

RECORD OF PROCEEDINGS

REGULAR MEETING
TOWN OF GRAND LAKE BOARD OF TRUSTEES
MONDAY, FEBRUARY 22, 2010 7:30 P.M.

CALL TO ORDER: The regular meeting of the Board of Trustees was called to order by Mayor Judy Burke at 7:36 p.m. at the Town Hall, 1026 Park Avenue.

PRESENT: Mayor Burke; Trustees Johnson, Lanzi, Rhone, and Weydert; Town Manager Hale, Town Clerk Kolinske and Town Planner Wittman.

ABSENT: Trustees Lewis and Peterson.

APPROVAL OF MINUTES

February 8, 2010: Trustee Johnson moved to approve the minutes of the February 8, 2010 regular meeting as written. Trustee Rhone seconded the motion and all Trustees voted aye.

ANNOUNCEMENTS: Mayor Burke announced that it would be appreciated if cell phones were turned off during the meeting.

Mayor Burke then announced that Nomination Petitions for three Town Trustee seats, to be elected at the April 6 Regular Municipal Election, may be obtained from Town Hall and must be filed with the Town Clerk by 4:30 p.m. Friday, March 5, 2010. Applications for absentee ballots and voter registration forms are also available at Town Hall. Electors must register by March 8.

The Rapids Restaurant and the Grand Lake Fire Department are hosting the 9th Annual K.O.L.E. (Kevin's Outreach for Local Emergencies) Prime Rib Dinner on Tuesday, February 23 beginning at 5:00 p.m. Community seating is every 15 minutes. Call 627-3707 for reservations.

REPORTS: SALES TAX
CASH FLOW REPORT
FOR FEBRUARY 2010:

Mayor Burke asked Town Clerk Kolinske to present the sales tax cash flow report. Kolinske reported that the amount of revenue received in February 2010 for the month of December 2009 is \$38,057. This amount is 13.36% below what was received through February 2009.

REPORTS: FINANCIAL
REPORT FOR
JANUARY 2010:

In the absence of Financial Trustee Peterson, Mayor Burke asked Town Clerk Kolinske to present the Financial Report for January 2010. Kolinske reported that General Fund expenditures through the end of January totaled \$59,927.55 or 3.4% of budget. She said the Water Fund expenditures for the same period totaled \$19,338.57 or 4.0% of budget and the Marina Fund expenditures totaled \$5,443.43 or 1.7% of budget.

CONFLICTS OF INTEREST:

Mayor Burke stated that if there are any Trustees wishing to announce a conflict of interest with any items on this evening's agenda, they should do so at this time.

Trustee Johnson announced that he had a conflict with the Local Liquor Licensing issues as he holds a license for The Bears Den. He also announced that he would abstain from voting on the amendment to the sign code with regard to banners.

Trustee Lanzi announced that he had a conflict with O-A Bistro under the Local Liquor Licensing Authority as he is a personal friend of the applicant as well as their landlord and will abstain from voting. He also announced that he would abstain from voting on the amendment to the sign code.

Trustee Weydert announced that he also had a conflict with O-A Bistro under the Local Liquor Licensing Authority as he is a personal friend of the applicant. No one on the Board nor anyone in the audience had a challenge with him voting.

Mayor Burke announced that she would abstain from discussion regarding the amendment to the sign code.

