

***TOWN COUNCIL***

***MEETING***

***PACKET***

**June 3, 2019**



## **Town Council**

### **Agenda**

**Monday, June 3, 2019  
Town Hall, Council Chambers  
450 So. Parish Avenue  
7:00 PM**



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**MISSION STATEMENT**-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

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*Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position. If you wish to speak at the Town Council meeting, please fill out a sign-up sheet and present it to the Town Clerk.*

**1) CALL TO ORDER**

A) Pledge of Allegiance

**2) ROLL CALL**

**3) AGENDA APPROVAL**

**4) RECOGNITIONS AND PROCLAMATIONS –**

**5) PUBLIC COMMENT (three-minute limit per speaker)**

A) Rich Werner – Upstate Colorado Economic Development

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*The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to have an item discussed or if there is public comment on those ordinances marked with an \*asterisk. The Council member may then move to have the subject item removed from the Consent Agenda for discussion separately.*

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**6) CONSENT AGENDA**

A) Town Council Meeting Minutes – May 20, 2019

B) **2nd Reading** Ordinance Number 2019-160 – An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication Facilities

C) Water Agreement between Town of Johnstown and Maplewood Acres, Inc.

**7) TOWN MANAGER REPORT**

**8) TOWN ATTORNEY REPORT**

**9) OLD BUSINESS**

**10) NEW BUSINESS**

A) **Public Hearing First Reading** – Ordinance Number 2019-161, An Ordinance Amending Article 1 of Chapter 11 of the Johnstown Municipal Code to Include Section 11-7 Concerning the Sale, Exchange or Disposition of Real Property, Public Buildings and Public Utilities

**11) EXECUTIVE SESSION**

**12) COUNCIL REPORTS AND COMMENTS**

**13) MAYOR'S COMMENTS**

**14) ADJOURN**

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## **Work Session**

A) Larimer County Road Orientation Discussion

B) Thornton Water Discussion



**NOTICE OF ACCOMODATION**

If you need special assistance to participate in the meeting, please contact the Town Clerk at (970) 587-4664. Notification at least 72 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to the meeting.

## **AGENDA ITEM 6A-C**

### **CONSENT**

### **AGENDA**

- **Council Minutes – May 20, 2019**
- **2<sup>nd</sup> Reading Ordinance Number 2019-160**
  - **Water Agreement**  
**(Maplewood Acres, Inc.)**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** June 3, 2019

**ITEM NUMBER:** 6A-C

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk

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**AGENDA ITEM DESCRIPTION:** The following items are included on the Consent Agenda, which may be approved by a single motion approving the Consent Agenda:

- A) Town Council Meeting Minutes – May 20, 2019
- B) 2<sup>nd</sup> Reading Ordinance Number 2019-160, An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication Facilities
- C) \*Water Agreement Between Town of Johnstown and Maplewood Acres, Inc.

\* When Maplewood Acres, Inc. annexed property into the Town of Johnstown, Maplewood entered into an Annexation Agreement, committing to dedicate all water rights appurtenant to the property at the time of development. The attached Water Agreement between the Town and Maplewood permits Maplewood to exchange up to 100 units of Colorado Big Thompson Project (“CBT”) water that is appurtenant to the property for shares of the Consolidated Home Supply & Ditch Reservoir Company (“Home Supply”). Maplewood would be permitted to exchange up to 22.5 CBT units for each adjudicated Home Supply share and up to 18 CBT units for each un-adjudicated share. Maplewood would then be required to dedicate the Home Supply shares to the Town at the time of development. The remaining provisions of the Annexation Agreement remain in full force and effect. This agreement follows the same agreement approved between the Town and Keto Enterprises, where the Town Water Engineer provided guidance for the water exchange and the Town Attorney drafted the Water Agreement.

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**LEGAL ADVICE:** The entire Consent Agenda may be approved by a motion of the Town Council approving the Consent Agenda, which automatically approves each and every item listed on the Consent Agenda. If a Council member wishes to have a specific discussion on an individual item included with the Consent Agenda, they may move to remove the item from the Consent Agenda for discussion.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve Consent Agenda

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the Consent Agenda.

**For Denial:**

# **Council Minutes**

The Town Council of the Town of Johnstown met on Monday, May 20, 2019 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Lebsack led the Pledge of Allegiance.

#### Roll Call:

Those present were: Councilmembers Berg, Lemasters, Mellon, Molinar Jr., Young and Tallent

Also present: Matt LeCerf, Town Manager, Avi Rocklin, Town Attorney, Mitzi McCoy, Finance Director, Marco Carani, Public Works Director, Kim Meyer Planning Director and Brian Phillips, Police Chief

#### Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Molinar Jr. to approve the Agenda as submitted. Motion carried with a unanimous vote.

#### Consent Agenda

Councilmember Mellon made a motion seconded by Councilmember Lemasters to approve the Consent Agenda with the following items included:

- May 6, 2019 Council Meeting Minutes
- Payment of Bills
- April Financial Statements
- Intergovernmental Agreement for Contribution to Roadway Improvements

Motion carried with a unanimous vote.

#### New Business

A) Consider Award of Contract to Loveland Barricade for the 2019 Pavement Marking Project – Councilmember Berg made a motion seconded by Councilmember Young to Award the bid between the Town of Johnstown and Loveland Barricade for the 2019 Town of Johnstown Pavement Marking Project in the amount not to exceed \$90,450.00. Motion carried with a unanimous vote.

B) Consider Award of Contract to A-1 Chip Seal for the Slurry Seal Project – Councilmember Lemasters made a motion seconded by Councilmember Berg to award the bid between the Town of Johnstown and A-1 Chip Seal Company for the 2019 Town of Johnstown Slurry Seal Project in the amount not to exceed \$219,550. Motion carried with a unanimous vote.

C) Public Hearing First Reading – Ordinance Number 2019-160, An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication Facilities - This ordinance amends Chapter 16 of the municipal code to conform to existing state and federal laws and regulations regarding wireless communication facilities.

Mayor Lebsack opened the public hearing at 7:30 p.m. Having no public comments the public hearing was closed at 7:34 p.m.

Councilmember Mellon made a motion seconded by Councilmember Molinar Jr. to approve Ordinance Number 2019-160, An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication Facilities. Motion carried with an unanimous vote.

D) Consider Second Amendment to Iron Horse Agreement – According to the Iron Horse Development Agreement, the developer is required to pay for the proportionate share of roadway, traffic signal, and intersection improvements along County Road 3 and to Highway 34. The proportionate share would be 25% of the cost based on ownership adjacent to the intersection. Because the infrastructure improvements have not occurred, the Town restricted building permits on the development. Iron Horse and the Town have been working on an agreement to move forward with the development of the property. Staff would like to see development continue, building permits issued for the property and the developer honor the original agreement. Councilmember Mellon made a motion seconded by Councilmember Tallent to table this item indefinitely. Motion carried with a unanimous vote.

There being no further business to come before Council the meeting adjourned at 8:31 p.m.

Mayor

Town Clerk



**2<sup>nd</sup> Reading**  
**Ordinance 2019-160**

**TOWN OF JOHNSTOWN, COLORADO**

**ORDINANCE NO. 2019 - 160**

**AN ORDINANCE REPEALING AND REPLACING  
ARTICLE XIX OF CHAPTER 16 OF THE JOHNSTOWN  
MUNICIPAL CODE CONCERNING WIRELESS  
COMMUNICATION FACILITIES.**

**WHEREAS**, the Town of Johnstown, Colorado is a municipal corporation duly organized and existing under its Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado; and

**WHEREAS**, Article XIX of Chapter 16 of the Johnstown Municipal Code regulates telecommunications towers and antennas in the Town; and

**WHEREAS**, Town Council desires to amend Article XIX of Chapter 16 of the Johnstown Municipal Code to conform to existing state and federal laws and regulations regarding wireless communication facilities; and

**WHEREAS**, Town Council finds that this Ordinance is in the best interests of the Town of Johnstown.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:**

**Section 1.** Article XIX of Chapter 16 of the Johnstown Municipal Code shall be repealed and replaced in full to read as follows:

**ARTICLE XIX – Wireless Communication Facilities.**

**Sec. 16-341 Purpose and intent.**

In order to accommodate the communication need of residents and businesses while protecting the public, health, safety and general welfare of the community, the Town Council finds that these regulations are necessary to:

- (a) Provide for the managed development and installation, maintenance modification and removal of wireless communications infrastructure in the Town with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate and remove wireless communication facilities;
- (b) Minimize adverse visual effects of WCFs through thoughtful design and siting, including, but not limited to, camouflage design techniques, appropriate and effective screening and undergrounding whenever possible;

- (c) Encourage the location of towers in areas that minimize the total number of towers needed throughout the Town;
- (d) Require the co-siting of WCFs on new and existing sites wherever possible;
- (e) Encourage the location of WCFs in areas where the impact to the Town and its residents is minimized;
- (f) Enhance the ability of wireless communications service providers to provide wireless services to the community quickly, effectively and efficiently; and
- (g) Effectively manage WCFs located in the public right-of-way.

