



BOARD OF TRUSTEES
January 17, 2023
6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Work Session Agenda

The Zoom information below is for online viewing and listening only.

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/84871162393?pwd=UkVaaDE4RmhJaERnalleK1hvNHJ5Zz09>

Passcode: 726078

Or One tap mobile :

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Dial(for higher quality, dial a number based on your current location):

US: +1 720 707 2699 or +1 719 359 4580 or +1 669 444 9171 or +1 253 205 0468 or +1 253 215 8782
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626 6799 or +1 360 209 5623
Webinar ID: 848 7116 2393

A. ITEMS

1. Sam Light, CIRSA - Elected Officials Refresher Presentation
2. Marijuana Regulation Discussion
3. Board of Trustee Goal Setting 2.0
4. Board of Trustee Planning Calendar

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements. Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.



Board of Trustees Meeting

Date: January 17, 2023

Subject: Sam Light, CIRSA - Elected Officials Refresher Presentation

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. CIRSA Presentation_01.17.23



Elected Officials Presentation

Presented by Sam Light, CIRSA General Counsel 1.17.23

Introduction

Presentation Overview

- Further exploration of liability risks and “best practices” in the areas of:
 - Transparency & electronic communications
 - Organizational structure & liability
 - Ethics and personal conduct
- We’ll touch on some “hot topics” as well as some perennial risk management and governance challenges that governing bodies face from time-to-time.
- Presentation is a training resource only; is not intended to address or provide legal advice on any specific, pending issues.

Transparency

- Background: The Open Meetings Law (OML) “openness” requirement applies when 3 or more members of the governing body “meet” to discuss “public business”.
- The OML requires that such discussions occur at a meeting that is open to the public.
- And, if action will be taken or a quorum will be present, there must be timely notice—agenda posted at least 24 hours in advance.
- A “meeting” includes any gathering to discuss public business, in person, by phone, or electronically.
- The “openness” rule is a “rule of three”, so what about one-on-one meetings?

Transparency & Electronic Communications

- Emails: “If elected officials exchange email to discuss pending legislation or other public business among themselves, the electronic mail is subject to the [OML];” i.e., to the “openness” requirement.
- Email communication between elected officials “that does not relate to the merits or substance of pending legislation or other public business...shall not be considered a ‘meeting.’” Safe harbors (“non-meetings”) under House Bill 21-1025:
 - “Scheduling and availability”
 - Email sent for purpose of forwarding information (FYI)
 - Responding to an inquiry from an individual who is not a member of the body
 - Posing a question for later discussion by the body

Transparency & Electronic Communications

- While House Bill 21-1025 brings clarity re: certain non-meetings, it also confirms what the OML intends: Discussions of the “merits or substance”—that is, “the essence”—of a matter of public business are subject to the OML’s openness requirement.
 - “Merits or substance” means “any discussion, debate, or exchange of ideas, either generally or specifically, related to the essence of any public policy proposition, specific proposal, or any other matter being considered by the governing entity.”
- See CIRSA Handout and this CIRSA article: <https://www.cirsa.org/news/how-the-colorado-open-meetings-law-applies-to-elected-officials-email/>).
- Separate from the OML “openness” requirements, public records include “the correspondence of elected officials,” subject to limited exceptions.

Transparency & Electronic Communications

- Using social media? Be cognizant of risks for public officials; e.g.:
 - Open meetings and open records issues
 - First Amendment concerns
 - Due process issues related to quasi-judicial proceedings
 - Other tort liabilities
 - True threats and doxing
- See this CIRSA article: <https://www.cirsa.org/wp-content/uploads/2019/06/Social-Media-Use-by-Elected-Officials.pdf>.

Social Media - Tips

- Keep personal and any official sites separate.
- On your official site (if you have one), don't delete posts or discriminate based on content or viewpoint. Seek staff assistance in assessing whether comments may be removed.
- If on balance there is a need for the Town and/or its officials to correct disinformation, consider carefully the who, how, when and where.
- Don't engage in discussions of quasi-judicial matters (can constitute *ex parte* discussions).
- Consider also the value and impact of your social media activity in relation to your role as a member of the governing body; E.g.: Are personal opinions denoted as such? Are posts for or about the board accurate as to "we" and where "we" are at?

Organizational Structure and Liability

- As discussed in April 2022 training, the law recognizes that everyone within a municipal organization has a “job description”—it is important that everyone understand and honor their “job description,” both to help ensure the organization functions at a high level, and to avoid risks of liability, including the risk of personal liability!
- You have protection from personal liability if you are “within the scope of employment” and not acting “willfully and wantonly.”
- Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you.
- It can also result in loss of your public officials’ insurance coverage. Public officials’ liability coverage follows the same “course and scope” concepts.

Organizational Structure and Liability

- What is the Town structure? What is the governing body “job description”?
 - The Town of Wellington is a statutory town, with a Board-Administrator organizational structure.
 - Under this structure, there is a “separation of powers”—and such a separation of powers is the most common form of municipal structure.
 - **Board of Trustees:** Legislative & Corporate Authority (Policy & Governance)(CRS 31-4-301 Town Code 2-2-10).
 - **Town Administrator:** Chief administrative officer; responsibility for “day-to-day” operations (Town Code 2-3-20).

Organizational Structure and Liability

Where Do We Focus Efforts?

Ownership



Governance



Management



Supervision



Front Line Employment

Roles of elected officials are focused on:

- Policy-making, bigger picture, looking forward (i.e., future planning and projects); board decision-making regarding corporate interests and assets.
- Examples: Develop general ordinances & policies (legislation), annual budget-making, master plan, financial oversight, quasi-judicial and corporate matters reserved to the board.
- Longer time horizons—looking down the road.
- Stewardship and protection the Town's interests and assets.

Organizational Structure and Liability

- Tips to support the structure and avoid concerns around “role discipline” and “scope”:
 - Embrace the power and purpose of delegations of authority. The job descriptions of “others” are there to “serve and protect.” The **serve** to clarify where authority and responsibility lies, and to **protect** you, the governing body, and the Town assuming everyone is committed to “role discipline.”
 - Individually, the role of elected official may include being an ambassador, a set of “eyes and ears” for the Town and community, a liaison, and a champion of causes. But the job of elected official is a “WE” job. While each member holds a fraction of the governing body’s power, that power can’t be exercised alone.
 - Rather, elected officials act primarily as a BODY, and exercise responsibilities mainly by VOTING in a PUBLIC MEETING.

Organizational Structure and Liability

- More tips to support the structure and avoid concerns around “role discipline” and “scope”:
 - Commit to personnel conduct that strengthens the WE and the governing body as an institution. This sometimes requires personal sacrifices, such as:
 - Setting aside a personal interest or agenda when there is lack of support.
 - Accepting “the Board has spoken” though one preferred a different outcome.
 - Recognizing that individual efforts—e.g., liaison and representative roles—are in service of the governing body (the WE).
 - Patience in terms of waiting until a matter is “ripe” for the governing body’s discussion and decision and, related to that, not “assuring” outcomes.

