

RESOLUTION NO. 2305-08

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR
APPROVING AND AUTHORIZING THE TOWN MANAGER TO FINALIZE,
EXECUTE, AND IMPLEMENT A SUBDIVISION IMPROVEMENT AND
OCCUPANCY AGREEMENT FOR THE HAMPTON INN AND SUITES,
SUPERSEDING THE HAMPTON INN OCCUPANCY AND LOS AMIGOS ROAD
IMPROVEMENT AGREEMENT EXECUTED ON SEPTEMBER 4, 2007
(MNS NO. 00-52)**

WHEREAS, Billa Enterprises, LLC (“Owner”), and Bhadare/White Windsor, LLC (“Developer”) wish to undertake construction of the Hampton Inn and Suites (“Hotel Facility”) and to subdivide the affected lands as shown on the Tentative Map previously approved by and subject to the conditions stated in Town of Windsor Planning Commission Resolution No. 351-01, adopted June 21, 2001, as modified by Town Council Resolution No. 2123-07, adopted August 15, 2007, and Town Council Resolution No. 2304-08, adopted June 18, 2008; and

WHEREAS, the completion of certain public improvements, including but not limited to realignment of Los Amigos Road and associated modifications to the existing culvert of Windsor Creek under Los Amigos Road and provision of a new pedestrian/bicycle bridge over Windsor Creek, is a condition of said subdivision, and construction of said public improvements has not been completed; and

WHEREAS, the completion of certain private site improvements, including but not limited to on-site parking facilities, is an essential prerequisite to the orderly and safe beneficial use and/or occupancy of the Hotel Facility, and construction of said on-site private improvements has not been completed; and

WHEREAS, vacation of certain portions of the existing right of way of Los Amigos Road to the parcel of property on which the Hotel Facility is to be constructed is an essential prerequisite to construction of said private site improvements, and said vacation has not been completed; and

WHEREAS, construction by Developer to the satisfaction of the Town Engineer of certain public improvements, including but not limited to the realignment of Los Amigos Road and associated modifications to the existing culvert of Windsor Creek under Los Amigos Road is an essential prerequisite to vacation of said right of way, and said construction and acceptance have not been completed; and

WHEREAS, the design by the Developer of said public and private improvements and the review and approval of improvement plans for said improvements by the Town are essential prerequisites to their construction, and said design, review, and approval have not been completed; and

WHEREAS, notwithstanding the incompleteness of all of the essential and sequential prerequisites to beneficial use and occupancy of the Hotel Facility described above and

completion of the associated subdivision and any uncertainties associated with either or both, Owner and Developer desire to proceed with construction of the Hotel Facility at this time, at Owner's and Developer's sole and exclusive risks in all respects; and

WHEREAS, the Town desires to accommodate Owner's and Developer's request, subject to the condition that any and all construction associated with the Hotel Facility is at the sole and exclusive risk of the Owner and Developer, with no assumption of risk or liability of any kind by the Town; and

WHEREAS, on August 15, 2007, the Town Council adopted Resolution No. 2123-07 modifying the conditions of approval of Planning Commission Resolution Nos. 350-01 and 351-01 in order to accommodate Owner's and Developer's request that a building permit for the Hampton Inn and Suites ("Hotel Facility") be issued prior to completion of the essential and sequential prerequisites to use and occupancy of the Hotel Facility; and

WHEREAS, on August 15, 2007, the Town Council adopted Resolution No. 2122-07 authorizing the Town Manager negotiate, execute, and implement the Hampton Inn Occupancy and Los Amigos Road Improvement Agreement for the Hampton Inn and Suites (Subdivision MNS 00-52) with the Owner and Developer in order to accommodate Owner's and Developer's request that a building permit for the Hampton Inn and Suites ("Hotel Facility") be issued prior to completion of the essential and sequential prerequisites to use and occupancy of the Hotel Facility, said agreement subsequently being executed on September 4, 2007; and

WHEREAS, Town Council Resolution Nos. 2122-07 and 2123-07 and the Hampton Inn Occupancy and Los Amigos Road Improvement Agreement resulting therefrom were based upon the construction of a new bridge of Los Amigos Road across Windsor Creek to be designed and constructed by the Developer, said construction subsequently being delayed from the schedule anticipated at the time of adoption of Resolution Nos. 2122-07 and 2123-07 by design issues discovered immediately prior to construction, and said new bridge construction as designed subsequently being determined to preclude the future possibility of utilizing the existing culvert of Windsor Creek under Highway 101 as a pedestrian/bicycle crossing; and

WHEREAS, on March 19, 2008, in order to address time constraints associated with the opening of the Hampton Inn and to preserve the future possibility of utilizing the existing culvert of Windsor Creek under Highway 101 as a pedestrian/bicycle crossing, an approach to accomplishing the realignment of Los Amigos Road utilizing a knuckle roadway realignment requiring a modification to the existing Windsor Creek culvert under Highway 101 and the construction of a new pedestrian/bicycle bridge over Windsor Creek (the "roadway knuckle approach"), rather than the construction of a new vehicular bridge over Windsor Creek, was considered before the Town Council; and

WHEREAS, on March 19, 2008, the Developer expressed to the Town Council support for adoption of the roadway knuckle approach and the Town Council thereafter supported the roadway knuckle approach to accomplish the realignment of Los Amigos Road, unless found infeasible or inadequate by Town staff; and

WHEREAS, Town staff has determined the roadway knuckle approach feasible and adequate to accomplish the realignment of Los Amigos Road; and

WHEREAS, the incorporation of the roadway knuckle approach to the realignment of Los Amigos Road impacts certain of the provisions of the Hampton Inn Occupancy and Los Amigos Road Improvement Agreement previously authorized by the Town Council on August 15, 2007, by the adoption of Resolution No. 2122-07 and subsequently executed on September 4, 2007; and

WHEREAS, the draft Subdivision Improvement and Occupancy Agreement for the Hampton Inn and Suites on file with the Town Clerk's office generally incorporates the key provisions specified in Town Council Resolution No. 2122-07, adopted August 15, 2007, modified to reflect incorporation of the roadway knuckle approach and the passage of time;

NOW, THEREFORE, BE IT RESOLVED that the Town Council approves and authorizes the Town Manager to finalize, execute, and implement a Subdivision Improvement and Occupancy Agreement for the Hampton Inn and Suites with the Owner and Developer thereof substantially similar to the draft agreement on file with the Town Clerk's office, said Subdivision Improvement and Occupancy Agreement for the Hampton Inn and Suites reflecting incorporation of the roadway knuckle approach to the realignment of Los Amigos Road, including modifications to the existing culvert of Windsor Creek under Highway 101 and a separate new pedestrian/bicycle bridge over Windsor Creek, and said Subdivision Improvement and Occupancy Agreement for the Hampton Inn and Suites superseding in its entirety the Hampton Inn Occupancy and Los Amigos Road Improvement Agreement previously executed on September 4, 2007.

PASSED, APPROVED, AND ADOPTED this 18th day of June 2008 by the following vote:

AYES: COUNCILMEMBERS ALLEN, GOBLE, SALMON AND MAYOR FUDGE
NOES: NONE
ABSTAIN: NONE
ABSENT: COUNCILMEMBER PARKER


DEBORA FUDGE, MAYOR

ATTEST:


MARIA DE LA O, TOWN CLERK