#### **Sec. 16-342 Definitions.**

*Agreement* shall mean an executed agreement, and any exhibits, supplements or amendments thereto, between the owner or operator of WCFs and the Town to utilize the public right-of-way or public property to install WCFs and associated equipment.

*Alternative tower structure* shall mean man-made trees, clock towers, bell steeples, light poles, buildings and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures and camouflage or conceal the presence of the antennas or towers in a manner designed to make them architecturally compatible with the surrounding area. This term also includes any antenna or antenna array attached to an alternative tower structure. A stand-alone pole in the right-of-way, streetlight or traffic signal that accommodates small cell facilities is considered an alternative tower structure to the extent it meets the camouflage and concealment standards of this Article.

*Antenna* shall mean any device used to transmit or receive radio or electromagnetic waves such as, but not limited to, panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations or other similar devices and configurations as well as exterior apparatus designed for telephone, radio or television communications through the sending or receiving of wireless communications signals.

*Base station* shall mean a structure or equipment at a fixed location that enables Federal Communications Commission ("FCC") licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower. Base station includes, without limitation:

- (a) Equipment associated with wireless communications services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Town under this Article, has been reviewed and approved under the applicable zoning or siting process or under another state or local regulatory review process, even

if the structure was not built for the sole or primary purpose of providing such support; and

- (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the Town under this Article, has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the relevant application is filed with the Town, does not support or house equipment described in paragraphs (a) and (b) above.

*Camouflage, concealment or camouflage design techniques* shall mean measures used in designing a WCF to alter or mask its appearance in such a manner as to substantially integrate it into surrounding building designs or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A WCF site utilizes camouflage design techniques when it:

- (a) is integrated as an architectural feature of an existing structure such as a cupola, spire, chimney, cornice or similar item;
- (b) is integrated in an outdoor fixture such as a utility tower; or
- (c) uses a design which mimics and is consistent with nearby natural features, architectural features (such as a clock tower), or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards),

such that the presence of the WCF is not readily apparent.

*Cell on wheels* shall mean a mobile cell site that consists of an antenna tower and electronic radio transceiver equipment on a truck or trailer designed to boost reception as part of a larger cellular network and is temporary in nature.

*Collocation* shall mean:

- (a) the mounting or installation of transmission equipment on a pre-existing structure (i.e., tower, building, utility pole, street light pole); or
- (b) the modification of a structure for the purpose of mounting or installing an antenna facility on the structure to transmit or receive radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

*Co-siting* shall mean the sharing of a single structure, tower, designated area of land or other facility by more than one antennae or other WCF equipment.

*Director* shall mean the Town's director of the Planning and Development Department. Director may also include, in the Town Manager's discretion, the Town Manager.

*Eligible facilities request* shall mean any request for modification of an existing tower or base station that is not a substantial change.

*Eligible support structure* shall mean any tower or base station as defined in this Article, provided that it is existing at the time the relevant application is filed with the Town under this Article.

*Existing tower or base station* shall mean a constructed tower or base station that was reviewed, approved and lawfully constructed in accordance with all requirements of applicable law as of the time it was built; for example, a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

*Micro cell facility* shall mean a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, twelve (12) inches in height, and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.

*Monopole* shall mean a single, freestanding pole-type structure supporting one or more antennas.

*Over the air receiving device* shall mean an antenna used to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations, but shall not include antennas used for AM/FM radio, amateur ("ham") radio, CB radio, digital audio radio services or antennas used as part of a hub to relay signals among multiple locations.

*Pole-mounted small cell facility* shall mean a small cell facility with an antenna that is mounted and supported on an alternative tower structure, which structure may be a replacement pole.

*Public property* shall mean real property owned or controlled by the Town, excluding the public right-of-way.

*Public right-of-way (ROW)* shall mean any public street, way, alley, sidewalk, median, parkway or boulevard that is dedicated to public use.

*Radio frequency emissions letter* shall mean a letter from the applicant certifying that all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

*Replacement pole* shall mean an alternative tower structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure in order to support a WCF or small cell facility or micro cell facility or to accommodate collocation, and replaces a pre-existing pole or structure.

*Shot Clock* means the provisions of the Declaratory Ruling and Third Report and Order issued by the FCC on September 28, 2018, related to the timeframe for review and tolling, as may be amended by the FCC from time to time.

*Signal non-interference letter* shall mean a letter from the applicant certifying that the WCFs that are the subject of the application will be designed, sited and operated in accordance with applicable federal regulations addressing radio frequency interference.

*Site for towers* (other than towers in the right-of-way and eligible support structures) shall mean the current boundaries of the leased or owned property surrounding the tower or eligible support structure and any access or utility easements currently related to the site. A site for other alternative tower structures, base stations, micro cell facilities and small cell facilities in the right-of-way is further restricted to that area comprising the base of the structure and other existing or proposed related accessory equipment deployed on the ground.

*Small cell facility* or *small wireless facility* shall mean a WCF where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and primary equipment enclosures are not larger than twenty-eight (28) cubic feet in volume; and all other wireless equipment associated with the structure, including the wireless equipment associated with the propose antenna and any pre-existing associated equipment on the structure, is not more than twenty-eight (28) cubic feet in volume, cumulatively.

Small cell facilities are mounted to structures fifty (50) feet or less in height, including their antennas, or are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater.

Small cell facility shall also include a micro cell or micro cell facility.

*Substantial change* shall mean a modification that substantially changes the physical dimensions of an eligible support structure if, after the modification, the structure meets any of the following criteria:

- (a) For towers, other than alternative tower structures or towers in the right-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array, with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;
- (b) For towers, other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
- (c) For any eligible support structure, it involves installation of more than the standard

number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;

- (d) For towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
- (e) For any eligible support structure, it entails any excavation or deployment outside the current site;
- (f) For any eligible support structure, it would defeat the concealment elements of the eligible support structure; for the purposes of this definition, a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure; or
- (g) For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets or new excavation that would not exceed the thresholds identified in subsections (a), (b), (c) or (d) of this definition. For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

*Telecommunications Act* means the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 151-614 (1994 & Supp. 1998), as amended.

*Toll* and *tolling* shall mean to delay, suspend or hold off on the imposition of a deadline, statute of limitations or time limit.

*Tower* shall mean any structure that is designed and constructed primarily built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

*Transmission equipment* shall mean equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Unreasonable interference* shall mean any use of the right-of-way that disrupts or interferes with the use by the Town, the general public or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities and any other activity that will present a hazard to public health, safety or welfare.

*Wireless communications facility* or *WCF* shall mean a facility used to provide personal wireless services as defined at 47 U.S.C. § 332 (c)(7)(C), as amended; or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, base stations, support equipment, alternative tower structures and towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Title.

#### **Sec. 16-343 Applicability.**

- (a) The requirements set forth in this Article shall apply to all eligible facilities requests and WCF applications for base stations, alternative tower structures, towers, micro cells, small cells and all other wireless facilities, unless exempt under Subsection (b).
- (b) The requirements set forth in this Article shall not apply to:
  - (1) Amateur radio antennas. Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive-only antennas, provided that the height is less than or equal to the distance from the base of the antenna to the property line and meets other applicable provisions of the Code are met.
  - (2) Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to June 3, 2019, shall not be required to meet the requirements of this Article. Notwithstanding the foregoing, any modifications qualifying as an eligible facility request shall be evaluated under this Article.
  - (3) Miscellaneous receiving antennas. Antennas used for reception of television, multi-channel video programming and radio such as over-the-air receiving device (OTARD) antennas, television broadcast antennas, satellite antennas and broadcast radio antennas, provided such antennas are less than one (1) meter in diameter, mounted on the ground with a total height less than five (5) feet or attached to an existing building. The Director has the authority to approve modifications to the size



and height restriction of OTARD antennas and OTARD antenna structures, if, in the reasonable discretion of the Director, modifications are necessary to comply with federal law.

- (4) Emergency. A WCF installed upon the declaration of a state of emergency by the federal or state government or by the Town pursuant to written determination, provided prior to the WCF installation or within seventy-two hours (72) thereafter, that such action is necessary to protect the health, safety and welfare of the public.
- (5) Temporary WCF. A cell on wheels, or similar temporary WCF, installed for the purpose of providing sufficient coverage for a special event for no more than fifteen (15) days, subject to administrative approval by the Town.

**Sec. 16-344 Operational standards.**

- (a) Federal Requirements. WCFs shall meet the standards and regulations of the Federal Aviation Administration, the FCC and any other federal government agency with the authority to regulate WCFs, as amended from time to time. If such standards and regulations are revised, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within thirty (30) days of the Town's determination of such failure shall constitute grounds for the removal of the WCF by the Town or by the owner of the WCF at the owner's expense.
- (b) Permission to use public right-of-way or public property.
  - (1) Public right-of-way. Prior to, or concurrently with, the filing of an application seeking land use approval for the siting of WCF in the ROW, the applicant shall have an executed agreement with the Town, granting the applicant a non-exclusive license to use the ROW. WCFs attached to an existing pole or replacement pole or on a new traffic signal, street light pole or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner. The applicant shall remain the owner of, and solely responsible for, any WCF installed in the ROW.
  - (2) Public property. Prior to, or concurrently with, the filing of an application seeking land use approval for a WCF on public property, the applicant shall execute a lease agreement with the Town.
- (c) Operation and maintenance. To ensure the structural integrity of WCFs, the owner and operator of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If, upon inspection, the Town concludes that a WCF fails to comply with such codes and/or constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have thirty (30) days from the date of notice to bring the WCF into

compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the Director may extend such compliance period, not to exceed 90 days from the date of said notice. If the owner fails to bring the WCF into compliance within said time period, the Town may remove the WCF at the owner's expense.

