is not possible to present the special tax to the voters at the upcoming general election. The first opportunity to place the issue of the special tax before the voters would be November 2, 2021, the first Tuesday in November of the odd-numbered year.

Circulator petitions. A question was raised with me as to whether the petitioners complied with 31-11-113. I was not asked to review the full petition submissions and do not know whether the report required by 31-11-113 was turned into the clerk at the time the fully signed Initiated Ordinances were filed with the Clerk's office or, if filed, whether the report was sufficient under the statute. The statute provides that the proponents must file a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing is to be made at the same time the signatures on the Initiated Ordinance(s) are filed. I have had concerns surrounding the enforceability of the 31-11-113 requiring the report but, the statutory requirements, although perhaps suspect, remain a part of the statutory scheme for filing citizen-initiated ordinances and should have been complied with.

³ This is subject to the requirements of 31-10-108 that no special election may be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of the general election unless a mail ballot election is approved as a special election 60 days before the general election.

⁴ 31-11-110

⁵ Title 39, Article 28, Part 2

⁶ 29-2-15.

⁷ Constitution Article X sec 20

" § 1-1-104 (17) General election" means the election held on the Tuesday succeeding the first Monday of November in each even-numbered year.

31-10-101(10) Municipal election - Regular election" means: (a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place; (b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109(1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

⁹ For purposes of TABOR the Town is a district.

The validity of placing restrictions on circulators has been the subject of challenges before various courts, most notably the United States Supreme Court in *Buckley v. American Constitutional Law Foundation*, 119 S.Ct. 636, 525 U.S. 182, 142 L.Ed.2d 599, 67 U.S.L.W. 4043 (1999). The *Buckley* case involved the state's initiative process¹⁰ and dealt with required disclosure of paid circulator identities and other paid circulator information. The legislature did not change/modify the requirements of 31-11-113 after *Buckley*.¹¹)

The statute that requires the report that is to be filed with the clerk was adopted in 1995, before the *Buckley* decision. The statute only requires disclosure of the amount paid per signature and the amount paid to circulate and does not require that the amount paid to each circulator be disclosed. The report requirement may be enforceable after *Buckley*.^{12 13}

Petition deficiencies. I have reviewed the form of the petitions with an agent of the Colorado Department of Revenue Marijuana Enforcement Division who characterized the form of the petitions, specifically the petition allowing for marijuana sales, as "a mess." The most noted concern is that the Initiated Ordinance's proposed Article 14 references the Colorado's Medical Marijuana Code as being codified at Title 12 Article 43.3 and Retail Marijuana Code as being codified at Title 12 Article 43.4. At section 14-10 the Initiated Ordinance recites that Retail Marijuana and Medical Marijuana may only be sold as allowed by the "Colorado Retail Marijuana Code" and the Colorado Medical Marijuana Code. The Colorado Retail Marijuana and the Colorado Medical Marijuana Code are currently embodied in state statutes at Title 44 article 11 (as opposed to Title 12 Article 43.3) as the Colorado Medical Marijuana

¹⁰ State initiative process at 1-40-101 et seq, municipal initiative proves at 31-11-101 et seq.

¹¹ The majority opinion of the court stated - we agree with the Court of Appeals appraisal: Listing paid circulators and their income from circulation "forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts," 120 F. 3d, at 1105;^[24] no more than tenuously related to the substantial interests disclosure serves, Colorado's reporting requirements, to the extent that they target paid circulators, "fai[l] exacting scrutiny."

- ¹² For other cases involving similar initiated petition circulator issues see *Independence Inst. v. Gessler*, 936 F. Supp. 2d 1256 (D. Colo. 2013), signature compensation for petition circulators violates the first amendment of the United States constitution; *Am. Constitutional Law Found., Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999); requirement that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression; *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) Badge requirement is unenforceable. *Meyer v. Grant*, 108 S.Ct. 1886, 486 U.S. 414, 100 L.Ed.2d 425, 56 U.S.L.W. 4516 (1988), state may not prohibit paid circulators.

¹³ Justice Thomas in his concurrence to the *Buckley* decision notes: "Even assuming that Colorado has a compelling interest in identifying circulators, its law does not serve that interest. The State requires that proponents identify only the names of *paid* circulators, not *all* circulators. The interest in requiring a report as to the money paid to each circulator by name, as the majority points out, *ante*, at 201, has not been demonstrated.