Organizational Structure and Liability

- Elected officials have fiduciary and stewardship responsibilities to the Town as an entity. Success in these responsibilities calls for:
 - Consideration of issues on their merits alone.
 - Attention to broad interests and objectives: “What’s the right thing to do for the Town as a Town.”
 - Consideration of the interests and desires of both the vocal few and the silent majority.
 - A resolve to “speak with one voice” to direct reports. The governing body is responsible for sorting out and reconciling the views and priorities of its members, so that it can speak with one voice. This is how the Board achieves clarity, credibility and accountability to its voice.

Ethics and Personal Conduct

- Become familiar with the ethics laws that govern your conduct (State Statutes & Town Code Ch. 2, Art. 6) and make them your “best friend” in addressing ethics matters.
- In particular, familiarize yourself with the standards and procedures governing conflicts of interest, the handling of confidential information, and gifts. Some “hot topics”:
 - The “common interest” exclusion; i.e., is there a conflict if the Board’s action affects a large number of persons or entities?
 - Conflicts involving the entity itself as respects its “many hats”.
 - Campaign contributions.

Go Beyond Ethics!

- Beyond ethical conduct, commit yourselves to high levels of personal conduct. Recognize that inappropriate personal conduct can be destructive to a public body, its agenda, and its reputation. Some problem areas we've seen:
 - “Outsider syndrome” and elected officials “going it alone”.
 - Accusations of lack of respect, lack of good faith, hidden agendas, preconceptions, undue partisanship, incivility, or other concerns creating a sense of distrust.
 - An “imbalance” of information and/or participation on the body, or bodies constantly lining up with the same split vote on every issue.
- Commit to high standards of personal conduct that help strengthen the City as an entity and the Council as an institution, and to identifying and avoiding conduct that can debilitate a public body.

Concluding Thoughts – Embrace Wise Leadership

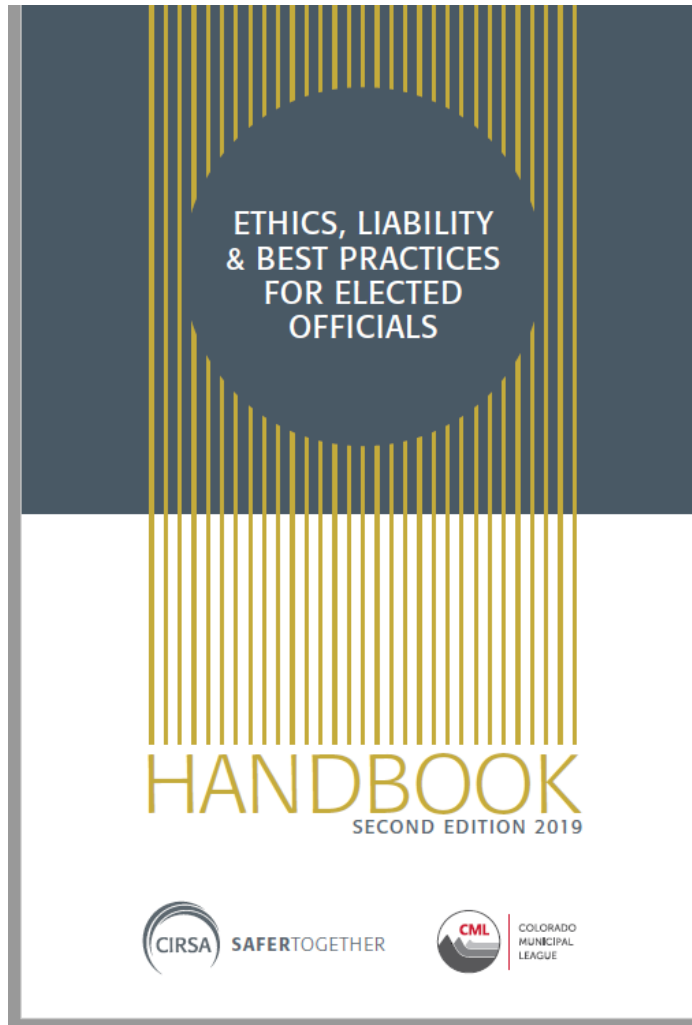
- While there are many aspects of risk management that municipalities and their elected officials cannot fully control—e.g., public perceptions, the actions of claimants, the inclinations of judges, the enactments of federal and state legislatures, etc.—embracing wise leadership in the areas we can control will support your success and reduce your risks. Some examples:
 - Committing to a “no surprises” approach while dealing with one another and staff.
 - Committing to meetings free of “gotcha” moments and “staff-bashing.”
 - Recognizing the “24/7” nature of the role, and the fact that, fair or not, sometimes perception = reality and reality = perception.
 - Embracing the fiduciary, stewardship, and “We” responsibilities of governing body membership.

Conclusion

Thank you for your public service!

And for the opportunity to present.

Resources



CIRSA Elected Officials Handbook:

<https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>

CIRSA Executive Director Tami Tanoue's Webinar on Ethics, Liability, and Best Practices for Elected Officials:

<https://www.cirsa.org/wp-content/uploads/2020/05/Ethics-Liability-and-Best-Practices-Webinar-2020.mp4>

•CIRSA elected and appointed officials' resources: <https://www.cirsa.org/safety-training/elected-officials/>.

Conclusion

Colorado Intergovernmental Risk Sharing Agency

- Not a commercial insurance company; CIRSA is a Colorado public entity self-insurance pool for property, liability, and workers' compensation coverages.
- Formed in 1982 by an intergovernmental agreement of 18 municipalities pursuant to CML study committee recommendations.
- Total membership today stands at 283 member municipalities & affiliated entities:
 - 282 are members of the PC pool
 - 139 are members of WC pool
- CIRSA views proactive approaches to risk management as critical member services – is a win-win.

Conclusion

Speaker Bio

Sam Light is General Counsel for the Colorado Intergovernmental Risk Sharing Agency (CIRSA). Previously Mr. Light was a partner with the Denver law firm of Light | Kelly, P.C., specializing in municipal and other public entity law, insurance law and defense of public entities and elected officials. Sam is a frequent speaker on municipal law and has practiced in Colorado since 1993.

Board of Trustees Meeting

Date: January 17, 2023
Subject: Marijuana Regulation Discussion

BACKGROUND / DISCUSSION

INTRODUCTION

This item is a further discussion of proposed amendments to the Town of Wellington Marijuana code. On December 13 at a work session, the Town Attorney brought forward a draft ordinance for discussion that would make three primary changes:

1. Include R-3 zoning in the ordinance for purposes of setbacks, which currently only apply to R-1, R-2, and R-4 zoning districts.
2. Allow the Board of Adjustment to hear requests for variances from the setback distances for marijuana stores and make those variances, if granted by the BOA, effective for purposes of licensing.
3. Make changes to the scope of information to be considered by the Local Licensing Authority for Marijuana Licenses, including neighborhood needs and desires.

