

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 3

DATE: October 14, 2008

STAFF: Darin Atteberry  
John Stokes

### SUBJECT

Resolution 2008-095 Responding to the Town of Timnath's Resolution #19; Series 2008, Proposing a Program of Cooperation with the City of Fort Collins Regarding the Riverwalk Project

### RECOMMENDATION

Staff recommends adoption of the Resolution.

### EXECUTIVE SUMMARY

On September 17, 2008, the Timnath Town Board adopted a Resolution proposing cooperation with Fort Collins regarding a property known as "Riverwalk" and requested a response from Fort Collins within 30 days. Riverwalk, which is located at the southwest corner of Harmony and I-25, lies within Fort Collins' Growth Management Area (GMA) which is identified in an Intergovernmental Agreement (IGA) with Larimer County. The IGA was established in 1980 and Riverwalk was incorporated into Fort Collins' GMA at that time. On September 24, Timnath initiated an annexation of Riverwalk. On October 1, Timnath Council had its first reading of the annexation ordinance; the second reading is scheduled for October 29.

Fort Collins' staff has prepared Resolution No.095, 2008, as a response to Timnath's September 17 Resolution. The Resolution describes the City's longstanding willingness to cooperate with Timnath on mutually acceptable development and revenue sharing approaches for Riverwalk and other I-25 properties of mutual interest and concern. The Resolution also describes the City's unwillingness to fund various infrastructure improvements that have been proposed by Timnath and states that the annexation by Timnath into the approved GMA of the City is not in the spirit of cooperation, but rather in the spirit of competition.

Due to these, and other undesirable consequences associated with Timnath's annexation into Fort Collins' GMA, the Resolution states that if Timnath were willing to discontinue its annexation of Riverwalk, the City would be willing to enter into an IGA with Timnath that establishes I-25 as the boundary between the two communities. The City also would consider the possibility of revenue sharing between the two communities and various other kinds of cooperative undertakings. Lastly, the Resolution states that if Timnath proceeds with its annexation into Fort Collins, funding for various infrastructure improvements and access associated with Riverwalk will be the responsibility of Timnath and/or the owners and developers of the property.

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**BACKGROUND**

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Colorado law encourages regional land use planning and IGAs. "Local governments are authorized and encouraged to cooperate...with other units of government...for the purposes of planning or regulating the development of land including...the joint exercise of planning zoning, subdivision, building and related regulations. Local governments may provide through intergovernmental agreements for the joint adoption ....of mutually binding and enforceable comprehensive development plans within their jurisdictions." (29-20-105) Pursuant to this statute, Fort Collins, Loveland, Windsor and Larimer County have executed IGA's to cooperate in managing development within their respective jurisdictions. One fundamental principle underlying regional cooperation is that municipalities do not annex inside each other's GMA's. The Fort Collins-Larimer County IGA has included the Riverwalk Property since 1980.

Annexation is a statutory process under which properties adjacent to municipalities become part of those municipalities. The purposes behind annexation, as stated in the statute are:

- (a) To encourage natural and well-ordered development of municipalities of the state;
- (b) To distribute fairly and equitably the costs of municipal services among those persons who benefit therefrom;
- (c) To extend municipal government, services and facilities to eligible areas which form a part of the whole community;
- (d) To simplify governmental structure in urban areas;
- (e) To provide an orderly system for extending municipal regulations to newly annexed areas;
- (f) To reduce friction among contiguous or neighboring municipalities; and
- (g) To increase the ability of municipalities in urban areas to provide their citizens with the services they require. (31-12-102)

Timnath and Fort Collins do not have an IGA. After extensive discussions and negotiations, Fort Collins presented a draft IGA to the Timnath Town Board in 2003 that Fort Collins understood was acceptable to the Timnath. The draft IGA included material regarding annexations, development referrals, community separators, and cooperative planning areas. Timnath declined to execute that IGA.