- (d) Abandonment and removal. After the WCF is constructed, if a WCF has not been in use for a period of three (3) months, the owner of the WCF shall notify the Town of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is constructed and is not operated for a continuous period of six (6) months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF, or the property owner who signed a removal affidavit, shall remove the same within thirty (30) days of receipt of written notice from the Town. If such WCF is not removed within said thirty (30) days, the Town may remove it at the owner or the property owner's expense and any approved permits for the WCF shall be deemed to have expired. The Town may also, in its sole discretion, decline to approve any new WCF application until the applicant who is also the owner of any abandoned WCF has removed such WCF or provided payment for such removal to the Town.
- (e) Hazardous materials. No hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.
- (f) Collocation and co-siting. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same WCF facility or site. When an owner or operator seeks to exclude a telecommunications competitor, upon request from the Director, the owner or operator shall provide written evidence explaining why collocation or co-siting is not possible at the particular facility or site.

#### **Sec. 16-345 Review procedures and requirements.**

- (a) Review procedures; applications; timeframe for review. New WCFs shall be constructed, collocated or co-sited after a written request from an applicant is reviewed and approved by the Town, in accordance with this Article. The Town shall provide an application for WCF submittals, which shall require the provision of information necessary and adequate for the Town to appropriately make a determination with respect to the WCF development request. An application for a WCF that does not comply with the provisions and design standards of this Article may seek use by special review approval pursuant to the procedure set forth in the Code.
- (1) Review procedures for certain WCFs, including base stations, alternative tower structures, small cell facilities and alternative tower structures within public rights-of-way.

Applications for base stations, alternative tower structures, small cell facilities and alternative tower structures within public rights-of-way shall be reviewed by the

Director for conformance with this Article, using the design standards set forth in Section 16-346 and those otherwise found in the Code. If the Director determines that WCFs in the rights-of-way are found to have a significant visual impact, are not compatible with the structure or surrounding area or do not meet the intent of this Article, the Director may refer such applications to the Planning and Zoning Commission for a use by special review determination.

(2) Review procedures for certain WCFs, including towers.

- a. Applications for towers, other than those defined or excepted in (1) above, must utilize the use by special review procedure (conditional use approval) set forth in the Code including Chapter 16, Article VII, and meet the applicable submittal requirements contained in Section 16-145(f)(1), as amended, unless otherwise directed by the Director.
- b. Applications for towers shall demonstrate that other alternative design options, such as using base stations or alternative tower structures, are not viable options.
- c. Subject to the tolling provisions contained in Subsection (c), the Town shall render a decision within one-hundred (150) days of the date on which an applicant submits a complete use by special review application.

(3) Review procedures for eligible facilities requests.

- a. Permitted use; application; decision. Eligible facilities requests shall be considered a permitted use in all zoning districts and shall be subject to administrative review. The Town shall prepare an application form requiring submittal of the information necessary for the Town to consider whether a project constitutes an eligible facilities request, including, but not limited to, sufficient information to allow the Town to determine whether the request does not constitute a substantial change and whether it complies with applicable law. The application shall not require the applicant to demonstrate a need or business case for the request.
- b. Timeframe for review of an eligible facilities request. Subject to the tolling provisions contained in Subsection (c), the Director shall render a decision within sixty (60) days of the date on which an applicant submits a complete application.
- c. Not an eligible facilities request. If the Director determines that the applicant's request is not an eligible facilities, the presumptively reasonable timeframe set forth in Section 332(c)(7) of the Telecommunication Act, as prescribed by the Shot Clock, shall begin to run from the issuance of the Town's decision that the application is not a covered request, assuming that the application is deemed to be complete at that time. The Town may request additional information from the applicant to evaluate whether the application is complete, during which time the timeframe for review of the application shall be tolled.

(4) Review procedures for small cell facilities.

- a. Application. The Town shall prepare an application form requiring submittal of the information necessary for the Town to consider whether a project constitutes a small cell facility.
- b. Timeframe for review of small cell facilities.
  - 1. Collocation on existing structure. Subject to the tolling provisions contained in Subsection (c), the Town shall render a decision within sixty (60) days of the date on which an applicant submits a complete application.
  - 2. New structure. Subject to the tolling provisions of contained in Subsection (c), the Town shall render a decision within ninety (90) days of the date on which an applicant submits a complete application.
- c. Batched applications for small cell facilities. If a single application seeks authorization for multiple deployments, all of which may be categorized as either small cell facilities using an existing structure or small cell facilities using a new structure, then the timeframe for review shall be equal to that for a single deployment within that category. If a single application seeks authorization for multiple deployments, the components of which may be a mix of these aforementioned categories (small cell facilities using an existing structure or small cell facilities using a new structure), then the timeframe for review shall be equal to that with the longer review timeframe permitted for all components of that application.

(b) Additional submittal requirements.

- (1) In addition to the requirements contained in the Town-approved applications, the following supplemental items are required for all WCF applications:
  - a. Applicable submittal requirements contained in Section 16-145(f)(1), as amended, unless otherwise waived by the Director;
  - b. Signal non-interference letter;
  - c. Radio frequency emissions letter;
  - d. Photo simulations showing before and after conditions;
  - e. Inventory of sites. Each applicant shall provide a narrative description and a map of the applicant's existing and currently proposed WCFs within the Town and those within one half-mile of the Town's boundaries. The applicant shall inform the Town generally of the areas in which it believes WCFs may need to be located

within the next three (3) years. The inventory list shall identify the site name, address or location and a general description of the facility (i.e., rooftop antennas and ground-mounted equipment). This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information or make commitments regarding locations of WCFs within the Town. This information will be used to assist in the Town's comprehensive planning and promote co-siting by identifying areas in which WCFs might be appropriately constructed for multiple users. The Town may share such information with other applicants seeking to locate WCFs within the Town, provided, however, that the Town shall not, by sharing such information, be making a representation that such sites are available or suitable. The inventory of sites shall be updated upon the submission of a new application filed more than six (6) months subsequent to the prior application; and

- f. Abandonment and removal affidavit. Affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.
- (2) Applications must include all necessary information, materials, a business license and completed permit applications for the permits that are required for the construction and installation of the proposed WCF, including, but not limited to, building, electrical or right-of-way permits.
- (c) Tolling and reset of the timeframe for review. The review periods commence to run when a complete application is filed with the Town, and may be tolled by mutual agreement of the Town and the applicant. When the Town determines that an application is incomplete, the timeframe for review will be reset once a complete application is received in the manner set forth herein.
- (1) Tolling for small cell facility applications. If an application is incomplete, the Town shall provide written notice to the applicant within ten (10) days of receipt of the application. The Town's timeframe for review shall be reset upon the Town's receipt of a complete amended application from the applicant. If the Town subsequently determines that the amended application is not complete, the Town shall provide a subsequent written notice to the applicant within ten (10) days of receipt of the amended application. The Town's timeframe for review shall toll until the applicant resubmits a subsequent amended application, and shall commence to run again on the business day following the day on which the applicant submits such subsequent amended application.
- (2) Tolling for all other WCF applications. If an application is incomplete, the Town shall provide written notice to the applicant within thirty (30) days of receipt of the application. The Town's timeframe for review shall toll until the applicant submits an amended application, and shall commence to run again on the business day following the day on which the applicant submits such amended application. If the

Town subsequently determines that the amended application is not complete, the Town shall provide a subsequent written notice to the applicant within ten (10) days of receipt of the amended application. The Town's timeframe for review shall toll until the applicant resubmits a subsequent amended application, and shall commence to run again on the business day following the day on which the applicant submits such subsequent amended application.