Following some discussion on December 13, including some public comment provided during the regular meeting and also via letter post-meeting, modifications were made to the proposed ordinance, and it was brought before the board for consideration on January 10.

At the January 10, 2023 meeting, there was public comment from a number of interested parties. Commenters discussed a desire for reduced setbacks to come more in line with other communities, though it was brought up that some other communities have the same 2,000 foot setbacks. Some commenters discussed a desire to allow more stores to open, as it appears that the only location that meets the setbacks has been claimed. This was countered with comments that the sole license application likely to be granted in the near future met the strict requirements, demonstrating that the setbacks were not impossible to meet.

The full public comments from January 10, 2023 can be seen at <https://www.youtube.com/watch?v=odOfdKUBfkQ>. This memo's purpose is not to summarize all comments, but we felt it was appropriate to highlight a few comments.

At the conclusion of public comment, the board moved to postpone consideration of the proposed ordinance to January 24, 2023 in order to allow an absent Trustee to participate fully in the discussion. That motion passed unanimously.

Trustees then proceeded to discuss some topics upon which the Board of Trustees wanted more information at the work session on January 17, 2023. These are discussed below and additional information will be provided at the Work Session.

ITEMS FOR DISCUSSION

A. Setbacks from (P) Public Zone Districts.

The Municipal Code provides that no retail marijuana license may be located within 500 feet of a property zoned P Public. Per the Land Use Code, "The Public District is intended to identify and perpetuate the existence of



public parks, playgrounds, recreation facilities and public and quasi-public buildings, whether publicly owned or leased.”

While the primary intent is largely recreational, the zone district also includes Public Facilities, defined as those “constructed facilities, including but not limited to transportation systems or facilities, water systems or facilities, wastewater systems or facilities, storm drainage systems or facilities, fire, police and emergency systems or facilities, electric, gas, telecommunication utilities or facilities and publicly owned buildings or facilities.” This would include detention ponds, as noted in the Board Meeting.

If the marijuana ordinance were changed, the setback could be changed to require a 500 foot setback from certain public uses, such as parks or other recreational facilities. If the board desires this type of change, staff would have to research the possible uses in Public Districts and provide a comprehensive list for consideration.

B. Setbacks from Schools and Day Care Facilities

The Municipal Code provides that no retail marijuana license may be located within 2,000 feet of any school, which is defined as “A public or private preschool, including a licensed daycare or a public or private elementary, middle, junior high, or high school, college, or principal campus of a college (and including the new Middle/High School at Wellington, not open as of the date of adoption of this ordinance).”

As will be demonstrated in maps provided at the Work Session, the 2,000 foot setbacks from schools cover a large percentage of the area of town, even if day care facilities are not considered. Including day care facilities, which may be day care centers or in home day care, the setbacks cover almost all properties that are located in C-3 Zoning Districts. Though the board did not specifically request maps of different setback distances, staff will attempt to provide maps showing 1,000 and 1,500 foot setbacks from these uses, as has been requested by members of the public.

As was discussed in letters to the board and public testimony, many other municipalities have setbacks from schools that are much smaller than 2,000 feet. Many also do not include day care facilities in their definitions of school.

C. Role of the Board of Adjustment

The Town of Wellington Board of Adjustment is an entity created by state law, with a mandate to hear appeals from decisions of town official decisions regarding the land use and to hear requests for variances. More precisely, as defined in the Municipal Code at Sec. 2-11-40:

The Board of Adjustment shall:

- (1)Hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Land Use Code or other matters authorized by statute
- (2)Hear and decide all matters referred to it or upon which it is required to pass under Town zoning ordinances and the Land Use Code. It shall also hear and decide other matters as provided by state statute or as otherwise provided by ordinance.

Of note, the purview of the Board of Adjustment may be changed by ordinance, though generally its role is limited to appeals and variances.

The marijuana code requires that all marijuana licenses comply with the zoning ordinances and that the license be certain distances from various uses. Those distances are further incorporated in to the land use code: “...and said zoning ordinances shall be amended...” As the setbacks are incorporated into the land use code, it is



staff's position that the Board of Adjustment has the authority to hear requests for variances. A variance, per the Land Use Code, "may be sought for relief from dimensional and numerical standards of this Land Use Code. Variances may not be sought to vary the allowed use on a property." If an owner of a C-3 property seeks a smaller setback for a marijuana license, that seems to fit within the purview of the Board of Adjustment.

The ordinance presented to the board at the December work session and January board meeting seeks to remedy a discrepancy where the Board of Adjustment may hear and grant a request for a variance under existing law, but the Marijuana Local Licensing Authority may not be authorized to grant a license with a varied setback distance. Essentially, the Board of Adjustment variance currently would allow a use, but no license would likely be allowed for that use. The proposed ordinance merely makes the Board of Adjustment-issued variance to be the applicable distance for issuance of a marijuana license.

It's important to read the requirements and standards for the Board of Adjustment to hear and issue variances. Attached to this agenda item are the procedures for variances.

STAFF RECOMMENDATION

The information contained herein and in person at the work session is intended to facilitate board discussion of the issues in the proposed ordinance to be considered again on January 24, 2023.

ATTACHMENTS

1. Variance Procedures and Findings

Excerpt from Wellington Land Use Code Variance Procedures and Findings for Approval

2.22 Variance

2.22.1 Purpose. A variance provides relief from the strict application of a standard to a specific site that would create an unnecessary hardship or practical difficulties on all reasonable use of the property.

2.22.2 Applicability. Variances may be sought for relief from dimensional and numerical standards of this Land Use Code. Variances may not be sought to vary the allowed use on a property.

2.22.3 Procedure. All applications for Variances shall comply with the following specific procedures in addition to the general procedures set forth in Section 2.04.

A. *Pre-application Conference*. A pre-application conference is required for a variance application to discuss specific application procedures, criteria, and requirements for a formal application.

B. *Application Submittal*. The variance application shall include:

1. A site plan detailing property boundaries, footprints of all existing and proposed buildings, parking configuration, location of all utilities and easements, and any other details required to demonstrate conformance with all regulations and development standards applicable to the proposed zoning district;
2. A written narrative justifying why the proposed variance fits in with the surrounding neighborhood;
3. Conceptual building plans, including elevations, exterior materials, doors, decks, etc., if applicable;
4. Any other information identified in the pre-application meeting.

