



BOARD OF TRUSTEES
March 16, 2021
6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Work Session Meeting

Due to social distancing and limited seating, individuals that wish to appear in person at the meeting will need to register by March 16, 2021 at 4:00 p.m. by sending an email to euckerkk@wellingtoncolorado.gov. Once seating is full, registration will be closed.

Individuals attending in person will need to arrive at the meeting by 6:20 p.m. and will be required to wear masks.

Individuals wishing to attend the meeting virtually can view the meeting at the link below or by calling into the phone numbers listed below:

Please click the link below to join the webinar:

<https://zoom.us/j/92373634946?pwd=Q1N5cmtYakZVQThTU9JbmRBMFBmdz09>

Passcode: 327912

Webinar ID: 923 7363 4946

Or iPhone one-tap :

US: +13462487799,,92373634946# or +16699009128,,92373634946#

Or Telephone:

US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799

A. ITEMS

1. 4th of July Fireworks Location

- Staff presentation: Hallie Sheldon, Management Analyst and Bee Lake Productions LLC, Bryan Ehrlich

2. Boxelder Stormwater Representative Report

- Presentation: Tim Singewald and Richard Seaworth

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: March 16, 2021
Submitted By: Hallie Sheldon, Management Analyst
Subject: 4th of July Fireworks Location

- **Staff presentation: Hallie Sheldon, Management Analyst and Bee Lake Productions LLC, Bryan Ehrlich**

EXECUTIVE SUMMARY

The Community Activities Commission voted at their March 2, 2021 meeting to keep the 4th of July parade on Cleveland Avenue and to move the 4th of July Festival to Wellington Community Park. This discussion of moving events prompted a discussion of alternate locations for the fireworks display. At the February 23, 2021 Board of Trustees meeting, it was requested by the Board to have our fireworks vendor, Bee Lake Productions provide an analysis of alternate fireworks locations at the March 16, 2021 Board of Trustees Work Session.

BACKGROUND / DISCUSSION

- For the past 4 years, the fireworks display has been located on town property at 6th Street and Wilson across from Wellington Middle School
- An audio/visual display has been played at the school in coordination with the fireworks display
- Other locations considered by Bee Lake Productions:
 - Wellington Community Park -
 - 1- While not optimal, this is a viable site. We will have issues with parking and crowd management but we can squeeze the fallout area in without compromising the spectator area. We will have to very careful to keep spectators behind the perimeter of the fallout area.
 - 2- We would need to get sign off on the commercial buildings on West 2nd Street. Obviously they are completely in the fall out zone. This is not uncommon, we would just need their sign off.
 - 3- The fallout zone does not cross the RR so that is good.
 - Wellington Cemetery -
 - 1- I am not in favor of this location. I have not had time to go out there and look at this option. We could manage to set this up in and amongst the grave sites but that is not a great idea, in my opinion.
 - 2- There appears to be two residences we would need to get signoff to be in the fall out zone.
 - 3- A more concerning issue is where we would put the spectators. They would have to be on the west side of I25 and even then that appears to be a private storage area. Spectators would be over 350' away at the closest point and I am not sure where we could stage the video portion.
 - 4- Fireworks do leave a bit of litter, and being in the cemetery it would have to be picked up. The shells are made of biodegradable paper, but there would be large pieces laying around and we would need to add some labor to clean it up. Where we currently shoot in the open field, we leave these pieces and they disintegrate in a matter of weeks.