Code and Title 44, Article 12 (as opposed to Title 12 Article 43.4) as the Colorado Retail Marijuana Code. The Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code are to be replaced effective January 1, 2021 (the date the proposed ordinance goes into effect) and the governing statutes will be located at title 44, Article 10, and the designation as the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code will be eliminated and the code will be titled as the “Colorado Marijuana Code”^{14, 15} Throughout the Initiated Ordinance’s proposed new Article 14 to the Town Code the incorrect citations are referenced. For example, the proposed Sec 14-20, C and D provide that the Local Licensing Authority adopts the minimum licensing requirements of Title 12, Article 43.4 and 43.3. No such minimum standards exist that correspond to these citations. Further, the initiated ordinance, including at Sec 14-20 provides for a Local Licensing Authority and recites actions that are being taken by the local Licensing Authority when no Local Licensing Authority has been created by the Town¹⁶. The following references are to concerning provisions of the Initiated Ordinance proposed code (identified as SEC 14-**) and corresponding concerns with the concerns indented below each quoted Initiated Ordinance section.

Proposed Sec 14-30 defines:

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

CRS 44-10-311(d)(II) The distances referred to in this subsection (1)(d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route

¹⁴ Marijuana Code was re-codified in 2018 by HB1023 and is now found at Title 44, articles 11 and 22 of the Colorado statutes and in 2019 by SB 19-224 and as of January 1, 2021 will be effective at Title 44 Article 10.

¹⁵ See also references to Colorado Medical Marijuana Code and Colorado Retail Marijuana code with statutory cites as Sec 1-30 definitions.

¹⁶ By the Initiated Ordinance the Licensing Authority is created by Sec 14-150 Can the voters create the Local Licensing Authority and in the same initiated action act for the Licensing authority? Is an act of the Local Licensing Authority, a quasi-judicial body, administrative or legislative in nature?

of direct pedestrian access.¹⁷ This measurement formula inappropriately differs from the statutory scheme.

44-10-302 references time place manner and number restrictions which may be adopted by the Town in relation to Retail Marijuana licensing.

License: A license or registration granted pursuant to this Article.

The Initiated Ordinance at Sec. 14-150 (1) related to the Local Licensing Authority recites that the Local Licensing Authority is authorized (according to the prior law at title 12) to issue Medical Marijuana Center Licenses. CRS 4-10-501 references the license to be issued as a Medical Marijuana Store Licenses rather than a Medical Marijuana Center License¹⁸. Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

The statute provides that the Town Board may be the local licensing authority but allows the board to designate a separate licensing authority. The Initiated Ordinance definition requires that the Town Board must serve as the licensing authority.

44-10-103(28) "Local licensing authority" means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

The term Local Licensing official is defined in the proposed ordinance, but the term is not used otherwise in the proposed ordinance nor does it appear that the term is used in the Colorado Marijuana Code.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

44-10-103(48) defines a person as defined by 7-90-102 which adopts the definitions as "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

44-10-103(49) defines "Premises" means a distinctly identified, as required by the state licensing authority, and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

¹⁷ See also Sec 14-70-(c) The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

¹⁸ Medical Marijuana Center Licenses may be issued through 2020 by 44-11-401, the new Colorado Marijuana Code provides for Medical Marijuana Store Licenses, 44-10-401(2)(a). Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

44-10-103(67) defines "School" means a public or private preschool or a public or private elementary, middle, junior high, or high school or institution of higher education.¹⁹

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

Defined according to wrong statutory citation. Should be defined by 44-10-103(69) with reference to "regulated marijuana in this State, pursuant to section 44-10-201."

14-40 Applications-Licenses.

- A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.

§ 44-10-313 (12) provides each license issued under this article 10 is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.

- B. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.

The filing requirements seem to follow 44-10-301. The statute contains no 30-day response requirement. 44-10-302 references time place manner and number restrictions which may be adopted by the Town. Sec. 14-50, speaks to denial of licenses and it is not clear if the Town may adopt more restrictive time place manner and number restrictions beyond those set forth in the initiated ordinance

- C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

This is likely compliant with the statute, § 44-10-304(3) provides that within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision must be in writing and must state the reasons for the decision. The local

¹⁹ Caveat, is a day care facility a pre-school?

licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

Sec. 14-60 Persons Prohibited as Licensees.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

After January 1, 2021, there is no longer a Colorado Retail Marijuana Code. By this section the Initiated Ordinance purports to act on behalf of the Local Licensing Authority.