C. *Review and approval*.

1. Board of Adjustments Review.

- a. The Board of Adjustments shall hold a public hearing and review the application at a regular meeting. Public notice shall be given pursuant to Section 2.02. The applicant or their representative may be present at the meeting to present the proposal. Staff shall present their staff report and recommendation.
- b. The Board of Adjustments shall either approve, approve with conditions, or deny the application, or continue the hearing pursuant to Section 2.02.4, with the requirement that the

applicant submit changes or additional information which they find necessary to determine whether the application complies with the Town's regulations, goals, and policies.

- c. Any information, exhibits, plans or elevations, whether conceptual or detailed, that are part of the application approved by the Board of Adjustments shall be considered a part of, and inseparable from, the approval. All development shall conform to the approved plans, unless otherwise provided for within this Land Use Code.

2.22.4 Findings for Approval.

- A. The relief requested is consistent with the Comprehensive Plan and the intent stated in this Land Use Code;
- B. Strict application of the regulation will result in an unnecessary hardship and practical difficulties on all reasonable use of the land intended by the existing zoning, as opposed to convenience or benefit of the applicant or a specific application;
- C. The need for the variance is due to specific and unique physical conditions on the site that do not exist on similarly situated land in the area;
- D. The manner in which strict application of the regulation deprives the applicant of reasonable use of the land compared to other similarly situated land in the area;
- E. The circumstances warranting the variance are not the result of actions by the applicant, or could not be reasonably avoided by actions of the applicant;
- F. Granting the variance will not harm the public health, safety and welfare or the purposes and intent of these regulations;
- G. The relief requested is the minimum necessary to alleviate the hardship and practical difficulties; and
- H. The relief requested is consistent with any other prior approvals and official plans and policies created under the guidance of that plan for these areas (e.g., The Comprehensive Plan, specific area plans like a Downtown Corridor Study, etc.).

Board of Trustees Meeting

Date: January 17, 2023
Subject: Board of Trustee Goal Setting 2.0

BACKGROUND / DISCUSSION

The Board of Trustees met on November 16, 2022, to create actionable goals for the adopted Strategic Plan. The group identified eight goals for the first two sections of the Strategic Plan (Infrastructure and Fiscal Responsibility). The remaining two sections (Planning and Development and Communication) will be discussed during the January 17, 2023, Work Session.

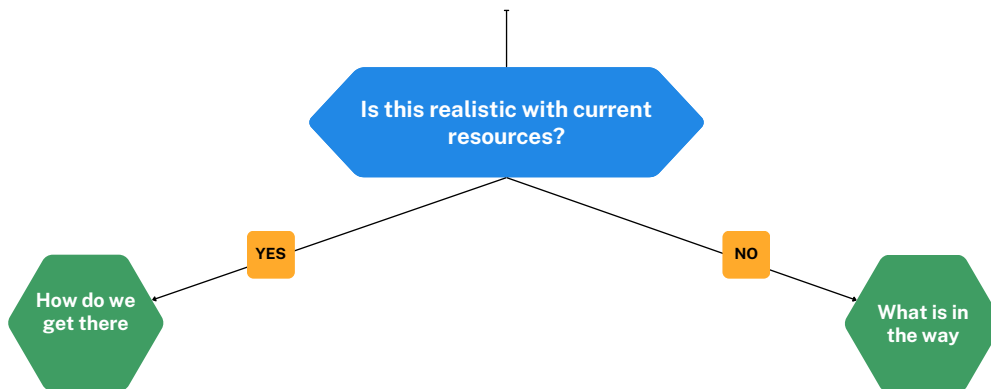
The Board of Trustees requested staff review the goals and identify the needs for accomplishing each objective. Staff leadership met and shared their thoughts, presented in the thought maps included in the packet.

For a review of the first meeting, including a review of requested items, answers to outstanding questions, and a list of the items yet to be discussed, please see the refinement summary.

STAFF RECOMMENDATION

ATTACHMENTS

1. BOT Strategic Plan Part One Refine 1:11:23



Fiscal Responsibility

- Increase tax revenue by 5%.
- Operate with a balanced budget.
- Create documents and videos for financial transparency created by the finance committee and hosted on **www.wellingtoncolorado.gov**.
- Increase funding by 5% for budgeted projects through grants.

Infrastructure

- Execute Safe Routes to school MOU
- Improve drainage on Cleveland using grant funding
- Add Stormwater improvements to the CIP

Questions

- What is our retention rate as an organization compared to other government agencies?
 - The Town's turnover rate between September 1, 2021 and March 30, 2022 was 33.3% and 33.3% of first year turnover. In the United States, the average turnover rate was higher than normal at 47.2%. Typically turnover in the government sector is lower than the national average. Some turnover is healthy and normal to bring in new knowledge and ideas into organizations as well as exiting underperforming employees. The Town began intentionally tracking this information in recent years and will need time to establish a normalized baseline

following the impacts of the COVID pandemic on the working environment. After establishing a baseline, actionable goals on stabilizing the turnover rate can be evaluated more accurately.

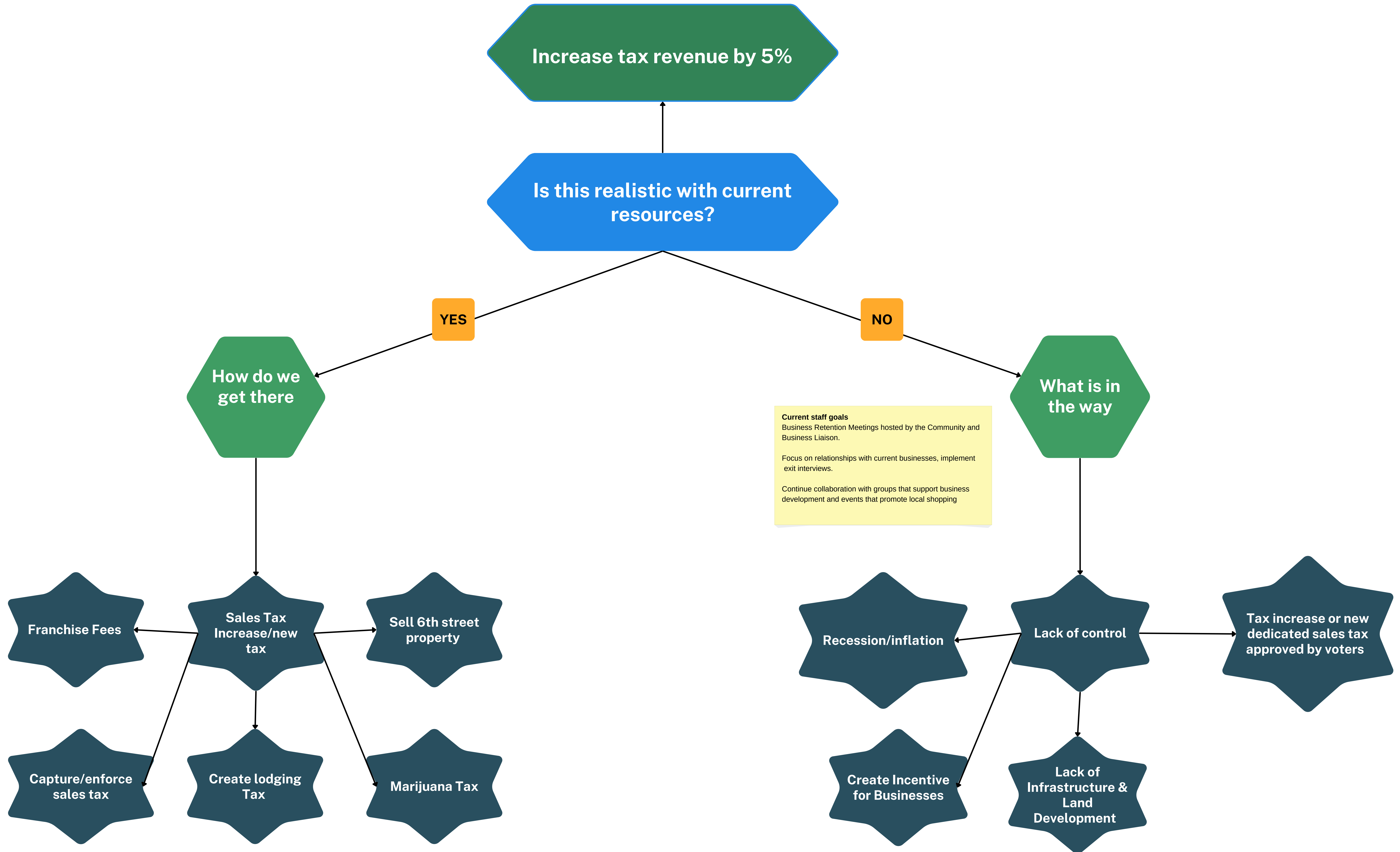
- What tax revenue does the town receive?
 - Property Tax, Sales Tax, Severance Tax, Use Tax, Interest Delinquent Tax, Cigarette Tax

