



BOARD OF TRUSTEES
February 14, 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.

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Webinar ID: 848 7116 2393

A. ITEMS

1. Regulating Marijuana - Discussion of Ordinance No. 01-2023
2. Land Use Fees
3. Review of Goals Set for 2022-2024 Strategic Plan
4. Board of Trustees 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: February 14, 2023

Subject: Regulating Marijuana - Discussion of Ordinance No. 01-2023

BACKGROUND / DISCUSSION

At the January 24, 2023 board meeting, a proposed ordinance to amend the Town of Wellington Marijuana Code was postponed by motion of the Board of Trustees. The postponement was accompanied by some requests for more information and opportunity for additional discussion. In particular, the Trustees requested additional information regarding 1) caps on the number of licenses allowed to be issued, 2) setback distance modifications, potentially in conjunction with caps, and 3) changing the public zone district setbacks to apply to particular uses, not zone districts.

To facilitate discussion at this work session, staff has provided some additional information here in the packet and will be prepared to answer questions that may arise from Trustees. Additionally, this packet contains materials previously provided to the board in packets on January 17 and 24, 2023. This includes the proposed ordinance, a variety of communications from interested parties, and discussion of many of the items that the board is considering.

1. Caps on number of marijuana retail licenses.

A significant item that was raised at the January 24, 2023 meeting was consideration of placing a cap or limit on the number of marijuana retail licenses. Under Colorado law, a municipality has wide discretion in whether to and how to allow marijuana establishments to operate. If a municipality wishes to limit the number of establishments, one option that is available is to simply place a cap on the number of licenses.

Communities of various sizes around Colorado cap licenses to a set number or tie the number of allowed licenses to some other factor, like population. Some communities have caps on the number of “locations,” not licenses, in order to facilitate co-location of medical and retail stores. While this option seems very simple, there are some important considerations to look at when considering this for the Town of Wellington.

First, how many establishments/locations/licenses should be allowed? There is no easy answer to this question and other communities show the wide variety of options: Grand Junction allows 10 licenses total, the Town of Eagle (pop. 7,500) allows 1 license for each type per 5,000 residents, Pueblo County allows 32 retail marijuana licenses but limits medical store licenses to 12, and Garden City allows 4 of each type of license. Enclosed in this packet are some appendices from a 2016 study of smaller communities in Colorado. Table 3 of that report shows the various caps imposed at that time.

Unfortunately, these various caps are set without any clear rationale for the number. If the Town desires to impose a cap on marijuana retail licenses, it is up to the discretion of the Board of Trustees to determine what the cap should be.

Second, if licenses are capped, how are licenses to be issued? Once a community determines that it intends to cap licenses, the next order of business is to consider how licenses will be issued. Some communities use a first-come first-served model, where others have a lottery of sorts where applications are accepted and a



random group is issued the licenses. The key to any process is that it needs to be fair and transparent.

Not the most comparable town, but in the City of Los Angeles, when it began accepting applications for the 100 licenses it would issue, the lead regulator there described the process as “chaos and frenzy.” The town opted to use a first-come first-served model and received 800 applications for those first 100 licenses. Applicants spent considerable sums to submit applications and ultimately not be able to get licenses.

See: [https://moritzlaw.osu.edu/sites/default/files/2022-](https://moritzlaw.osu.edu/sites/default/files/2022-09/Licensing%20Caps%20and%20Vertical%20Integration%20in%20the%20Cannabis%20Industry_transcript.pdf)

[09/Licensing%20Caps%20and%20Vertical%20Integration%20in%20the%20Cannabis%20Industry_transcript.pdf](https://moritzlaw.osu.edu/sites/default/files/2022-09/Licensing%20Caps%20and%20Vertical%20Integration%20in%20the%20Cannabis%20Industry_transcript.pdf)

Grand Junction, Colorado recently decided to open the licensing process for 10 licenses. The city decided to use a randomized model, but again applicants are expending large sums to complete applications and ultimately few will be selected. For its 10 licenses, on June 8, 2022, the city received 47 applications, of which 21 were initially denied as incomplete. 13 of those that were denied filed appeals, a process that has taken a number of months of internal appeals and at least one case is in district court currently. Once the appeals are all complete, there will likely be more than 30 accepted applications and the city will select 10 at random to receive licenses.

Any system that limits the number of licenses to an arbitrary number must be fair and transparent in how those licensees are selected, as the licenses become considerably valuable due to the scarcity. If the Town of Wellington were to implement a license cap, staff would recommend that the licensing process be largely left to the Local Licensing Authority to implement via regulation. However, it should be noted that any process would require considerable staff time to design and implement.

2. Setback Distance Modifications

Past packet documents are attached to this memo which reflect setback information that has been presented. As noted in the section above regarding caps on the number of licenses, incorporating setbacks in relation to caps would require staff time to design, present to the Trustees and implement.

3. P – Public Zone District Considerations

At the January 24, 2023 board meeting, the Board of Trustees considered a draft ordinance proposing amendments to the Town of Wellington Marijuana Code. The Board requested additional information related to the P – Public zoning district. Following the regular Board meeting, the Board of Trustees also conducted a work session to consider the draft updates to the Town’s Official Zoning Map. In the work session to consider the Zoning Map, questions also arose regarding the P – Public zoning district. The Board was informed that the Planning Commission had also raised similar questions about the P – Public zoning district and had requested a Planning Commission work session to discuss the topic on February 6, 2023.

The Planning Commission conducted a work session on February 6, 2023 to discuss information related to the P - Public District. The Planning Commission evaluated properties currently zoned P – Public, proposed to be zoned P – Public, and properties that have characteristics similar to the intent and purpose of the P – Public zoning district. Included with this report are excerpts from the Town's adopted Land Use Code to identify the intent of the P - Public District. Definitions from the Land Use Code that are related to the purpose and application of the P - Public District are also included for reference.

Also attached with this report are copies of the Draft Zoning Map with properties identified by number to help



inventory the properties by ownership, use, current zoning, draft zoning recommendations. "Map A" shows properties currently identified as P - Public, and "Map B" shows properties that are not zoned P - Public but which may have similar considerations for open space, drainage, or other characteristics. The numbers for each of the properties correspond to the included table with the property inventory (A1, B2, etc.). The property inventory also includes columns identifying each property as to if it is intended to be accessible to the public for public use, and if the property meets the definition of "Park" as defined in the Land Use Code (areas open to the general public and reserved for recreational, education or scenic purposes). Existing zoning and Draft Zoning Map zoning is identified.

"Map A" and "Map B" as well as the property inventory table were considered by the Planning Commission at its February 6, 2023 work session. Based on the Planning Commission's discussion, the Commission desires to forward recommendations to the Board of Trustees related to the P – Public zoning districts. The Planning Commission requested an agenda item on its next regular meeting March 6, 2023 to formally vote on forwarding a recommendation relating to the P – Public zoning district on the Official Zoning Map update.

If the Board desires to update zoning of properties throughout Town to be consistent with the existing purpose, intent and definitions related to the P – Public zoning district, the changes would likely result in some properties no longer being zoned P – Public. The effect of changing some properties to zoning districts other than P – Public would be some properties zoned C-3 Mixed Use Commercial where marijuana stores are a permitted use would no longer be impacted or would have a reduced impact from the current 500 ft. buffer from properties zoned P – Public.

If the Board desires to consider marijuana store setback requirements from particular uses rather than from properties zoned P – Public, additional definitions and clarity may need to be created and added to the Land Use Code and Marijuana Ordinance to achieve the Board's desired intent.

STAFF RECOMMENDATION

Discuss the information provided and give staff direction as to next steps such as needing additional information, scheduling the proposed ordinance for consideration by the Board of Trustees or advise of any amendments to be included in the draft ordinance

ATTACHMENTS

1. Ord 01-2023_Marijuana Amendments
2. 01.24.23 Packet_Ordinance 01-2023
3. 01.17.23 Packet_Marijuana Discussion
4. 2016 Study - Marijuana Appendices
5. Public District Intent and Definitions
6. Map A and Map B - Draft Zoning Map
7. P - Public Inventory Table

TOWN OF WELLINGTON

ORDINANCE NO. 01-2023

AN ORDINANCE AMENDING THE TOWN OF WELLINGTON MARIJUANA
ORDINANCE

WHEREAS, in 2021, proponents of a ballot measure filed with the Town of Wellington an initiated ordinance that would allow the sale of marijuana within the Town of Wellington; and

WHEREAS, the initiated ordinance included setbacks for marijuana licenses that would prohibit issuance of a marijuana store license for premises within 2,000 feet of any school or preschool, 500 feet of any public property or other marijuana license, and 200 feet of any R-1, R-2, or R-4 residential district; and

WHEREAS, following successful citizen protests over the sufficiency of the petition for the proposed initiated ordinance, lawsuits were filed against the Town of Wellington to require referral of the measure on the ballot; and

WHEREAS, the Town of Wellington and the plaintiffs in those lawsuits settled the matter by negotiating through counsel a slightly modified ordinance that would fix many of the errors in the original proposed initiative; and

WHEREAS, at the November, 2021 general election, the voters of the Town of Wellington adopted the referred measure allowing the operation of retail and medical marijuana stores in the Town of Wellington; and

WHEREAS, the adopted ordinance included language that it could not be modified by the Town of Wellington Board of Trustees until January, 2023; and

WHEREAS, the adopted measure includes provisions that could cause uncertainty for potential applicants and omissions that would allow marijuana stores close to R-3 zone districts; and

WHERE, the Town of Wellington Local Licensing Authority for marijuana licenses recommends that the adopted ordinance be amended further to require that the licensure process include consideration of neighborhood needs and desires and other important concerns for the Town of Wellington; and

WHEREAS, the Wellington Board of Trustees desires to amend the Wellington Marijuana to address these concerns while ensuring that the voters' desires as expressed in the vote for the measure in 2021 are preserved.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Wellington, Colorado:

SECTION 1

Chapter 2, Article 14, Section 40 is amended to read in its entirety:

Sec. 2-14-40. Applications—Licenses.

(a) An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

(b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. The Local Licensing Authority shall consider the needs of the affected neighborhood and the desires of the affected neighborhood's residents and businesses, including the employees of those businesses, as evidenced by petitions, remonstrances, testimony, or otherwise. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

SECTION 2

Chapter 2, Article 14, Section 70 is amended to read in its entirety:

Sec. 2-14-70. Restrictions for applications for marijuana store licenses.

(a) The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

- (1) Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.

(2) Until it is verified by the Planning Director or their delegee that the Premises complies with all zoning and land use ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply:

- a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and
 - b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and
 - c. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential Rural Density District), R-2 (Residential Low Density District), R-3 (Residential Medium Density District) and/or R-4 (Downtown Neighborhood District).
- (b) In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section. Where a variance has been granted by the Board of Adjustments from a distance restriction established by, or pursuant to, this Section, the distance allowed by the variance shall be deemed the applicable standard for that application.
- (c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Section 3. Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.

Section 4. Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.

Section 5. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 10th day of January, 2023 and ordered to become effective 30 days from the date of publication.

TOWN OF WELLINGTON, COLORADO

By: _____
Calar Chaussee, Mayor

ATTEST:

Patti Garcia, Town Administrator/Interim Town Clerk

Board of Trustees Meeting

Date: January 24, 2023
Subject: Ordinance 01-2023 - An Ordinance Amending the Town of Wellington Marijuana Ordinance

- **Presentation: Dan Sapienza, Town Attorney**

BACKGROUND / DISCUSSION

Attached is a proposed ordinance regarding marijuana that addresses some issues that have been raised around marijuana licensing. This ordinance was last discussed at the January 10, 2023 meeting of the Board of Trustees. Included in the packet are some additional communications from interested parties proposing various changes to the Town's marijuana code.

In particular, this ordinance is intended to create a path for parties desiring a reduced setback limit to request a variance through the Board of Adjustment, as with any other variance request. It also fixes an issue with Residential Zoning that has been identified and includes a suggestion from our Licensing Authority regarding hearings.

1. Apply the 200-foot setback from residential properties to R-3 zoning as well. The referred ordinance only requires a 200-foot setback from R-1, R-2, and R-4 properties, but in the new (proposed) zoning map, there will be R-3 zoning. It seems that the intent of the referred ordinance was to have uniform setbacks from all residential properties, so the attached adds R-3 properties to the list. Without this change, if properties are zoned as R-3, there would be no required setback from those properties.
2. Clarify that the LLA will not act on an application without a verification form from planning and when the LLA looks at setback requirements, any setback allowed by a variance is controlling. At present, the LLA requires verification from planning that the premises in the application meets the setback and zoning ordinances. Then, the LLA is required to hear evidence as to whether the premises complies with the setbacks requirements for marijuana.

The current process raises the question of whether the Board of Adjustment may hear a request for a variance and, if it were to grant such a variance, whether that variance would have any impact on the LLA's decision making. It appears that the answer to the first question is yes, the Board of Adjustment can hear variance requests for variances from the zoning ordinance related to marijuana business. The answer to the second question, though, is no, the LLA is obligated to ensure that the marijuana business complies with the marijuana ordinance requirements and is not bound by a possible Board of Adjustment's variance.

The proposed change would offer clarity: the setbacks and zoning requirements will be considered land use and zoning requirements, for which the Board of Adjustment has authority to hear requests for variances under a set and well-defined process. If a variance were approved, the variance would be binding on the LLA for purposes of that application's compliance with the setbacks and zoning requirements.

3. Add requirements for applicants to allow the LLA to look at neighborhood wishes and suitability of the applicant. As has been discussed previously, neighborhood wishes and suitability of an applicant are not issues on which the LLA may base decisions for issuance of a marijuana license. At present, neighbors wishing to fight a marijuana application in their area would not be allowed to present evidence at a public hearing for a marijuana license, as their views may not be considered in the LLA's decision-making. This change would make a public hearing regarding a marijuana application more similar to a liquor license application hearing and would allow for more public input into the LLA's decision-making.

STAFF RECOMMENDATION



Motion Options

- Move to approve Ordinance No. 01-2023 - An Ordinance Amending the Town of Wellington Marijuana Ordinance as proposed.
- Move to approve Ordinance No. 01-2023 with amendments as the Board of Trustees deems appropriate.
- Move to postpone consideration of Ordinance No. 01-2023 and provide guidance to staff as requested modifications.
- Move to deny Ordinance No. 01-2023

ATTACHMENTS

1. Ord 01-2023_Marijuana Amendments
2. Letter from Lacoste LLC re: marijuana ordinance proposals
3. Konope Consulting Proposal
4. Letter from Smokin' Cowboy re proposed ordinance
5. Letter from Piper Ogden re proposed ordinance
6. Dec. 13 Work Session Packet (1)

TOWN OF WELLINGTON

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WHEREAS, the adopted ordinance included language that it could not be modified by the Town of Wellington Board of Trustees until January, 2023; and

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- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed Retail and/or Medical Marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

(b) For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the Local Licensing Authority that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law. The Local Licensing Authority shall consider the needs of the affected neighborhood and the desires of the affected neighborhood's residents and businesses, including the employees of those businesses, as evidenced by petitions, remonstrances, testimony, or otherwise. For purposes of this subsection, the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the Premises identified in the application.

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(2) Until it is verified by the Planning Director or their delegee that the Premises complies with all zoning and land use ordinances and said zoning ordinances shall be amended as follows:

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- b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License; and
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(c) The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Section 3. Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.

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Section 5. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 10th day of January, 2023 and ordered to become effective 30 days from the date of publication.

TOWN OF WELLINGTON, COLORADO

By: _____
Calar Chaussee, Mayor

ATTEST:

Patti Garcia, Town Administrator/Interim Town Clerk

C. DEAN HERMS, JR.
JEFFREY B. CULLERS
RICK ZIER, OF COUNSEL



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January 20, 2023

Dan Sapienza
Town of Wellington
1312 S College Ave.
Fort Collins, CO 80524
Via email, dan@mosllc.law

Re: Town of Wellington Ordinance 01-2023

Dear Mr. Sapienza,

I represent Lacoste LLC and its principal, Michael “Scoo” Leary. My client and I understand that the Town of Wellington is considering amendment to the Marijuana Ordinance adopted by the voters of the Town of Wellington in November 2021. The purpose of this communication is to bring to the attention of the Board of Trustees a problematic outcome of the current Marijuana Ordinance as applied to Lacoste LLC and suggest ways to correct this outcome.

As you may be aware, Lacoste LLC has been seeking to establish a marijuana dispensary within the Town of Wellington for some time. Currently, Lacoste LLC is under contract to purchase a portion of 3997 Water Lily Dr. Wellington, CO (the “Lacoste Parcel”). The Lacoste Parcel is located directly north of a property owned by the Town of Wellington in which the sole use is as a floodwater detention area (the “Detention Property”). There is no other development of the Detention Property. This Detention Property is currently zoned “Public.”

The Marijuana Ordinance is codified at Chapter 2, Article 14 of the Wellington Municipal Code. The specific code provision at issue is § 2-14-70(a)(2)(b), which states as follows:

- b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) or any parcel containing another retail or medical marijuana store License;

Lacoste LLC’s intended marijuana dispensary on the Lacoste Parcel does not comply with the foregoing setback requirement. Lacoste LLC has applied for a setback variance, but was denied.

I believe that we can all agree that there is no apparent public policy rationale served by imposing any setback between the Detention Property and Lacoste LLC’s proposed dispensary on the Lacoste Parcel. The Detention Property will likely be undevelopable for the foreseeable future and does not carry any use that could be considered incompatible with a dispensary like

the other provisions in § 2-14-70(a)(2). These other provisions impose setbacks from schools, residential areas, and other marijuana establishments.

I understand that all the properties zone “Public” are owned by the Town of Wellington. I believe the voters of Wellington, in adopting the setback from “Public” zoned properties, had good intentions because most of the “Public” zoned properties are city parks or open space, and include vast areas along Boxelder Creek. Indeed, the Land Use Code describes the “Public District” zone as follows:

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. These areas are intended to support the community with accessible walkways, public gathering spaces, and motorized and non-motorized transportation connections and parking that accommodate a large influx of car and pedestrian traffic [...]. Land Use Code § 3.04.3 P.

Despite the above language, the Land Use Code allows other, less “sensitive” uses in the Public District, such as the following: resource extraction, communication facility, solid waste facility, and “Public Facilities.” The definition of “Public Facilities” is very broad and includes utility infrastructure and flood control like what exists on the Detention Parcel. Based on the above analysis, it is clear that while well-intentioned, imposing setbacks based solely on a property being zoned “Public” is a rather blunt tool to achieve the apparent policy purpose of separating marijuana dispensaries from public parks and open space. Application of this policy to Lacoste LLC’s intended property illustrates the problem.