A(1) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

Seems to comply with § 44-10-311 (2) § 44-10-313(1)(b) and (8)(b)

A(2) Retail or Medical Marijuana stores and establishes 2000 foot setback form schools, (500) feet of: parcels zoned P (Public District) or another Retail or Medical Marijuana store; and two-hundred (200) feet of: parcels zoned R-1 (Residential District), R-2 (Residential District) or R-4 (Residential District)

Is this violative of single subject rules.

Zoning: § 44-10-311(d)(1) allows medical marijuana distancing at 1000' or greater if set by Town by ordinance or resolution.

The State Constitution at Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses.

Are these administrative actions that should be left to the Town, as provided for in the Colorado's Marijuana Code and are the provisions therefore improper to include in the Initiated Ordinance?

Sec. 14-80 Transfer of Ownership.

- A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. § 12-43.4-309.

As of January 1, 2021, transfers of licenses will be addressed by 44-10-312.

- B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed \$1,000 to process such transfer.

44-10-803(3) provides: A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local

jurisdiction on marijuana businesses and establishments located within the local jurisdiction. Is this an administrative act and improperly taken in the Initiated Ordinance?

Requiring that the Local Licensing Authority must allow any proposed transfer invades the Local Licensing Authority's responsibilities under state law.²⁰

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-309 and this Article.

This statute is no longer in existence and as of January 1, 2021 is at Article 44, title 10.

Sec. 14-100 Licensing Renewal.

- A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day requirement set forth in this Article. The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application.

This section appears to be contrary to 44-10-314 and seems to invade the local licensing authority's ability to refuse a license if the licensing authority determines good cause exists.²¹

Sec. 14-110 Fees.

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars (\$1,500.00).

This section and 14-100 B and C limit the ability to charge fees, 44-10-803(3) provides A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction.

Sec. 14-120 Hours of Operation.

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

²⁰ See 44-10-901 discussed below in relation to disciplinary action.

²¹ See 44-10-901 discussed below in relation to disciplinary action.

Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses

Sec. 14-130 Disciplinary Actions: Suspension-Revocation-Fines.

- B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

44-10-901(1) grants the local licensing authority the authority to suspend or revoke a license issued by the authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article 10, or any of the rules promulgated pursuant to this article 10, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The subject provision dramatically limits this provision. As an example, if the licensing authority imposes conditions on a license issuance, does violation of the condition rise to an ongoing emergency? If the licensee violates operating hours, does an emergency arise? If it does not the licensing authority's ability to enforce is emaciated.

Sec. 14-130, C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:

44-10-901(3) addresses fines in lieu of suspension and this section is largely in keeping with the statute, except C.1.c allows a fine in lieu so long as there has been no suspension or revocation in the last 12 months, 44-10-901(3)(a)(III) provides that a fine in lieu is appropriate if there has been no suspensions or revocation in the last 2 years. Affording the ability to grant fines in lieu for the shorter period is contrary to state law.

Sec. 14-130, C.2. provides

The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$ 1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.RS. §12-43.4-901(4)(e).

The Initiated Ordinance should reference 44-10-901

Administrative vs Legislative nature of petitions and challenges to Initiated Ordinance.

Ordinance must comply with State Law. There are initial concerns with the Initiated Ordinances in that in cases, as outlined above, are not in line with the state statutes. As a statutory municipality,

Wellington's laws may not deviate from the laws of the state. Voters, initiating an ordinance, have no greater power than the Town Board to adopt an ordinance that is contrary to state law. To the extent that the Initiated Ordinance is contrary to state law, the Ordinance is invalid.

Initiated Ordinance is not properly the subject of the right of initiative and referendum.