LIQUOR LICENSING AUTHORITY: PUBLIC HEARING – CONSIDERATION OF AN ALTERATION OF LICENSED PREMISES APPLICATION FROM O-A BISTRO, LLC D/B/A O-A BISTRO – Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske reported that an Application for Alteration of Licensed Premises was received, with the appropriate fee, from O-A Bistro, LLC, d/b/a O-A Bistro at 928 Grand Avenue Unit 108. The request is to add the remainder of the original Unit 108 and Unit 103 to the premises. Unit 103 is located at the northeast corner of the building and is approximately 630 square feet +/- . There will be a 40” opening between the two units. The plan is to offer a full menu to include crepes, a variety of different cheeses and wine from Unit 103 with no changes to the food or drink in Unit 108. The request includes an outdoor seating area of approximately 309 square feet +/- located at the southeast portion of Unit 103. There will be wrought iron railing of 36” in height to prevent people from walking away with an alcoholic beverage. The only entrance to the outdoor seating area will be from inside through 3 separate french style doors. Elmer Lanzi is the owner of the building and the lease agreement between Olney Kliewer and Lanzi has been amended. On February 8, the Local Liquor Licensing Authority (Board of Trustees) received this application and scheduled a Public Hearing for consideration of this application for this evening. Public notice of the Public Hearing was posted on the premises on February 11, 2010, more than 10 days prior to this evening. The Grand County Sheriff's Department reviewed their records and found no adverse information that would affect this license

request. No comments have been received. The hearing is to be conducted as a quasi-judicial proceeding and in a manner which assures all interested parties a fair and reasonable opportunity to present views and information, and such that the applicant's procedural rights of fundamental fairness be protected. The Board may not consider any information presented after the close of the Public Hearing. Kolinske noted that Olney Kliever, applicant, was present.

Mayor Burke then opened the meeting for public comment. Having none, she closed the Public Hearing and turned the matter over to the Board of Trustees.

Trustee Rhone moved to approve an Alteration of Licensed Premises Application from O-A Bistro, LLC d/b/a O-A Bistro, seconded by Trustee Weydert. All Trustees voted aye except Trustees Johnson and Lanzi, who abstained.

At 7:51 p.m. Trustee Johnson excused himself and left the room.

LIQUOR LICENSING AUTHORITY: CONSIDERATION OF RENEWAL OF THE HOTEL AND RESTAURANT LIQUOR LICENSE FOR MTNMAX, INC., D/B/A MAX AND T'S BAR AND GRILL – Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske reported that the fees have been paid and the renewal documents are in order. The water, business license, and sales tax accounts are all current. She noted that the Grand County Sheriff's Department found no adverse information that would affect the status of the license. She then concluded by saying that Max Ludwig, President/Secretary, was present.

Trustee Rhone moved to approve the renewal of the Hotel and Restaurant Liquor License for MtnMax, Inc., d/b/a Max and T's Bar and Grill. Trustee Weydert seconded the motion and all Trustees voted aye.

At 7:53 p.m. Trustee Johnson resumed his seat.

OLD BUSINESS:

PUBLIC HEARING – CONSIDERATION OF ORDINANCE NO. XX-2010, AN ORDINANCE AMENDING THE TOWN OF GRAND LAKE MUNICIPAL CODES BY AMENDING SECTION 1 OF ARTICLE 2 OF CHAPTER 6 SIGN CODE – Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that at the meeting held on January 25, 2010 the Board discussed this issue and passed a motion to hold a Public Hearing on this matter on February 22, 2010. Legal Notice #4581161 was published in the Middle Park Times on January 28, 2010. No comments have been received. As a review, the proposed changes to the code are listed below.

Graphic Design signs:

A recent Appeals Court case in Colorado (Mahany vs. City of Englewood) mandates an established time frame for review and appeals for graphic designs. The proposed changes are to first set up a time frame of 7 days for "graphic designs" to be processed by the Town Manager or his designee, and secondly to establish a formal appeal process including a time frame of 45 days for any appeal by the Board.

Banners:

The current code just requires that signs "have a wood-like appearance with a natural flat wood tone background". Banners are allowed by code, with limitations, and are a sign by definition, but by their nature do not look "wood-like" at all. The proposed change is for banners not to have a wood-like appearance. Also, the issue of several banners being used by businesses which do comply with the requirements by code, but by changing the banners out, it could give the appearance that these banners are up all year long. The proposed change is for allowing one banner, for 26 days, or multiple banners, such as 26 banners for 1 day each, displayed for a cumulative total of 26 days per year. At the January 15, 2010 meeting the Board did discuss *not* changing the time frame for banners to be displayed due to the current economy and not wanting to limit the ability of businesses to draw in customers, but no action was taken on that suggestion as the meeting was continued to the Public Hearing. Draft Ordinance No. xx-2010 contains the language recommended by the Planning Commission.