In order to fix this problem with the Marijuana Ordinance, on behalf of Lacoste LLC, I propose that § 2-14-70(a)(2) of the Marijuana Ordinance be amended to eliminate the 500-foot setback that applies to any parcel zoned “Public.”

Alternatively, the setback for parcels zoned “Public” could be narrowed so it only applies when the parcel has a recreational or “gathering space” use. The following amendment would achieve that goal:

- b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of parcels zoned P (Public District) that contain a Community Facility or Civic Space as such terms are defined in the Land Use Code, or any parcel containing another retail or medical marijuana store License;

I have looked into how the Land Use Code defines “Community Facility” and “Civic Space” and they appear consistent with the goal of separating marijuana dispensaries and sensitive uses that would involve children. “Community Facility” is defined as follows:

Community Facility A place, structure, area, or other facility used to provide fraternal, cultural, social, educational, or recreational programs or activities. This

includes swimming pools, tennis courts, and similar facilities of a homeowners association, open to the public or a designated part of the public, and which may be publicly or privately owned.

The definition of Civic Space is lengthy, but in a nutshell it includes public or quasi-public gathering spaces and public open space. Clearly, flood control infrastructure such as what occupies the Detention Parcel immediately south of the Lacoste Parcel would not be included.

I respectfully request that the Board of Trustees carefully consider the analysis in this letter and take one of the actions proposed to fine-tune the Marijuana Ordinance so that it yields logical outcomes while still respecting the intentions of the voters in 2021. If you have any questions, do not hesitate to contact me.

Very Truly Yours,

/s/ Jeffrey B. Cullers

Jeffrey B. Cullers

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Explanation of Proposed Changes to the Wellington Marijuana Dispensary Ordinance
Article 14 – RETAIL AND MEDICAL MARIJUANA STORES

Colin Mudd
Konopé Consulting, LLC
Founder and Principal Consultant

January 11th, 2023

To whom It May Concern:

I am writing this proposal on behalf of myself and my company, Konopé Consulting. I do not represent any other applicant or potential applicant at this time. The town needs more perspective and context regarding common sense changes to the Code. The goal is to promote the will of the voters while also keeping the residents of the Town of Wellington safe and protected from any adverse consequences to the community.

I have over 13 years of experience in the Colorado cannabis industry. I believe I can provide additional information that will help inform the Board of Trustees and assist them in making the right decision regarding changes in the code for Medical and Retail Marijuana Stores. I specialize in compliance, training, and licensing for licensed cannabis companies in Colorado and other markets in the US. I worked with the MED and lawmakers at the State Capital to help create changes to Responsible Vendor Training last year with HB22-1222. I have a contract with the Town of Moffat to inspect their licensed facilities at Area 420. I have worked with various other municipalities in CO to educate lawmakers on common-sense approaches to regulating cannabis facilities. I appreciate the opportunity to help in any way I can. My hope is that members of the Town Board of Trustees and the Town Attorney will consider these proposed changes before their final vote later on in January or February if it takes that long. My first ask is, please don't rush this.

I want to be clear; I do not want the Town of Wellington overrun with dispensaries. The proposed changes would allow, in my opinion, approximately 4 dispensaries to be open in the town. If there is an abundance of dispensaries, the Town can one day put a moratorium in place that would allow the Board to determine if a permanent cap on the number of dispensaries is needed. Having that discussion in 2024 or 2025 is inevitable.

I applaud the Town for providing an opportunity that hasn't existed in Colorado since 2013. If a potential business owner wants to open a store, they can, so long as they comply with all state and local regulations. I ask that for 2023, you do what you can to help small businesses or mom-and-pop businesses open and succeed.

A lottery system with a cap on licenses caters to applicants with a considerable amount of resources that small businesses don't have. Additionally, a limited license municipality provides an undue burden on applicants trying to find a location, as a landlord can extort applicants for more money per month in order for the applicant to have a chance at opening one of the

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coveted licensed facilities. My proposed changes are intended to allow an open market and competition that, as we all know, is the bedrock of our capitalistic society.

With all that being said, my first proposal is to add Light Industrial, C-1, and C-2 zone-use districts to the approved list for dispensary operations. Simply put, dispensaries are no different from any other retail outlet. With the current and proposed Zone Use Maps, Wellington can accommodate dispensaries in those additional Zone Use Districts. Please remember that no one with Public Policy or Planning and Zoning expertise wrote the Ballot Measure in 2021. I believe having just one Zone-Use District is arbitrary and accomplishes nothing but limiting the number of dispensaries in Town. But as I stated above, there are other ways to achieve the result of not being overrun with too many dispensaries. Having one Zone-Use District is not the most efficient or an equitable means to an end.

My second proposal is to eliminate the 200-foot setback from Residential Zone Use Districts. Again, this is entirely arbitrary and does nothing to accomplish anything other than restrict the number of dispensaries in town. A dispensary is no more or less a nuisance within 200 feet as they are outside 200 feet from a residential zone-use district line. I fail to see what this setback accomplishes by way of public health and safety. If the smell is a concern, ask the stores to have an Odor Control Plan. If being a good community member is a concern, ask the stores to create a community engagement or social impact plan. If traffic is a concern, please remember that they operate in a Light Industrial, C-1, C-2, or C-3 (hopefully) zone district where retail use is approved. Traffic to the dispensary is the point, which means there will be excise money for the Town. A community engagement plan and an odor control plan eliminate any possible concerns from the community members and require the dispensary to uphold a good moral standing with the community they operate in. Also, keep in mind that the smell from a dispensary is limited and can be remediated with carbon filtration, which is not expensive for the dispensary to cover annually. A community engagement plan could be an opportunity to allow the dispensary to give a corrective action preventative action plan for potential situations that could negatively affect a member of the immediate community. Upkeep and compliance with these plans can be added to the Town's annual inspections and renewal applications.

My third proposal is to eliminate the 500-foot setback from IN-HOME DAYCARES. A licensed daycare facility is more like a preschool and should be separate from an in-home licensed daycare facility. Suppose there is Kinder Care or Early Learning facility in a municipality. In that case, those operate differently and with more kids of an older age than an in-home daycare facility does. They are like a preschool.

Additionally, this particular requirement has already been exploited and is ripe for further corruption. A well-resourced applicant could buy out a daycare facility that stands in their way of approval, removing an affordable daycare option for the Town. Conversely, a community member opposed to a dispensary can easily and quickly apply for an in-home daycare license to stop a dispensary from opening within 500 feet of their home. Or, a competitor could apply for an in-home daycare license in a home 400 feet away to prevent their competition from opening a store. These facts alone make this setback requirement a poor attempt at limiting the number of dispensaries.

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As I have mentioned numerous times, there are other ways of accomplishing a limited number of dispensaries other than this. I also need to find out where it states that an in-home daycare is subject to setbacks. A daycare is listed in the definition of a School but not specifically an IN-HOME DAYCARE, just a daycare. In that case, dispensaries should be 2000 feet away from all daycare facilities. We need to re-evaluate the definition of a school. Please remove daycare from the definition. I believe the intention is to protect school-aged children, and I am all for ensuring children stay safe from accidental ingestion or consumption of cannabis or cannabis products. However, with the compliance requirements for all dispensaries in Colorado, and a 95% plus rating with underage compliance checks from the Marijuana Enforcement Division, dispensaries are not selling to underage children who take advantage of in-home daycare services. Please don't allow this to be used as a tactic to limit competition or have it lead to the closure of more affordable in-home daycare facilities.

My fourth proposal is to replace the Public zone-use district as one of the protected zone-use districts and replace it with Parks. A drainage ditch in a public zone-use district should be able to have a dispensary near it, where a park may have children, and that is reasonably argued as a place that needs protecting in the Town of Wellington.

If I am not mistaken, so long as the Town clearly states that Zone-Use Variance Requests are not available for dispensary licenses, the risk of litigation against the town is mitigated. Please make the requirements black and white for applicants and remove the possibility of corruption or biases that will inevitably apply to Zone-Use Variance Requests. Simply put, tell the dispensaries where they can operate and where they can't and allow open, capitalistic competition amongst potential business owners. Like any regular business is allowed to do.

It's either one or the other. You allow variance requests or change the setbacks to enable more dispensaries to open compliantly. If you allow both a variance request option and keep the setbacks as arbitrary as they are, there will be an influx of Zone-Use Variance requests that the Town won't be able to manage, given the current budget and staffing for 2023. I believe the biases and possible corruption of the Variance Request Board leave the town open for litigation more so than removing variance requests as an option for dispensaries.

In other words, if you allow variance requests and set determined criteria for approving zoning variance requests, you eliminate biases and potential corruption. In that case, you might as well make the criteria to get a zoning variance request approved a permanent change in the code, eliminating the need for variance request hearings.

I've repeatedly heard 'the Board must follow the Will of the voters'. To that point, I say this; the voters voted for the Board of Trustees to make decisions to better the community and protect public health and safety. The Board must remember that the voters voted to have operational dispensaries in the Town of Wellington. As of today, Jan 11, 2023, there are none. There are no operational dispensaries because the Ballot measure was riddled with arbitrary zoning requirements intended to allow a small number of applicants to take advantage of the regulations. After more than a year, it is clear that what the voters voted on has not come to fruition. It is up to the members of the Board to use the resources at their disposal, planning

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and zoning department expertise, and stakeholder feedback to correct the mistakes from the Ballot measure and carve a new path to operational dispensaries in the Town of Wellington. More so, to start collecting the excise tax revenue and add it to the Town's annual budget.

Please stop perpetuating the mistakes of the ballot measure and remind yourself that the voters intended to have operational dispensaries in the town and tax those operational dispensaries. Neither of those intentions has been followed up to this point, and it is up to the Board to do something to fix the code, using all the resources and information that they have at their disposal. Information and resources that were not available to the voters in 2021.

I will end with this. Please remember that the voters also voted to allow the Board of Trustees to change the code as they see fit, starting in 2023. This is it. It's 2023 now. Don't let the Will of the voters be lost in arbitrary setbacks, and make the best decision possible for the Town of Wellington.

Respectfully,

Colin Mudd
Founder and Principal Consultant
Konopé Consulting

Full Text of Measure:

Passage of the Ordinance to be referred to the voters of the Town of Wellington:

TOWN OF WELLINGTON

ORDINANCE NO XX-2021

**Ordinance Concerning the Regulation of
Retail and Medical Marijuana Stores in
the Town of Wellington**

WHEREAS Article XVIII, Sections 14 and 16 of the Colorado Constitution. allow the personal and medical use of marijuana in Colorado subject to local; and

WHEREAS, Article XVIII, Sections 14 and 16 of the Colorado Constitution and applicable laws allowed the Town of Wellington, Colorado (the “Town”) to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or Retail Marijuana Stores and the Town enacted an ordinance prohibiting such operations.

WHEREAS, a citizen initiative was submitted to the Wellington Town Clerk to allow the sale of retail and medical marijuana and the petition was found by a C.R.S. §31-11-110 hearing officer to not be sufficient and the petition therefore was not submitted to the voters of the Town..

WHEREAS, it is unclear to the Wellington Town Board of Trustees (the “Town Board”) whether the voters wish to see the sale of medical and retail marijuana allowed in the Town and the Town Board feels that the question of whether retail or medical marijuana sales should be allowed in the Town should be decided by the Town’s voters.

WHEREAS, members of the Town Board have voiced a willingness, if flaws in the previously submitted initiated ordinance can be addressed that the Town Board might be willing to refer the question of whether retail and medical marijuana should be allowed in the Town to the Town’s voters and there has been a further willingness to refer an initial regulatory scheme to the Town’s voters so long as the Town Board would have full authority to modify the regulatory scheme after following January 1, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON COLORADO UPON APPROVAL BY THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON. COLORADO, THAT:

Section 1. Articles 13.5 of Chapter 16 and Article 13.6 of Chapter 2 of the Wellington Municipal Code are hereby repealed in their entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 - RETAIL AND MEDICAL MARIJUANA STORES

Sec. 2-14-10 Purpose.

A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.

B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell retail marijuana or medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Sections 14 and 16 of Article XVIII of the State Constitution and Article 10 of Title 44, C.R.S. and 1 CCR 212-3 (the “Colorado Marijuana Code”).

Sec. 2-14-20 Powers and Duties of the Local Licensing Authority.

A. The Local Licensing Authority shall grant or deny local Licenses for the distribution and sale of retail marijuana or medical marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.

B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and sale of Retail Marijuana to be consistent with state law for the enforcement of this Article.

C. This Article 14 incorporates the requirements and procedures set forth in the Colorado Marijuana Code. The Local Licensing Authority adopts the provisions and restrictions set forth in Colorado Marijuana Code and regulations for all Licensees not explicitly addressed within this Article. In the event of conflict between the provisions of this Article and the Colorado Marijuana Code, the more restrictive provision shall control.

D. On and after February 1, 2022, the Local Licensing Authority shall begin processing applications under this Chapter and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Article so long as the conditions set forth in this Article are met and the applicant has paid the operating fee and any other fees required by this Article. Local Licensing Authority fees (exclusive of State fees) for applications shall not exceed \$5,000.00.

Sec. 2-14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in Article XVIII, Sections 14 or 16 of the Colorado Constitution and the Colorado Marijuana Code. C.R.S. §44-10-101, *et seq.* and C.R.S. §25-1.5-101, *et seq.* unless varied hereunder:

Colorado Marijuana Code: Article 10 of Title 44 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

License: A license or registration granted pursuant to this Article.

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Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to sell retail and/or medical marijuana in accordance with the provisions of the Colorado Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington shall serve as the Local Licensing Authority unless the Town Board creates a separate Local Licensing Authority empowered to act in such capacity.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Medical marijuana store A "Medical marijuana business" as defined by the Colorado Marijuana Code but only including a medical marijuana store, and not including a medical marijuana cultivation facility, a medical marijuana products manufacturer, a medical marijuana testing facility, a marijuana research and development licensee, a medical marijuana business operator, or a medical marijuana transporter.

Parks: To be defined by Zoning and Town Attorney

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

Protected Use: Those uses defined in Sec. 2-14-70 including Schools, Parks, parcels zoned P (Public District) or any parcel containing another Retail or Medical Marijuana Store License, or parcels zoned R-1 (Residential District), R-2 (Residential District) and/or R-4 (Residential District).

Retail Marijuana Store: A "Retail Marijuana Business" as defined by the Colorado Marijuana Code but only including a retail marijuana store and not including a retail marijuana cultivation facility, a retail marijuana products manufacturer, a marijuana hospitality business, a retail marijuana hospitality and sales business, a retail marijuana testing facility, a retail marijuana business operator, or a retail marijuana transporter.

School: 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).

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State Licensing Authority: The Colorado Department of Revenue, Marijuana Enforcement Division, created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of retail and medical marijuana in this State, pursuant to Articles 10 of Title 44 C.R.S. and Colorado Marijuana Rules 1 CCR 212-3, and other Colorado applicable statutes as applicable and incorporated in the Colorado Marijuana Code.

Sec. 2-14-40 Applications-Licenses.

An application for a License shall be filed in accordance with State law on forms provided by the State Licensing Authority. The application shall contain such information as the State Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State Licensing Authority. An application shall be approved or denied by the Local Licensing Authority or the Local Licensing Official and by the State Licensing Authority. An application shall not be approved, and a license shall not be issued if either of the Licensing Authorities find that:

- The applicant knowingly made a false statement or knowingly gave false information with the application; or
- Reliable evidence shows the applicant will operate the proposed retail and/or medical marijuana Store in violation of the Colorado Marijuana Code; or
- Good Cause, as defined in the Colorado Marijuana Code and other applicable law, exists for denial of the application.

Sec. 2-14-50 Denial of Application.

A. The Local Licensing Authority shall deny a Local License application as provided for by the Colorado Marijuana Code and regulations promulgated thereunder, and if the application contains any false, misleading information. If an application is determined incomplete by the Local Licensing Official, the applicant will be notified and be given seven (7) days to remedy and supplement the application to conform to this Article or the application may be denied.

B. The Local Licensing Official shall consider and act upon all applications in accordance with the standards of this Article and in compliance with the Colorado Marijuana Code and regulations. The Local Licensing Authority shall deny any application that is not in full compliance with this Article.

C. The Local Licensing Authority shall formulate a list of all additional requirements if needed in addition to the forms provided by the State Licensing Authority.

D. If the Local Licensing Authority denies a License, the applicant shall be entitled to a hearing.

E. If an application is denied, the Local Licensing Authority shall set forth in writing the grounds for denial.

Sec. 2-14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Marijuana Code and applicable state regulations.

Sec. 2-14-70 Restrictions for Applications for Marijuana Store Licenses.

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A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

1. Until it is established that the applicant is, or will be, entitled to possession of the Premises for which application is made under a lease, rental agreement, letter of intent or other arrangement for possession of the premises or by virtue of ownership of the Premises.
2. The approval of the application for Licensure for a Retail or Medical Marijuana Store License complies with all zoning ordinances and said zoning ordinances shall be amended as follows:

Retail or Medical Marijuana Store Licenses shall only be permitted in the **Light Industrial, C-1, C-2, and C-3** zoning districts. In addition, the following setbacks will apply:

- a. Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two thousand (2,000) feet of any parcel containing a school; and
- b. A Retail or Medical Marijuana Store License shall not be permitted to be located within five hundred (500) feet of **Parks, parcels zoned P (Public District)** or any parcel containing another retail or medical marijuana store License; **and**
- c. ~~Retail or Medical Marijuana Store Licenses shall not be permitted to be located within two hundred (200) feet of parcels zoned R-1 (Residential District), R-2 (Residential District) and/or R-4 (Residential District).~~

B. In addition to the requirements of the Colorado Marijuana Code the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the Premises in which Retail or Medical Marijuana Store licensure application is to be sold is located within any distance restrictions established by, or pursuant to, this Section.

C. The distance measurements and requirements pursuant to this Section shall be computed by Direct Measurement in a straight line from the nearest property line of the land containing the Protected Use to the nearest portion of the building in which the Retail or Medical Marijuana Store License is located.

Sec. 2-14-80 Transfer of Ownership.

A. A Local License granted under the provisions of this Article shall not be transferable except as provided in this Section, but this Section shall not prevent a change of location as provided in the Colorado Marijuana Code.

B. For a transfer of ownership, a Licensee shall apply to the State Licensing Authority and Local Licensing Authority on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority may charge a fee not to exceed \$1,000.00 to process such transfer and shall permit a transfer of ownership pursuant to this Article in conjunction with the Colorado Marijuana Code.

Sec. 2-14-90 Licensing Renewal.