- (3) Failure to act. If an applicant fails to respond and resubmit the information requested by the Town within fourteen (14) days of the Town's written notice, the Town may make a determination of denial without prejudice. The applicant may thereafter submit a new application.
- (d) Decision. Any decision to approve, approve with conditions or deny an application shall be in writing and supported by evidence and shall be provided to the applicant. An applicant may appeal an administrative decision in accordance with the Code and may appeal a decision rendered by Town Council in accordance with state and federal law and regulations.
- (e) Compliance with applicable law. Notwithstanding the approval of a WCF application or eligible facilities request, all work must be completed in compliance with applicable building, structural, electrical and safety requirements as set forth in the Code and all other applicable laws and regulations. All applicants shall:
  - (1) Comply with permits and licenses issued by a governmental authority with jurisdiction;
  - (2) Comply with easements, covenants, conditions and restrictions on or applicable to the underlying real property;
  - (3) Maintain the WCF in good working condition and to the standards established at the time of application approval; and
  - (4) Ensure the WCF and the site is free from trash, debris, litter, graffiti and other forms of vandalism. Any damage shall be repaired as soon as practicable, and, in no instance, more than ten (10) days from the time of notification by the Town or after discovery by the owner or operator of the site. Notwithstanding the foregoing, any graffiti on WCFs located in the public rights-of-way or on public property may be removed by the Town, in its discretion, and the owner or operator of the WCF shall pay all costs of such removal within thirty (30) days after receipt of an invoice from the Town.
- (f) Fee. The applicant shall pay a fee with the submission of the application. The fee shall be the maximum amount allowed by the FCC, if at all, or an amount set by Town Council by resolution. The fee shall constitute a reasonable approximation of the Town's costs and shall be imposed on a non-discriminatory basis. The Town may, in its discretion, retain professional consultants to review and assist in the processing of applications. If a

professional consultant is retained by the Town, the applicant shall be required to pay the Town's actual costs for the consultant.

**Sec. 16-346 Design standards.**

- (a) Applicability. WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the Town. The design standards set forth herein shall apply to the location and design of all WCFs governed by this Article, unless otherwise exempted by the Town. While the Town anticipates and expects compliance with all the design standards set forth herein, the Town's primary objectives are to ensure that WCFs use camouflage and concealment design techniques to reduce visibility and be co-sited or collocated to minimize the number of facilities.
- (b) General design standards for WCFs.
  - (1) Camouflage and concealment. All WCFs and any transmission equipment shall, to the maximum extent possible, use camouflage and concealment design techniques including, but not limited to, the use of materials, colors, textures, screening, undergrounding, landscaping or other design options that blend the WCF into the surrounding natural setting and built environment.
    - a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural or aesthetically significant structures or areas, views or to community features or facilities). In instances where WCFs are located in areas of high visibility, they shall be designed (e.g., placed underground, depressed or located behind earth berms) to minimize their profile.
    - b. Camouflage design may include the use of alternative tower structures should the Director determine that such design meets the intent of this Article and the community is better served thereby.
    - c. WCFs shall be constructed out of non-reflective materials (visible exterior surfaces only).
  - (2) Co-siting and collocation.
    - a. Co-siting. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent reasonably feasible based upon construction, engineering and design standards, except where such collocation would materially compromise the design intent of the WCF, particularly visually.
    - b. Collocation. If existing eligible facilities are not available in the area to be served, WCFs shall be designed to utilize pre-existing structures, poles and buildings wherever possible.

- (3) Accessibility. WCFs and associated equipment shall be designed and sited to comply with the Americans with Disabilities Act and all other local, state and federal laws and regulations. WCFs may not be located or maintained in a manner that causes unreasonable interference.
- (4) Height. The maximum height of a WCF shall be thirty-six inches (36') unless otherwise approved through a use by special review procedure or the applicant provides compelling evidence that a majority of similar, nearby structures are taller and that a taller height is thus compatible. The Director shall determine whether a taller height is acceptable.
- (5) Setbacks. The following minimum setback requirements shall apply to all WCFs, except for alternative tower structures and small cell facilities in the right-of-way, and shall be the greater of the following:
  - a. When attached to a structure, the setback for a principal building within the applicable zoning district;
  - b. Twenty-five percent (25%) of the facility height, including WCFs and related accessory equipment;
  - c. For sites within 100 feet of residential uses, facilities over thirty (30) feet from ground elevation measured within five (5) feet of the base, a setback from all adjacent residential property lines of one (1) foot for every foot in height; or
  - d. Twenty (20) feet.
- (6) Lighting. WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. All exterior lighting within equipment yards shall be mounted on poles or on a building wall below the height of the screen wall or fence.
- (7) Noise. Noise generated on a site must not be emitted at levels prohibited in the Code or otherwise prohibited by the Director, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without the prior written authorization of the Director.
- (8) Landscaping.
  - a. All landscaping and screening shall adhere to the Town of Johnstown Landscape Standards and Specifications, as amended;
  - b. WCFs shall be sited in a manner that ensures continued compliance with required landscaping and open areas for the principal uses on the parcel;
  - c. WCFs, including small cell facilities, unless excepted by the Director for safety



considerations, shall provide screening from rights-of-way and adjacent properties, which may, in the Director's discretion, include berms and plant materials; and

- d. Where landscaping is required, appropriate irrigation must be installed.

(9) Screening.

- a. All structures and improvements associated with a WCF shall incorporate adequate safety equipment and aesthetic treatments to be visually compatible with uses in the surrounding area;
- b. All equipment not located within the right-of-way and not otherwise addressed herein shall be fully screened within a walled yard or placed in an enclosed building except in cases where the Director determines that a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the right-of-way or adjacent properties and to provide security; and
- c. Cables, wires, boxes, transformers and other accessory equipment must be designed to be located internally or otherwise highly-integrated into any structure to the degree feasible to minimize visual clutter and screen.

(c) Additional design standards for WCFs on structures, including buildings, towers, poles.

- (1) Building roof-mounted WCFs and equipment shall be set back from the edges of flat roofs, screened, painted, enclosed or otherwise effectively camouflaged and concealed to minimize the visual impact on surrounding properties and rights-of-way. No roof-mounting may occur on gabled or similar roofing structures that provide significant visibility from nearby rights-of-way and properties.
- (2) Antennas may only be mounted to the side of a building if camouflage and concealments techniques are utilized to ensure maximum integration and minimal interference with the architectural features of that building. The equipment shall be mounted in a configuration as flush to the wall as technically possible, with a maximum protrusion of six (6) feet, and shall not project above the wall on which it is mounted.
- (3) Equipment shall, to the maximum extent feasible, feature the smallest and most discreet components that the technology will allow so as to have the least possible impact on the architectural character and overall aesthetics of the building or structure.
- (4) Roof-mounted WCF equipment shall be screened by parapet or screen walls in a manner compatible with the building's design, colors and materials.
- (5) If a replacement pole is being considered, the new pole must match, to the extent feasible, other street light and traffic poles within five hundred and twenty-eight (528) feet of the site with regard to design, height, width and utility. A replacement pole accommodating

internal wiring and cable may be up to twenty-four inches (24") in diameter at the base.

(d) Design standards in relation to residential uses.

- (1) WCFs shall be sited and designed in a manner that is considerate of the proximity of the facility relative to residential structures, neighborhoods and planned residential areas in order to minimize the visual impacts of WCFs on existing and planned residential areas.
- (2) When placed on or adjacent to residential properties, a WCF shall be placed in close proximity to a common property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent and nearby properties.
- (3) For a corner lot, the WCF shall be placed adjacent to a common property line between adjoining residential properties or on the corner formed by two intersecting streets.

(e) Design requirements specific to various types of WCFs.

(1) Alternative tower structures not in the public right-of-way shall:

- a. Be designed and constructed to look like a building, facility, structure or other commonplace item typically found in the area;
- b. Be camouflaged or concealed consistent with other existing natural or manmade features in or near the proposed location;
- c. Be compatible with the surrounding area, including design considerations such as the context, scale, massing, height, articulation, topography and the landscaped environment;
- d. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed alternative tower structure should be minimized as much as possible;
- e. Be sited in a manner that is sensitive to the proximity of the facility to structures, neighborhoods, special districts, natural areas and residential uses and zoning district boundaries; and
- f. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.

(2) Alternative tower structures and small cell facilities in the public right-of-way. Such WCFs are subject to the alternative tower structures design standards set forth in this Section and to the following additional design criteria:

- a. Alternative tower structures and associated small cell facilities or micro cell facilities may be deployed in the public right-of-way through the utilization of a street light pole, distribution lines, utility poles, traffic signal or similar structure;
- b. To the extent that an alternative tower structure is a vertical structure located in the public right-of-way, its pole-mounted components shall be located on or within an existing utility or street light pole serving another purpose whenever technically feasible;
- c. If the applicant provides evidence that an existing structure is not available in the area where additional coverage is needed, a new pole or structure may be considered;
- d. With respect to pole components, such components shall be located on or within a new utility pole where other utility distribution lines are aerial and there are no reasonable alternatives, if the applicant is authorized to construct the new utility poles;
- e. Alternative tower structures shall be consistent with the size and shape of similar pole-mounted equipment installed by communications companies on utility poles in the right-of-way within reasonable proximity the proposed alternative tower structure;
- f. Alternative tower structures shall be designed such that antenna installations on traffic signal standards are placed in a manner so that the size and appearance of the structure will not be considerably altered and the function of the signal will not be impacted;
- g. Alternative tower structures shall be sized to minimize the negative aesthetic impacts to the right-of-way and adjacent properties;
- h. Alternative tower structures shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle or pedestrian access or visibility along the right-of-way;
- i. Alternative tower structures may not be more than five (5) feet taller (as measured from the ground to the top of the pole) than any existing utility or traffic signal pole within a radius of five hundred and twenty-eight (528) feet of the pole or structure. A new or freestanding alternative tower structure may not be higher than thirty six (36) feet; and
- j. Alternative tower structures in the right-of-way shall not exceed twenty four (24) inches in diameter.