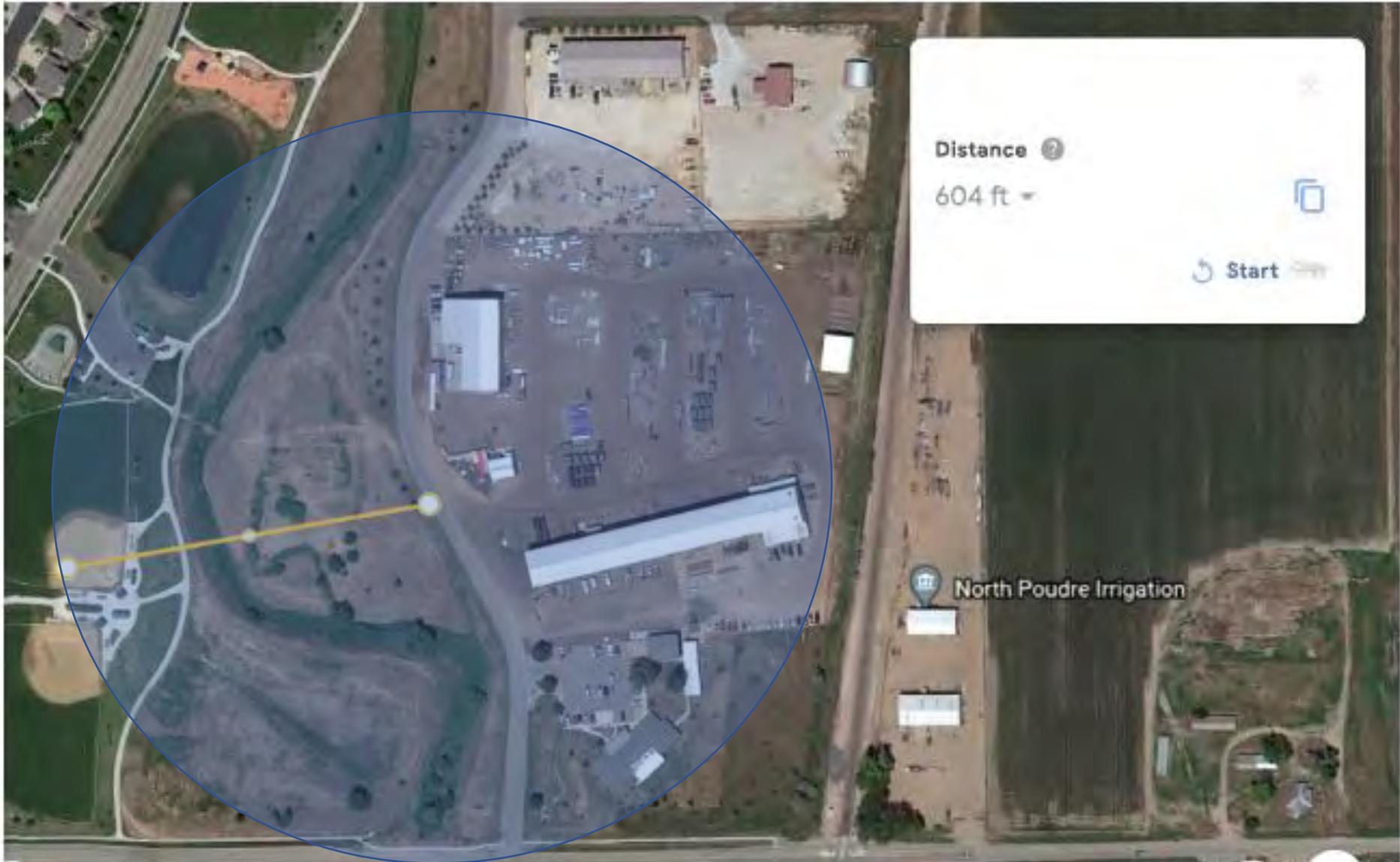
STAFF RECOMMENDATION



ATTACHMENTS

1. Community Park Fallout Packet
2. Cementery Fallout Packet

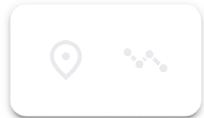
Wellington Community Park Fallout Zone





Distance ?
604 ft ▾

Start Copy

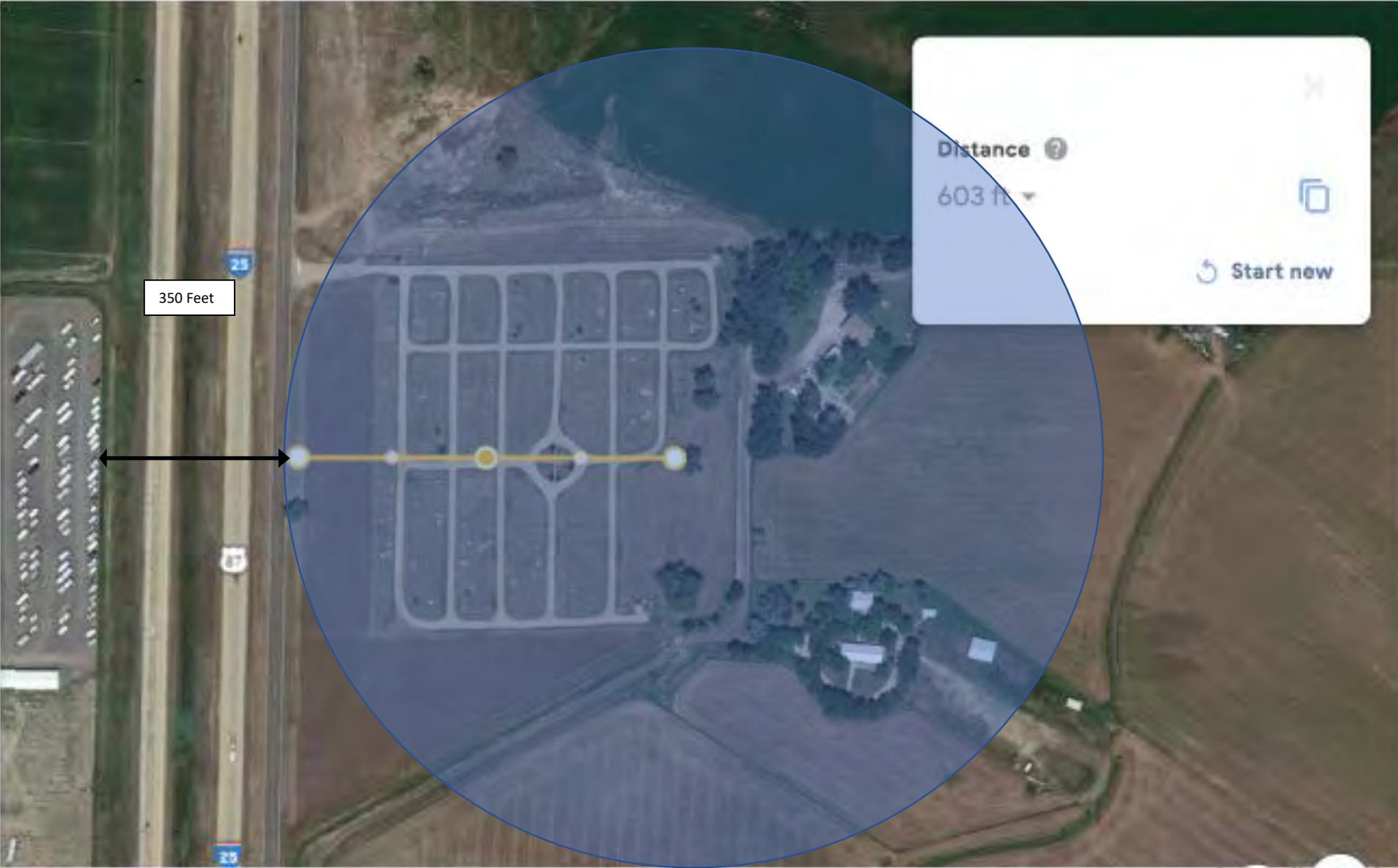


100%



Camera: 2,271 m 40°42'51"N 105°00'13"W 1,591 m

Wellington Cemetery Fallout Zone





Distance ?
 603 ft ▼
 Start new



100%



Camera: 2,271 m 40°43'05"N 104°59'17"W 1,597 m



March & Olive LLC

Wellington Town Attorney

Memo

TO: Wellington Board of Trustees

CC: Patti Garcia, Town Administrator; Cody Bird, Town Planner; Bob Gowning, Public Works Director; Tyler Sexton, Deputy Finance Director; Judith Tippetts, Finance Director

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

RE: Boxelder Storm Water Authority

DATE: March 2, 2021

In August of 2008, the Town entered into an intergovernmental agreement with Fort Collins and Larimer County which resulted in the formation of the Boxelder Basin Regional Stormwater Authority (the "Authority"). An authority is a separate governmental entity formed under Title 29 Article 1 of the Colorado Revised Statutes by agreement between two or more governmental entities. An authority is autonomous, formed to provide specific cooperative governmental functions, in this case storm water drainage. At the same time the Authority was formed, Wellington adopted a storm water utility fee which is charged against all Town properties and is billed for the most part as a component of the Town's utility billings.