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration with a Local Licensing Authority renewal application fee of \$1,500.00. The Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold hearings on Licensing renewal applications including for good cause. Good Cause for purposes of this Section shall mean:

1. The Licensee renewal applicant has violated or has failed to comply with any terms, conditions, or provisions of this Article or the Colorado Marijuana Code or any supplemental law; ordinance; or regulation; or
2. The Licensee has been operated in a manner that adversely affects the public health or welfare of the immediate neighborhood in which the establishment is located.

B. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License has been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee paid to the Local Licensing Authority of \$500.00 in addition to the License renewal fee paid to the Local Licensing Authority and any fees due to the State Licensing Authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until final action to approve or deny the Licensee's renewal application.

C. Notwithstanding the amount specified for the Late Application Fee, the Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, may reduce the amount of the renewal application and/or the late application fee.

Sec. 2-14-100 Fees.

Every Retail and Medical Marijuana Store Licensee shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Local Licensing Authority and set by resolution, but in no event shall either fee payable to the Local Licensing Authority exceed five thousand dollars (\$5,000.00).

Sec. 2-14-110 Hours of Operation.

A Retail or Medical Marijuana Store Licensee may engage in the sale of marijuana and marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Local Licensing Authority may at its discretion extend, but not further limit, such hours of operation.

Sec. 2-14-120 Disciplinary Actions: Suspension-Revocation-Fines.

A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to suspend or

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revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.

B. The Local Licensing Authority may take disciplinary action for violations by Licensee or any agent, manager, or employee of Licensee of the Colorado Marijuana Code or this Article.

C. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of all or any portion of a suspension and may hold all or part of any suspension in abeyance on conditions set by the Local Licensing Authority. When determining whether to impose a fine in lieu of a suspension the Local Licensing Authority may make findings that:

1. The public safety, health and welfare would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
2. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and
3. The Licensee has not had its License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision in relation to a penalty for violations pertaining to the Licensee.

D. The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of Premises, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare.

E. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.

F. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension, if the fine is paid to a Local Licensing Authority.

G. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority and Licensee shall be, upon request, afforded a hearing within thirty (30) days.

Sec. 2-14-130 Inspection of Books and Records-Inspection Procedures.

A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require

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an audit to be made of the books of account and records on such occasions as it may consider necessary.

B.The Licensed Premises, including any places of storage where retail or medical marijuana is stored, sold, or dispensed shall be subject to inspection by the Local Licensing Authority and its investigators, during all business hours for the purpose of inspection or investigation and for examination of any inventory or books and records required to be kept by the Licensee. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay. and, upon request by authorized representatives of the Local Licensing Authority, the Licensee shall open the area for inspection.

C.Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 2-14-140 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only Retail Marijuana Store and Medical Marijuana Store Licenses upon payment of a fee and in compliance with all Local Licensing requirements to be determined by the Local Licensing Authority.

Sec. 2-14-150. Other Marijuana Licenses Prohibited.

A.Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail and/or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

B. The Local Licensing Authority declares that, should any provision, section, paragraph, sentence, or word of this Article be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Article as hereby adopted shall remain in full force and effect.

Section 3. Subject to the following, prior to January 1, 2023 modification of the provisions of this ordinance shall require approval of the voters of the Town of Wellington, Colorado. Following January 1, 2023, the Town Board may modify, or repeal this ordinance by ordinance of the Town Board, prior to January 1, 2023, the Town Board may modify this ordinance by ordinance of the Town Board to comply with the Colorado Marijuana Code or other state statute or state regulation.

Section 4. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. All the provisions of the Wellington Municipal Code as heretofore adopted that conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 6. The Town Clerk shall certify the passage of this Ordinance and cause

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notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.



January 2, 2023

VIA ELECTRONIC MAIL

Town Attorney Daniel Sapienza

dan@mosllc.law

Town Administrator Patti Garcia

garciaapa@wellingtoncolorado.gov

Re: Marijuana Businesses in Wellington
(Proposed Changes to Variance Process)

Dear Mr. Sapienza and Ms. Garcia,

Please be advised that we represent Smokin' Cowboy, LLC, a business currently seeking marijuana licensure in the Town of Wellington. We were given notice of proposed changes related to marijuana business license variances to be discussed at the January 10, 2023 meeting and submit this letter for the Board of Trustees' consideration. The proposed change was discussed at the December 13, 2022 Board of Trustees Work Session and reads as follows:

Clarify that the LLA will not act on an application without a verification form from planning and when the LLA looks at setback requirements, any setback allowed by a variance is controlling. At present, the LLA requires verification from planning that the premises in the application meets the setback and zoning ordinances. Then, the LLA is required to hear evidence as to whether the premises complies with the setbacks requirements for marijuana.

The current process raises the question of whether the Board of Adjustment may hear a request for a variance and, if it were to grant such a variance, whether that variance would have any impact on the LLA's decision making. It appears that the answer to the first question is yes, the Board of Adjustment can hear variance requests for variances from the zoning ordinance related to marijuana business. The answer to the second question, though, is no, the LLA is obligated to ensure that the marijuana business complies with the marijuana ordinance requirements and is not bound by a possible Board of Adjustment's variance.

The proposed change would offer clarity: the setbacks and zoning requirements will be considered land use and zoning requirements, for which the Board of Adjustment has authority to hear requests for variances under a set and well-defined process. If a variance were approved, the variance would be binding on the LLA for purposes of that application's compliance with the setbacks and zoning requirements.

While we agree that there should be additional clarity regarding the relationship between zoning variances and licensing authority setback determinations, we disagree with the proposed solution. Zoning and setback requirements meet separate community goals and should not be conflated as the same requirement. Zoning determinations simply speak to the character of the proposed use when compared to the surrounding neighborhood. Setback requirements address business density and additional sensitive uses that may not be considered in a variance review.

Of note, Wellington's Land Use Code already addresses this type of issue in its Purpose and Applicability sections (with emphasis added):

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.

Those sections are clear that variances are not intended to impact the use of a property and may only vary the "strict application" of "dimensional and numerical standards." Setback requirements like those found in Sec. 2-14-70 are related to the use of the property to ensure that business density and sensitive uses like schools and residential properties are not unduly impacted. Additionally, Sec. 2-22-2 is specific in its intent to apply to "standards of this Land Use Code." The marijuana setbacks are not found in the Land Use Code and the variance standards do not apply.

In addition to the inapplicability of the variance standards to marijuana setbacks, the Local Licensing Authority is not permitted to address applications that do not comply with Sec. 2-14-70, without exception for actions under the Land Use Code (with emphasis added):

Sec. 2-14-70 Restrictions for Applications for Marijuana Store Licenses. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Article:

The proposed change found in the Work Session document would require an expansion of the scope of variances as well as an expansion of the Local Licensing Authority's powers, neither of which were anticipated by the voters when they voted in favor of allowing marijuana businesses to enter Wellington. This is not a simple clerical fix and fundamentally changes the Town Code in a way that could not have been considered by the voters.

Our final concern related to the proposed solution is the timing of variance and setback review. A variance may be obtained for a property well in advance of submitting a marijuana license application. If an approved variance requires the Local Licensing Authority to disregard setbacks, they would not be able to consider other marijuana businesses or daycares that opened in the interim period, resulting in possible density issues that were not anticipated by the voters. We have seen similar exceptions be abused in other jurisdictions, often with significant community backlash.

To keep marijuana licensing in-line with the expectation of Wellington voters and prevent possible abuses of the variance process, we suggest that the Board of Trustees clarify that variances are binding upon the Local Licensing Authority for purposes of the Land Use Code, but that the setback standards found in the marijuana code are separately addressed without regard for variances. This clarification would not require an amendment to the Town Code and would only require an understanding of Town staff related to the application of the separate zoning and setback standards.

Please let us know if you have any questions. You can reach me at:
jeff@gardlawfirm.com or 303-499-3040. We look forward to hearing from you.

Sincerely,

/s/ Jeffrey S. Gard

Jeffrey S. Gard



7830 W. Alameda Ave.
Suite 103-301
Lakewood, CO 80226

Phone: 720.773.1526
Email: Mario@kbnlaw.com

January 3, 2023

Town of Wellington
Attn : Board of Trustees

*Re: Clarification to Issues Brought up at the
December 3, 2022 Town of Wellington Board of Trustees Meeting*

Board of Trustees:

I am writing on behalf of my client, Piper Ogden Company, LLC (“Piper Ogden”), to thank the Town of Wellington Board of Trustees (“Board of Trustees”), for allowing me to speak at the December 13, 2022 Board of Trustees Meeting (“December 13th Meeting”) and engaging in thoughtful discussion regarding issues I raised during my public comment. We understand that it would have been against precedent for me to answer questions at that meeting, but both my client and I would be willing to engage the Board of Trustees, as you discussed, in the near future.

I would like to provide some additional information based on the discussion at that meeting. Specifically, because the Board of Trustees is considering changes to the ordinance governing marijuana sales in Wellington – and because it is now allowed to make those changes under the ballot measure passed by the people of Wellington – I believe this information would be useful.

If there are any additional questions, I can either reply by letter or help to facilitate a discussion at either the next Board of Trustees Regular Meeting or a Special Meeting.

Needs and Desires Requirement

First, I noted that alcohol sales do not have the same affirmative requirement that has been proposed in the new Sec. 2-14-40(b).¹ Specifically, the proposed change requires an applicant to “satisfy the Local Licensing Authority that the residents of the affected neighborhood desire the business” and that “the affected neighborhood shall include the area within one-half (0.5) mile of the property line of the property line of the Premises identified in the application.” After my comments, Mr. Sapienza appeared to state that liquor licensing does include this requirement. Because I could not clarify at the meeting, I thought it would be useful to do so in this letter.

Colorado Revised Statutes (“C.R.S.”) § 44-3-301(2)(a) is the operative state statute governing interaction from the community. It states:

“Before granting any license, all licensing authorities shall consider ... the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidence by

¹ A copy of the proposed ordinance sent to me by Dan Sapienza has been attached to this letter for easy reference and to avoid any confusion.

petitions, remonstrances, or otherwise.”²

Note that this statute does not place an affirmative requirement on the applicant, but on the licensing authority. The licensing authority is required to “consider” the information before it. This seems to be the better approach for any similar change in Wellington. By requiring the licensing authority to consider similar information, it provides an avenue for the public to be included in the licensing discussion. However, it should also be noted that the needs and desires of the community are not wholly conclusive for liquor and should not be for marijuana. Furthermore, the subjective nature of the information provided could be more concrete. For example, the Board of Trustees could specify that a petition signed by 25 inhabitants would provide the requisite proof. Similarly, the Board of Trustees could allow individuals working in the surrounding area, not just residents, to engage in comment as a part of the community.

Setbacks

During the December 13th Meeting, the Board of Trustees also discussed whether there is a “standard” for setbacks for marijuana dispensaries from preschools and daycares. Throughout the state, these setbacks are usually set at 1,000 feet or less (e.g. 100 feet or 500 feet). A setback of 2,000 feet – or even a quarter mile – represents the largest setback we are aware of in the state. For example, the following setbacks have been adopted in the region around Wellington and some large cities in Colorado:

City / Town	Setback from School/Child Care	Code Citation
Garden City	1,000 ft from a school	Garden City Municipal Code § 16-5-110(b)
Fort Lupton	1,000 ft from a school or child care center	Fort Lupton Municipal Code § 6-361(b)(3)
Log Lane Village	100 ft from a school or child care facility	Log Lane Village Municipal Code § 8-101(a)
Milliken	1,000 ft from a school or licensed daycare	Milliken Municipal Code § 6-7-120(d)
Fort Collins	1,000 ft from a preschool or school	Fort Collins Municipal Code § 15-615(a)(1)
Northglenn	500 ft from a license daycare facility 1,000 ft from a school	Northglenn Municipal Code § 18-16-13(a)
Boulder	1,000 ft from a school or day care center	Boulder Municipal Code § 6-16-7(e)
Denver	1,000 ft from a school or child care establishment	Denver Revised Municipal Code § 6-209(b)

It should also be noted that these measurements are all measured via a direct measurement from premises to premises. This is in contrast to liquor licensing restrictions which are only 500 feet (C.R.S. § 44-3-313(d)(I)) measured using a route of direct pedestrian access (C.R.S. § 44-3-313(d)(II)). Consequently, any marijuana dispensary protects public safety concerns by meeting a much higher setback standard, even at distances far below the 2,000 feet currently used by the Town of Wellington.

By adopting a change to 1,000 feet, or even to a quarter mile, the Town of Wellington would bring

² This is frequently referred to as a “needs and desires” requirement.

itself in line with its neighbors and cities across the state.

If you have any questions for would like to discuss this matter, you may reach me by email at Mario@kbnlaw.com or by telephone at (720) 773-1526.

Sincerely,

Mario D. Nicolais

Cc:

Calar Chaussee, Mayor
chausseec@wellingtoncolorado.gov

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macdonas@wellingtoncolorado.gov

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Daneil L Sapienza, Town Attorney
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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.).

Winter December 12th, 2016

Regulation of Recreational Marijuana in Small Cities and Counties in Colorado

Katherine Nesse

Colin Victory

Missouri Department of Transportation

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Table 1. Micropolitan statistical areas (mSAs) by population size in Colorado with their component counties and the municipalities studied.

Jurisdiction	Population	Interviewed	Jurisdiction	Population	Interviewed
Edwards-Glenwood Springs mSA*	125,734		Montrose mSA	41,276	
Eagle County	52,197		Montrose County	41,276	
* Basalt*	3,857		● Olathe	1,849	
* Minturn	1,027		● Montrose	19,132	
* Avon	6,447		Steamboat Springs-Craig mSA*	37,304	
* Eagle (town)	6,508	✓	Moffat County	13,795	✓
* Gypsum	6,477		▣ Craig	9,464	
* Vail	5,305		Routt County	23,509	✓
Garfield County	56,389		▣ Hayden	1,810	
● New Castle	4,518		* Oak Creek	884	✓
● Silt	2,930		* Steamboat Springs	12,088	✓
* Carbondale	6,427	✓	Breckenridge mSA	27,994	
● Glenwood Springs	9,614	✓	Summit County	27,994	
● Parachute	1,085	✓	* Breckenridge	4,540	
● Rifle	9,172	✓	* Dillon	904	
Pitkin County	17,148		* Frisco	2,683	✓
* Snowmass Village	2,826		* Silverthorne	3,887	
* Aspen	6,658		Fort Morgan mSA	28,159	
Durango mSA	51,334		Morgan County	28,159	✓
La Plata County	51,334	✓	● Brush	5,463	
▣ Bayfield	2,333		● Fort Morgan	11,315	✓
▣ Durango	16,887	✓	● Wiggins	893	
Cañon City mSA	46,824		Sterling mSA	22,709	
Fremont County	46,824		Logan County	22,709	
● Florence	3,881		▣ Sterling	14,777	
● Cañon City	16,400				

- * Resort town
- ▣ Border town
- Remote town

Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.

Decennial Census, Accessed using American FactFinder, Table P1. These mSAs are based on 2013 definitions.

* The southern edge of Basalt is in Pitkin County. Edwards-Glenwood Springs is a Combined Statistical Area: Edwards mSA (Eagle County) and Glenwood Springs mSA (Garfield & Pitkin counties). Steamboat Springs-Craig is a Combined Statistical Area: Steamboat Springs mSA (Routt County) and Craig mSA (Moffat County).

Table 2. Types of retail marijuana businesses allowed by jurisdiction.

Jurisdiction	Retail Store	Cultivation	Manufacturing	Testing	Moratorium
Eagle County	O	O	O	O	✓
* Basalt*	O	X	X	X	✓
* Minturn	X	X	X	X	✓
* Avon	X	X	X	X	✓
* Eagle (town)	O	O	O	O	
* Gypsum	X	X	X	X	
* Vail	X	X	X	X	✓
Fremont County	X	X	X	X	
● Florence	X	X	X	X	
● Cañon City	X	X	X	X	✓
Garfield County	X	X	X	X	
● New Castle	X	X	X	X	✓
● Silt	O	O	O	O	
* Carbondale	O	O	O	O	✓
● Glenwood Springs	O	O	O	O	✓
● Parachute	O	O	O	O	
● Rifle	X	O	X	X	
La Plata County	O	O	O	O	✓
▣ Bayfield	X	X	X	X	
▣ Durango	O	X	X	O	
Logan County	X	X	X	X	
▣ Sterling	X	X	X	X	
Moffat County	X	X	X	X	✓
▣ Craig	X	X	X	X	✓
Montrose County	X	X	X	X	
● Olathe	X	X	X	X	
● Montrose	X	X	X	X	

Jurisdiction	Retail Store	Cultivation	Manufacturing	Testing	Moratorium
Morgan County	X	X	X	X	✓
● Brush	X	X	X	X	
● Fort Morgan	X	X	X	X	✓
● Wiggins	X	X	X	X	✓
Pitkin County	O	O	O	O	
* Snowmass Village	X	X	X	X	✓
* Aspen	O	O	O	O	
Routt County	X	X	X	X	✓
▣ Hayden	X	O	X	X	
* Oak Creek	O	O	O	O	
* Steamboat Springs	O	O	O	O	
Summit County	O	O	O	O	✓
* Breckenridge	O	O	O	X	
* Dillon	O	O	O	X	✓
* Frisco	O	O	O	X	✓
* Silverthorne	O	O	X	X	

* The southern edge of Basalt is in Pitkin County

X Banned business type
O Allowed business type

* Resort town
▣ Border town
● Remote town

Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.

Table 3. Licensing fees in jurisdictions that allow the sale of retail marijuana.

Jurisdiction	License fee (\$)	Renewal fee (\$)	Application fee (\$)	Cap on licenses
Denver (city)	5,000	5,000	2,500 (testing 500)	--
Eagle County	2,000	1,500	--	8
* Basalt*	2,000	1,000	5,000	2
* Eagle (town)	2,000	500	--	1 per 1,500 res.
Garfield County	--	--	--	--
● Silt	1,500	500	--	--
* Carbondale	2,000	500	2,000	5
● Glenwood Springs	1,000	1,000	2,000	--
● Parachute	5,000	2,000	5,000	--
● Rifle	5,000	5,000	--	4
La Plata County	3,000	3,000	1,000	--
■ Durango	2,500	3,000	5,000 (annual)	--
Pitkin County	3,000	3,000	--	--
* Aspen	2,500	1,000	2,000	--
Routt County	--	--	--	--
■ Hayden	2,000	250	2,500	--
* Oak Creek	5,910	5,910	250	--
* Steamboat Springs	9,165	9,165	--	3
Summit County	2,250 (store 3,065)	1,125 (store 1,533)	1,825	--
* Breckenridge	2,063	1,031	--	--
* Dillon	3,000	1,500	--	--
* Frisco	3,000	3,000	--	--
* Silverthorne	3,000	1,500	--	4

* The southern edge of Basalt is in Pitkin County

- * Resort town Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.
- Border town
- Remote town

Table 4. Distance buffers for retail marijuana businesses (in feet).