In *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013) (2013) involved a protest filed under 31-11-110. The protesters in *Vagneur* filed written objections to the initiative petitions contending that the proposals **(1) contained administrative matters that are not subject to the initiative power; (2) included more than a single subject; and (3) contained misleading ballot titles.**

The hearing officer concluded that the proposed ordinances "encroached upon the administrative processes reserved to the administrative staff of the City of Aspen as authorized by City Council," and that "allowing citizens through the initiative process, to either dictate or negate administrative actions normally undertaken by city staff is a misuse of the process" and contrary to the initiative rights established by the Aspen City Charter. The hearing officer declined to sever any impermissible portions of the initiative because Proponents had testified that they believed the conditions were necessary to understand their proposals

The *Vagneur* court reviewed whether a citizen initiative is administrative or legislative in character, and whether an administrative initiative is a proper exercise of the initiative power.²² The court defined and set forth numerous tests from prior court decisions as to whether an ordinance was administrative or

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- ²² In *City of Idaho Springs v. Blackwell*, 731 P.2d 1250 (1987) the court stated: An ordinance which shows an intent to form a permanent rule of government until replaced is one of permanent operation." 5 E. McQuillin, *Municipal Corporations* § 16.55, at 194 (3d ed. 1981) (emphasis added) (footnote omitted). Second, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. *Witcher*, 716 P.2d at 449-50; *Margolis*, 638 P.2d at 303; *Zwerdinger*, 194 Colo. at 196, 571 P.2d at 1077.
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In the *Blackwell* case Idaho Springs asserted: (1) that the petitions, although styled as "petitions for initiated ordinances," were actually petitions for referenda that were untimely (2) that the petitions addressed administrative rather than legislative matters and were therefore improper;

- The court noted The proposed initiated ordinances also must be classified as administrative matters when viewed under the second "test." The choice of location and structure for the new city hall is an act "necessary to carry out" the existing legislative policy to build a new city hall. See *Witcher*, 716 P.2d at 449; *Margolis*, 638 P.2d at 303; *Zwerdinger*, 194 Colo. at 196, 571 P.2d at 1077. The decision to raise tax revenues to be used in part for city hall construction was made in 1977 and approved by the majority of Idaho Springs voters in a special election. Implementation of the 1977 policy decision in the ordinance is administrative or executive and is not a proper subject for an initiated ordinance.
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legislative in character. The court acknowledged that decisions surrounding the administrative/legislative determination needed to be made on a case by case basis. It can be argued that the question of whether the town should allow the sale of medical and retail marijuana is a legislative decision but the enforcement and implementation including time place manner and number restrictions are administrative in nature. Further, to the degree that the Initiated Ordinance has the Local Licensing Authority, which does not exist until the Ordinance is adopted, adopting positions, that action is likewise administrative. “When in a matter of state-wide concern, such as Marijuana Licensing, the state legislature has specifically delegated particular authority to the governing board, courts have uniformly held that the initiative processes do not ordinarily apply.” McQuillan, Law of Municipal Corporation §16.52 (3rd Ed.).

Usurpation of Administrative and enforcement Power. The Initiated Ordinance improperly limits enforcement powers which by statute are afforded to the liquor licensing authority. Particularly Sec. 14-13 limits the Local Licensing Authorities statutory ability to take disciplinary action, limiting the enforcement powers to situations where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency. Limitation of the authority’s quasi-judicial powers afforded by state law is not an appropriate exercise of the initiative power.

Impossibility of Implementation. It can be argued that implementation of the Initiated Ordinance is virtually impossible as the ordinance is presented. As noted, the Initiated Ordinance cites to laws that no longer exist. As a general rule-initiated matters, once adopted may not be changed, the initiated Ordinance as proposed adopts state laws that are no longer in place and will become increasingly difficult to enforce and implement as time goes on.

Initiative vs. Referendum. Questions were raised whether the proponents may by initiative overturn the prior actions of the Town board in prohibiting the sales of medical and retail marijuana within the limits of the Town or if this action had to be filed as a referendum within the requisite time after the town board, as allowed by the state constitution, adopted ordinances precluding local marijuana sales.

Article XVIII Section 16, (5) (f) of the constitution allowed the Town by ordinance to prohibit retail marijuana stores. Having done so the ordinance had to be challenged by referendum to be changed?