Projecting Signs over ROW:

Code currently reads "*The sign shall not extend more than four (4) feet past the foundation wall*". The proposed change in code would reflect a maximum 4' encroachment over the Right of Way (ROW) only in the designated mandatory boardwalk areas. Proposed Ordinance No. xx-2010 sets the guidelines for the initial review and the review process for graphic designs, changes requirements for banners, and modifies projecting signs over the ROW. Staff recommends the Board open the Public Hearing, take comment, discuss the issues, and then take what action they deem appropriate.

The Board has the following options:

1. The Board may continue this Public Hearing for further discussion.
2. The Board may adopt this ordinance, Ordinance No. 3-2010, either as is or with changes.
3. The Board may decide to not adopt this ordinance.

Mayor Burke then opened the meeting for public comment.

Judy Jensen, owner of Grand Lake Wine & Spirits and Cabin Quilts & Stitches at 908 Grand Avenue, was recognized from the audience and wanted clarification on the 4' requirement for signs projecting over the right of way. Town Manager Hale explained to her that current code requires

that a sign shall not extend more than four (4) feet past the foundation wall and that the proposed change would allow for a sign to project up to a maximum of 4' into the right of way only in the designated mandatory boardwalk areas.

Having no other questions or comments, Mayor Burke closed the Public Hearing and turned the matter over to the Board of Trustees.

Following lengthy discussion, Trustee Weydert moved to adopt Ordinance No. 3-2010, an Ordinance Amending the Town of Grand Lake Municipal Codes by Amending Section 1 of Article 2 of Chapter 6 Sign Code with changes to 3. 1. 2. to read as follows: *These types of signs may be displayed for a time period not to exceed fifty-two (52) days per year, cumulative, and for no more than seven (7) consecutive days.* Trustee Rhone seconded the motion and all Trustees voted aye except Trustee Johnson, who abstained.

OLD BUSINESS:

CONSIDERATION OF AN AGREEMENT BETWEEN THE TOWN OF GRAND LAKE AND THE ROCKY MOUNTAIN REPERTORY THEATRE REGARDING WAIVING THE TOWN'S AFFORDABLE HOUSING FEES – Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that at a meeting held on January 11, 2010, the Town Board met with representatives of Rocky Mountain Repertory Theatre (RMRT) regarding RMRT's request for the Town's consideration of a waiver of the Affordable Housing Fees that will be owed to the Town in conjunction with RMRT's proposed theatre project; this fee is \$12,654. At that time, the Town Board seemed favorable to the waiver, providing an agreement was drawn up between the Town and RMRT. The Board directed staff to work with the Town Attorney and representatives of RMRT on drafting an agreement to be brought back before the Board. Staff has worked with Mr. Ed Bittle, Mr. Dick Lacouture and Town Attorney Krob on the development of a waiver. An agreement was drafted by Mr. Bittle and Mr. Lacouture and staff forwarded the agreement to Town Attorney Krob. Based on recommendations from Town Attorney Krob, the Board should specifically discuss:

1) Representatives of RMRT are not favorable to placing a covenant on the properties where the housing is currently being met, binding this agreement to those parcels. While staff remembers some members of the Board more favorable to this type of action, there was not unanimous consensus on the matter. Staff would like to inquire with the Board their willingness to not have this agreement specifically tied to the land in the form of a covenant. One solution to having some "teeth" to this agreement is outlined in Section 4 in that it is the responsibility of RMRT to notify the Town, within 30 days prior to taking action – such as the sale of the property, or RMRT is subject to paying the Fee that is being waived as per this agreement. Staff believes that while this arrangement would pose some risk to the Town, the Agreement could be placed into their property file and would be caught,

eventually, by the Town if it weren't followed, although it isn't likely that staff would know to look in the property file prior to these properties being sold. Thus, it really comes down to the Board's comfort level with RMRT — the relationship has been very good over the past few years, so how strongly do you feel about placing a covenant on the property to protect the Town's interests?