Jurisdiction	Parks	Schools	Other retail marijuana businesses
Eagle County	200	500	200
* Basalt*	500	1,000	--
* Eagle (town)	1,000	1,000	--
Garfield County	--	--	--
● Silt	500	500	500
* Carbondale	500	500	400
● Glenwood Springs	500	500	900
● Parachute	500	500	150
● Rifle	1,000	1,000	--
La Plata County	1,000	1,000	--
▣ Durango	250**	1,000	1 per block
Pitkin County	1,000	1,000	--
* Aspen	--	500	--
Routt County	--	--	--
▣ Hayden	500	500	--
* Oak Creek	--	1,000	--
* Steamboat Springs	1,000	1,000	1,000
Summit County	--	1,000	500
* Breckenridge	500	500	--
* Dillon	300	1,000	--
* Frisco	500	500	700
* Silverthorne	500	500	1,000

* The southern edge of Basalt is in Pitkin County

** In Durango, the 250-ft buffer is around parks with playground equipment only

- * Resort town
- ▣ Border town
- Remote town

Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.

Table 5. Allowed operational hours of marijuana businesses.

Jurisdiction	AM					PM										
State of Colorado	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Eagle County		9	10	11	12	1	2	3	4	5	6					
* Basalt*	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
* Eagle (town)				11	12	1	2	3	4	5	6					
Garfield County																
● Silt				10	11	12	1	2	3	4	5	6	7	8	9	
* Carbondale					11	12	1	2	3	4	5	6	7	8	9	
● Glenwood Springs	8	9	10	11	12	1	2	3	4	5	6					
● Parachute		9	10	11	12	1	2	3	4	5	6	7	8			
● Rifle	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
La Plata County	8	9	10	11	12	1	2	3	4	5	6	7				
▣ Durango	8	9	10	11	12	1	2	3	4	5	6	7				
Pitkin County		9	10	11	12	1	2	3	4	5	6	7	8			
* Aspen	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
Routt County																
▣ Hayden	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11
* Oak Creek	8	9	10	11	12	1	2	3	4	5	6	7				
* Steamboat Springs	8	9	10	11	12	1	2	3	4	5	6					
Summit County	8	9	10	11	12	1	2	3	4	5	6					
* Breckenridge	8	9	10	11	12	1	2	3	4	5	6	7	8	9		
* Dillon	8	9	10	11	12	1	2	3	4	5	6	7	8			
* Frisco	8	9	10	11	12	1	2	3	4	5	6	7	8	9		
* Silverthorne	8	9	10	11	12	1	2	3	4	5	6	7	8	9		

* The southern edge of Basalt is in Pitkin County

- * Resort town
- ▣ Border town
- Remote town

Resort towns are towns within a 45-minute drive of a ski area. Border towns are towns within a one-hour drive of the state border. Remote towns are all others. Hayden could be either a resort town or a border town.

Wellington Land Use Code

3.04.3P – Public District.

A. *Intent.* 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. These areas are intended to support the community with accessible walkways, public gathering spaces, and motorized and non-motorized transportation connections and parking that accommodate a large influx of car and pedestrian traffic. Buildings may be small, mixed with other uses in Downtown, or large, providing joint facilities (library, recreation center, etc.) intermixed in residential or mixed-use areas. Civic areas should consider building design, materials, and durability; making developments timeless, and favoring form and function over cost. These areas should also leverage local public art to add beauty and pride to Wellington.

B. *Principal uses.* Principal permitted uses in the P District shall be as listed in *Section 4.02 Table of Allowable Uses*.

C. *Conditional uses.* Permitted conditional uses in the P District shall be as listed in *Section 4.02 Table of Allowable Uses*.

Definitions:

Park means an area open to the general public and reserved for recreational, educational or scenic purposes.

Public areas means streets, parks, open spaces and other property designated or described as for public use on a map or plat of the Town and fee title is vested in the Town, other public body or a special district as defined in Section 32-1-103, C.R.S.

Public use means uses which are owned by and operated for the public by the Town, county, state or federal governments or by school districts.

Quasi-public means having the nature or characteristics of being public but owned by a private or not-for-profit entity.

Public Facilities 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.

Open space means any land or water area with its surface open to the sky, which serves specific uses of providing park and recreation opportunities, conserving natural areas and environmental resources, structuring urban development form and protecting areas of agricultural, archeological or historical significance. Open space shall not be considered synonymous with vacant or unused land but serves important urban functions. Usable open space shall exclude areas used for off-street parking, off-street loading, service driveways and setbacks from oil and gas wells and their appurtenances or other hazards to the public.

Public open space means an open space area conveyed or otherwise dedicated to the Town, State or County or other public body for recreational or conservation uses. Public open spaces are to be unencumbered by oil and gas wells, their appurtenances or other hazards to the public.

Retention basin means a pond, pool or basin used for permanent storage of water runoff.

Civic Space Public or quasi-public uses in residential or business areas that are accessible to the public and primarily serve as gathering or meeting areas for the immediate community, or reserved as open space that provides a community amenity or promotes environmental or ecological functions. Civic spaces may be public buildings; defined space in residential, commercial, or mixed-use buildings; or outdoor space constructed to accommodate community gatherings. They can be the settings where celebrations are held, where social and economic exchanges take place, where friends run into each other, and where cultures mix. Civic spaces include active or passive recreational uses, nature and recreation trails, nature preserves (such as wildlife sanctuaries, conservation areas, and game preserves), cultural amenities (e.g. fountains, ice rinks, reflecting pools), open spaces, parks, squares, plazas, playgrounds, or memorial parks. This includes any of the following as defined below:

a) Active recreation: Recreational uses requiring constructed facilities for organized activities, such as playing fields, ball courts, and playgrounds.

b) Dog park: A park that provides a variety of recreational amenities for dogs and persons that may include benches, parking, restrooms, and water fountains. If dogs are to be unleashed, the area must be fenced.

c) Community space: Buildings or facilities that provide gathering places, such as community centers, property owner association meeting spaces, or clubhouses.

d) Open space: Areas of trees, shrubs, lawns, grass, pathways and other natural and man-made amenities not within individual building lots, set aside for the use and enjoyment of residents, visitors and other persons, unoccupied by buildings or facilities unless related to recreational activities. Generally, open space is intended to provide light and air and is designed for either scenic or recreational purposes. For the purpose of this Code, open space includes active recreation space, common open space, and dedicated open space.

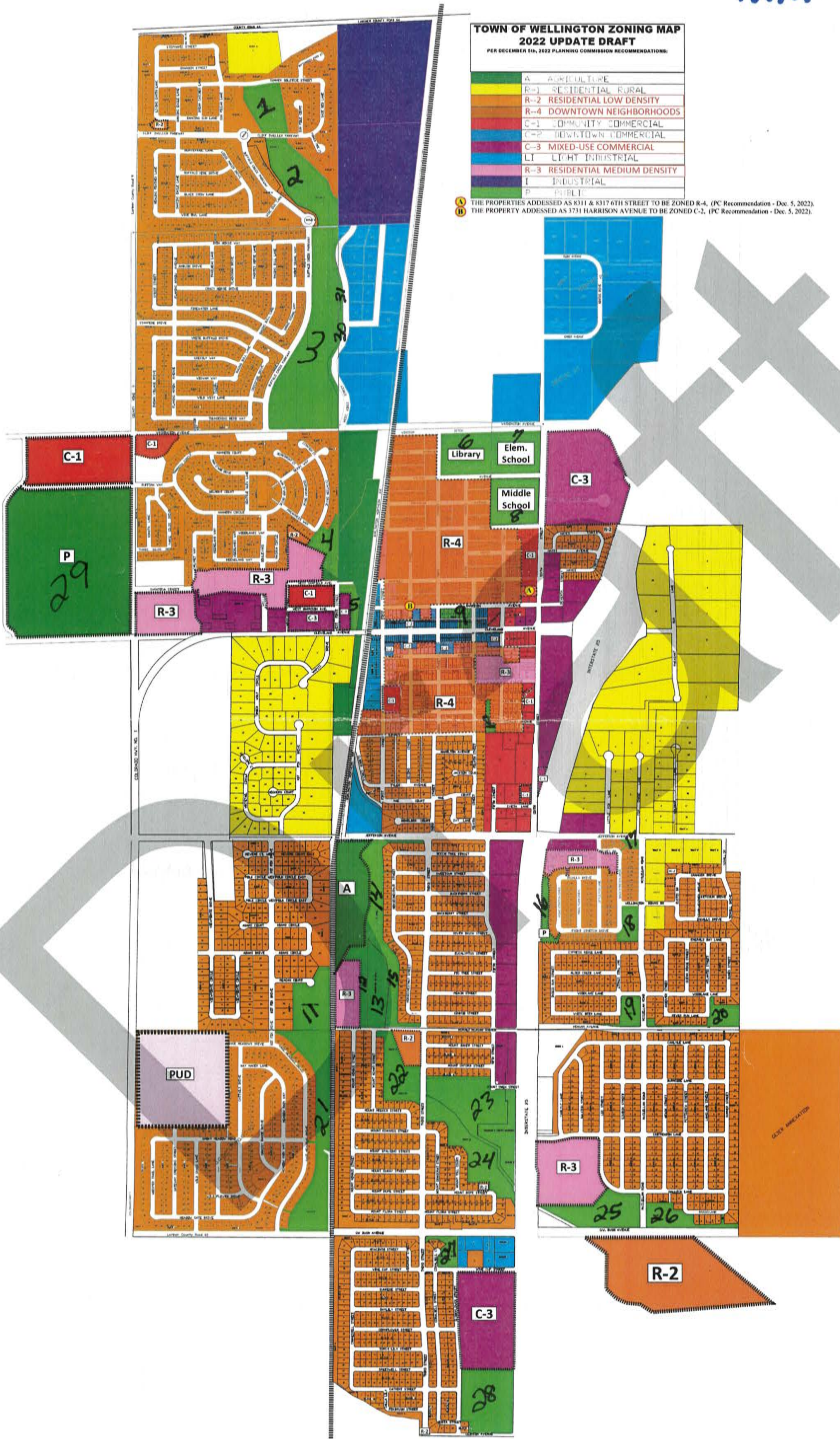
e) Park or plaza: An open space which may be improved and landscaped; usually surrounded by streets and buildings.

f) Urban deck: A platform for landscaped greens or engineered to accommodate buildings, which spans over major roadways. The intent of an urban deck is to create and enable pedestrian movement across an otherwise, typically impenetrable barrier, and to provide space for activity that can link both sides of the roadway.

g) Wetlands mitigation bank: A natural resource management technique authorized by Part 404 of the Federal Clean Water Act, or other state or federal law, as applicable, using wetland preservation, restoration, creation and/or enhancement to offset or replace wetland functions that are lost due to development. Wetland mitigation banks are typically large areas of wetlands operated by private or public entities, which may sell credits to other entities to compensate for wetland loss or impact at development sites or enter into other similar arrangements.

A THE PROPERTIES ADDRESSED AS 8311 & 8317 6TH STREET TO BE ZONED R-4, (PC Recommendation - Dec. 5, 2022).

B THE PROPERTY ADDRESSED AS 3731 HARRISON AVENUE TO BE ZONED C-2, (PC Recommendation - Dec. 5, 2022).



#1

MAP B



Highland Cemetery

13

#2

#3

-14

51

9

11

12



P - Public District Inventory and Analysis

Map	Prop. #	Description	Property Owner	Public/Private Ownership	Public Access	Recreation/Education/Scenic	Existing Zoning	Draft Zoning Map	PC Draft Considerations
A 1		Drainage / Open Space / Future Trail	Sundance at Daubert Farm Holdings LLC (future dedication to Town)	Public (future)	Yes (future)	Yes	P - Public	P - Public	P - Public
A 2		Drainage / Open Space / Future Trail	Sundance at Daubert Farm Holdings LLC (future dedication to Town)	Public (future)	Yes (future)	Yes	P - Public	P - Public	P - Public
A 3		Wellington Community Park / Dog Park / Playground / Batting Cages / Splash Pad / Drainage / Open Space / Boxelder Creek	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 4		Drainage	Town of Wellington	Public	None currently	Maybe (future trail)	P - Public	P - Public	R-2
A 5		Drainage	Town of Wellington	Public	None currently	Maybe (future trail)	P - Public	P - Public	C-3
A 6		Leeper Center and Library Park / 2 ball fields / Town Utility Infrastructure	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 7		Eyestone Elementary	Poudre School District	Public	School	Yes	P - Public	P - Public	P - Public
A 8		Wellington Middle School	Poudre School District	Public	School	Yes	P - Public	P - Public	P - Public
A 9		Centennial Park / Skate Park / Basketball Court / Town Building	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 10		Drainage	Town of Wellington	Public	No	No	P - Public	P - Public	R-4
A 11		Viewpointe Park / Basketball Court / Playground / Drainage with Athletic Fields	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 12		Harvest Village Park / Playground / Trail	Hartford Homes at Harvest Village LLC (future dedication to Town)	Public (future)	Yes	Yes	P - Public	P - Public	P - Public
A 13		Harvest Village Park / Open Space / Trail / Drainage	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 14		Boxelder Creek / Trail / Open Space / Drainage	Hartford Homes at Harvest Village LLC (future dedication to Town)	Public (future)	Yes	Yes	P - Public	P - Public	P - Public
A 15		Wastewater Lift Station	Town of Wellington	Public	No	No	P - Public	P - Public	P - Public
A 16		Open space / Trail / Drainage	Wellington Downs Holdings LLC	Private	Yes	Yes	R-4	P - Public	R-3
A 17		Sunrise Park / Playground	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 18		Drainage	Town of Wellington	Public	No	No	P - Public	P - Public	R-2
A 19		Park Meadows Park / Playground / Drainage with Athletic Fields	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 20		Drainage	Town of Wellington	Public	No	No	P - Public	P - Public	R-2
A 21		Trail / Open Space / Drainage / HOA Irrigation Pond	SH Development Company LLC (future dedication to Town)	Public (future)	Yes	Yes	P - Public	P - Public	P - Public
A 22		Trail / Disc Golf / Drainage / Boxelder Creek	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 23		Rice Elementary / Open Space / Drainage	Poudre School District	Public	School	Yes	P - Public	P - Public	P - Public
A 24		Trail / Disc Golf / Drainage / Boxelder Creek	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 25		Trail / Ponds / Disc Golf / Drainage with Ballfield	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 26		Drainage	Town of Wellington	Public	No (disc golf)	ory an	P - Public	P - Public	P - Public
A 27		Winnick Park / Playground / Open Space	Town of Wellington	Public	Yes	Yes	P - Public	P - Public	P - Public
A 28		Drainage	Town of Wellington	Public	No	No	P - Public	P - Public	C-3
A 29		Wellington Middle/High School	Poudre School District	Public	School	Yes	P - Public	P - Public	P - Public
A 30		Private Owner / Drainage	Assure LLC	Private	No	No	P - Public	P - Public	LI
A 31		HOA Open Space / Drainage	Boxelder Business Park Assn.	Private	No	No	P - Public	P - Public	LI
B 1		Water plant in the county	Town of Wellington	Public	No	No	County	County	County
B 2		HOA / Open Space / Drainage / Street Lawns	Sundance at Daubert Farm Holdings LLC	Private	No - HOA	No	R-2	R-2	R-2
B 3		HOA / Street Lawns	Buffalo Creek Subdivision at Wellington	Private	No	No	R-2	R-2	R-2
B 4		HOA / Drainage	Three Silos Homeowners	Private	No	No	R-2	R-2	R-2
B 5		Windsor Ditch	WRCC Inc	Private	No	No	R-2	R-2	R-2
B 6		Windsor Ditch	WRCC Inc	Private	No	No	R-2	R-2	R-2
B 7		HOA / Open Space / Pocket Parks / Drainage	Wellington Pointe Community	Private	No - HOA	Yes - HOA	R-2 (one part P)	R-2	R-2
B 8		HOA / Drainage	Wellington Pointe Community	Private	No	No	None	R-3	R-2
B 9		HOA / Open Space / Drainage/ Trail (future)	SH of Colorado Inc	Private	Yes	Yes	PUD & R-2	PUD & R-2	PUD & R-2
B 10		HOA / Open Space / Drainage / Street Lawns	Hartford Homes at Harvest Village LLC	Private	No	No	R-2	R-2	R-2
B 11		HOA / Open Space / Drainage / Basketball Court	Homeowners Association Wellington South	Private	No - HOA	No	R-2	R-2	R-2
B 12		HOA / Open Space / Drainage / Street Lawns	Mountain View Ranch Homeowners	Private	No	No	R-2	R-2	R-2
B 13		Cemetery in the county	Town of Wellington	Public	Yes	No	County	County	County
B 14		HOA / Drainage	Cottonwood Park at Meadows Association	Private	No	No	R-2	R-2	R-2
B 15		HOA / Buffer I-25	Park Meadows of Wellington	Private	No	No	R-2	R-2	R-2
B 16		HOA / Buffer / Drainage	Meadows at Wellington Homeowners	Private	No	No	R-2	R-2	R-2
B 17		Open Space / Trail (future)	Town of Wellington	Public	Yes (future)	Yes (future)	R-2	R-2	R-2
B 18		HOA / Open Space / Drainage / Trail (future)	SH of Colorado Inc	Private	Yes (future)	Yes (future)	R-2	R-2	R-2
B 19		Town Building	Town Municipal Services Building	Public	Yes	No	TR	C-2	C-2
B 20		Town Building	Old Town Hall (Cleveland Ave)	Public	Yes	No	C-2	C-2	C-2

Board of Trustees Meeting

Date: February 14, 2023
Subject: Land Use Fees

BACKGROUND / DISCUSSION

The Town recently adopted Resolution No. 37-2022 updating fees and charges within the Town (November 8, 2022). The schedule of fees includes current fees for land use applications. Information regarding proposed changes for land use fees were presented to the Board of Trustees at a presentation October 25, 2022 leading up to the fee resolution adoption in November. The land use fees were not updated as part of the fee resolution because the current land use fees and building fees were adopted by ordinance (Ord. No. 8-2019), and a fee established by ordinance cannot be modified by a resolution.