In 2002-03, Timnath participated in the **Fort Collins-Timnath-Windsor Separator Study** which identified specific opportunities to achieve mutual goals for visual and geographic separation via purchase of land or development rights. The Study stated that "there is strong local support for establishing effective community separators...as evidenced by Timnath's update of its comprehensive plan to both accommodate and reflect community separator opportunities."

Key findings and conclusions from the Study led to subsequent implementation efforts by Fort Collins' Natural Areas Program. Those efforts were based on the following statements in the Study:

- "...meaningful implementation of these community separators will require significant purchase of properties or development rights by public agencies."
- "Until Timnath and Windsor adopt open space funding mechanisms, Fort Collins and Larimer County will need to fund most property and development rights acquisitions in the

area. Fort Collins has a far greater interest in implementing the Fort Collins/Timnath Separator than Larimer County...”

After the Study was completed, Fort Collins worked with several landowners in the community separator to acquire conservation easements and 105 acres of fee ground near the Prospect intersection. In response to Timnath’s concerns about its ability to construct various types of potential public improvements on one of the easements, including expansion of County Road 5 and flood control improvements, the City included specific language in the easement which would allow infrastructure projects to proceed. The pending draft of the easement was forwarded to the Town of Timnath with a letter from the Fort Collins’ City Manager on March 2, 2005. No response was received from the Town of Timnath.

Since the time of the Study and Timnath’s comprehensive plan of 2003, however, Timnath's vision for the future has changed. Timnath has dramatically expanded its comprehensive planning area, even to go so far as to propose incorporating areas of Fort Collins’ GMA that have been part of Fort Collins since 1980. Furthermore, that area, Riverwalk, is now being annexed into Timnath.

In June of 2007, Fort Collins became aware of a proposed revision of Timnath’s comprehensive plan. Fort Collins was not notified of the revision, as required by law. The proposed revision contained major changes, including expansion of Timnath all the way to County Road 52, far to the north of any previous comprehensive plan.

After objections by Fort Collins and citizens, in January of this year, the Larimer County Commissioners tabled consideration of a proposed Timnath-Larimer County Intergovernmental Agreement (IGA) to establish a Timnath Growth Management Area (GMA) based on the revised comprehensive plan. At that point, City staff started working with Timnath staff to resolve the issues raised by the City at the Commissioners’ public hearing.

City staff believes the main reason for the Larimer County Commissioners’ tabling the proposed IGA was to allow the City and Town to participate in a joint land use planning effort in order to come to an agreement as to the appropriate land uses and location of GMA boundaries (for both Timnath and Fort Collins) primarily for the area north of Mulberry Street, but also for additional areas located east of I-25, as well as to explore the potential for establishing boundaries for cooperative planning areas and/or areas of influence.

The comprehensive planning process was to address the following questions/issues:

1. What is the planning vision for the area?
2. What are the major planning goals?
3. What land uses are envisioned for the area?
4. What are the population/employment projections for the area given the planned land uses?

City staff prepared a draft Memorandum of Understanding (MOU) for the City and Town to participate in a joint land use planning.

Timnath staff responded with a counter MOU which had the following Scope of Work:

- a. Identify transportation and storm drainage issues of mutual concern.
- b. Identify possible construction and funding opportunities to address issues identified in a.
- c. Work to implement the specific recommended actions resulting from this MOU.

Throughout 2008, City and Town staff met to dialogue about these, and other, issues. During this time, the City presented numerous options and ideas for Timnath to consider, including the concept that each entity would stay on its respective side of I-25. Unfortunately, the Town has either not been interested in, or has not responded, to these offers. The Town has continued to hold fast to its expansive, comprehensive plan. Furthermore, unfortunately, the Town has continued to narrow the scope of the joint meetings. Currently the focus of the meetings is solely on streets within one mile of I-25.

In addition to staff meetings with Timnath, Fort Collins' Mayor, Doug Hutchinson, and City Manager, Darin Atteberry, have met on multiple occasions with the Mayor and Town Manager of Timnath (Donna Benson and Becky Davidson, respectively). Unfortunately, those meetings have been unproductive, in spite of the fact that Mayor Hutchinson and City Manager Atteberry offered numerous concessions to the Town. The Mayor and the City Manager have consistently indicated to Timnath that an annexation by Timnath into the Fort Collins GMA was unacceptable to Fort Collins.