One generally thinks of utility billings as being for the provision of certain services, such as water, sewer, gas, and electricity. The formation of the storm water utility was sanctioned by Colorado's Courts and in contrast to the delivery of traditional utility services, storm water charges are assessed based upon the provision of drainage services and billings for those services take into account the amount of drainage from a property. These billings are often based upon the extent of a property's impervious surface which impacts required drainage facilities. With the creation of the Town's storm water utility, the Town agreed to pay a significant share of collected storm water revenues towards addressing costs associated with work to be performed by the Authority. As finally agreed to, the IGA provided for a five-person board of directors that would manage the Authority. These directors were selected, one by each of the member entities, one by joint appointment of the County and City, one by joint appointment of the County and Town.

FLOOD SITUATION. Dating back 30+ years, one of the most pressing impediments to development of the Town was the FEMA designation placing the bulk of the Town in the flood plain. This flood plain was

created in part by artificial barriers which channel north and south flowing flood waters through Wellington. The railroad bed on the west side of Town and the interstate to the east effectively act as dikes directing above ground water flows.

Planning for and encouraging expected growth in Wellington to the north and south was compounded by this channeling of waters. Growth to the west was impacted by both the railroad bed and the interstate acting as dams. Growth to the east was problematic as storm water flows running east had limited outlets and could not flow to the Poudre River (the natural drainage area) which is located west of the interstate, immediately off Prospect Road. Southerly storm water flows were further impeded by raised county roadbeds located both east and west of the interstate between Wellington and Prospect Road. Allowing water to flow directly south from Prospect Road creates impacts on Timnath, as well as properties annexed to Fort Collins on both the east and west sides of the interstate. As seen by the drainage and groundwater that accumulated at Tract F at the southeast corner of Columbine Estates, water passing through Wellington and draining to the south becomes trapped on the west side of the interstate. As a result of the flood circumstances, most property owners in Wellington were required to pay for expensive flood insurance and basements were generally not allowed.

RATIONALE FOR AUTHORITY. The flood impacts on Wellington were likewise felt in Fort Collins and in the county, with the county having particular concerns surrounding the risk of damages which could be occasioned to county roads, bridges, and other infrastructure improvements. All of the three Authority members had long been aware of flood risks. This recognition in part was the reason for the construction of the B-Dams which, when built, provided storm water safety but today, as population and improvements down gradient from the dams has increased, have also provided heightened safety concerns.

AUTHORITY RATIONALE. In the mid-1980s, storm drainage flows had increased and become a greater impediment to development within the Town. There was a North Poudre ditch north of town with a pipe that flowed under the interstate to Clark Reservoir. The ditch was capable of capturing and conveying storm water to the east side of the interstate. The Town's ability to negotiate with North Poudre was limited. However, Fort Collins was a significant North Poudre stockholder. At the same time, the county had likely access to FEMA grant funds which would cover improvement costs. It was recognized that a county FEMA application would be more enticing in the face of a cooperative effort between the Town, County and City. The City in the meantime, recognized a need to channel east side storm waters to allow possible future annexations to the City on the east side of the interstate and to address existing storm water risks faced by already annexed Fort Collins properties. The Authority was formed with the goal of addressing first, the north project by which storm waters impacting Wellington would be directed beneath the interstate via the North Poudre ditch where they would be detained in North Poudre's Clark Reservoir. A second contemplated phase would then channel storm water generally, including the redirected storm water from Clark, on the east side of the interstate to allow water to safely reach the Poudre. A third long term mission involving expected concerns with the B-Dams was contemplated but not formulized.

The first project phase involving the northerly improvements, channeling water to Clark Reservoir was completed with minimal problems. It was necessary to enter agreements with North Poudre allowing the reservoir to be dredged and providing that the Authority would take responsibility for silt that would accumulate in the reservoir and the Authority would clean the reservoir as required.

With the completion of the north side project, the Authority undertook the east side detention phase. The design and complications associated with the east side project mounted, substantially impacting costs. In 2014, the outgoing Wellington Town Board approved, over objections of incoming Town Board members, a first amendment to the Authority's intergovernmental agreement which authorized borrowing of roughly \$9,000,000 for the east side project including a further agreement whereby improvements to County Road 52, would be addressed, and approving agreements between the Authority and Timnath, Timnath having early on chosen not to participate in the Authority.