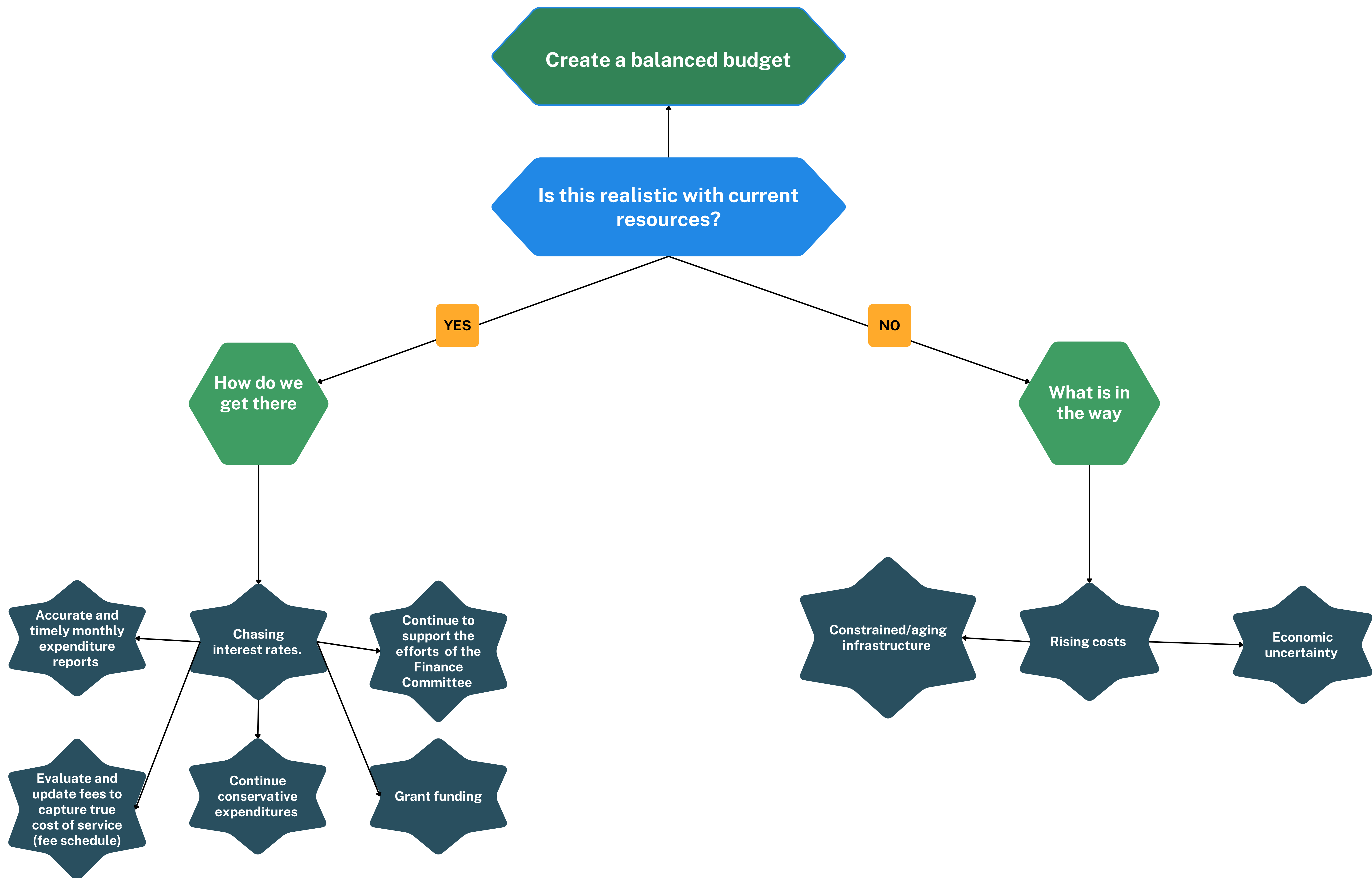
Parking lot

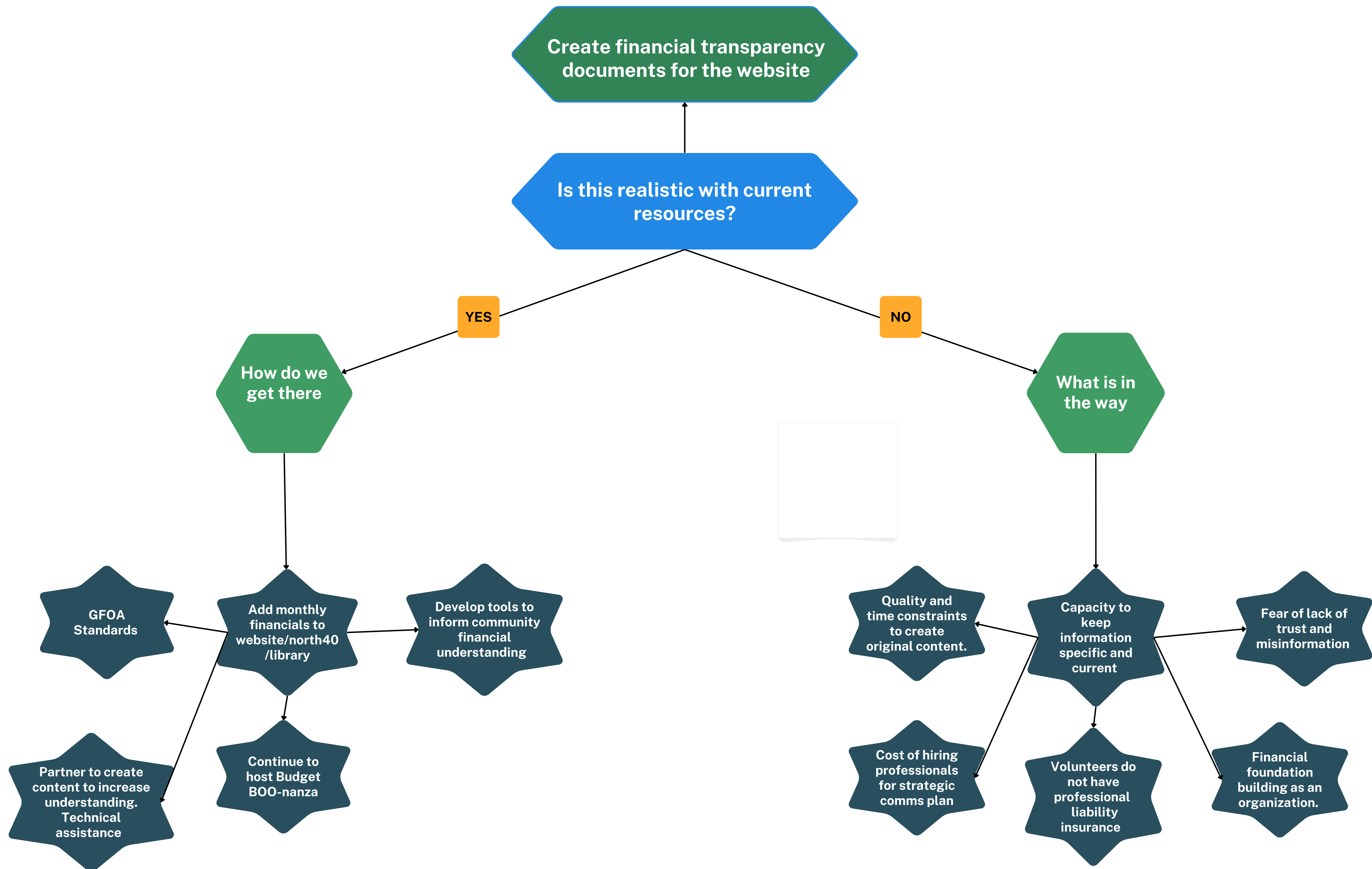
- Water Utility Board Discussion
- Fee Schedule