In summer of 2007, the developer(s) of Riverwalk (the Stoner Team) approached the City about annexation and development. After discussions with the Stoner Team, and based on what staff believed were sound planning principles, City staff agreed that a revision of the Harmony Corridor Plan and Design Standards were in order.

Several subsequent meetings were held between City staff and the Stoner Team concerning: details of the plan amendment and design standards; pre-annexation agreement and conditions; infrastructure needs; development design; and potential financing strategies. The Stoner Team and the City jointly funded a study of engineering options for improving storm drainage across Harmony Road. Two public open houses were conducted by City staff on the proposed amendments to the Plan and design standards; the Stoner Team attended and participated in both Open Houses. Staff presented the amendments to affected boards and commissions. A full day "charette", facilitated by a local planning consultant firm selected and paid for by the City, was held between the Stoner Team and City staff to discuss a variety of development issues. The City Council held two work sessions related to the property: the first on the overall vision for the I-25 corridor; and the second, specifically on the proposed amendments to the Harmony Corridor Plan and design standards.

Between November 2007 and April 2008, City staff continued to work on refining the amendments (with input from the Stoner Team) and had scheduled to move forward with a recommendation of approval to City Council; the hearing was scheduled for June, 2008. In addition, staff devised a new process for developers to review their project with the City Council in advance of any decision making by the Council or the Planning and Zoning Commission. (This process was then successfully utilized by a developer pursuing a major King Soopers and retail development on North College Avenue.) On or about mid-April 2008, however, staff learned that the Stoner Team was no longer interested in pursuing the plan amendment; subsequently, the Stoner Team terminated further

negotiations with City staff. Shortly thereafter, the City learned that Timnath was in negotiations with the Stoner team regarding annexation of the property.

After all the good faith dialogue and negotiations related to Timnath's comprehensive plan revision, the proposed Riverwalk development, and numerous other issues, the City recently learned by accident (no notice was provided by Timnath) of its proposed annexation of Riverwalk. The City believes that this annexation clearly is not in the best interests of the City, Timnath, nor the region. The City believes that this proposed annexation violates the most fundamental principles of regional planning. Almost all of the property to be annexed is contiguous to Fort Collins, and it serves as an important gateway to the City.

As noted previously, Riverwalk is located within the Fort Collins GMA boundary, which was established through an IGA between the City of Fort Collins and Larimer County in 1980. The boundary, for all intents and purposes, represents the future City limits of Fort Collins. There are a series of policies and specific provisions within the Fort Collins-Larimer County IGA that essentially require properties to annex into the City prior to their development, or as soon after development that the requirements of the State's annexation laws can be met. Both the City and the County have greatly benefitted from their IGA. The annexation of the Stoner property into Timnath would undermine and destroy almost three decades of intergovernmental cooperation of growth management and land use planning.

Harmony Road is a crucial gateway into Fort Collins and it is extremely important that the road be identified, designed, built, and maintained to reflect its importance. The City should control development standards on what is one of the major gateways into its jurisdiction. Furthermore, revenues from development are important to support City operations and facilities. Moreover, the City has expended funds and done a great deal of planning in the area to achieve the overall vision for the community and the gateway area. A few tangible examples include: the 1991 Harmony Corridor Plan; 1995 purchase of Natural Areas in the gateway area; participation in the new interchange in 1999; the City's park-n-ride; the City taking over responsibility for Harmony Road from the State; floodplain planning and design in conjunction with different owners over the years; trail systems throughout the area; and, renaming of streets formerly known as CR7 and CR36. These investments were not speculative on the City's part. The City relied on the GMA agreement, geographic ties to Fort Collins, and good-faith relationships with all surrounding jurisdictions.