(3) Towers that are not alternative tower structures or small cell facilities.

- a. No new towers, excepting small cell facilities in the right-of-way, shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Director that existing WCFs are not able to accommodate the needs that the applicant proposes to address with its tower application and sufficient separation of towers is achieved. Evidence may consist of the following:
  - 1. No existing WCFs with a suitable height are located within the geographic area required to meet the applicant's engineering requirements;
  - 2. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
  - 3. The applicant's proposed WCF would cause electromagnetic interference with the existing WCFs or the existing WCFs would cause interference with the applicant's proposed WCF; or
  - 4. The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation;
- b. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and Town design approval processes, be painted a neutral color so as to reduce visual obtrusiveness;
- c. Wherever possible, towers shall be located to utilize existing landforms, vegetation and structures to aid in screening the facility from view or to otherwise blend in with the surrounding built and natural environment;
- d. Monopole support structures shall taper from the base to the tip;
- e. All towers shall be enclosed by security fencing or wall and shall also be equipped with an appropriate anti-climbing device;
- f. Where the proposed height exceeds that of the zoning district, towers over ninety (90) feet in height shall not be located within one-quarter mile from any existing tower that is over ninety (90) feet in height, unless the applicant has shown to the satisfaction of the Director that there are no reasonably suitable alternative sites in the required geographic area that meet the applicant's needs; and
- g. Tower-related accessory equipment shall meet the following standards:
  - 1. All buildings, shelter, cabinets and other accessory components shall be grouped as closely together as technically possible;
  - 2. The total footprint coverage area of the WCF's accessory equipment shall not exceed three hundred fifty (350) square feet;

3. No related accessory equipment or accessory structure shall exceed twelve (12) feet in height; and
  4. Related accessory equipment, including, but not limited to, remote radio units, shall be fully screened whenever feasible by being located behind parapet walls or within equipment enclosures.
- (f) Design standards for ground mounted equipment. Ground-mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns. Wherever feasible, ground-mounted equipment that is otherwise visible from the right-of-way or adjacent properties shall be undergrounded to minimize the visual impact to the area and minimize impacts related to physical access on the site. Where appropriate and to the extent it is reasonably feasible based upon construction, engineering and design standards, the Director may require a flush-to-grade underground equipment vault.
- (g) Deviation; interpretation of standards and guidelines.
- (1) Deviation. The Town anticipates and expects compliance with all the design standards set forth in this Section. If an applicant does not utilize the design standards, the applicant shall, in its application, identify the standards that are not utilized and the reason for the deviation.
  - (2) Interpretation. Where interpretation of the design standards is necessitated by the circumstances, the Director shall make such determination. The applicant may appeal the Director's determination to the Board of Adjustment.

**Secs. 16-347 - 16-360. Reserved.**

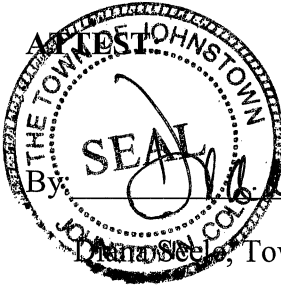
**Section 2. Severability.** If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**Section 3. Code revisions.** Minor changes such as the format and other related changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content of this Ordinance be altered by such changes.

**Section 4. Effective Date and Publication.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this 20th day of May, 2019.

**TOWN OF JOHNSTOWN, COLORADO**



By: Diana Seele  
Diana Seele, Town Clerk

By: Gary Lebsack  
Gary Lebsack, Mayor

**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

# **WATER AGREEMENT**

**WATER AGREEMENT  
BETWEEN TOWN OF JOHNSTOWN AND  
MAPLEWOOD ACRES, INC.**

THIS WATER AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between THE TOWN OF JOHNSTOWN, a Colorado home rule municipal corporation ("Town"), and MAPLEWOOD ACRES, INC., a Colorado Corporation ("Maplewood"), collectively referred to as "the Parties."

**WITNESSETH:**

**WHEREAS**, Maplewood is the owner of a parcel of land situated in the Town of Johnstown, County of Weld, State of Colorado, the description of which is set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"); and

**WHEREAS**, on or about February 18, 2009, the Town and Maplewood entered into an Annexation Agreement, referred to as the Maplewood Annexation ("Annexation Agreement"); and

**WHEREAS**, subsequent to execution of the Annexation Agreement, Maplewood annexed the Property into the Town; and

**WHEREAS**, the Annexation Agreement provides that Maplewood "shall offer to the Town for dedication all water rights and lateral ditch company rights appurtenant to the Property. Further, [Maplewood] shall dedicate to the Town all appurtenant water rights no later than the date of approval of the final plat of the first phase of the project;" and

**WHEREAS**, among potentially other water rights and lateral ditch company rights, Maplewood owns units of the Colorado Big Thompson Project ("CBT units") that are appurtenant to the Property; and

**WHEREAS**, when the opportunity arises, Maplewood desires to trade one-hundred (100) of its CBT units for shares of the Consolidated Home Supply Ditch & Reservoir Company ("Home Supply shares") and then dedicate the Home Supply shares to the Town; and

**WHEREAS**, based on the terms and conditions set forth in this Agreement, the Town agrees that Maplewood may exchange the CBT units appurtenant to the Property for Home Supply shares.

**NOW, THEREFORE**, in consideration of the mutual agreements, covenants, promises, representations, and warranties hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



1. **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.

2. **Water Rights Exchange.** Pursuant to the terms of this Agreement, Maplewood may sell, trade or exchange: (1) up to 22.5 CBT units appurtenant to the Property for each Home Supply share changed to municipal uses; or (2) up to 18 CBT units appurtenant to the Property for each Home Supply share not changed to municipal uses. Maplewood shall provide written notice to the Town prior to the sale, trade or exchange contemplated herein and shall promptly provide notice subsequent to the consummation of the transaction, which notice shall include identification by certificate number of the acquired Home Supply share(s).

3. **Dedication of the Home Supply Shares.** As a condition of this Agreement, Maplewood agrees that the obligations contained in Paragraph 9 of the Annexation Agreement shall extend to the newly-acquired Home Supply shares and that the Home Supply shares shall be dedicated to the Town no later than the date of approval of the final plat for the first phase of the development of the Property. Consistent therewith, absent written approval of Town Council, Maplewood shall not be entitled to sell, transfer or convey the Home Supply shares to a third party. Maplewood further understands and agrees that, if Home Supply shares are dedicated to the Town that have not been changed to municipal uses, Maplewood shall be obligated to pay the water court transfer fee required by the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended.

4. **Water Credit.** Upon dedication of the Home Supply shares contemplated by this Agreement and the dedication of all other water rights and lateral ditch company rights appurtenant to the Property, the Town shall provide a raw water credit to Maplewood toward satisfaction of the raw water requirements for development of the Property, in the amount set forth in the Johnstown Municipal Code, as amended from time to time. Maplewood understands and agrees that the water that is dedicated to the Town pursuant to the Annexation Agreement and pursuant to this Agreement may not be sufficient to satisfy the raw water requirements for the development.

5. **Annexation Agreement.** Except as modified herein, the Annexation Agreement shall remain in full force and effect and Maplewood, among the other requirements contained in the Annexation Agreement, shall remain obligated to dedicate to the Town all appurtenant water rights no later than the date of approval of the final plat of the first phase of the development.

6. **Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested as follows:

TO MAPLEWOOD:  
Maplewood Acres, Inc.

TO THE TOWN:  
Town of Johnstown

Attn: Scott Lewis  
492 S Youngfield Ct.  
Lakewood, CO 80228

Attn: Town Clerk  
450 S. Parish Ave.  
Johnstown, CO 80534

The addresses for notices may be changed by written notice given to the other Party in the manner provided above. Notice may also be sent via e-mail delivery and shall be effective upon confirmation of receipt of the email.

7. **Successors and Assigns.** Upon written notice and approval of the Town, Maplewood may assign this Agreement to a developer of the Property or to a successor entity.

8. **Amendment or Modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and signed by the Parties hereto with the same formality as this Agreement.

9. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

10. **Headings for Convenience Only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

11. **Choice of Laws and Venue.** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in Weld County, State of Colorado.

12. **Entire Agreement.** Except with respect to the Annexation Agreement, this Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

13. **Findings.** The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the laws, regulations and policies of the Town.

14. **No Presumption.** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Water Agreement the day and year first above written.