The purpose of this work session on land use fees is to provide information related to the proposed land use fee changes that are recommended by Town staff. Following discussion and guidance from the Board of Trustees, Town staff intends to prepare appropriate ordinances and resolutions to update the land use fees and will present the ordinances and resolutions at an upcoming Board meeting.

A draft table of existing and proposed land use application fees is included with this report. Existing land use fees were last reviewed and updated in 2019 (Ord. 8-2019, attached). Existing fees for land use applications do not adequately cover Town costs to process, review and conduct required public meetings for land use cases. Costs of land use applications include publication of notices, mailing notices, Town staff review time, project coordination, public meetings, inspections and recording of official documents. In addition to updating land use fees, there are also a number of new land use fees proposed and are highlighted on the attached table. The new fees are a result of updates to the Town's Land Use Code that provides new application procedures for processing simpler development requests and administrative procedures that were added.

Updated fees are proposed by staff on a cost recovery basis, meaning the proposed fees are recommended at a rate that is intended to cover the actual fixed costs and staff time required to process the applications. Tables of assumptions used for calculating the costs of processing various application types are included for reference. Fixed costs include the actual costs of envelopes, printing, postage, etc. Quantity assumptions are also provided based on application type and include an average number of mailings/advertisements for public hearings, average staff hours required for review and administration, and number of public meetings, etc. Some development application types are larger in scale and require additional time and coordination to review and process. As a result, an increasing scale factor is used on a per lot or per acre basis to recover the additional time expenses associated with more complicated reviews.

When the Board of Trustees was presented with information for the fee resolution adoption in October and November of 2022, questions were raised about the recommended cost of application for Variances. A concern was also expressed that the proposed cost for variances may be higher than expected. Staff has re-evaluated the recommendations for variances and is proposing to base fees on zoning district categories. The purpose of this approach is to separate the variances into different tiers based upon complexity and time required for review for different types of land uses. The tiers are proposed as follows:

- Residential Zone Districts – Residential variances are typically pretty consistent in the types of requests and the time required for review and coordination. The cost recovery basis calculations estimated by

Town staff indicate the fee should be \$1,000. Staff heard from the Board that there may be a desire to reduce this cost as means to support residents for affordable fees.

- C-1, C-2 and LI Zone Districts – These commercial zone districts generally result in development sites that are smaller in size and located near other compatible land uses. Variances in these types of zoning districts are somewhat consistent in the types of requests heard. Time required for review of commercial sites typically takes longer due to more variables and development standards associated with commercial development as opposed to residential development. The cost recovery basis calculated by Town staff indicates the fee should be \$1,000 and that is the fee recommended by Town staff.
- C-3 and I – Industrial Zoning Districts – C-3 Mixed-use Commercial and I – Industrial zoning are the most complicated of the commercial zoning district categories. Development size and scale are larger than other zoning categories, and the range of permitted uses are the broadest of the zoning categories. With the increased complexity of development standards and range of uses, these variance applications vary widely and require considerably more time to review and process. Additional coordination may also be required if large sites require applications that need to be sent to other outside referral agencies, resulting in more time for coordination. Town staff is recommending a fee of \$2,000 for variance applications in the C-3 and I zoning districts.
- Each Additional Variance – In some instances, a site development proposal may request multiple variances for the same site. Processing multiple requests on the same site results in some of the procedural elements being replicated with much of the same information (notices are mostly identical or may be combined in one notice, familiarization with site and requests does not have to be duplicated, multiple requests may be considered for concurrent review at the same meeting night). The additional variance requests on the same site still requires staff time to review and prepare staff reports, but does not warrant a whole second application fee. Town staff recommends the full fee for the first variance based on the zoning district, and a flat fee of \$500 for each additional variance on the same site.

The Town has a policy of “growth pays its own way.” Therefore, updating land use application fees will ensure new growth will pay its proportionate share of costs associated with the review, administration and inspection of development. It is advisable to periodically review and update fees to ensure fees are sufficiently covering actual Town costs of providing services. Increased additional costs (such as engineering review, legal review, etc.) may still be recoverable by invoicing developers for expenses incurred in the processing of land use proposals.

STAFF RECOMMENDATION

Discuss recommendations for land use fees and provide staff direction for additional information that may be desired.

ATTACHMENTS

1. Existing and Proposed Land Use Fees
2. Cost Recovery Assumptions
3. Ord 8-2019 Building and Land Use Fees

Existing and Proposed Land Use Application Fees

Application Type	Wellington Existing Fee		Wellington Proposed Fee	
Annexation	\$ 500.00	+ \$10 per acre	\$ 4,000.00	+ \$10 per acre
Preliminary Major Subdivision - Single-family and Two-family Zoning Districts	\$ 500.00	+ \$10 per lot	\$ 3,000.00	+ \$10 per lot
Preliminary Major Subdivision - All other Zoning Districts	\$ 500.00	+ \$10 per acre	\$ 3,000.00	+ \$10 per acre
Major Subdivision, Final	No Fee		\$ 500.00	
Minor Subdivision Plat - Single-family and Two-family Zoning Districts	\$ 350.00	+ \$10 per lot	\$ 1,500.00	+ \$10 per lot
Minor Subdivision Plat - All other Zoning Districts	\$ 350.00	+ \$10 per acre	\$ 1,500.00	+ \$10 per acre
Manufactured Home Park	\$ 500.00	+ \$10 per lot	\$ 3,000.00	+ \$10 per lot
Recreational Vehicle Park	\$ 500.00	+ \$10 per vehicle space	\$ 3,000.00	+ \$10 per vehicle space
Revised Final Plat			\$ 500.00	
Lot Line Adjustment			\$ 500.00	
Easement Adjustment			\$ 500.00	
Condominium/Townhome Plat			\$ 750.00	
Vacation of Right-of-Way or Easement	\$ 150.00		\$ 1,200.00	
Zone Change Request (Rezone)	\$ 350.00		\$ 1,200.00	
Planned Unit Development (PUD)	\$ 500.00	+ \$10 per acre	\$ 4,000.00	+ \$10 per lot for residential + \$10 per acre for commercial
Conditional Use	\$ 350.00		\$ 1,200.00	
Variance, Residential Zones	\$ 250.00		\$ 500.00	
Variance, C-1, C-2 and LI Zones	\$ 250.00		\$ 1,000.00	
Variance, C-3 and I Zones			\$ 2,000.00	
Each Additional Variance (concurrent review on same site)			\$ 500.00	each additional variance on same site
Special Review			\$ 750.00	
Non-Conforming Use Review	\$ 150.00		\$ 500.00	
Site Plan Review	\$ 500.00	+ \$100 per acre if more than 1 acre	\$ 1,200.00	+ \$100 per acre if more than 1 acre
Amend Approved Site Plans (Planning Commission)	\$ 250.00		\$ 500.00	
Administrative Adjustment	\$ 100.00		\$ 500.00	
Minor Deviation			\$ 250.00	
Extension of Final Approval	\$ 150.00		\$ 250.00	
Board of Adjustment / Appeals	\$ 250.00	+ legal expenses incurred, if any	\$ 500.00	+ legal expenses incurred, if any
3rd and Subsequent Rounds of Review			50% of base fee	
Zoning Permit (for accessory structures less than 120 sq. ft. or fences, structures and signs otherwise not requiring a building permit)	\$ 30.00		\$ 30.00	
Park Land Fee in-lieu of Dedication	Appraisal		Appraisal	
Tree Preservation Standards Fee in-lieu			\$ 500.00	per tree

New procedures/process - No fees established

Fixed Cost Assumptions

Item	Unit Cost	
#10 window envelopes	\$ 0.15	EA
Color print (front & back)	\$ 0.25	EA
Postage	\$ 0.51	EA
Certified Mailings	\$ 10.00	EA
Newspaper Advertisement	\$ 40.00	EA
Advertisement Sign	\$ 15.00	EA
Administration	\$ 25.00	HR
Planning Review	\$ 45.00	HR
Public Mtg.	\$ 150.00	EA
Recording Documents	\$ 150.00	EA

Quantity Assumptions, Typical

Item	Quantity					
	Site Plan	Annexation	Subdivision	Vacation/Rezone	Variance, Residential	Variance, C-3 and I Zones
Notice Mailings	0	50	80	30	30	50
Certified Mailings	0	15	0	0	0	0
Newspaper Advertisement	0	2	2	1	1	1
Advertisement Sign	0	2	2	1	1	2
Administration	6	12	10	6	4	8
Planning Review	20	40	30	12	12	20
Public Mtg.	1	6	6	2	1	1
Recording Documents	0	4	2	1	1	1

Increasing Scale Factor

Size and complexity of development sites increases the amount of time to review the additional details associated with the request
 Additional time required for review is proportionate to the number of lots for single-family and two-family residential developments
 Additional time required for review is proportionate to the size of commercial, multi-family and non-residential developments

Town costs for scale of site reviews is calculated using the below assumptions:

\$10 per lot

\$10 per acre

\$100 per acre if more than one acre (commercial and multi-family site plan reviews)

ORDINANCE NO. 8-2019

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO ESTABLISHING FEES AND CHARGES AUTHORIZED PURSUANT TO TOWN ORDINANCE FOR SERVICES RELATED TO LAND USE APPLICATION; BUILDING INSPECTION; PLAN REVIEW; ADMINISTRATIVE SERVICES AND OTHER SERVICES RENDERED BY OR THROUGH THE TOWN.

WHEREAS, the Board of Trustees of the Town of Wellington, Colorado (the "Town") is authorized to establish by ordinance various fees, charges and taxes to be paid in connection with requirements imposed or services provided pursuant to Town ordinance; and

WHEREAS, the Board of Trustees has heretofore adopted resolutions and ordinances establishing fees for building inspections, plan review, administrative services and other services rendered by or through the Town, has from time to time amended specific provisions of the same, and now desires to establish new fees as contained herein and repeal any other conflicting fees previously established.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO:

Section 1. Fees Established. As authorized by Town ordinance, the following fees and charges are hereby established for the various requirements and services provided for in or authorized by the Wellington Municipal Code and other ordinances of the Town, as the same may from time to time be amended.

Section 2. Building Trades and Permits.

Permit issuance – Non-refundable (all permits)	\$25
Building Permit (based on valuation of work)	
\$1-1,000	\$25
\$1,001-25,000	\$69.25 + \$14.00 for each additional \$1,000 or fraction thereof over \$1,000
\$25,001-50,000	\$391.25 + \$10.10 for each additional \$1,000 or fraction thereof over \$25,000
\$50,001-100,000	\$643.75 + \$7.00 for each additional \$1,000 or fraction thereof over \$50,000
\$100,001-500,000	\$993.75 + \$5.60 for each additional \$1,000 or fraction thereof over \$100,000
\$500,001-1,000,000	\$3,233.75 + 4.75 for each additional \$1,000 or fraction thereof over \$500,000
\$1,000,000 or greater	\$5,608.75 + \$3.15 for each additional \$1,000 or fraction thereof over \$1,000,000

Building Plan Review (Single- and Two-family Residential)	30% of Building Fee
Building Plan Review (Commercial and Multi-family)	65% of Building Fee
Town Administration Fee	10% of Building Fee
Electrical Review Fee	In Accordance with State Statute
Furnace or A/C Replacement	\$75
Water Heater Replacement	\$75
Lawn Sprinkler	\$75
Roof / Reroof	\$75
Siding Replacement	\$75
Window Replacement	\$75
Demolition	\$50
Re-inspection	\$75
Temporary Certificate of Occupancy (TCO)	\$150
Re-activation of Expired Permit	50% of permit fee
Investigation Fee	50% of permit fee
Inspection outside normal business hours	\$100 per hour (one hour minimum)
Re-review of previously approved plans	\$75 per hour (one hour minimum)
Fence	\$30
Temporary Sign Permit	\$30
Zoning Permit (for accessory structures less than 120 sq. ft. or structures otherwise not requiring a building permit)	\$30

Section 3. Land Use Application Fees.

Annexation	\$500 + \$10/acre
Zone Change Request (Rezone)	\$350
Planned Unit Development	\$500 + \$10/acre
Conditional Use	\$350
Major Subdivision, Preliminary	
Single-family and Two-family zoning	\$500 + \$10/lot
All other zoning districts	\$500 + \$10/acre
Major Subdivision, Final	No fee
Minor Subdivision	\$350
Manufactured Home Park	\$500 + \$10/lot
Recreational Vehicle Park	\$500 + \$10/vehicle
Vacation of ROW or Easement	\$150
Site Plan Review	\$500 + \$100/acre if over one acre
Amend Approved Site Plans (Planning Commission)	\$250
Administrative Adjustment to Approved Site Plans	\$100
Board of Adjustments/Appeals	\$250
Variance	\$250
Non-conforming Use Review	\$150
Extension of Final Approval	\$150
Home Occupation	\$30

Section 4. Periodic Review of Fees and Charges. The equity and sufficiency of fees and charges set forth herein shall be reviewed from time to time by the Board of Trustees; provided, that failure to conduct or delay in conducting review shall not invalidate any such fee or charge.

Section 5. Repealer. Any other fees or charges previously established that are in conflict with the fees and charges contained within this ordinance are hereby repealed.

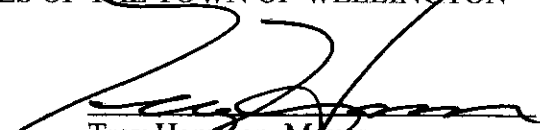
Section 6: Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.

Section 7: Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.

Section 8: Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours. Furthermore, the Mayor's signature shall be affixed to the plat and attested by the Town Clerk.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON AND ORDERED TO BECOME PUBLISHED THIS 25th DAY OF June, 2019 AND ORDERED TO BECOME EFFECTIVE AUGUST 1, 2019.

BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON


Troy Hamman, Mayor

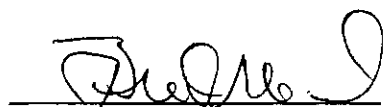
ATTEST:


Ed Cannon, Town Administrator/Clerk

PUBLISHED BY TITLE THIS 27th DAY OF June, 2019 IN "THE COLORADOAN."

APPROVED AS TO FORM:

March, Olive & Pharris

By: 
J. Brad March, Town Attorney

Board of Trustees Meeting

Date: February 14, 2023
Subject: Review of Goals Set for 2022-2024 Strategic Plan

BACKGROUND / DISCUSSION

The Board of Trustees met on November 16, 2022 and January 17, 2023 to create actionable goals for the adopted Strategic Plan. Based on discussions, there was a request for refinement of the portions of the adopted Strategic Plan. The changes that were proposed are identified in red in the packet document and in bold below. The Strategic Plan was adopted by the Board of Trustees so any changes will be brought for consideration at an upcoming meeting.

Under Fiscal Responsibility, the following bullet was added:

- **Ensure financial viability of town infrastructure and services by retaining and attracting business.**

Under Infrastructure, the two following changes were made:

- **Review and** develop partnerships and enhance focus on transportation solutions, such as street, bridge, facilities, sidewalk, and accessibility improvements.
- Ensure adequate current and future water resources **and inform users about wise ways to save treated drinking water.**

Staff reviewed the goals that were brought forward at both meetings and identified the needs for accomplishing each objective. Staff leadership met and shared their thoughts, all of which are identified in the thought maps which are included in the packet.

After Trustee review and acknowledgment of the goals set forth below and included in the attached presentation, staff anticipates the document to be a living document that can be updated and changed based on Board of Trustee direction. Quarterly updates on progress will be provided in meeting packets and also posted on the Town's website. Although it is the intent of staff to do our best to accomplish the identified goals, we may come to the Trustees at a later date with a request to prioritize goals that they feel are most important to the community.

The Board of Trustees identified the following goals in relation to the Strategic Plan pillars:

Fiscal Responsibility

- Increase tax revenue by 5%
- Operate within a balanced budget
- Create documents and videos for financial transparency created by the finance committee and hosted on website
- Increase funding by 5% for budgeted projects through grants

Infrastructure

- Execute Safe Routes to School Memorandum of Understanding
- Add stormwater improvements to Capital Projects
- Improve drainage on Cleveland using grant funding



Planning and Development

- Complete a cemetery needs assessment
- Complete ADA compliance plan
- Community gathering space inventory by the second quarter of 2023
- Budget for Parks & Trails Master Plan
- Intergovernmental Agreement for Growth Management Plan

Communication

- Host four Community Town Hall meetings with a Volunteer fair as a meeting
- Emergency Plan Draft by Second Quarter of 2023
- Host joint work session with Senior Center in 2023
- Brand guide to refine the smalltown feel

STAFF RECOMMENDATION

For Trustee discussion.

ATTACHMENTS

1. 22-24 Strategic Plan_Goals 02.14.23



**FISCAL
RESPONSIBILITY**



INFRASTRUCTURE



**PLANNING AND
DEVELOPMENT**



COMMUNICATION



TOWN OF

WELLINGTON

2022 – 2024

STRATEGIC PLAN REFINEMENT SUMMARY

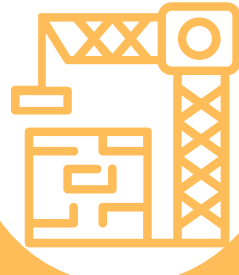
STRATEGIC PLAN SUMMARY

2022 – 2024



FISCAL RESPONSIBILITY

- Ensure financial viability of town infrastructure and services by retaining and attracting business.
- Maintain financial transparency and increase operational efficiency.
- Pursue funding sources for the positive direction of the community.
- Identify self-sustaining strategies to prioritize affordability for residents and implement a utility rate structure to align with community pricing objectives.



INFRASTRUCTURE

- Complete the Water Treatment Plant and Water Reclamation Facility expansion projects under budget and on time.
- Review and develop partnerships and enhance focus on transportation solutions, such as street, bridge, facilities, sidewalk, and accessibility improvements.
- Analyze and pursue stormwater solutions.
- Ensure adequate current and future water resources and inform users about wise ways to save treated drinking water.
- Prioritize organizational strength to retain, attract, and support Town staff.



PLANNING AND DEVELOPMENT

- Identify and promote development of community gathering spaces.
- Complete Downtown Master Plan and Parks Master Plan.
- Consider options for open space and buffer from surrounding communities.
- Promote small town feel through responsible growth and sound financial practices.



COMMUNICATION

- Assess opportunities and partners for emergency preparedness.
- Promote inclusive language and improve access to local government.
- Increase engagement and communications with local businesses, the senior community, and other partners in our town.

Mission Statement

We provide outstanding municipal services for our community of today and tomorrow.

Vision Statement

Wellington strives to be one of the best small towns in America to live and work, recognized as a great place to raise a family, own a unique business , and create memorable experiences through community.