The state annexation laws are intended not only to provide for the orderly growth of urban communities but also to reduce friction among contiguous or neighboring communities. Properties seeking annexation must have one-sixth contiguity to existing municipal boundaries in order to be eligible for annexation. The purpose of that contiguity requirement is to ensure that a "community of interest" exists between the area proposed to be annexed and the annexing municipality.

Timnath's annexation of Riverwalk would not foster orderly growth patterns; instead, it would likely set in motion a patchwork of annexations by competing municipalities on opposite sides of the Interstate. And, it would certainly not reduce friction between Fort Collins and Timnath. Moreover, there exists no community interest between Riverwalk and existing Timnath town limits; that community of interests exists between Riverwalk and Fort Collins. If that were not the case, Timnath would not need to utilize a flagpole annexation in order to reach inside the Fort Collins GMA and annex the property.

Thus, for these, and other reasons, on October 8 2008, the City filed an objection and request for mediation pursuant to Section 24-32-3209(w.3)(b) of the Colorado Revised Statutes. It is Fort Collins' expectation that, as required by this statute, Timnath will take no further action with regard to this annexation for at least ninety days from October 8 or until completion of the mediation.

While City staff appreciates Timnath's offer to cooperate with Fort Collins, as expressed in the resolution of September 17, staff believes that the offer is disingenuous. While expressing an offer of cooperation, at the same time Timnath has expanded its growth area into Fort Collins GMA with a revised comprehensive plan and pursued an annexation into the City's 28-year-old GMA. Further, staff has learned that the Town of Timnath has approached other properties in our GMA about potential annexation. These efforts are antithetical to the concept of cooperation.

Even if the City were willing to support the Riverwalk project in Timnath's town boundaries, Timnath's resolution states that Timnath would be willing to "assist in funding the needed infrastructure." Yet the developer is not proposing to pay the City's impact fees, which would be used to support these expenses.

### **Conclusion**

Staff believes that Timnath's offer of cooperation is unacceptable. Timnath's annexation of Riverwalk violates long-standing agreements and regional planning efforts and principles. The offer is financially unacceptable to Fort Collins because it proposes to place a major fiscal burden on Fort Collins for a development located in Timnath.

Staff recommends the attached draft resolution as a counter-offer. The resolution states that:

if [Timnath] is willing to not annex the Property to Timnath, the City Council would be willing to enter into an intergovernmental agreement with Timnath that would address the regional planning issues referenced above as well as the possibility of equitable revenue sharing, future Fort Collins community separator acquisitions, mutually acceptable GMA boundaries, regional trail collections, and a joint design review committee.

and, that:

if the Town Board pursues the annexation of the Property, such annexation will seriously jeopardize these joint planning efforts and the funding of the infrastructure improvements needed to mitigate the impacts of the development and allow access thereto will be the sole responsibility of the Town of Timnath and/or the owners and developers of the Property.

**TOWN OF TIMNATH  
RESOLUTION NO. 19, Series 2008**

**A RESOLUTION FOR THE TOWN COUNCIL  
OF THE TOWN OF TIMNATH, COLORADO  
PROPOSING A PROGRAM OF COOPERATION  
WITH THE CITY OF FORT COLLINS  
REGARDING THE RIVERWALK PROJECT**

WHEREAS, the Town of Timnath is in the process of review and consideration of the annexation of certain real property of approximately 268 acres, located in unincorporated Larimer County at the southwest quadrant of Harmony Road and Interstate 25, referred to herein as the "Riverwalk Project;" and

WHEREAS, the Town Council wishes to express its appreciation to the City of Fort Collins, and especially Mayor Doug Hutchinson and City Manager Darin Atteberry, for their cooperation in the discussion of regional collaboration; and

WHEREAS, approximately 25 acres of property located within the corporate boundaries of Fort Collins are proposed to be developed as a portion of the Riverwalk Project; and

WHEREAS, the Riverwalk Project has the potential to affect the entryway into both the City of Fort Collins and the Town of Timnath; and

WHEREAS, development of the type represented by the Riverwalk Project can be considered a benefit to the community and the region as a whole; and