**MAPLEWOOD ACRES, INC.**

By: \_\_\_\_\_  
Scott Lewis, President

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by Scott Lewis, as \_\_\_\_\_ of Maplewood Acres, Inc.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
Address

**ATTEST:**

**TOWN OF JOHNSTOWN, COLORADO**  
**a municipal corporation**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

## EXHIBIT "A"

### PROPERTY DESCRIPTION

KNOW ALL MEN BY THESE PRESENTS, THAT MAPLEWOOD ACRES, INC., BEING THE OWNER AND PROPRIETOR OF A PORTION OF THE FOLLOWING DESCRIBED LAND, TO WIT:

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 7, INCLUDING RAILROAD RIGHT-OF-WAY DESCRIBED IN BOOK 370, PAGE 451, COUNTY PUBLIC RECORDS, AND A PORTION OF THE NORTHWEST QUARTER OF SECTION 18, ALL IN TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 13 AND A PORTION OF THE SOUTHEAST QUARTER OF SECTION 12, ALL IN TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 7, THENCE S87°09'07"E ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 7 A DISTANCE OF 2392.82 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 7;  
THENCE S00°04'55"E ALONG WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 7 A DISTANCE OF 2400.69 TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 2692301, COUNTY PUBLIC RECORDS;  
THENCE N87°32'22"W ALONG THE NORTH LINE OF SAID PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 2692301 A DISTANCE OF 200.00 FEET;  
THENCE S00°04'55"E ALONG THE WEST LINE OF SAID PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 2692301 A DISTANCE OF 218.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 46;  
THENCE N87°32'22"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 46, 30.00 FEET NORTH OF, BY PERPENDICULAR MEASUREMENT, THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 7 A DISTANCE OF 328.62 FEET TO A POINT ON THE EASTERLY LINE OF LOT A, RECEPTION NUMBER 1902722, COUNTY PUBLIC RECORDS;  
THENCE N27°19'06"W ALONG SAID EASTERLY LINE OF LOT A, RECEPTION NUMBER 1902722 A DISTANCE OF 436.22 FEET;  
THENCE S00°04'57"E, ALONG THE WESTERLY LINE OF SAID LOT A, RECEPTION NUMBER 1902722 A DISTANCE OF 378.99 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 46;  
THENCE N87°32'22"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 46, 30.00 FEET NORTH OF, BY PERPENDICULAR MEASUREMENT, THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 7 A DISTANCE OF 484.11 FEET TO A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7;  
THENCE S00°09'32"E ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER OF SECTION 7 A DISTANCE OF 30.03 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18;  
THENCE S01°37'16"E ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 18 A DISTANCE OF 30.08 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 46;  
THENCE N87°32'22"W ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 30.00 FEET SOUTH OF, BY PERPENDICULAR MEASUREMENT, THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 18 A DISTANCE OF 1169.52 FEET TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN;  
THENCE N90°00'00"W A DISTANCE OF 30.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 13;

THENCE N00°23'05"W A DISTANCE OF 30.00 TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN;  
THENCE N00°18'38"W ALONG THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 13, PARALLEL WITH AND 30.00 FEET WEST OF, BY PERPENDICULAR MEASUREMENT, THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 12 A DISTANCE OF 667.01 FEET;  
THENCE N89°41'22"E A DISTANCE OF 60.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 13;  
THENCE N89°41'22"E ALONG THE SOUTHERLY LINE OF LOT A, RECEPTION NUMBER 3016125, COUNTY PUBLIC RECORDS A DISTANCE OF 245.00 FEET;  
THENCE N00°18'38"W ALONG THE EASTERLY LINE OF SAID LOT A, RECEPTION NUMBER 3016125 A DISTANCE OF 427.79 FEET;  
THENCE S89°41'22"W ALONG THE NORTHERLY LINE OF LOT A, RECEPTION NUMBER 3016125, WELD COUNTY RECORDS A DISTANCE OF 245.00 FEET;  
THENCE S89°41'22"W A DISTANCE OF 60.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 13;  
THENCE N00°18'38"W ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 13, PARALLEL WITH AND 30.00 FEET WEST OF, BY PERPENDICULAR MEASUREMENT, THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN A DISTANCE OF 1570.62 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 12;  
THENCE S90°00'00"E A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.  
CONTAINING AN AREA OF 142.388 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL RESERVATIONS, EASEMENTS OR RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

HAS CAUSED THE ABOVE DESCRIBED TRACT OF LAND TO BE ANNEXED UNDER THE NAME OF MAPLEWOOD ACRES ANNEXATION TO THE TOWN OF JOHNSTOWN COLORADO.

**AGENDA ITEM 7**

**TOWN MANAGER  
REPORT**



# TOWN OF JOHNSTOWN

## MEMORANDUM

---

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: June 3, 2019

CC: Town Staff  
Local Media

SUBJECT: Departmental Report

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Upcoming Town Council Work Sessions – If there are topics that the Council would like staff to schedule for discussion, please let me know. The following topics are recommended for Council discussion (all meetings will be held in the Town Council Chambers unless otherwise indicated):

- 06/03/2019 – Regular Town Council Meeting
  - 06/10/2019 – Work Session (none planned)
  - 06/17/2019 – Regular Town Council Meeting
  - 06/24/2019 – Work Session (none planned)
- 

### **Police Department**

#### ***Training:***

- *Baton Training* – Blue Side received training and recertification on Oleoresin Capsicum (OC) and intermediate impact weapon (Baton).
- *AR15 Armor School* – Officer Balltrip attended Liberty Firearms Institute AR15 Armor School. This certification will allow all work needed to be performed on the departments patrol rifles to be done in house instead of paying for an outside vendor.
- *Active Shooter Event Training* – Sergeant Dickerson attended ALERRT Incident command - train the trainer for active shooter events. This certification will allow Sergeant Dickerson to provide response to active shooter training to both law enforcement and private organizations.

#### ***Community Policing, Outreach & Miscellaneous Items:***

- *Realities Ride and Rally* – JPD worked the Realities Ride and Rally which consisted of shutting down, downtown Johnstown for the hundreds of motorcycles that stopped downtown. JPD the blocked intersections at Hwy 60/Parish, Hwy 60/Telep, and Hwy 60

## **The Community That Cares**



and Colorado Blvd so that the motorcycles could travel safely out of town to their next stop.

- *Law Enforcement Torch for the Special Olympics* - Officer Wood, Officer Cygan, Officer Balltrip, Sergeant Williams, Evidence Tech Ashely Vetter, and Lieutenant Oglesby ran the Law Enforcement Torch for the Special Olympics from Hwy 60/Colorado Blvd to Hwy 60/CR 19 (3 miles), to raise money for the Colorado Special Olympics.

### **Administration, Finance, & Planning**

- *Northern Colorado Children's Museum* – The Town Manager participated in a discussion with representatives evaluating the need for a Children's Museum located in Northern Colorado. This would provide a great cultural amenity to the region should their overall findings provide viability in the project and campaign financing become a reality.
- *Court Software* – Funds were allocated in the 2019 budget to purchase Municipal Court software. The software has been installed and is being used by the court clerk.
- *GIS Interviews* – Town Manager and Planning & Dev. Director met with two Northern Colorado firms who provide GIS services to local governments and special districts. Based on their expected proposals, we will engage one of them to begin development of our GIS system for the betterment of our spatial information and analysis.
- *Anadarko Gas Compressor (USR19-0011)*– Planning & Dev. Director attended the Weld Co Planning Commission hearing on May 21<sup>st</sup> to hear the report and presentation and assert the Town's requested conditions of approval for the project. Six Johnstown residents also spoke at the meeting against the project – largely related to long-term air quality concerns. Weld Co. PC recommended approval with conditions to BOCC – hearing to be June 19<sup>th</sup>.
- *Software* – Finance, Clerk, and Planning & Dev are researching additional software modules of Caselle to seamlessly connect and streamline permitting, licensing, and other Town functions through one software suite.
- *PUD Process* – Planning & Dev. is working with current developers/projects to update and clarify our PUD process to better balance elements of risk/certainty and concept/detail for the Town and the developer over the span of the approval process. Recommended updates to code are likely to emerge from this exercise.
- *2018 Audit* – The audit is currently underway. Auditors were onsite during the week of 5/27.
- *2020 Budget* – Worksheets are in the process of being prepared for the 2020 Budget process. They will be distributed to Department Heads the end of the first week in June.

### **Public Works Department**

#### ***Streets, Stormwater, & Parks***

- *Parks* – Parks are the big focus right now. Precipitation is slowing down mowing operations and grass is growing fast. Preparation for BBQ days is underway. Crews are focusing on Parish Park where a new horse shoe pits is installed and the volleyball court has been cleaned up and sand added.
- *Streets* – Lighted pedestrian crosswalks were installed on Parish Ave. in front of the Veteran's Brothers Brewery and Charlotte crosswalk areas. Additions crosswalk signs were also installed at all intersections on Parish. Pedestrian safety at its finest.

- *Street sweeping* – All of Pioneer Ridge was completed as well as Old Town. Crews plan on sweeping a subdivision on a weekly rotation as long as other issues do not arise.
- *Grading* – Approximately 6 miles of gravel road maintenance were completed. CR3 & CR20, CR 44 and CR 46. These roads are done every week, heavy traffic on these roads from the oil and gas industry as well as vehicle traffic create the need for grading on a regular schedule.
- *Cemetery* – Crews help with preparing the grounds for the Memorial Day event.
- *Trash removal* – Crews have been removing trash, junk, metals from the Central wastewater plant when time permits, since this area of the plant has been a place to discard old equipment and material. Once cleaned out this will be the area for the Police Department to have their gun range.
- *Downtown* – All flowers were placed in planters in downtown. Crews will street sweep and have the downtown ready for BBQ day.