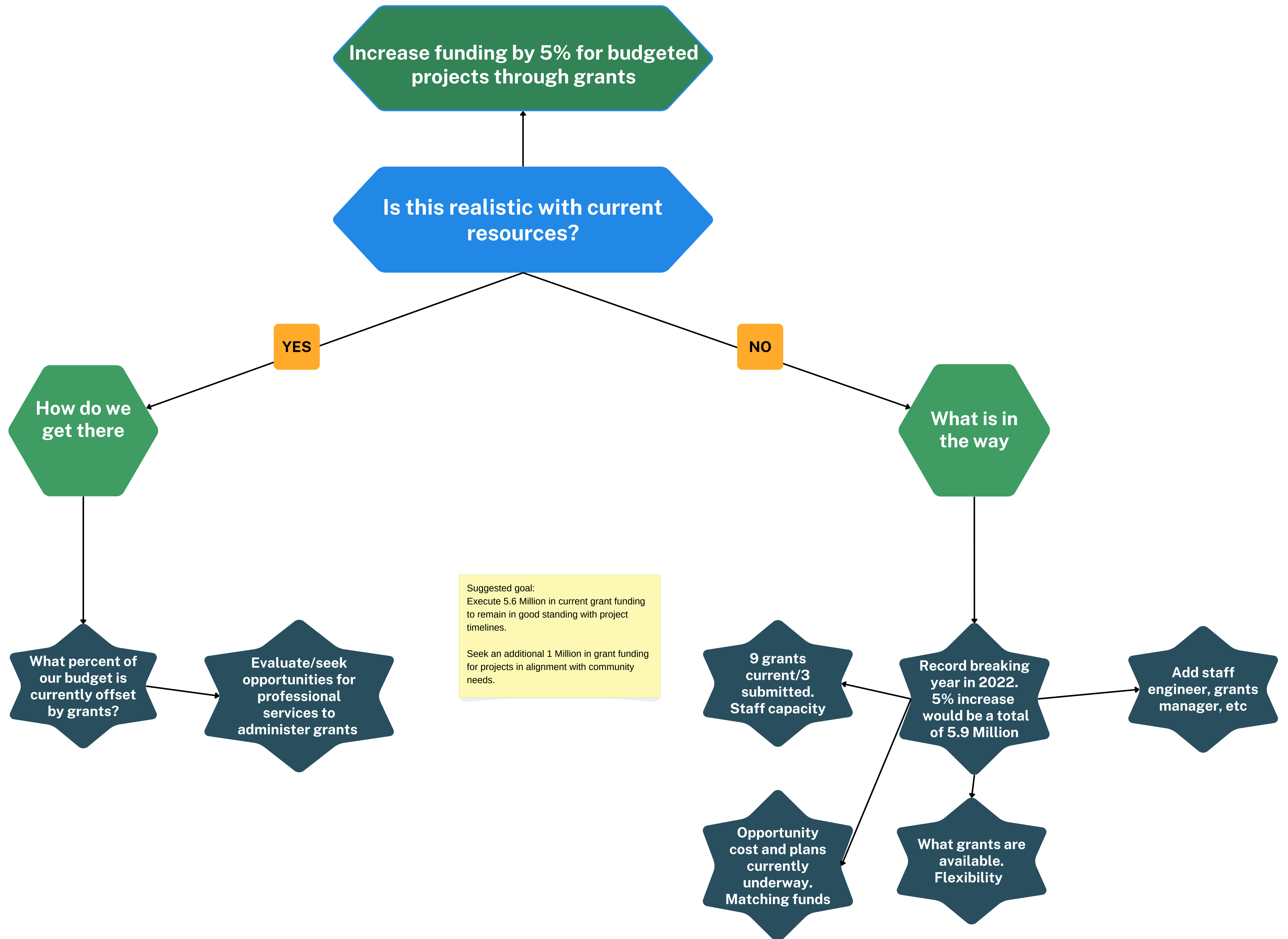
BOT Asks from Staff

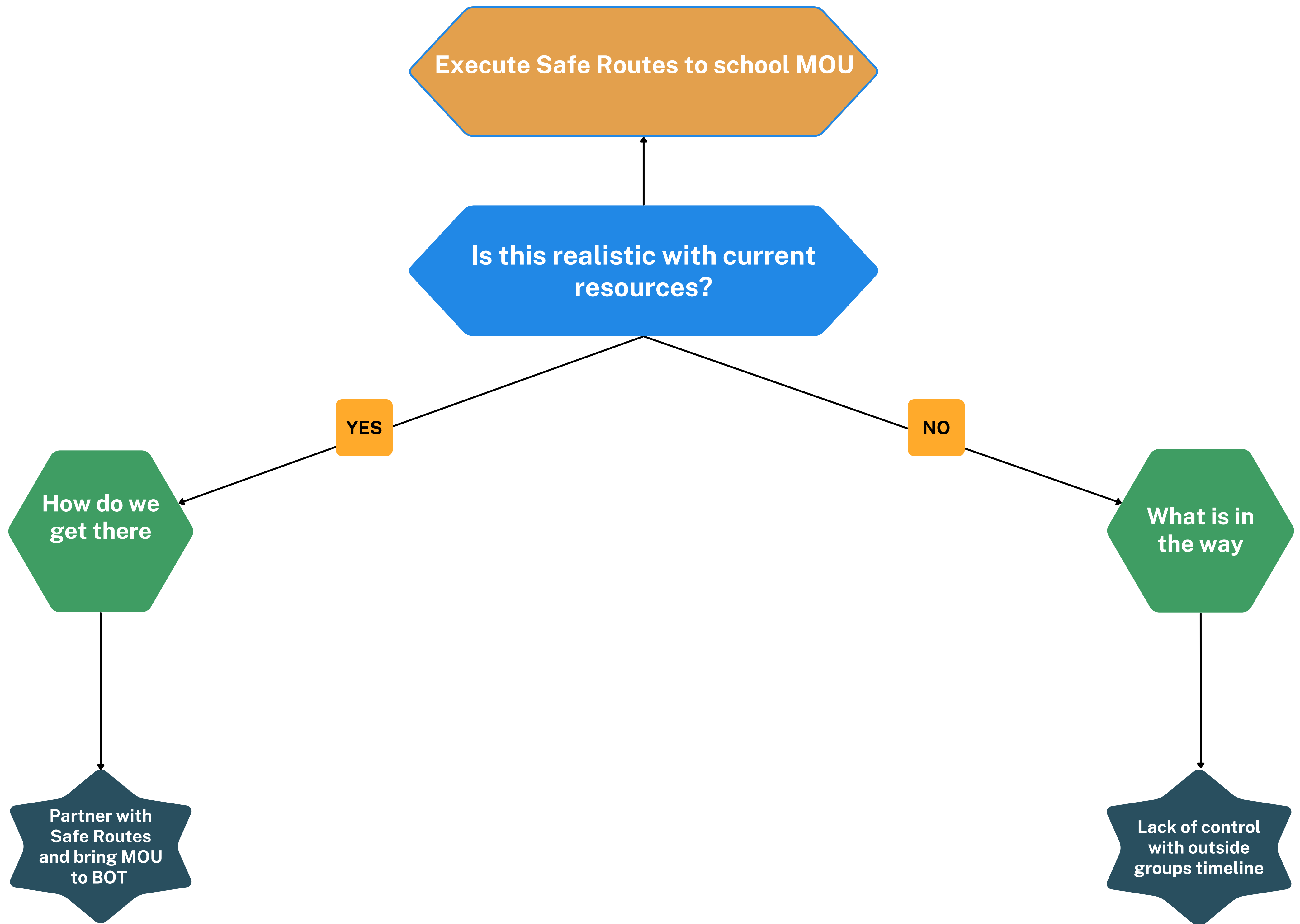
- Review and develop list of current partners and MOU's by May 2023
- Balance budget mid year review in May or June