FISCAL RESPONSIBILITY

- Ensure financial viability of town infrastructure and services by retaining and attracting business.
- Maintain financial transparency and increase operational efficiency.
- Pursue funding sources for the positive direction of the community.
- Identify self-sustaining strategies to prioritize affordability for residents and implement a utility rate structure to align with community pricing objectives.

Board of Trustee's Goals

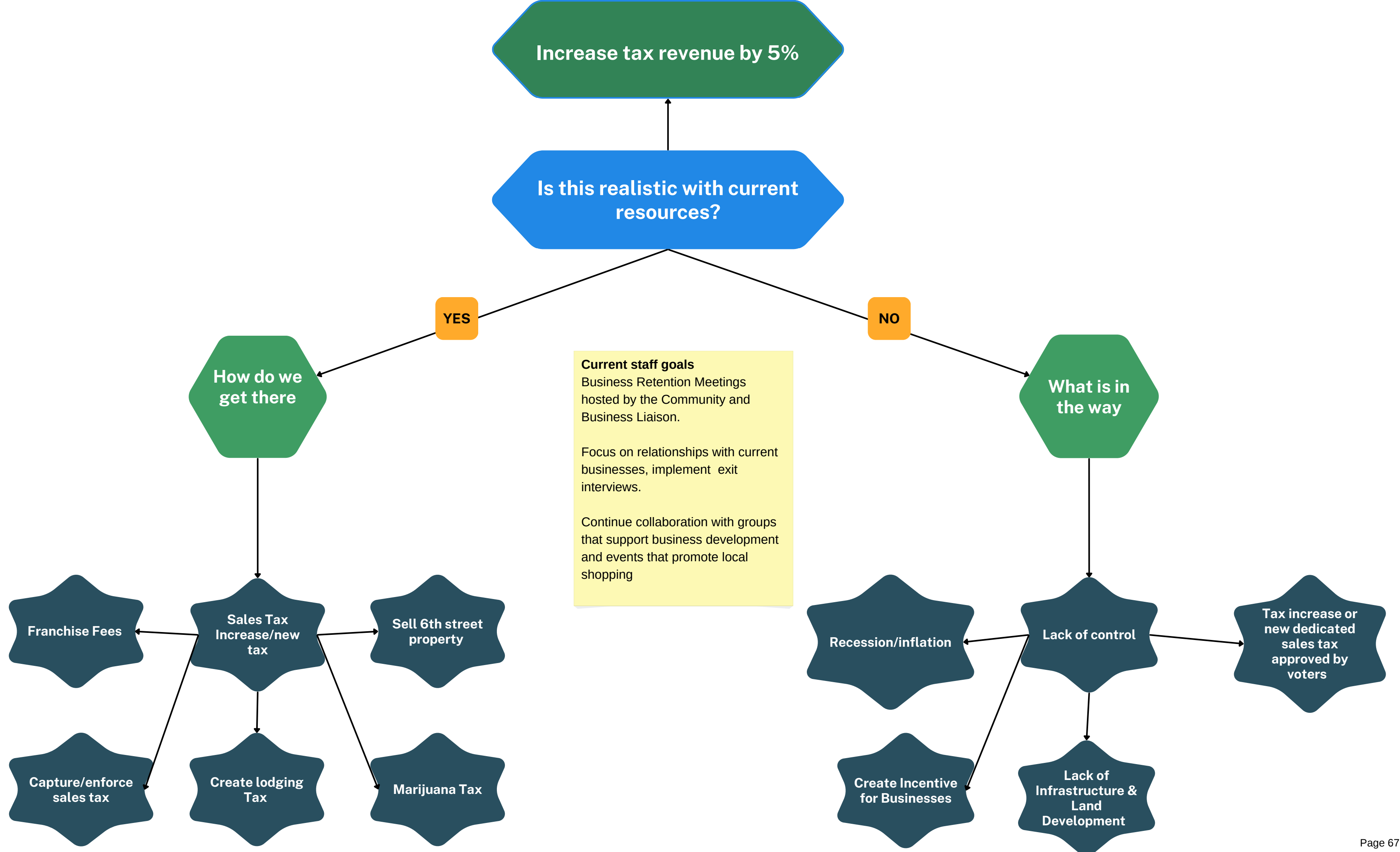
Increase tax revenue by 5%.

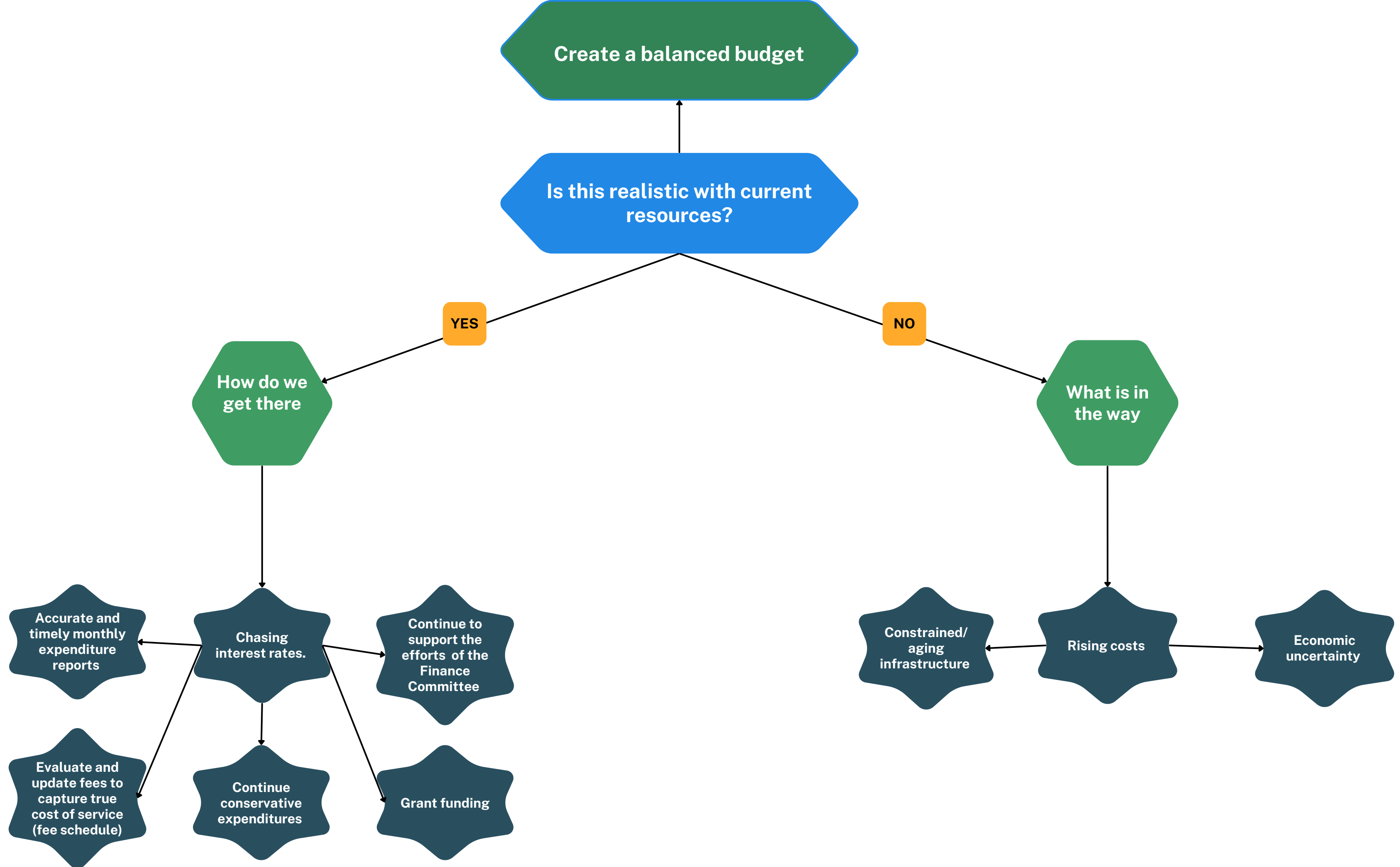
Operate with a balanced budget.

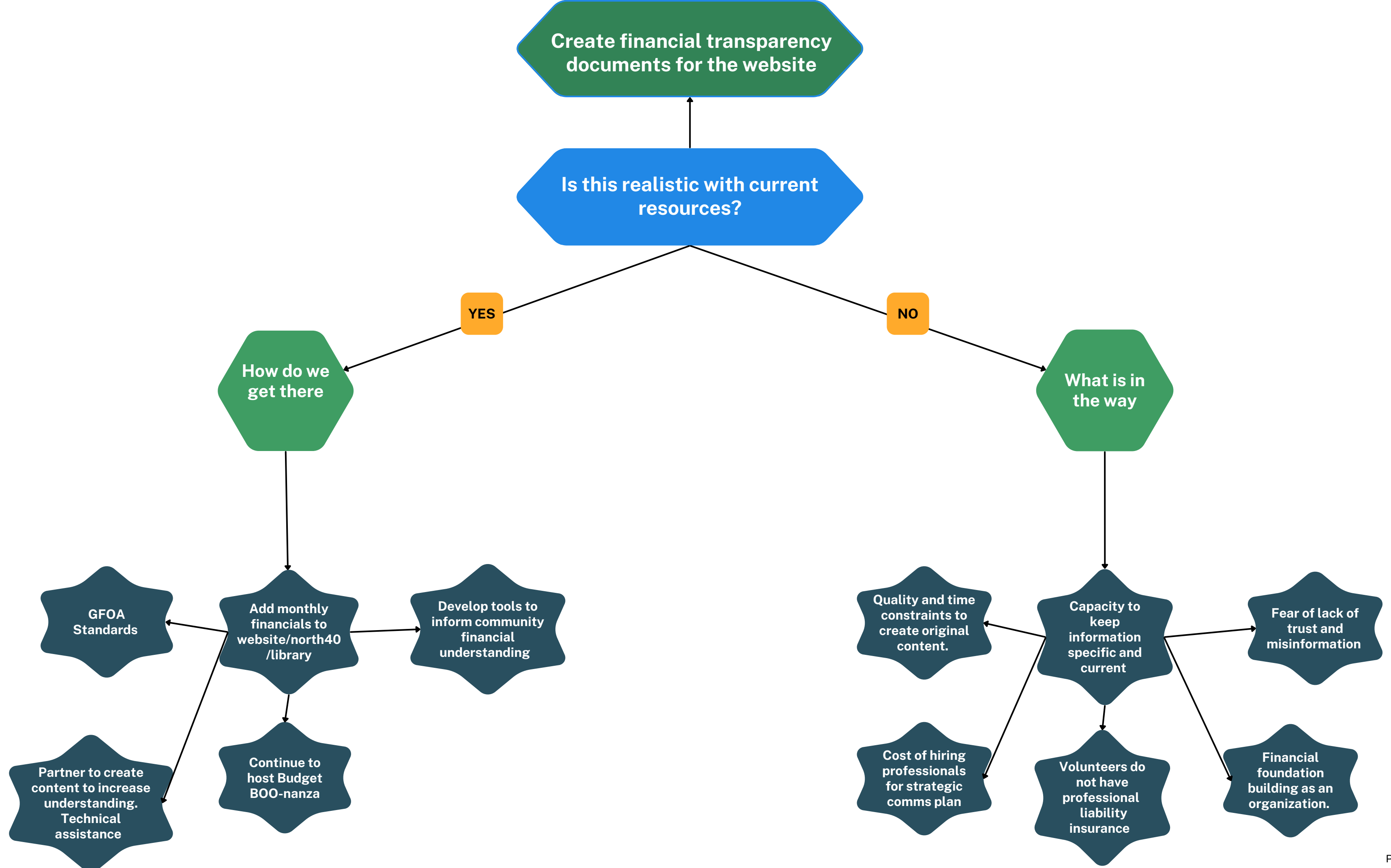
Create documents and videos for financial transparency created by the finance committee and hosted on website.

Increase funding by 5% for budgeted projects through grants.











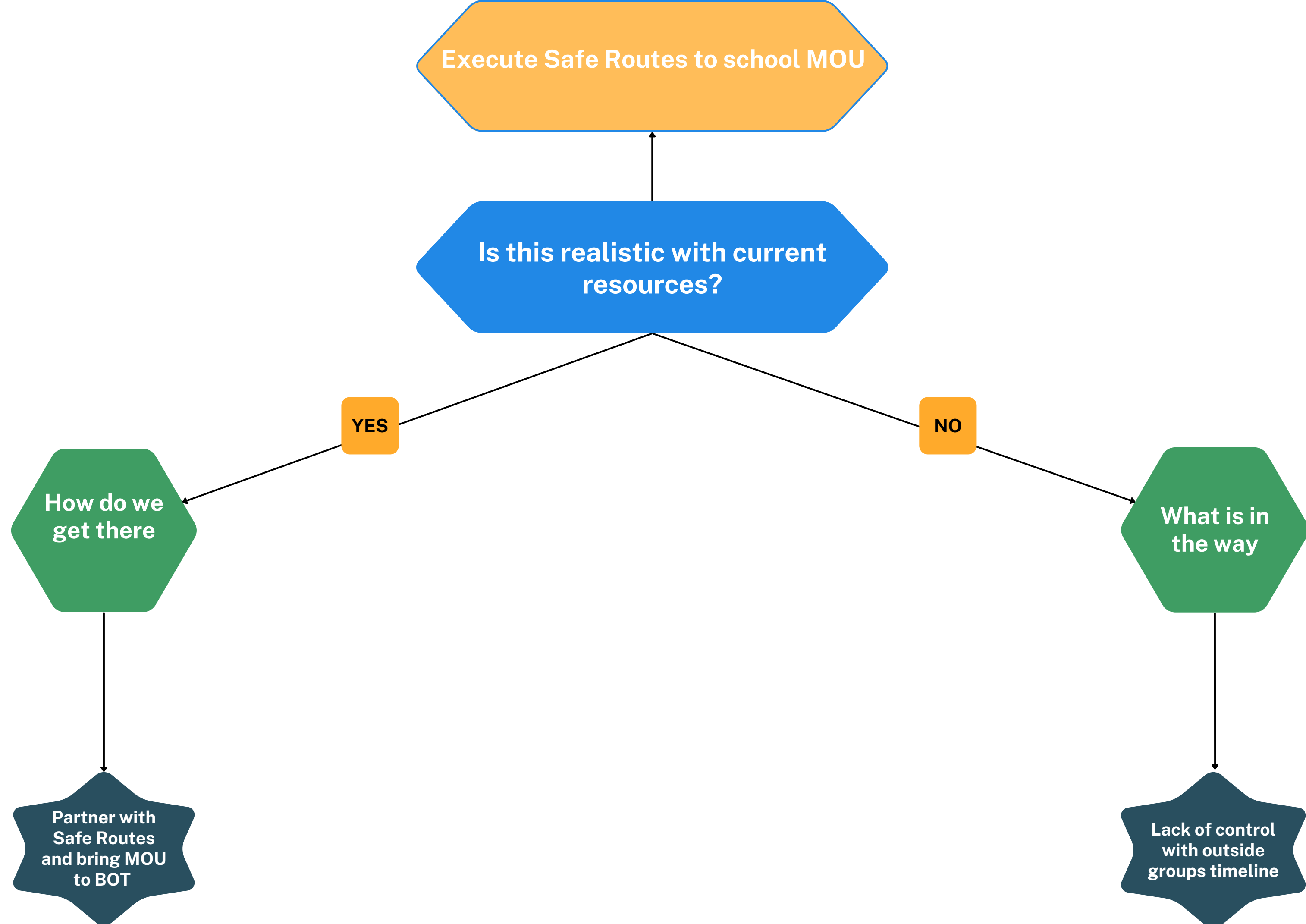
INFRASTRUCTURE

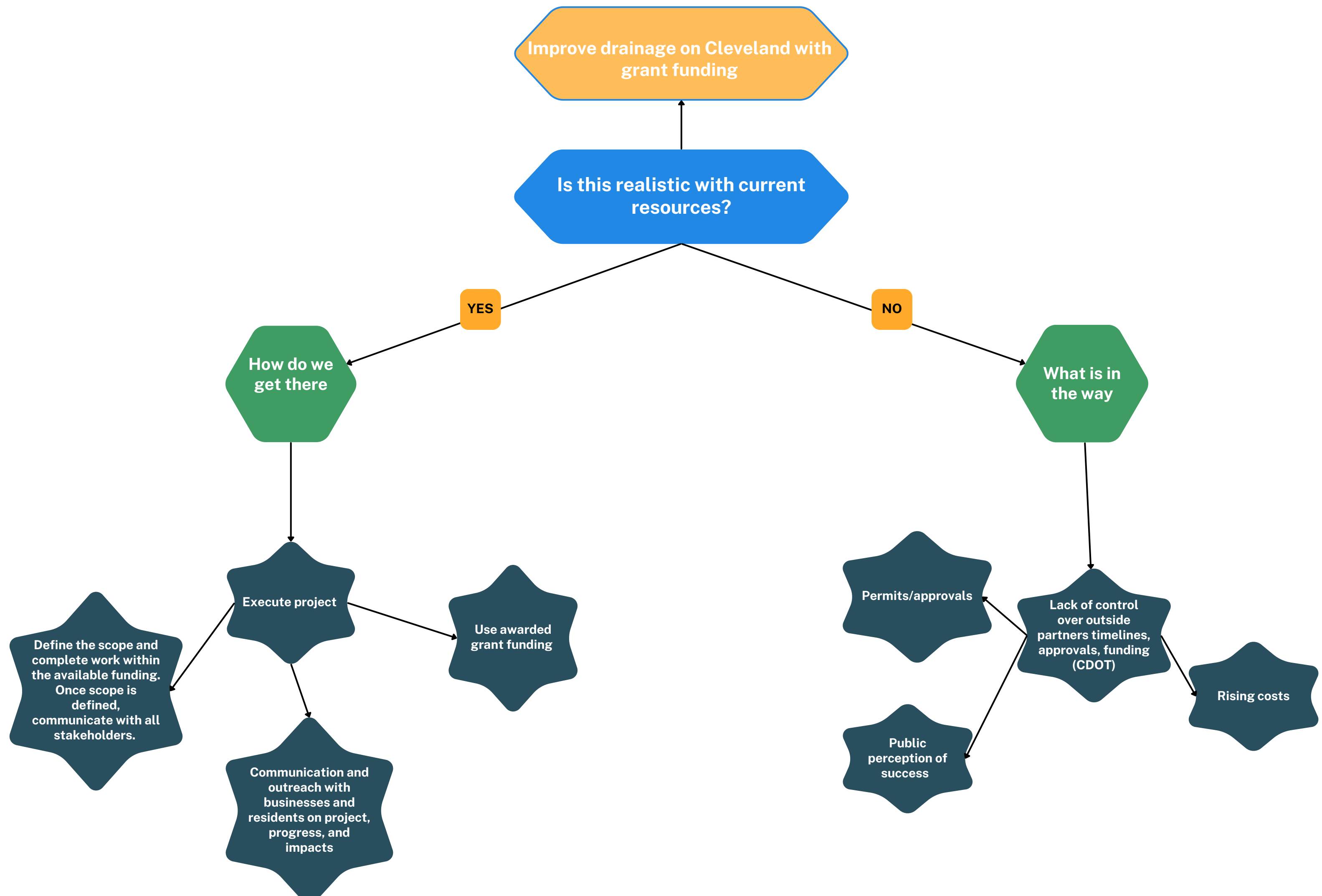
- Complete the Water Treatment Plant and Water Reclamation Facility expansion projects under budget and on time.
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- Ensure adequate current and future water resources and inform customers about wise ways to save treated drinking water.
- Prioritize organizational strength to retain, attract, and support Town staff.