By early 2015, the newly seated Town Board was becoming increasingly disillusioned with the 2014 agreements, and east side costs and complications continued to rise. Among the concerns voiced by Wellington's Town Board, particularly by then Mayor Tim Singewald, were that the Town did not benefit from the east side component that as a result of its growth they were bearing a disproportionate share of the costs associated with the project, that Fort Collins and the County were not properly accounting for their properties that were within the Authority's boundaries as defined by the IGA and that the project, particularly the east side component, was being mismanaged. The Town's challenges to the design of the east side improvements mounted. Court condemnation cases and outcomes likewise fostered concern. By 2017, the mounting costs prompted the Town to again withhold the Town's fee contributions that were required by the IGA.

The Town threatened Court action and retained its then water counsel, Jeff Kahn, to negotiate a new agreement. Kahn and then Town Administrator, Ed Cannon, with input from then Mayor, Tim Singewald, negotiated amendments to the original IGA which reapportioned costs, allowed for the repayment of the Authority's roughly \$9,000,000 in bond obligations, provided for funding \$1,000,000 to address Clark Reservoir obligations and funding \$1,200,000 to address obligations associated with the east Side detention. A modified agreement called for payoff of the bonds which was projected to occur in roughly 2031 if no prepayments were made. Upon bond satisfaction the revised agreement calls for dissolution of the Authority, with the Town accepting responsibility for 50% of the costs associated with Clark Reservoir, the County and City each bearing 25% of the remaining Clark (north project) costs; and the City, County and Timnath bearing the responsibility for the east side detention project. So as not to violate the terms of the bonds, each of the parties were required to continue to contribute their originally envisioned fee amounts to the Authority until the bonds were satisfied. At such time as the bonds were paid off, there would be a "truing-up" and fees associated with the Clark Reservoir component and the east side component would be accounted for and excess payments would be returned to each contributor. The expectation was that the amount to be returned to the Town at the time of bond satisfaction would be roughly a million dollars. It was also expected that the bonds would be paid off prior to 2031 based on the expectation that Authority fee revenues contributed by each member would increase as a result of development and an increased number of fee payers within the Authority's service area.

ACTIVITIES SINCE 2017 RENEGOTIATION. Running parallel with the 2017 renegotiation of the IGA, were issues involving the condemnation of property from the Day family. The Boxelder had hired Denver counsel to handle the condemnation. Unexpectedly the Day family won a victory in the District Court and the Authority felt that the need to complete improvements mandated settlement. Agreements were reached by the Authority with the Days as substantial payments were made. The Days continued to assert that wells on their property had been negatively impacted and the Authority was faced with

above ground water flows and the need to augment (replace) water losses due to surface evaporation. Costs associated with the east side project are continuing.

The Town's 2018 elections saw a shift in the Town Board, and neither Tim Singewald nor Travis Harless, who had been the driving forces behind the renegotiation of the IGA, remained on the Authority board. Lee Tucker, a long-time town resident had served on the Authority Board as the Town/County appointee and Richard Seaworth continued to serve as the appointee of the Town. Mr. Tucker's health was failing, and the Town Board made the decision to move Seaworth to the County/Town board position and appointed Singewald as the Town's Authority representative. In addition to the Authority board, the 2017 Amendment created an Authority Audit Committee to ensure that Authority revenues and costs were better monitored. The then Town Finance Director, Keith Wilson, was appointed as the Town's delegate to the Finance Committee and Wilson worked closely with then Town Administrator Cannon, who together with then Town Water attorney, Kahn, had negotiated the amendment. Cannon and Wilson together with then Authority Board Member and then Fort Collins City Councilman, Gerry Horak (now running for Fort Collins Mayor) and then City Finance Director, Mike Beckstead, to configure the Finance Committee and define and address issues with the Authority board. The Town's then Deputy Town Administrator, Ryan Abbott, left the Town and took a job with Pinnacle Consulting, which acted as the manager for the Authority, including directing and collecting revenues and providing for the Authority's financial accounting.

At this junction, most of the existing members of the Authority have moved on. Current members of the Authority consist of Singewald and Seaworth as well as Martina, Wilkinson, who had been an engineer with the County and moved on to the City (the City/County Representative), Eric Tracy, a land development engineer with the County (County representative) and Teresa Connor, a water engineering and field services engineer with the City (city representative).

