

DATE: January 18, 2011
STAFF: Darin Atteberry
Steve Roy

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

12

SUBJECT

First Reading of Ordinance No. 008, 2011, Approving a Second Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, Extending the Deadlines for the City and Town to Amend Their Growth Management Area Boundaries, and Deleting All References to the Possible Purchase by Timnath of the Vangbo Property.

EXECUTIVE SUMMARY

On February 17, 2009, the City of Fort Collins and the Town of Timnath entered into an intergovernmental agreement regarding annexations, growth management, and related issues. The agreement resolved certain differences that had arisen between the City and Town concerning a variety of planning and growth management issues. The agreement set one-year deadlines for the parties to amend their Growth Management Area boundaries and for Timnath to exercise an option to purchase the Vangbo property from the City. In early 2010, the parties approved an amendment to this intergovernmental agreement that extended the deadlines for approval of the Fort Collins GMA and for Timnath to decide whether to exercise its option. Another extension is needed, and Ordinance No. 008, 2011, would extend for an additional year the period of time within which the parties' GMA boundaries are to be amended. It would also delete all references to Timnath's possible purchase of the Vangbo property because Timnath has decided not to move forward with the purchase.

BACKGROUND / DISCUSSION

In February 2009, the City Council passed Ordinance No. 011, 2009, approving an intergovernmental agreement between the City of Fort Collins and the Town of Timnath regarding Growth Management Areas (GMAs) for the two communities and associated issues authorizing the disposition of certain properties (the "Intergovernmental Agreement"). On February 17, 2009, the Intergovernmental Agreement was signed by both parties.

Section 2.2 of the Fort Collins-Timnath IGA deals with the City's GMA boundary. Specifically, Section 2.2(b) states that the City shall within one year (by February 17, 2010) seek approval by Larimer County of an amendment to the Fort Collins-Larimer County IGA changing the Fort Collins GMA boundary to be consistent with the boundary contained in the Fort Collins-Timnath IGA. Section 2.2(b) goes on to say, "...irrespective of whether or not Larimer County approves such amendment, Fort Collins shall within the same period of time (by February 17, 2010) take all actions necessary to amend the boundaries of the Fort Collins GMA as it exists independently of the Intergovernmental Agreement between Fort Collins and Larimer County..."

The City's IGA with the County also establishes boundaries for the Fort Collins Growth Management Area ("FCGMA"). The boundaries in that agreement conflict with the boundaries established in the Intergovernmental Agreement. In addition, the City/County IGA states that Fort Collins will not amend its GMA boundaries without the consent of the County. The County has expressed concerns about amending the FCGMA as proposed by the Intergovernmental Agreement and having to provide urban level services on a long-term basis to areas which were, under the City/County IGA, to be annexed into Fort Collins.

Because of the conflicting obligations of Fort Collins under these two agreements, Fort Collins requested in late 2009 that Timnath agree to extend the deadline imposed by the Intergovernmental Agreement upon Fort Collins pursuant to Section 2.2(b) of the Intergovernmental Agreement for six months (with the possible extension for an additional six months) to afford Timnath and Larimer County adequate time to resolve their differences and come to agreement about the Timnath/Fort Collins growth management area boundary. In return, Timnath asked for an extension of Article 6 of the IGA, which gives Timnath an option to purchase the Vangbo property from Fort Collins. Therefore, in February of 2010, the City and the Town approved a First Amendment to the IGA which extended both deadlines.

Since that time, Timnath has been faced with a number of pressing issues that have made it difficult for Town officials to bring to closure their discussions with the City, the County and affected property owners to resolve the County's

concerns about the provision of urban level services to the properties that will be removed from the City's GMA and placed in Timnath's GMA. Therefore, the parties have agreed to an additional one-year extension of the period of time within which the Fort Collins and Timnath GMA boundaries will be amended. Timnath has also agreed that, within the same period of time, it will actively pursue County approval of its own GMA with a western boundary that is consistent with the Intergovernmental Agreement.

In addition, since Timnath has decided not to purchase the Vangbo property, the Second Amendment also deletes all references to Timnath's possible purchase of that property.

The extension agreement approved by this Ordinance extends the deadline for GMA boundary amendments for an additional year (until February 17, 2012), and also removes all reference in the IGA to Timnath's possible purchase of the Vangbo property.

FINANCIAL / ECONOMIC IMPACTS

There are no financial impacts of extending the deadlines.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

ORDINANCE NO. 008, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING A SECOND AMENDMENT TO THE
FORT COLLINS-TIMNATH INTERGOVERNMENTAL AGREEMENT
REGARDING COOPERATION ON ANNEXATION, GROWTH MANAGEMENT,
AND RELATED ISSUES, EXTENDING THE DEADLINES FOR THE CITY AND
TOWN TO AMEND THEIR GROWTH MANAGEMENT AREA
BOUNDARIES AND DELETING ALL REFERENCES TO THE POSSIBLE
PURCHASE BY TIMNATH OF THE VANGBO PROPERTY

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the "Intergovernmental Agreement"); and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement requires that by February 17, 2010, Fort Collins seek the approval of Larimer County to amend the boundaries of the Fort Collins Growth Management Area (the "FCGMA") to match the boundaries that are specified in the Intergovernmental Agreement; and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement also provides that irrespective of whether or not the County approves the amendment of the FCGMA, Fort Collins shall, within the same period of time, take all actions necessary to amend the boundaries of the FCGMA independently of the intergovernmental agreement between Fort Collins and Larimer County dated November 21, 2000 (the "City/County IGA"); and