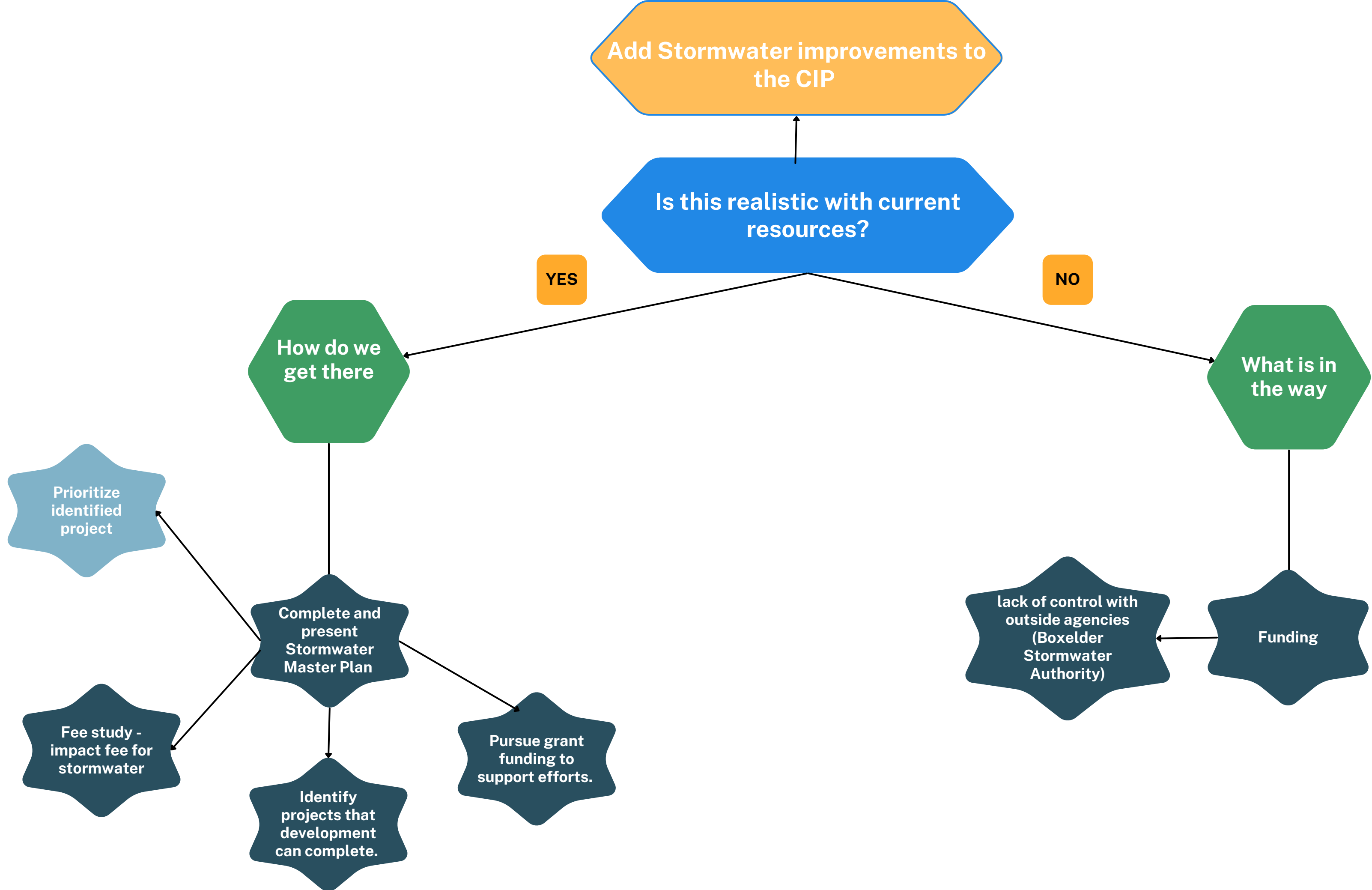
**Execute Safe
Routes to school
MOU**

**Add Stormwater
improvements to
the CIP**

**Improve drainage
on Cleveland using
grant funding**









PLANNING AND DEVELOPMENT

- Identify and promote development of community gathering spaces.
- Complete Downtown Master Plan and Parks Master Plan.
- Consider options for open space and buffer from surrounding communities.
- Promote small town feel through responsible growth and sound financial practices.

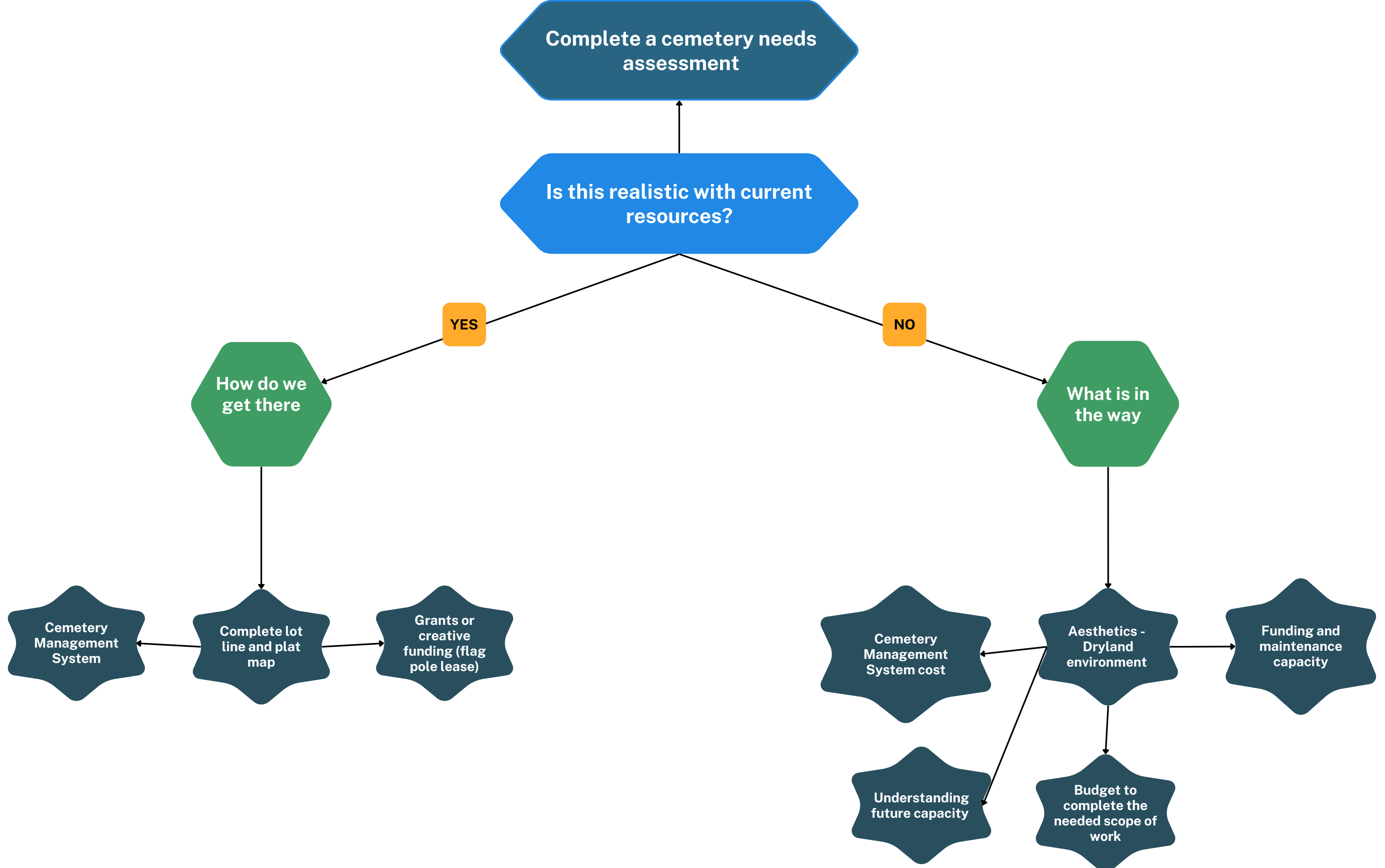
Complete a cemetery needs assessment

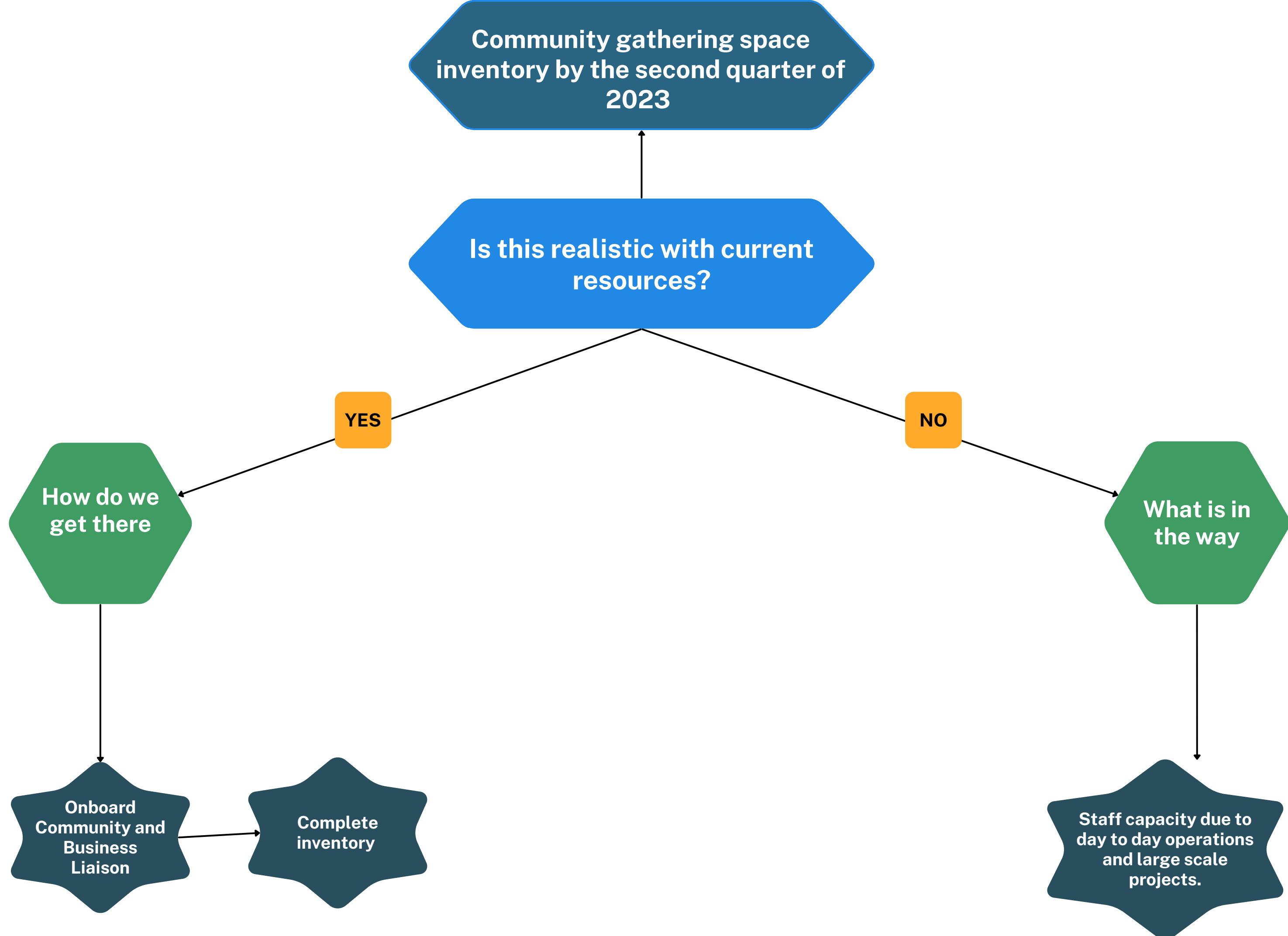
Complete ADA Compliance Plan

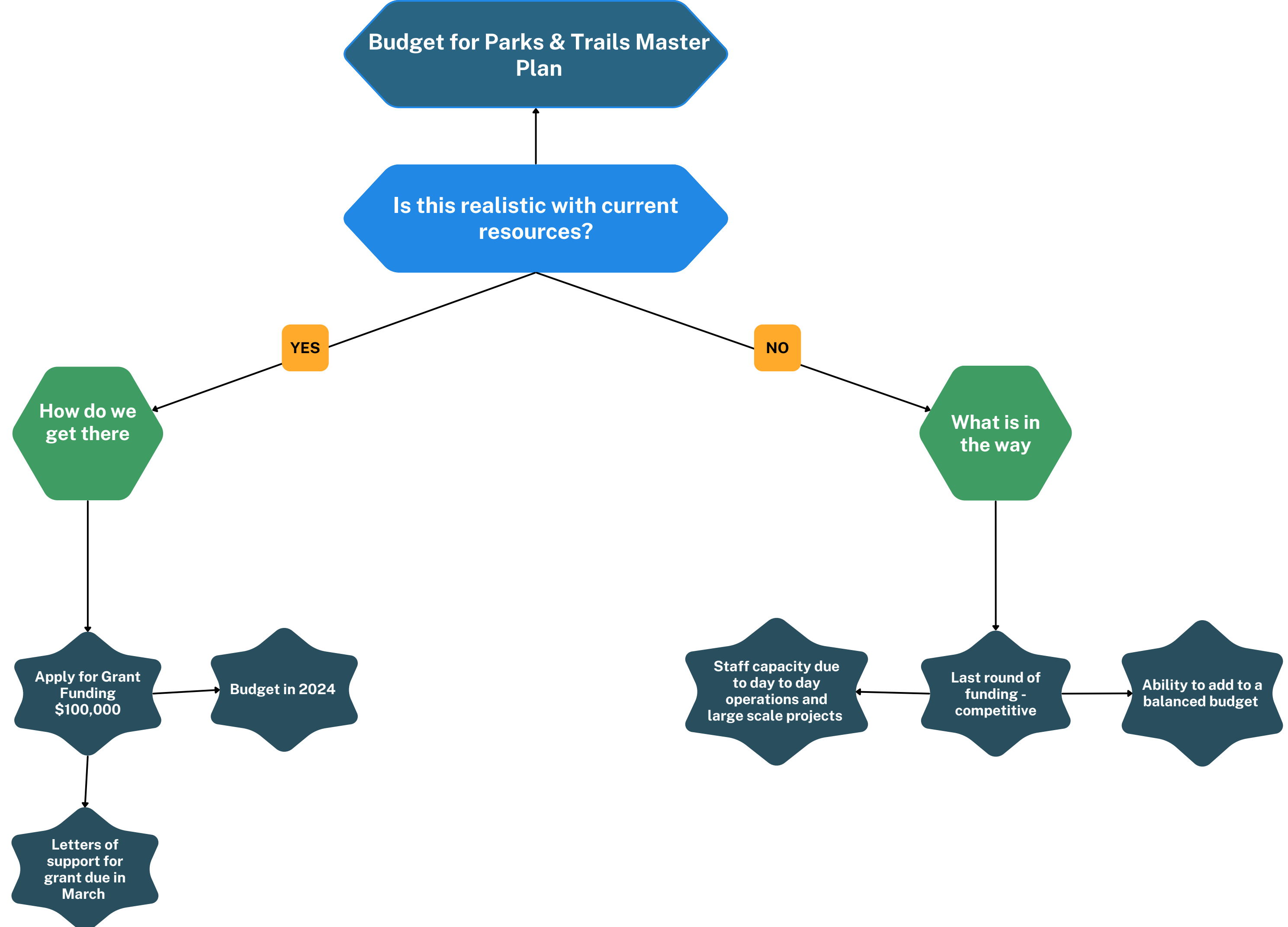
Community gathering space inventory by the second quarter of 2023