### ***Water & Wastewater***

- *Cemetery* – Crews have the cemetery looking great. Sod was placed on all graves that needed completion and had the grounds looking great for the Memorial Day event.
- *Water Plant* – The DAF Saturator project should wrap up by June 14<sup>th</sup>. Completion went 2 weeks longer than expected, but kept on track to ensure daily operations.
- *Sanitary Survey* – We have successfully finished the sanitary survey issues with the exception of the filter assessment and installation of vents on the two tanks at the plant which was extended to June of 2020 and April 2020 respectively. Will be budgeting to replace media in 2020 for the two filters at the water plant. Based on the filter inspections, the media has reached its useful life of 15 years.
- *CDPHE Inspection* – We met with two state compliance representatives on May 28<sup>th</sup> to discuss operations at the water plant. Staff spent 4 hours going over operations and discussed making changes to a few items to make our daily treatment operations run more efficiently. This will help with turbidity compliance numbers reported to the State. This was a very productive meeting.
- *Wastewater* – Aeration project is under design for the central lagoon plant. We are hoping to go to bid by end of June, early July. This project will help with treatment and keep us in compliance until we start the new plant design and construction.

**AGENDA ITEM 10A**

**PUBLIC HEARING**

**1<sup>st</sup> Reading**

**Ordinance Number 2019-161**

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## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** June 3, 2019

**ITEM NUMBER:** 10A

**SUBJECT: \*Public Hearing – (First Reading)** Consider Ordinance No. 2019-161, An Ordinance Amending Article I of Chapter 11 of the Johnstown Municipal Code to Include Section 11-7 Concerning the Sale, Exchange or Disposition of Real Property, Public Buildings and Public Utilities

**ACTION PROPOSED:** Approve Ordinance No. 2019-161 on first reading

**PRESENTED BY:** Town Attorney

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**AGENDA ITEM DESCRIPTION:** C.R.S. § 31-15-713 provides that, before the sale of certain municipal-owned property is made, including the sale of “public utilities, public buildings, real property used or held for park purposes, or any other real property used or held for any governmental purpose,” the municipality must submit the question of the sale and the terms and conditions of the sale to the electors at a regular or special election.

Colorado caselaw recognizes that the sale, disposition and exchange of municipal-owned property is a matter of local concern. *Cheyenne v. City of Colorado Springs*, 425 P.3d 1174, 118 (2018). Home rule municipalities may thus establish a process for the disposition of such property that differs from the state statute.

The proposed ordinance allows Town Council, in its discretion, to sell, exchange or dispose of real property, public buildings and public utilities by ordinance based on terms and conditions that Town Council deems to be in the best interests of the Town or by submission of the question to the electors.

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**LEGAL ADVICE:** Ordinance No. 2019-161 was prepared by the Town Attorney.

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**FINANCIAL ADVICE:** N/A.

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**RECOMMENDED ACTION:** Approve Ordinance No. 2019-161 on first reading.

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**SUGGESTED MOTION:**

**For Approval:** I move to approve Ordinance No. 2019-161, An Ordinance Amending Article I of Chapter 11 of the Johnstown Municipal Code to Include Section 11-7 Concerning the Sale, Exchange or Disposition of Real Property, Public Buildings and Public Utilities.

**For Denial:** I move to deny approval of Ordinance No. 2019-161.

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**Reviewed:**

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**Town Manager**

# **Ordinance 2019-161**

**TOWN OF JOHNSTOWN, COLORADO  
ORDINANCE NO. 2019-161**

**AN ORDINANCE AMENDING ARTICLE I OF CHAPTER 11 OF THE  
JOHNSTOWN MUNICIPAL CODE TO INCLUDE SECTION 11-7  
CONCERNING THE SALE, EXCHANGE OR DISPOSITION OF REAL  
PROPERTY, PUBLIC BUILDINGS AND PUBLIC UTILITIES**

**WHEREAS**, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, Section 6 of Article XX of the Colorado Constitution recognizes the right of home rule municipalities to legislate with respect to matters of local concern, which includes a home rule municipality’s right to determine how to sell, exchange or dispose of real property, public buildings and public utilities; and

**WHEREAS**, consistent with the Town’s Home Rule Charter, the Town Council desires to amend the Johnstown Municipal Code to set forth the manner and process by which the Town may sell, exchange or dispose of real property, public buildings and public utilities; and

**WHEREAS**, the Town Council deems this Ordinance to be in the best interests of the Town of Johnstown.

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
JOHNSTOWN, COLORADO, AS FOLLOWS:**

**Section 1.** Article I of Chapter 11 of the Johnstown Municipal Code shall be amended to include Section 11-7, which shall read as follows:

**ARTICLE I GENERAL**

**Sec. 11-7 Sale, exchange or disposition of Town property.**

The Town may sell, exchange or dispose of real property, public buildings or public utilities, used or held for any purpose, by ordinance upon such terms and conditions as Town Council deems to be in the best interests of the Town. Alternatively, in Town Council’s discretion, the Town may submit the question of the sale, exchange or disposition of real property, public buildings or public utilities and the terms and conditions thereof to the electors at a regular or special election.

**Section 2. Severability.** If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**Section 3. Publication and Effective Date.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

# **WORK SESSION**

## **DISCUSSION ITEMS**

- 1) Larimer County Road 3  
Orientation**
- 2) Thornton Water**





# TOWN OF JOHNSTOWN

## MEMORANDUM

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TO: Honorable Mayor and Town Council

FROM: Matt LeCerf, Town Manager

DATE: June 3, 2019

SUBJECT: LCR 3 Orientation Discussion

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At the last Council Meeting, Town Council was presented with an agreement that would permit the Iron Horse Development to continue permitting additional property for construction in their development. While the agreement was tabled indefinitely to provide for some modifications, Council did express their desire to allow Iron Horse to move forward with development in the interim while the agreement is changed.

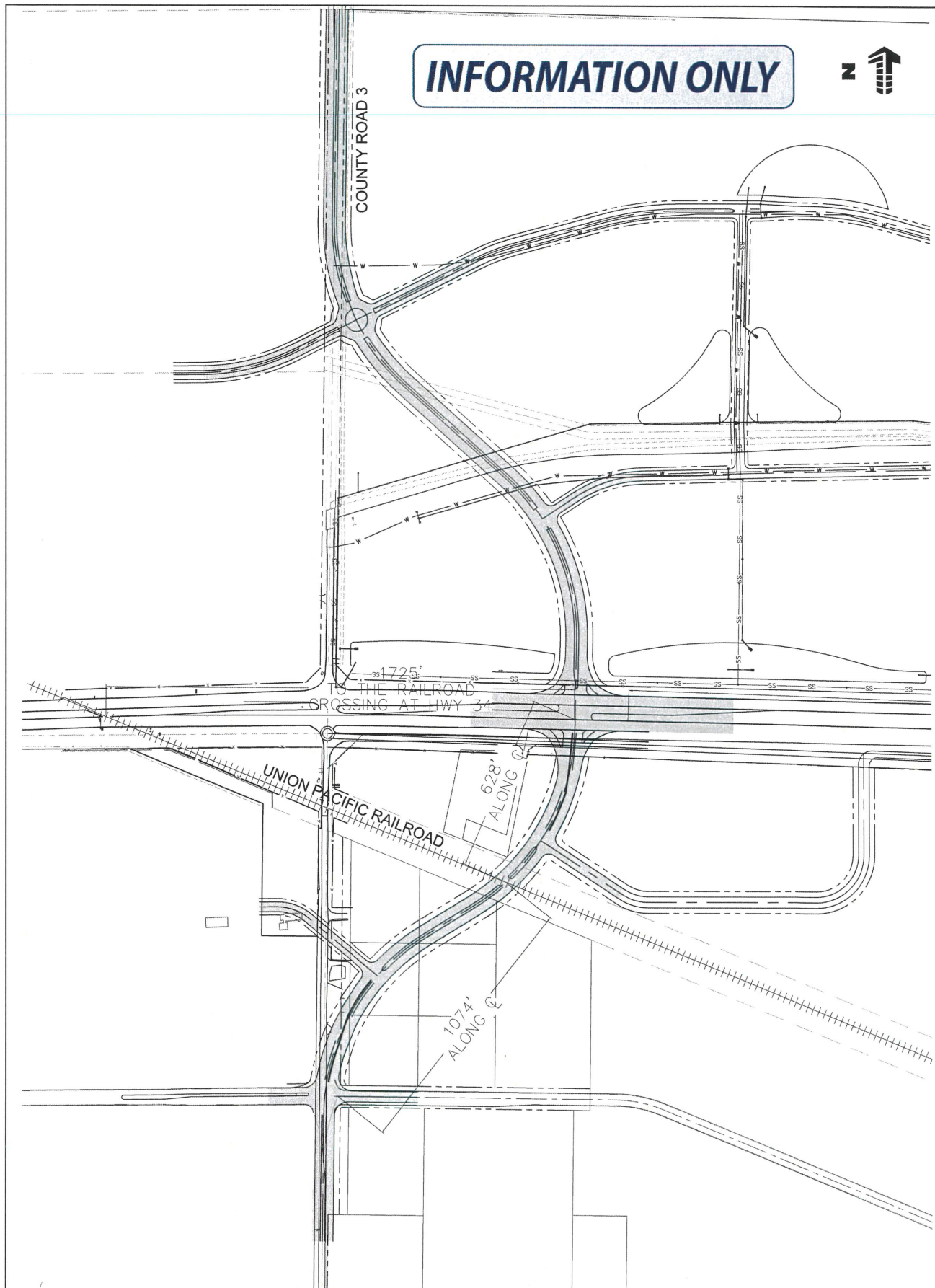
One of the key elements in this area, centers on what will happen to LCR3 north of Ronald Reagan Blvd. In its current condition, the roadway travels straight north to Highway 34 and has no traffic signal at the busy intersection. Also impacting the traffic flow in this location is the railroad crossing on LCR 3 about 350' south of the LCR 3 and Highway 34 intersection, as well as the second crossing on Highway 34 west of the LCR 3 and Highway 34 intersection by approximately 900'.