WHEREAS, specifically the Town of Timnath desires to provide a regional development that provides mutual benefit to Larimer County, the City of Fort Collins, and the Town of Timnath; and

WHEREAS, by working together on the Riverwalk Project, the Town of Timnath and the City of Fort Collins can spearhead a regional project that benefits the whole region and allows for cooperation between communities at a new level; and

WHEREAS, in the event the Riverwalk Project is annexed and completed, there are a number of infrastructure improvements located within Fort Collins which could be improved in connection with the Project, which will assist the region as a whole in improving safety for the traveling public; and

WHEREAS, the architectural design of Riverwalk Project is assumed to be of importance to both Fort Collins and Timnath; and

WHEREAS, development of the Riverwalk Project will result in potential increases in real property and sales tax revenues.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO THAT:**

1. The Town Council hereby makes the following proposal for consideration and response by the Fort Collins City Council with respect to certain aspects of the Riverwalk Project, to the extent that Project is annexed into and developed within the Town:

- a) The Town of Timnath will share with the City of Fort Collins 20% of the net sales tax revenues received by the Town from retail sales transactions within the portion of the Riverwalk Project located within the Town.
- b) The City of Fort Collins will share with the Town of Timnath 20% of the net sales tax revenues received by the City from retail sales transactions within the portion of the Riverwalk Project located within the City, to be devoted to regional improvements.
- c) The Town of Timnath will, in cooperation with the City of Fort Collins, assist in the funding for construction of the following public infrastructure improvements located within Fort Collins, which improvements will serve the entire region:
  - a. Improve Strauss Cabin Road and Harmony Road intersection, including signalization: \$3-4M
  - b. Harmony Road storm drainage overflow: Approximately \$4-5M
  - c. Develop and maintain Eagle View Park and Trail: \$4-5M
  - d. Connection of trails for Fossil Creek Reservoir and Eagle View Park through Riverwalk Project and to the Poudre River Trail under Harmony Road: \$2M
- d) The City of Fort Collins and the Town of Timnath will cooperate regarding access and infrastructure for the Riverwalk Project as follows: (1) The City will permit access for the Project on Harmony Road and Strauss Cabin Road, and (2) the City will cooperate with the Town to allow the improvements on Harmony Road to be completed within the planned schedule for the Project.
- e) The City and the Town will continue to cooperate on the development of the overall Riverwalk Project.
- f) A Design Review Committee (DRC) shall be formed to review and advise on the architectural design of the Riverwalk Project. The DRC shall be composed of five representatives, appointed as follows:
  - a. City of Fort Collins Planning Staff Member
  - b. Town of Timnath Planning Staff Member
  - c. Three (3) Members from the Developer Team (Architecture, Developer, Landscape Designer)

2. The Town Council understands and appreciates that the proposal contained in this Resolution is conceptual in level of detail, but is nevertheless sufficient for the Fort Collins City




Council to determine whether the City is willing to further pursue more detailed discussions leading to an intergovernmental agreement on this subject. Accordingly, the Town Council declares this proposal as an offer to Fort Collins to engage in those further detailed discussions. In the event this offer is either rejected or not responded to within 30 days from the date hereof, the Town Council will consider that the City Council is not interested in pursuing such an agreement, and the proposal will be considered withdrawn. In the event the City accepts this proposal, the Town Council will direct its staff to develop an intergovernmental agreement for consideration and approval by both the City and the Town within 30 days. If the agreement is not approved within the thirty days the offer is considered withdrawn.