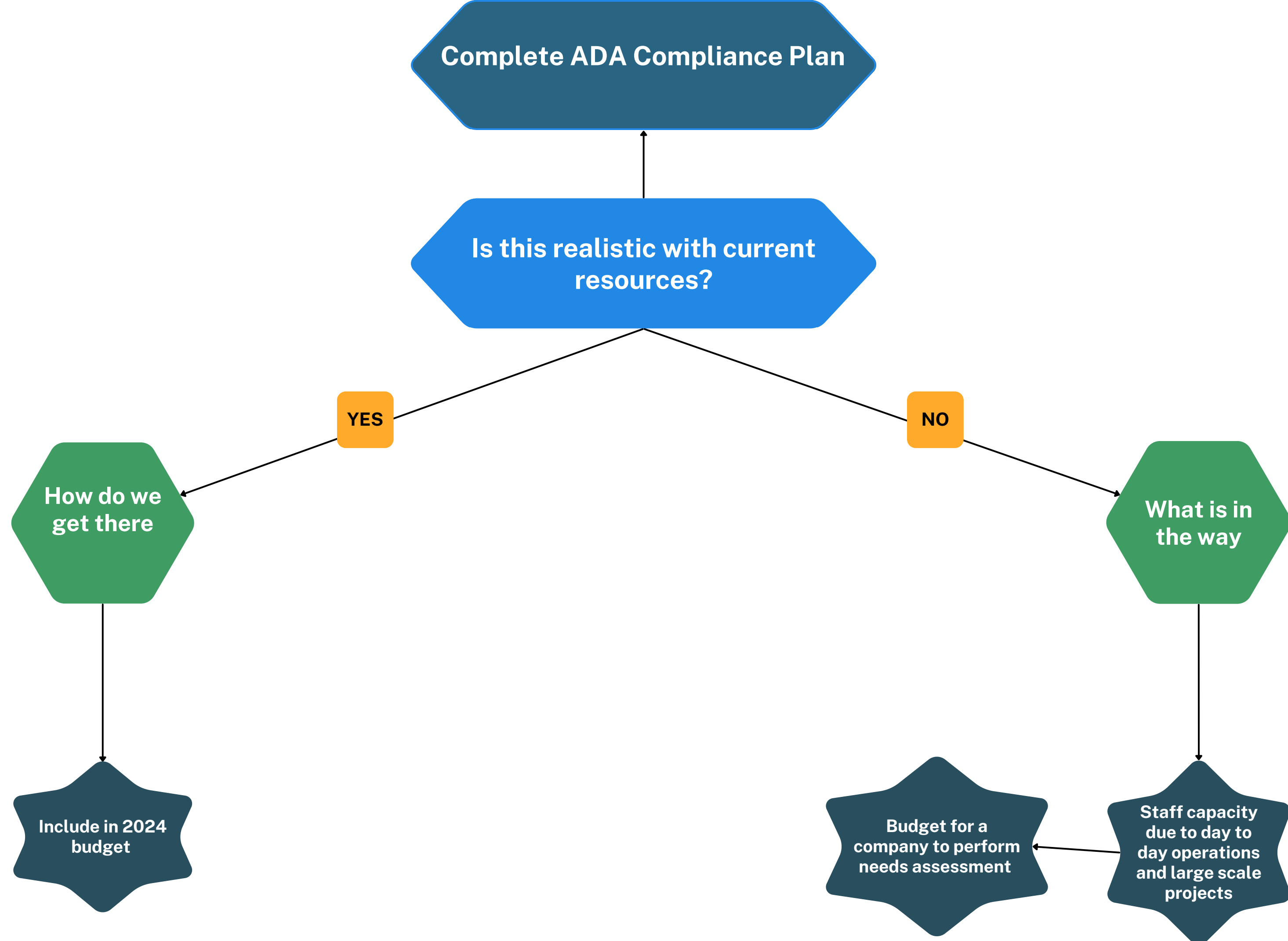
Budget for Parks & Trails Master Plan

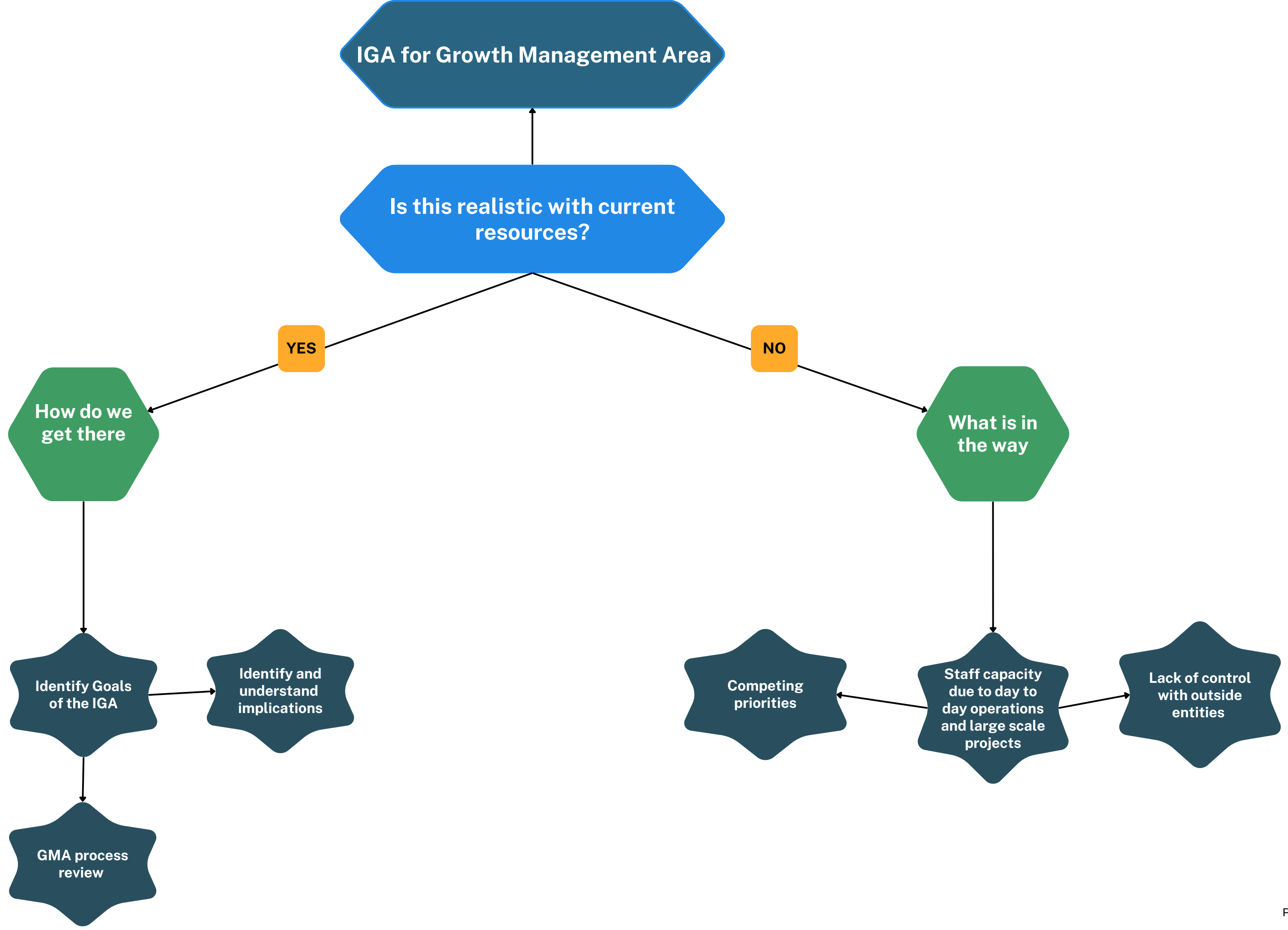
IGA for Growth Management Area













COMMUNICATION

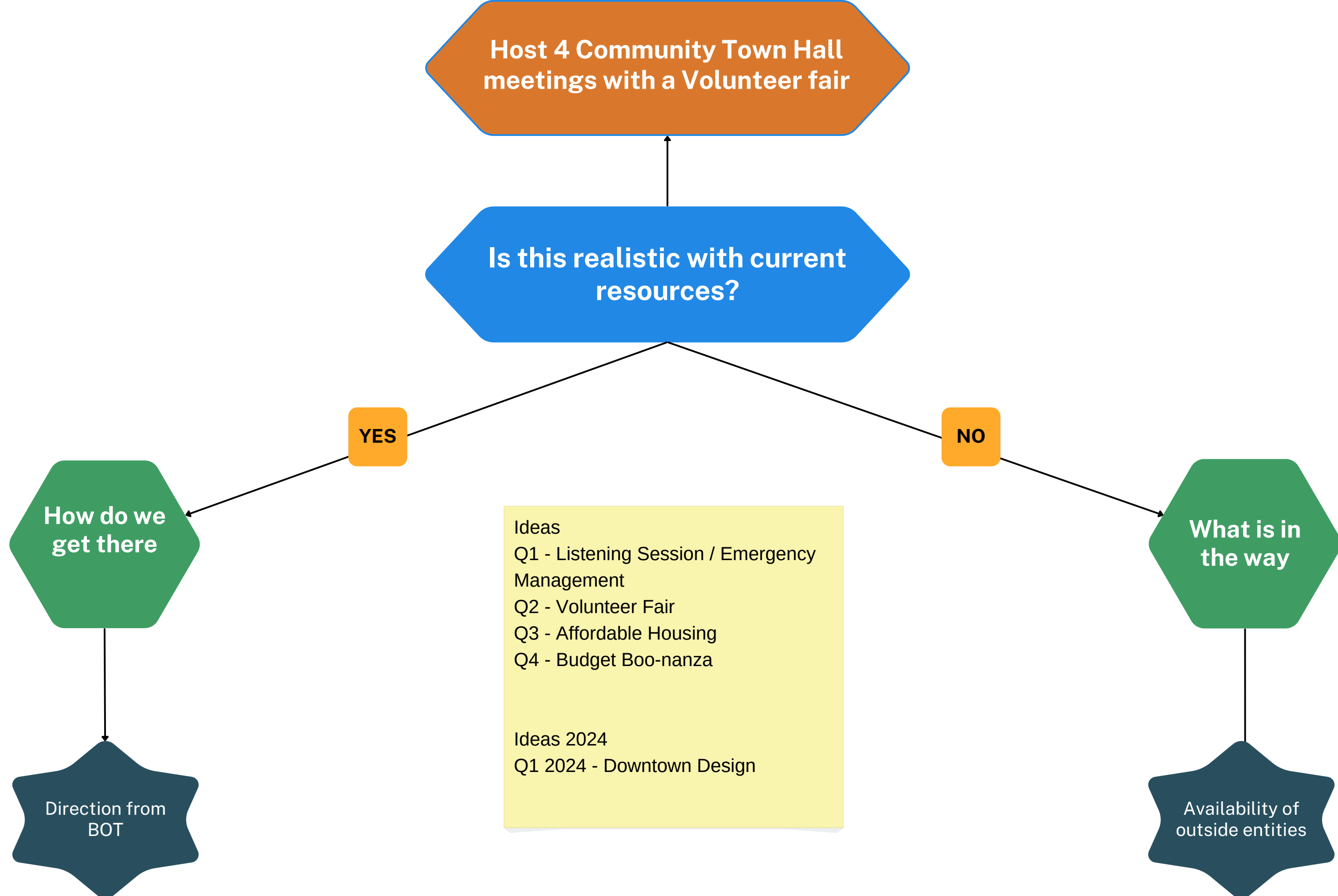
- Assess opportunities and partners for emergency preparedness.
- Promote inclusive language and improve access to local government.
- Increase engagement and communications with local businesses, the senior community, and other partners in our town.

**Host 4
Community Town
Hall meetings**

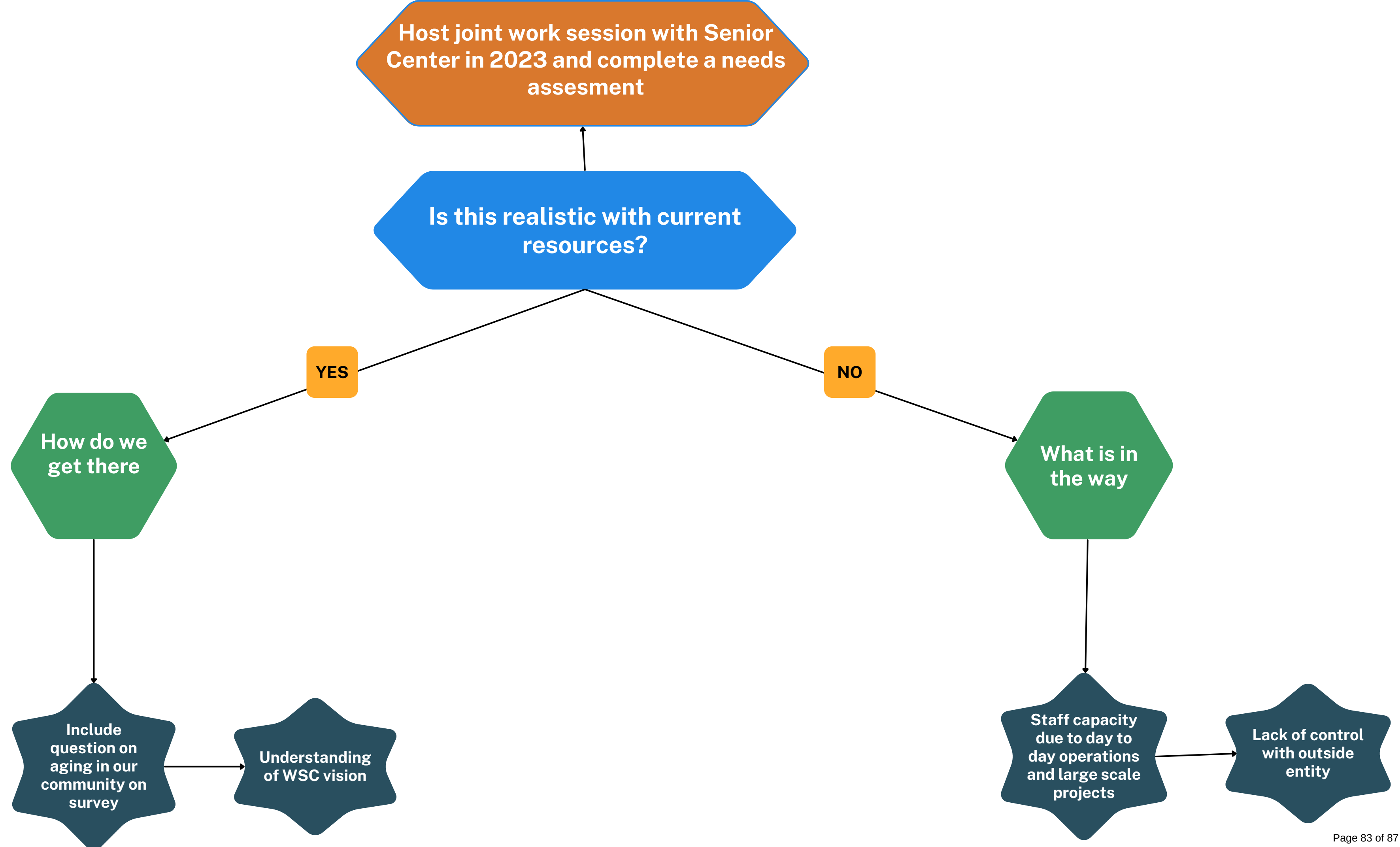
**Emergency Plan
Draft by Second
Quarter of 2023**

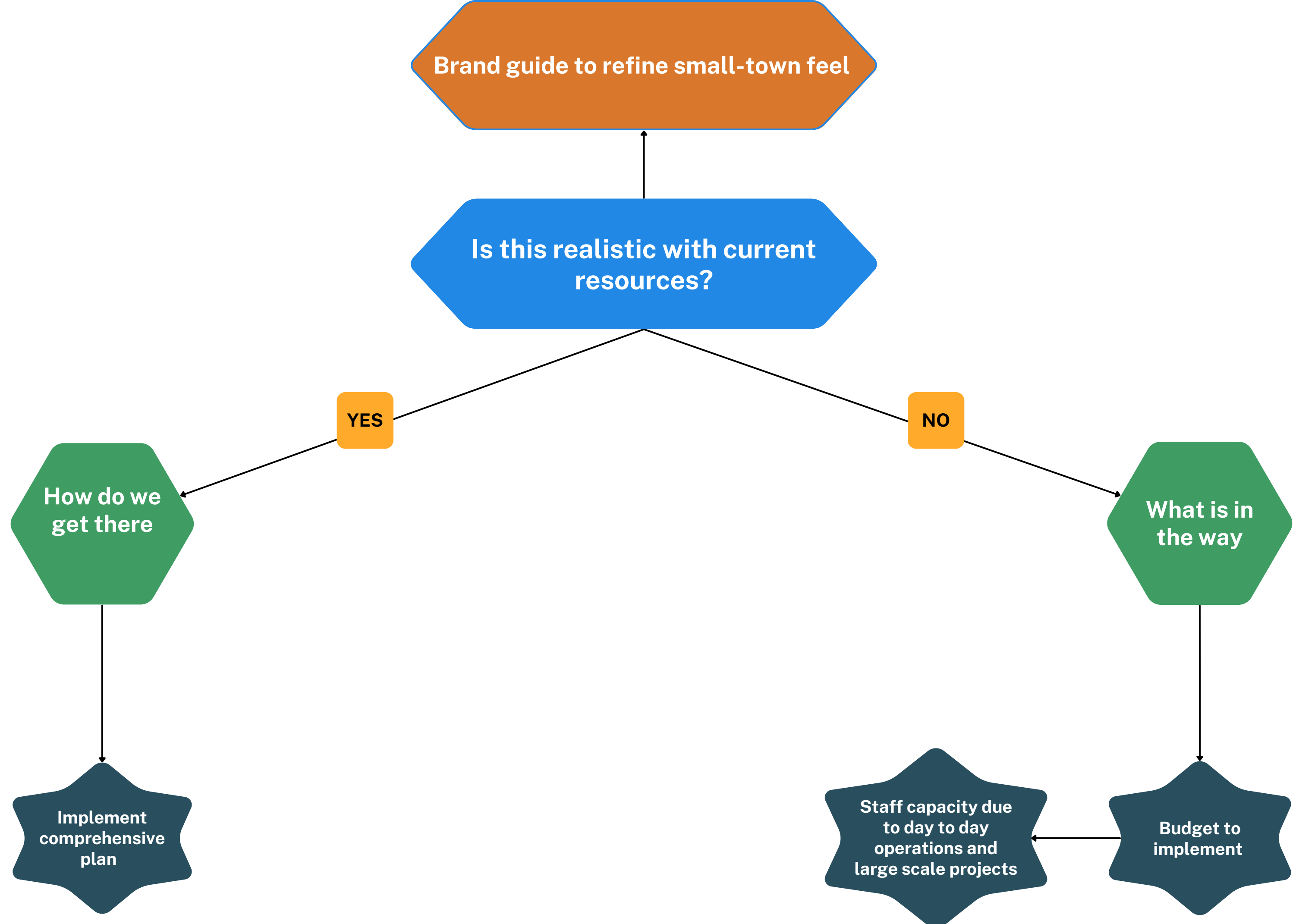
**Host joint work
session with Senior
Center in 2023**

**Brand guide to
refine small-
town feel**











Board of Trustees Meeting

Date: February 14, 2023
Subject: Board of Trustees Planning Calendar

BACKGROUND / DISCUSSION

The Planning Calendar will be updated after the Board of Trustees review the projects included in the 2022-2024 Strategic Plan goals.

STAFF RECOMMENDATION

ATTACHMENTS

1. BOT Planning Calendar



BOARD OF TRUSTEES PLANNING CALENDAR

February 21, 2023 6:30 p.m.	Board of Trustees Work Session Municipal Code Chapter 13 and Utility Bill Ordinance Discussion 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 CIRSA Presentation Cash in Lieu Water Discussion – Water 101
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
May 16, 2023 6:30 p.m.	Board of Trustees Work Session Hauler Licensing Discussion
May 23, 2023 6:30 p.m.	Board of Trustees Regular Meeting
June 13, 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

Additional Events:

June 25-28, 2023 – CML Annual Conference

This document is subject to change without notice