The Authority's website reflects that the last Authority Board meeting was on January 20, 2021 with three prior board meetings on January 21, 2020; May 26, 2020; and August 21, 2020. The attorney for the Authority, Greg White, who served since the Authority's creation, has retired. Ryan Abbott has gone onto other projects. The Audit Committee met once. Wilson's successor as Finance Director, Pete Bandjford, succeeded Wilson (Bandjford subsequently left Wellington) and Tyler Sexton, as Interim Finance Director succeeded Bandjford on Authority Audit Committee. No audit committee meetings have been held during Sexton's tenure. Tyler receives and reviews Authority information but acknowledges that he has limited background related to the Authority. At the time of the 2017 amendment, it was envisioned that the activities of the Authority board would be minimal, and the guts of the operations were to be handed off to the Audit Committee which would have oversight of the Authority's revenues and expenditures. Having gone from Assistant to Interim then back to Assistant Finance Director, Sexton, while still a member of the inactive Audit Committee, has had little time to address Boxelder issues.

CURRENT STATUS. After appointment of Ms. Garcia, as Town Administrator, she and I had general discussions and I began gathering information and making contacts related to the Boxelder. Information is fairly sparse. Pinnacle, the manager, has just appointed new personnel to oversee the Boxelder's operations and that staff has limited background. As noted, Authority's attorney stepped down. On the Boxelder website, the January 2021 minutes have not been posted, the most recently available minutes are those from January of 2020, and the most recently posted board packet is from October of 2019. In

discussions with Mr. Seaworth, he is concerned that the Authority may have substantial contingent liabilities associated with possible claims surrounding impacts caused by improvements installed by the Authority. There also continue to be continued concerns involving the Days' wells and how to address surface flows which resulted from work associated with the East Side project. Based upon the 2017 amendments to the IGA, the Town's obligations for these liabilities are limited but there the revised agreement may allow Town contributions to be utilized to pay costs, with costs being true-up later . I have not heard that any studies have been done to determine whether there is an imminent need to perform work on Clark Reservoir.

The Authority's financial statements are audited on an annual basis and the 2019 audit report is the last report available. The audit reflects that as of December 30, 2019, total bonded indebtedness has been reduced to \$7,757,690. The estimated surface water augmentation costs which the Town is ultimately not responsible for paying (reimbursable are the true-up) but does have to contribute to until the Authority shuts down, has been increased from \$700,000 to \$1,600,000. The Authority held substantial cash or cash equivalent assets that Mr. Singewald advocates be applied to reduce the bonded indebtedness. Singewald has also taken the position that costs related to the east side project need to be accounted for, including Pinnacle costs, such that they are taken into account at the time of the true-up.

RECOMMENDATIONS. Tyler Sexton remains the appointee to the Audit Committee. The Town's financial representative to the committee should be familiar with the Authority's financials and with concerns of the Town's representatives on the Authority Board. It is likely, that with Mike Beckstead's departure, there is not a current City representative to the Audit Committee, it is unknown whether there is a County Representative. It is suggested that Ms. Garcia contact the City Manager and the County Administrator and request the required annual audit committee meeting. Direction needs to be given to the Audit Committee Representative.

Issues which the Audit Committee should discuss likely should include the following:

1. Balance of Authority bonds and possible pay down.
2. Current revenues generated by each Authority entity.
3. Whether bond prepayments are prudent.
Current maintenance needs at Clark Reservoir and costs associated.
4. Current status of intended reserve accounts.
 - a. Clark Reservoir \$1,000,000 sinking fund.
 - b. East side detention sinking fund 1.2 million.
5. Allocation of expenses between east side and Clark projects. Costs of North and East projects.
6. Likely true-up payments that will be due to the Town and how true-up will be paid based upon.
7. Pay down of bonds.
8. Revenues contributed by entity members.

Future considerations and the Town needs to evaluate and give direction to its representatives on the Board as to how Town wishes to proceed.

1. Representatives are scheduled for reappointment, including Singewald (in 2022) and Seaworth.
2. While it seems unlikely that there will be further liability associated with the project, if east side costs exceed resources, the potential exists that there would be a need for additional fee increases

which would impact residents throughout the Authority and particularly in the Town, which is entirely encompassed by the Authority. The Town should evaluate costs and associated risks.

3. At the time the Authority is terminated, it was projected that there would be a substantial true-up amount due to the Town. While subject to debate, it would appear that these true-up funds be paid back to the Town and could be used for general storm water purposes. The source of the true-up funds due to the Town needs to be discussed and the Town needs to evaluate how these funds will be applied on termination of the Authority.