2) The Board also discussed the plausibility of a sunset on the Agreement.

2a) RMRT is proposing a sunset of the agreement of 15 years. Is the Town Board favorable to a sunset? As discussed, the value of having free employee housing to RMRT's staff/troupe outweighs the fee that is being waived, as there is a commitment to continue to provide low-cost/free housing as per this Agreement. As RMRT has been able to demonstrate, they have provided free housing for their troupe for decades and will continue to do so until 2025, at the least.

2b) If the Board is favorable to a sunset, Town Attorney Krob indicates the Board may want to require that at the end of the sunset, the Town collect the previously-waived fees from RMRT. Does the Town Board believe the fee should be required at the expiration of a proposed/agreed sunset?

Wittman noted that this matter was discussed at the afternoon workshop with representatives of RMRT and the Board was agreeable to not placing a covenant on the properties where the housing is currently being met and was agreeable to a sunset of 15 years as proposed by RMRT.

Staff is requesting the Town Board review the agreement and, in particular, the aforementioned items, and discuss with representatives of RMRT. Following discussion, the Board should move to direct staff to incorporate the discussed changes into the agreement, draft a resolution for the approval of the agreement and bring back before the Board at their next regularly-scheduled meeting. Wittman noted that Carol Wolff, Dot Weber and Judy Jensen were present representing RMRT.

Following brief discussion, Trustee Weydert moved to direct staff to incorporate the discussed changes into the agreement, draft a resolution for the approval of the agreement and bring back before the Board at their next regularly-scheduled meeting. Trustee Rhone seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION OF RESOLUTION NO. XX-2010, A RESOLUTION AUTHORIZING THE RELEASE OF AN APPROVED BUILDING PERMIT PRIOR TO COMPLIANCE WITH CHAPTER 12-2-8, PARKING REGULATIONS, FOR A PROPOSED THEATRE STRUCTURE TO BE LOCATED AT LOTS 6-8, BLOCK

12, TOWN OF GRAND LAKE - Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that staff has been working with Rocky Mountain Repertory Theatre (RMRT) on the review of a building permit application for a proposed 296-seat theatre to be located on Lots 6-8, Block 12, Town of Grand Lake, a/k/a 404 Vine Street. In discussions with the applicant, RMRT is unsure how the organization would best like to meet their parking requirements that are not met at the aforementioned property. While there is an option to meet the parking requirements by supplying the parking at an off-site location, RMRT may want to discuss with the Town Planning Commission and Board option(s) surrounding potentially seeking a variance to parking requirements by negotiating with the Town improving parking in an area closer to the proposed theatre. Staff has advised the applicant the release of the building permit is contingent on the applicant's ability to indicate on plans where all required parking will be met. Since the applicant has been able to demonstrate where required parking will be compliant with the Municipal Code and the permit review and construction phases will take some time for the applicant, staff is inquiring with the Board the Board's willingness to release the building permit and authorize the construction of the theatre, upon approval by the Grand County Building Department, contingent that no Certificate of Occupancy shall be granted until the applicant has provided all the necessary required parking spaces. This would give the applicant the time to discuss with the Town the location of the remainder of the parking spaces while construction of the theatre is occurring. Staff has drafted Resolution No. 6-2010, *A Resolution Authorizing the Release of an Approved Building Permit Prior to Compliance with Chapter 12-2-8, Parking Regulations, for a Proposed Theatre Structure to be Location at Lots 6-8, Block 12, Town of Grand Lake* for the Board's consideration. The Board should discuss this matter with the applicant and take action. If the Board is favorable, staff would recommend the board move to adopt Resolution No. 6-2010. Again, Wittman noted that Carol Wolff, Dot Weber and Judy Jensen were present representing RMRT.

