

TO: Mayor Sullivan and Members of Board of Trustees

FROM: Brandon Dittman, Town Attorney

DATE: 01/16/2020

ITEM: Resolution 2020-2016, A Resolution of the Town of Lyons, Colorado Approving a Mutual Release and Settlement Agreement Between the Town of Lyons, Colorado and Lyons Properties, LLC.

☐ ORDINANCE
☒ MOTION / RESOLUTION
☐ INFORMATION

I. REQUEST OR ISSUE:

To approve a Mutual Release and Settlement Agreement to resolve the Lawsuit Between the Town of Lyons (the "Town") and Lyons Properties, LLC ("LP").

II. RECOMMENDED ACTION / NEXT STEP:

Pass the Resolution approving the Mutual Release and Settlement Agreement

III. FISCAL IMPACTS:

The Town of Lyons will receive \$70,000 in lieu of a water share from Lyons Properties, LLC .

IV. BACKGROUND INFORMATION:

On January 12, 2016, the Town executed into a Memorandum of Agreement with LP ("MOA") which created various contractual obligations with regard to the development of the properties located at 501, 503, and 517 W. Main Street, Lyons, Colorado 80540 (collectively the "LP Property"). The MOA was amended on May 2, 2016 and May 25, 2016. Paragraph 25 of the MOA, as amended, required LP to "dedicate to [Lyons] one additional water share that is acceptable to the City of Longmont for water provided to 501 W. Main St., Lyons, CO 80540."

In addition, the Town and LP entered into a variety of other agreements regarding the LP Property including the Agreement for Land Use Application Fees/ Deposits – Zoning Amendment and Special Use Review; the Agreement for Land Use Application Fees/ Deposits – Planned Unit Development Rezoning (collectively the "Agreements.") In 2019, the Town notified LP of various defaults of the Agreements and attempted to amicably resolve the dispute over the defaults. The

Town and LP were able to resolve, or develop a path towards resolution, on all defaults except for the water share requirement under the MOA. On May 24, 2019, the Town filed a lawsuit in Boulder County District Court to preserve its rights to enforce the water share requirement of the MOA. LP countersued the Town in response.

While the lawsuit was pending, the Town continued negotiations with LP to resolve the outstanding water share obligation and to drop the counterclaims against the Town. At the end of 2019, the Town and LP were able to agree on a proposal to resolve the Lawsuit. As part of the settlement the Town will receive \$70,000 in lieu of the required water share, and LP will drop its counterclaims against the Town. The settlement proposal has been memorialized in the Mutual Release and Settlement Agreement which can only be approved by the Resolution.

V. LEGAL ISSUES:

If the Board of Trustees does not approve the Resolution, the lawsuit is scheduled for a *Trinity* hearing on February 12, 2020. The Town will continue to incur legal expense and the obligation of LP to provide a water share will remain outstanding.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

None anticipated.

VII. SUMMARY AND ALTERNATIVES: The Board of Trustees has the following options:

- (1) Adopt Resolution 2020-16, as may or may not be amended;
- (2) Direct Town Staff to make revisions to the Resolution or schedule consideration of the Resolution on the February 4, 2020 Trustees agenda; or
- (3) Reject or deny the Resolution and proceed to continue the lawsuit against LP

PROPOSED MOTION:

"I MOVE TO APPROVE RESOLUTION 2020-16, A RESOLUTION OF THE TOWN OF LYONS COLORADO APPROVING A MUTUAL RELEASE AND SETTLEMENT AGREEMENT BETWEEN THE TOWN OF LYONS, COLORADO AND LYONS PROPERTIES, LLC"

Additional Documents:

Exhibit A – Mutual Release and Settlement Agreement