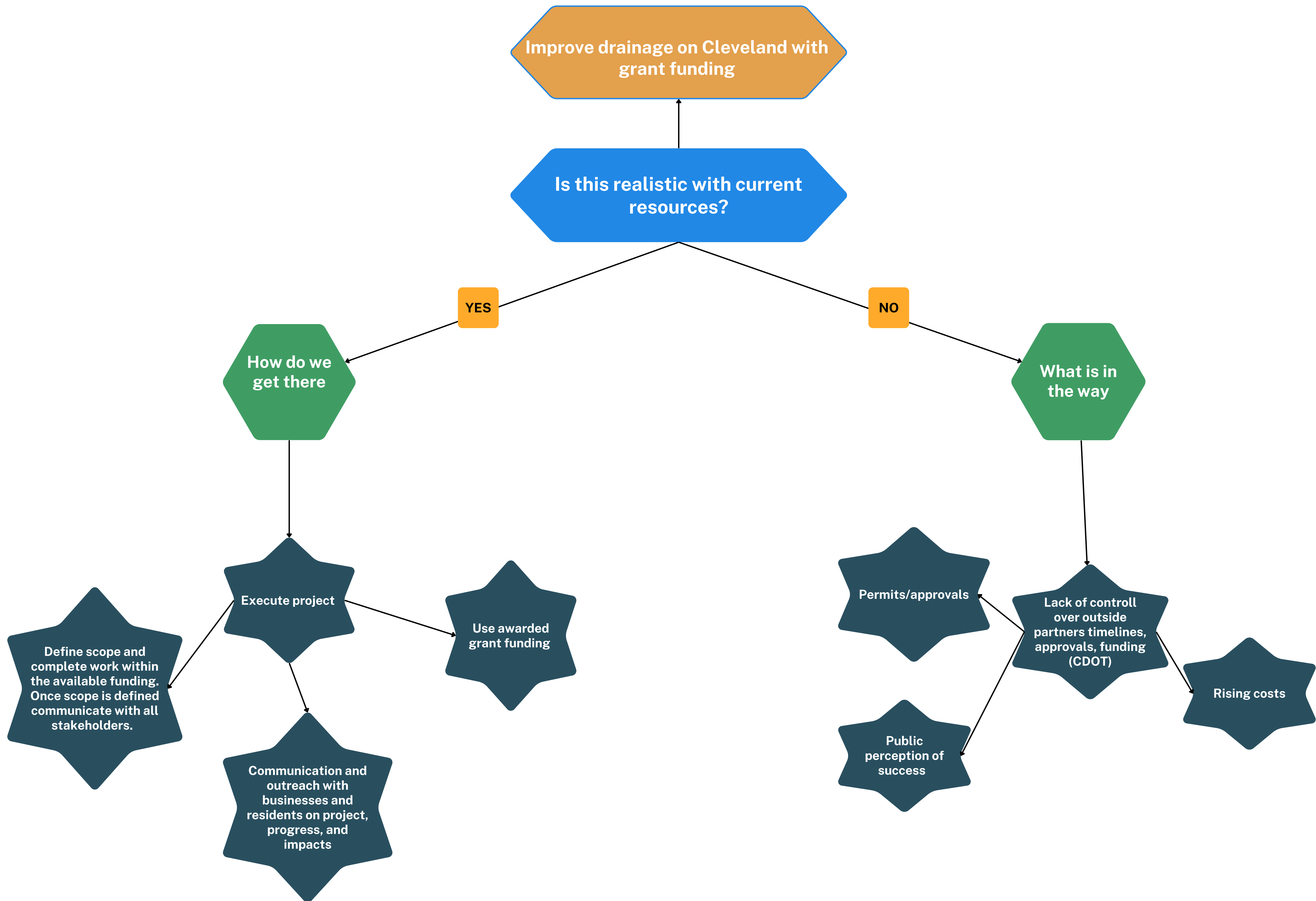


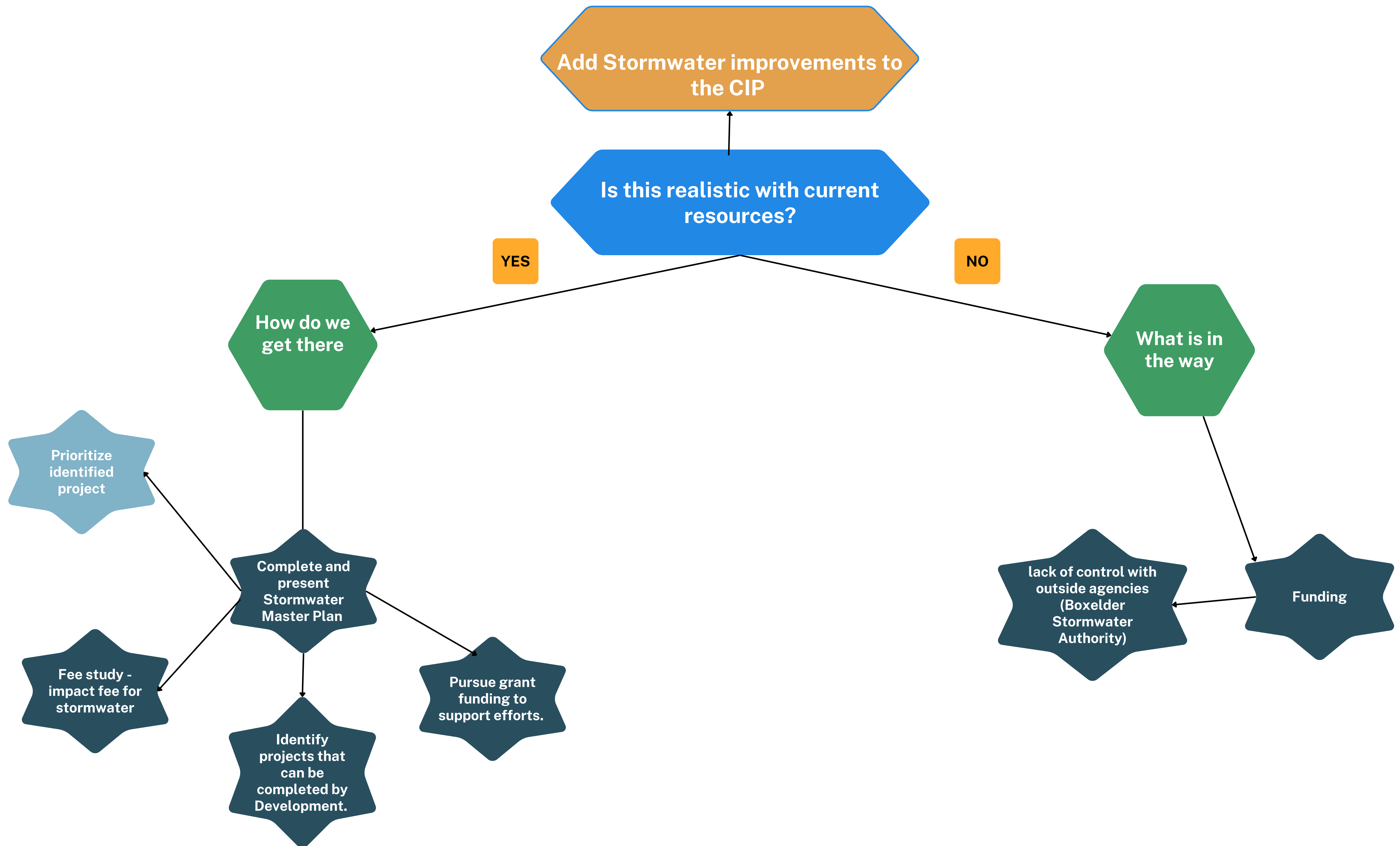














Board of Trustees Meeting

Date: January 17, 2023
Subject: Board of Trustee Planning Calendar

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. 01.12.23_BOT planning calendar



BOARD OF TRUSTEES PLANNING CALENDAR

January 24, 2023 6:30 p.m.	Board of Trustee Regular Meeting
January 24, 2023 Immediately following Regular Meeting	Board of Trustee Work Session Zoning Map Update Community Survey Discussion
February 14, 2023 6:30 p.m.	Board of Trustee Regular Meeting
February 21, 2023 6:30 p.m.	Board of Trustees Work Session Utility Bill Ordinance Change Fuel, Oil & Grease (FOG) and Pretreatment Discussion Boxelder Presentation
February 28, 2023 6:30 p.m.	Board of Trustee Regular Meeting
March 14, 2023 6:30 p.m.	Board of Trustees Regular Meeting
March 21, 2023 6:30 p.m.	Board of Trustees Work Session
March 28, 2023 6:30 p.m.	Board of Trustee Regular Meeting
April 11, 2023 6:30 p.m.	Board of Trustee Regular Meeting
April 18, 2023 6:30 p.m.	Board of Trustees Work Session Marijuana Sales Tax Collection Off Road Vehicle Discussion
April 25, 2023 6:30 p.m.	Board of Trustees Regular Meeting
May 9, 2023 6:30 p.m.	Board of Trustees Regular Meeting

This document is subject to change without notice



BOARD OF TRUSTEES PLANNING CALENDAR

Future Work Session Topics:

Board of Trustee Roles & Responsibilities

Library Board Discussion

Joint meeting with Wellington Fire Protection District

Joint meeting with Larimer County Board of Commissioners

Hauler Licensing

Additional Events:

February 16, 2023 – CML Legislative Workshop @ Colorado History Center