Following brief discussion, Trustee Johnson moved to adopt Resolution No. 6-2010, a Resolution Authorizing the Release of an Approved Building Permit Prior to Compliance with Chapter 12-2-8, Parking Regulations, for a Proposed Theatre Structure to be Location at Lots 6-8, Block 12, Town of Grand Lake. Trustee Rhone seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION OF RESOLUTION NO. XX-2010, A RESOLUTION AUTHORIZING THE RELEASE OF AN APPROVED BUILDING PERMIT PRIOR TO COMPLIANCE WITH CHAPTER 10-1-8A, PLANT INVESTMENT FEES, FOR A PROPOSED THEATRE STRUCTURE TO BE LOCATED AT LOTS 6-8, BLOCK 12, TOWN OF GRAND LAKE - Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained

that on February 17, 2010, the Town received a request from Rocky Mountain Repertory Theatre (RMRT) for the Town to consider the construction of their new theatre, to be located at 404 Vine Street, an "addition to an existing structure" for the purposes of payment of plant investment fees of \$26,000 for a proposed 1.5" water connection. As the Municipal Code Section 10-1-8 indicates, "*The customer shall pay a water plant investment fee in the amount established by resolution adopted by the Board of Trustees...The Plant Investment Fee shall be paid in full prior to the issuance of any building permit for new construction. The Plant Investment Fee may be financed by the applicant through the Town for existing structures or additions to existing structures subject to the following minimum conditions:*

1. *Down payment of at least twenty percent (20%) of the total plant investment fee due.*
2. *Payment period of two (2) years maximum with payments to be made quarterly.*
3. *Floating interest rate to be charged on the unpaid balance of two (2) points above the Federal Funds Rate as published ten (10) days prior to the due date of the quarterly payment.*
4. *The applicant shall sign a promissory note for the amount being financed, said note to be of a form and manner approved by the Town.*
5. *Failure by the applicant to pay within thirty (30) days of the due date of any payment shall relieve the Town of any obligation to further serve the property, and said Plant Investment Fee shall be forfeited.*
6. *Nothing in this section shall limit the Town's ability to shut off water, file tax liens, or otherwise initiate legal action due to the applicant's failure to make payments to the Town within thirty (30) days of the due date of any payment."*

It is staff's interpretation of the code that this is not an addition to an existing structure yet an addition to an existing complex. While it may be interpreted by the Town that we could potentially be able to enter into an agreement of this nature regarding this project, staff feels it is most appropriate to amend, if the Board is favorable, the current code to allow for financing in this manner for projects similar to this and then enter into an agreement of this nature. To be able to aide RMRT in a timely review of their building permit application, staff is requesting the Board consider allowing the release of an approved building permit application to Grand County Building Department with RMRT having not met the required Plant Investment Fee of \$26,000 but conditional that no Certificate of Occupancy would be issued to the project until this has been resolved by RMRT and the Town. This would not only give time for the Town to amend and alter the code, if applicable, but also allow for the Town and RMRT to draw up an agreement for this type of water payment.

Staff has drafted Resolution No. 7-2010, a *Resolution Authorizing the Release of an Approved Building Permit Prior to Compliance with Chapter 10-1-8a, Plant Investment Fees, for a Proposed Theatre Structure to be Located at Lots 6-8, Block 12, Town of Grand Lake*. The Board should discuss this matter with representatives of RMRT and if the Board is favorable, staff recommends the Board move to adopt Resolution No. 7-2010. Again, Wittman noted that Carol Wolff, Dot Weber and Judy Jensen were present representing RMRT.