Possible Alternative Ordinances. There is some authority that suggests that the proponents could withdraw the Initiated Ordinances.²³ I tentatively made a suggestion to the proponent’s attorney that if the flawed Initiated Ordinances were withdrawn and single question ordinances along the form being submitted to the Board were alternate ordinances could be submitted. ²⁴ Initially the attorney appeared to be interested in the proposal to withdraw, and advised he would get back to me. I followed up late

²³ The ability to withdraw the petitions at this point is subject to legal questions.

²⁴ § 31-11-104 (2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Friday and was advised that he had not received a client response. We exchanged cell phone numbers, as of late Sunday I have not been contacted. The Board could elect to present an alternative ordinance to be considered by the voters at the same election as the Initiated Ordinances are presented. The Board needs to evaluate whether this causes confusion.



Board of Trustees Meeting

Date: November 10, 2020

Submitted By:

Annual Renewal - Avuncular Bob's T Bar Inn and Brew Pub

Subject:

- **Staff presentation: Krystal Eucker, Town Clerk**

EXECUTIVE SUMMARY

Avuncular Bob's T Bar Inn has submitted their annual renewal for their Hotel and Restaurant liquor license. A review of the application found the establishment is in good standing with the Colorado Secretary of State and the establishment is current with their sales tax. The Larimer County Sheriff's Office reported completing routine bar checks which resulted in no issues. There was a physical disturbance inside the establishment on November 8, 2019 which the Larimer County Sheriff's Office was called for assistance; that occurrence did not result in any violations related to the liquor license.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

Staff recommends approval of the annual liquor license renewal for Avucular Bob's T Bar Inn.

ATTACHMENTS

1. Avuncular Bob's T Bar Inn

AVUNCULAR BOB'S T BAR INN & BREW PUB OPERATIONS LLC
PO BOX 421
Wellington CO 80549

Fees Due		
Renewal Fee		500.00
Storage Permit	\$100 X _____	\$
Sidewalk Service Area	\$75.00	\$
Additional Optional Premise Hotel & Restaurant	\$100 X _____	\$
Related Facility - Campus Liquor Complex	\$160.00 per facility	\$
Amount Due/Paid		\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

Retail Liquor or Fermented Malt Beverage License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name AVUNCULAR BOB'S T BAR INN & BREW PUB			Doing Business As Name (DBA) AVUNCULAR BOB'S T BAR INN & BREW PUB OPERATIONS	
Liquor License # 03-12295	License Type Hotel & Restaurant	Sales Tax License # 40857776	Expiration Date 12/10/2020	Due Date 10/26/2020
Business Address 3803 CLEVELAND AVENUE Wellington CO 80549				Phone Number 9705689829
Mailing Address PO BOX 421 Wellington CO 80549			Email	
Operating Manager	Date of Birth	Home Address		Phone Number
1. Do you have legal possession of the premises at the street address above? ☒ Yes ☐ No Are the premises owned or rented? ☒ Owned ☐ Rented* ☐ If rented, expiration date of lease _____				
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. Yes ☐ No ☒				
3a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? Yes ☐ No ☒				
3b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? Yes ☐ No ☒				
4. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. Yes ☐ No ☒				
5. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. Yes ☐ No ☒				
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. Yes ☐ No ☒				
7. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. Yes ☐ No ☒				

Affirmation & Consent

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business <i>R Campbell</i>	Title <i>Margie's Park</i>
Signature <i>K C</i>	Date <i>10/26/20</i>

Report & Approval of City or County Licensing Authority

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 44, Articles 4 and 3, C.R.S., and Liquor Rules.

Therefore this application is approved.

Local Licensing Authority For		Date
Signature	Title	Attest

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Tax Check Authorization, Waiver, and Request to Release Information

I, K Campbell am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of Avuncular Bob's T Bar & Grill (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business) <u>Avuncular Bob's T Bar & Grill Pub</u>		Social Security Number/Tax Identification Number <u>84 267 8738</u>	
Address <u>3803 Cleveland Ave</u>		City, State, Zip <u>CO. 9513 00002</u>	
City <u>Wellington, CO. 80549</u>		State <u>CO.</u>	Zip <u>80549</u>
Home Phone Number <u>970-217-1474</u>		Business/Work Phone Number <u>Same</u>	
Printed name of person signing on behalf of the Applicant/Licensee <u>K Campbell</u>			
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information) <u>K Campbell</u>			Date signed <u>10/26/20</u>

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).