WHEREAS, Section 2.3(b) of the Intergovernmental Agreement contains a similar provision stating that Timnath shall, within one year, amend the boundaries of its Growth Management Area (the "TGMA") match the boundaries that are specified in the Intergovernmental Agreement; and

WHEREAS, due to a number of extenuating circumstances, the parties have not yet been able to accomplish the amendment of their respective growth management area boundaries; and

WHEREAS, Article 6 of the Intergovernmental Agreement grants to Timnath an "option period" within which Timnath has the right to purchase from Fort Collins certain open space known as the Vangbo Property; and

WHEREAS, on March 3, 2010, the parties executed a First Amendment to Intergovernmental Agreement which extended the periods of time within which Fort Collins was to amend the FCGMA and Timnath was to provide written notice to Fort Collins of its intent to exercise its option to purchase the Vangbo Property; and

WHEREAS, Timnath has decided that it no longer intends to pursue the acquisition of the Vangbo Property; and

WHEREAS, the parties wish to execute a second amendment to the Intergovernmental Agreement to: (1) extend until February 17, 2012, the period of time within which both parties will amend the boundaries of their growth management areas; and (2) eliminate the provisions of the Intergovernmental Agreement that establish Timnath's option to purchase the Vangbo Property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to enter into a Second Amendment to the Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management and Related Issues in substantially the form attached hereto as Exhibit "A", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purpose of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 18th day of January, A.D. 2011, and to be presented for final passage on the 1st day of February, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 1st day of February, A.D. 2011.

Mayor

ATTEST:

City Clerk

SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
(Regarding Cooperation on Annexation, Growth Management and Related Issues)

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (“Amendment”) is made and entered into this ____ day of January, 2011, by and between THE TOWN OF TIMNATH, COLORADO, a Colorado home rule town (hereinafter referred to as “Timnath”), and THE CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipal corporation (hereinafter referred to as “Fort Collins”).

RECITALS

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the “Intergovernmental Agreement”); and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement requires that by February 17, 2010, Fort Collins seek the approval of Larimer County to amend the boundaries of the Fort Collins Growth Management Area (the “FCGMA”) to match the boundaries that are specified in the Intergovernmental Agreement; and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement also provides that irrespective of whether or not the County approves the amendment of the FCGMA, Fort Collins shall, within the same period of time, take all actions necessary to amend the boundaries of the FCGMA independently of the intergovernmental agreement between Fort Collins and Larimer County dated November 21, 2000 (the “City/County IGA”); and

WHEREAS, Section 2.3(b) of the Intergovernmental Agreement contains a similar provision stating that Timnath shall, within one year, amend the boundaries of its Growth Management Area (the “TGMA”) match the boundaries that are specified in the Intergovernmental Agreement; and

WHEREAS, due to a number of extenuating circumstances, the parties have not yet been able to accomplish the amendment of their respective growth management area boundaries; and

WHEREAS, Article 6 of the Intergovernmental Agreement grants to Timnath an “option period” within which Timnath has the right to purchase from Fort Collins certain open space known as the Vangbo Property; and

WHEREAS, on March 3, 2010, the parties executed a First Amendment to Intergovernmental Agreement which extended the periods of time within which Fort Collins was to amend the FCGMA and Timnath was to provide written notice to Fort Collins of its intent to exercise its option to purchase the Vangbo Property; and

WHEREAS, Timnath has decided that it no longer intends to pursue the acquisition of the Vangbo Property; and

WHEREAS, the parties wish to execute a second amendment to the Intergovernmental Agreement to: (1) extend until February 17, 2012, the period of time within which both parties will amend the boundaries of their growth management areas; and (2) eliminate the provisions of the Intergovernmental Agreement that establish Timnath's option to purchase the Vangbo Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Section 2.2(b) of the Intergovernmental Agreement is hereby amended to extend the period of time within which Fort Collins must amend the FCGMA, so that such Section reads in its entirety as follows:

(b) Fort Collins shall seek the approval of Larimer County to amend the boundaries of the FCGMA in accordance with Section 2.2(a) above. In addition, and irrespective of whether or not Larimer County approves such amendment, Fort Collins shall, on or before February 27, 2012, take all actions necessary to amend those boundaries to the FCGMA as it exists independently of the Intergovernmental Agreement between Fort Collins and Larimer County, Colorado dated November 21, 2000, to conform the FCGMA to the limitations of Section 2.2(a) above, it being the intention of and agreement of the parties that the requirements of Section 2.1 shall apply to the (as hereby described and amended) FCGMA boundaries irrespective of any action by Larimer County.

2. Section 2.3(b) of the Intergovernmental Agreement is hereby amended to extend the period of time within which Timnath must amend the TGMA, so that such Section reads in its entirety as follows:

(b) Timnath shall amend the TGMA in accordance with Section 2.3(a) above on or before February 17, 2012.

3. That Article 6 of the Intergovernmental Agreement is hereby rescinded and shall be of no further force and effect whatsoever.

4. No Further Modification. Except as expressly amended by this Amendment, the Intergovernmental Agreement is unmodified and shall continue in full force and effect.

5. Binding Agreement. Both Timnath and Fort Collins intend that this Amendment shall be binding upon them.

6. Amendments. This Amendment may only be amended, changed, modified or altered in writing, signed by both parties hereto.

7. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

8. Jointly Drafted; Rules of Construction. The parties hereto agree that this Amendment was jointly drafted, and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

9. Defined Terms. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings set forth in the Intergovernmental Agreement.

[The Remainder of Page Intentionally Left Blank. Signature Pages Follow.]

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

THE TOWN OF TIMNATH, COLORADO

By: _____
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM

Town Attorney

THE CITY OF FORT COLLINS, COLORADO

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

City Attorney