Following brief discussion, Trustee Rhone moved to adopt Resolution No. 7-2010, a *Resolution Authorizing the Release of an Approved Building Permit Prior to Compliance with Chapter 10-1-8a, Plant Investment Fees, for a Proposed Theatre Structure to be Located at Lots 6-8, Block 12, Town of Grand Lake* and to direct staff to work on an agreement and code modifications to bring back before the Town Board at a later date and time. Trustee Weydert seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A REQUEST FOR FEDERALLY APPROPRIATED FUNDS FOR AN ENVIRONMENTAL ASSESSMENT FOR THE EAST SHORE TRAIL AND TO AUTHORIZE THE MAYOR TO SIGN A LETTER OF SUPPORT FOR THE GRAND COUNTY BOARD OF COUNTY COMMISSIONER'S REQUEST - Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that Headwaters Trails Alliance (HTA) has been contacted by the International Mountain Biking Association (IMBA) regarding a potential request for a federal appropriation for the Environmental Assessment (EA) for the East Shore Trail. As a reminder, running along the east shores of Lake Granby and Shadow Mountain Lake, the East Shore Trail is being proposed to be (re)constructed to accommodate bicycles; the trail, when completed, will be a part of HTA's trail network – connecting the communities of the County by multi-use trails. As the Board may be aware, since the trail may be reconstructed in areas and the uses of the trail will be expanded, it is the understanding that an Environmental Assessment will be needed to consider the environmental impacts of this development. IMBA's request is for a local unit of government, the Town of Grand Lake, Grand County, etc., to write a letter of request for funds to be appropriated to the National Parks Service for the East Shore Trail's EA. Wittman stated that since the time that this memo was written, she said that she and Grand County's staff have been in discussions and Grand County's staff has agreed to take this request to the Grand County Board of County Commissioners (BOCC) on February 23. Staff is requesting the Town Board consider making a motion authorizing the Mayor to sign a letter of support for Grand County's federal appropriation request in the amount of \$180,000 for the East Shore Trail.

Following brief discussion, Trustee Johnson moved to authorize the Mayor to sign a letter of support for Grand County's federal appropriation request

RECORD OF PROCEEDINGS

in the amount of \$180,000 for the East Shore Trail. Trustee Rhone seconded the motion and all Trustees voted aye.

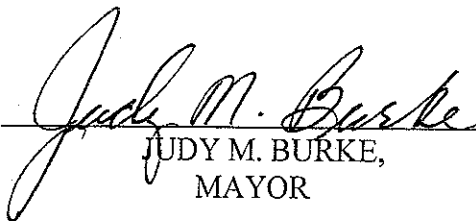
NEW BUSINESS:

CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A LETTER ADDRESSED TO SCOTT FRANKLIN, MOFFAT EIS PROJECT MANAGER, REGARDING MOFFAT TUNNEL DEIS – Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that this letter is the first stab at the Town's comments regarding the Moffat Tunnel DEIS. As of yet, staff is still awaiting additional comments from Shanna Koenig with NWCCOG-QQ, therefore, he asked the Board to consider these comments as a draft version until he has had a chance to solicit her feedback one more time. If the Board is satisfied with the comments, the staff recommendation is for the Board to make a motion authorizing the Mayor to sign Moffat Tunnel DEIS comments once staff has received additional information from Shanna Koenig with NWCCOG-QQ.

Trustee Lanzi moved to authorize the Mayor to sign Moffat Tunnel DEIS comments once staff has received additional information from Shanna Koenig with NWCCOG-QQ. Trustee Rhone seconded the motion and all Trustees voted aye.

CITIZEN PARTICIPATION: None.

ADJOURNMENT: Trustee Rhone moved to adjourn, seconded by Trustee Weydert. All Trustees voted aye, and the meeting was adjourned at 8:45 p.m., February 22, 2010.



JUDY M. BURKE,
MAYOR

ATTEST: 

RONDA KOLINSKE, CMC,
TOWN CLERK