**PASSED AND ADOPTED THIS 17th DAY OF SEPTEMBER, 2008**

  
Donna Benson, Mayor

ATTEST:

  
Linda Griess, Acting Town Clerk

RESOLUTION 2008-095  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
RESPONDING TO THE TOWN OF TIMNATH RESOLUTION NO. 19, SERIES 2008,  
PROPOSING A PROGRAM OF COOPERATION WITH THE CITY OF FORT COLLINS  
REGARDING THE RIVERWALK PROJECT

WHEREAS, on September 17, 2008, the Town Board of the Town of Timnath (the "Town Board") adopted Resolution No. 19, Series 2008, in which the Town Board offered to share with Fort Collins certain sales tax revenues to be generated by a development known as the Riverwalk Project (the "Proposed Project"), which development may be constructed on property located at the southwest corner of the intersection of Interstate 25 (the "Interstate") and Harmony Road (the "Property"); and

WHEREAS, in order for the City to be eligible for cost sharing under this proposal, the Town Board has suggested that, in a spirit of regional cooperation and with the assistance of Timnath, the City take the lead in funding the construction of various road and storm drainage improvements that will be needed to mitigate the impacts of the Proposed Project, and also provide public access to the Proposed Project from Harmony Road and from Strauss Cabin Road, which abuts the Proposed Project on the west of the Property; and

WHEREAS, on June 11, 2008, Timnath entered into a pre-annexation agreement (the "Agreement") with the owners of the Property which provides, among other things, that the Town Board will consider annexing the Property, zoning the Property as requested by the owners, and providing various kinds of financial assistance to the Proposed Project; and

WHEREAS, the Agreement further provides that the owners of the Property will not initiate any discussions with other municipalities, including Fort Collins, regarding the Proposed Project, nor seek to annex the Property to any such municipality; and

WHEREAS, on September 24, 2008, pursuant to the Agreement, the Town Board approved a resolution initiating annexation proceedings for the Property and, on October 1, 2008, approved on first reading annexation and zoning ordinances for the Property; and

WHEREAS, the City Council fully supports collaboration among neighboring municipalities with regard to regional planning and, toward that end, has worked cooperatively with Timnath over the years by: (1) ensuring that any activities or land acquisitions of the City east of the Interstate were acceptable to the then-current governing body of Timnath; (2) unilaterally funding extensive improvements to the I-25/Harmony Road interchange that substantially benefit both the City and Timnath; and (3) making possible, through its participation on the Poudre Fire Authority Board, the construction of a proposed new fire station in Timnath; and

WHEREAS, the City Council is very willing to consider ways in which cooperation between Fort Collins and Timnath can be strengthened, including renewed discussions between the City and Timnath regarding land use and transportation planning, implementation of growth management policies, the identification and preservation of open space and natural areas, and the

delivery of such services as water, storm water, sanitary sewage disposal systems, fire and police protection; and

WHEREAS, the Timnath proposal is problematic for Fort Collins because, if the Proposed Project is located outside the City limits, the City would not have uncommitted revenues available to fund the infrastructure improvements needed to accommodate and mitigate the impacts of the project, since development projects in neighboring communities do not pay the Fort Collins capital improvement expansion fees that normally help pay for these kinds of improvements; and

WHEREAS, more importantly, the City Council cannot, in fairness to the residents of the City, agree to cooperate in making possible the development of the Proposed Project in Timnath, since the Property upon which the Proposed Project is to be located has, for more than 25 years, been included in the City's Growth Management Area, and the annexation to Timnath of that critical gateway to Fort Collins not only represents poor regional planning but fosters competition, rather than collaboration, between two municipalities that should instead be working as partners in fashioning a sustainable future for the residents of both communities.

NOW, THEREFORE, BE IT RESOLVED BY COUNCIL OF THE CITY OF FORT COLLINS AS FOLLOWS:

Section 1. That, if the Town Board is willing to not annex the Property to Timnath, the City Council would be willing to enter into an intergovernmental agreement with Timnath that would address the regional planning issues referenced above as well as the possibility of equitable revenue sharing, future Fort Collins community separator acquisitions, mutually acceptable GMA boundaries, regional trail connections, and a joint design review board.

Section 2. That, if the Town Board pursues the annexation of the Property, such annexation will seriously jeopardize these joint planning efforts, and the funding of the infrastructure improvements needed to mitigate the impacts of the development and allow access thereto will be the sole responsibility of the Town of Timnath and/or the owners and developers of the Property.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 14th day of October A.D. 2008.

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Mayor

ATTEST:

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City Clerk