As an alternate, the agreement presented on May 20, 2019 to Council with Iron Horse contemplated the idea of a new LCR 3 roadway. This idea is also supported through the February 2019 approved PEL Study of Highway 34. In the agreement, the Town will have 5 years to determine which direction they want LCR 3 to ultimately be constructed – either in its current configuration or through the alternate concept design shown in the attached map. After 5 years' time, if the Town has not made a decision, Iron Horse would be permitted to develop the property impacted by the proposed alternate route of LCR 3.

I feel confident in assuming that not one party involved in this project desires to deliberate about the direction of this road for 5 years. Hopefully we are in a position where this project is complete in 5 years. Achieving completion of this roadway regardless of the location chosen is going to take a considerable amount of coordination with both private and public input and participation. Consequently, the purpose of this work session is to gain feedback from the Council about what direction for long-term improvements you desire on this roadway. We will also discuss a tentative plan of action for gaining consensus and working together with our partners on this project.

Maps are included in this item to facilitate discussion and for informational purposes.

## **The Community That Cares**



## JOHNSTOWN - GREELEY RECOMMENDED ALTERNATIVE

6.1 MILES, CENTERRA PKWY/THOMPSON PKWY TO EAST OF US 257

### 6-lane Roadway Cross Section with Interchanges

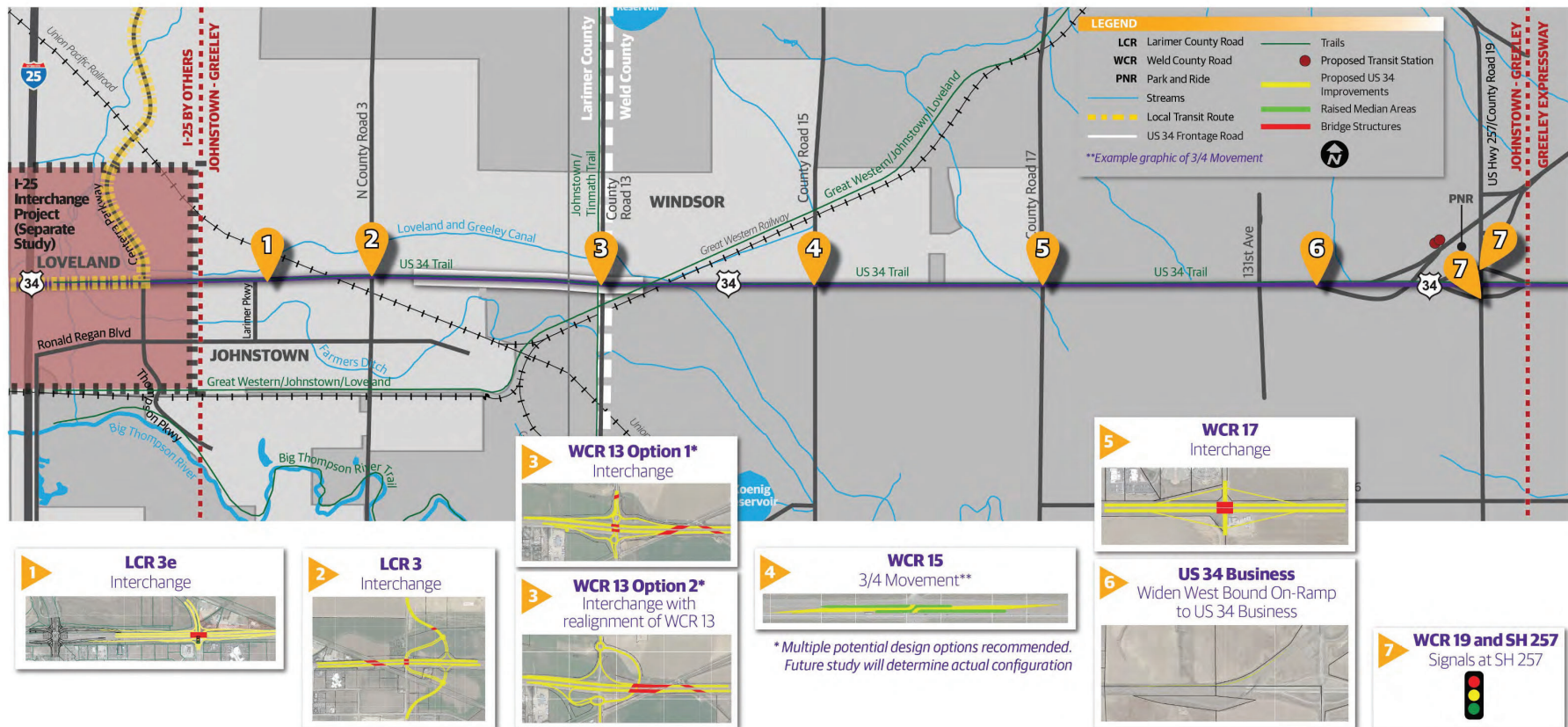
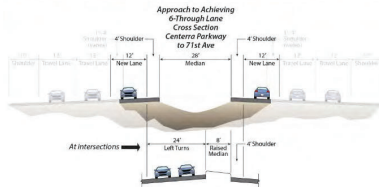


Figure 2-6. Recommended Alternative: Johnstown-Greeley Segment



## Exhibit A - Concept Plan



### LAND USE KEY

- INDUSTRIAL
- OPEN SPACE

NET ACRES:

UNDEVELOPED LOTS - 18.3 ACRES

FUTURE LOTS - 81.55 ACRES

TOTAL: 99.85 ACRES

- RESERVED LOTS
- UNDEVELOPED LOTS
- FUTURE LOTS



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AT ANY TIME.

JULY 2013



# TOWN OF JOHNSTOWN

## MEMORANDUM

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TO: Honorable Mayor and Town Council

FROM: Matt LeCerf, Town Manager

DATE: June 3, 2019

SUBJECT: Thornton Water Discussion

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As you are aware, the City of Thornton is working on their Northern Colorado Water Project. The impact to the Town of Johnstown from this project is due to the fact that the waterline will travel through the Town limits and cross Town right-of-way in specific areas (see attached map). During a Council meeting in 2018, Council inquired about the project and based on a recent meeting between Staff and Thornton Personnel working on the project, Thornton communicated that they were informed this project would be handled administratively. In consideration for the Town providing accessibility for the project, we would be provided with an emergency inter-connection from the trunk line running through Town. For clarity, the Town would still need to extend the line to our Water Treatment Plant.

When I mentioned this information to Council, I sensed a surprise and concern from Council on how this was handled. Since the brief Council meeting discussion, Staff has engaged with Thornton to the extent that it has been communicated that we are not 100% sure that this project given its magnitude should have been approved administratively. Furthermore, I have expressed that I believe we may need to have some sort of formal agreement on the use of our right-of-way which may include maintenance, impact to Town infrastructure that this project may have on our ability to deliver services to our community, and any benefit(s) received by the Town associated with the use of the right-of-way.

The project through Johnstown, is planned for bidding in July. While this phase of the project is fairly simple, complicating matters is the fact that Thornton's 1041 permit to the Larimer County Commissioners was denied and they are subsequently appealing this decision to the District Court. While there is no clear timetable for a decision through the courts, this process could be arduous and time consuming without a guarantee of Thornton's 1041 permit approval. If this approval is not granted, it leaves this project unclear as to how it will proceed. Additionally, it seems to provide little value to have this infrastructure installed if the 1041 decision by the County Commissioners is upheld until a clear plan is identified by Thornton, even if they guaranteed removal of the infrastructure should it not be used.

The purpose of this work session is to receive feedback/direction from the Council related to a position you would like us to take on this matter inclusive of any specific provisions or items to consider, assuming the waterline is coming through the Town of Johnstown.

## **The Community That Cares**

# Thornton Water Project Work Package 1

## Johnstown Segment

