

RECORD OF PROCEEDINGS

REGULAR MEETING
TOWN OF GRAND LAKE BOARD OF TRUSTEES
MONDAY, JULY 12, 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 7:30 p.m. at the Town Hall, 1026 Park Avenue.

PRESENT: Mayor Burke; Trustees Gibbons, Johnson, Lanzi, Lewis, Peterson, and Weydert; Town Manager Hale and Town Clerk Kolinske.

ABSENT: None.

APPROVAL OF MINUTES

May 10, 2010: Minutes were not available.

May 24, 2010: Minutes were not available.

June 28, 2010: Minutes were not available.

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

The 63rd Annual Buffalo Barbeque Celebration will include a pancake breakfast, a 5K run and walk, music, a parade, a barbeque, bingo, used book sale and many fun children's activities, the weekend of July 16 – 18.

There will be a Flea Market, Farmer's Market, Saturday, July 16 from 10 – 4 and the Library's Used Book Sale will be July 16 – 18 from 10 – 4 at the Grand Arts Center.

The Rocky Mountain Repertory Theatre is now presenting its third production of the 2010 Season, "*Thoroughly Modern Millie*", in the Community House.

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 issue as he holds a license for The Bears Den.

At 7:33 p.m. Trustee Johnson excused himself and left the room.

LIQUOR LICENSING AUTHORITY: CONSIDERATION OF RENEWAL OF THE HOTEL AND RESTAURANT LIQUOR LICENSE FOR TOMLYNSON, INC., D/B/A THE RAPIDS LODGE AND RESTAURANT – 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 concluded by saying that Tom Ludwig, President, was present.

Trustee Peterson moved to approve the renewal of the Hotel and Restaurant Liquor License for Tomlynson, Inc., d/b/a The Rapids Lodge. Trustee Weydert seconded the motion and all Trustees voted aye.

At 7:35 p.m. Trustee Johnson resumed his seat.

OLD BUSINESS:

None.

NEW BUSINESS:

CONSIDERATION OF A RIGHT-OF-WAY LICENSE AGREEMENT BETWEEN THE TOWN OF GRAND LAKE AND SOMBRERO STABLES – Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Board of Trustees directed staff to work with Sombrero Stables this year in order to draft an agreement between the two entities. The general feeling at that time was that while the Town hasn't had any specific issues with Sombrero, there needed to be better defined roles of both organizations, as Sombrero is one of the principal users of Thomasson Park, and has informal duties such as cleaning up after their horses, and sometimes helping out with trail maintenance, but no formal, written agreement has ever captured all of this. The draft agreement has been reviewed by Town Attorney Krob as well as representatives from Sombrero Stables and the Thomasson Family. All parties have reviewed the agreement; the only comments from the Thomason's were that they would like to be added as additional insured by Sombrero which has been done and is now reflected in the agreement. Sombrero has always picked up after their horses, and has helped to maintain the trails that they've used, so this agreement doesn't ask them to do anything that they haven't always done, it just puts it in writing. Furthermore, it identifies joint inspection of their trail system at the beginning and end of every season so both entities are on the same page. As for the Town, the Town has always put up the horse crossing signs and has painted the crosswalks for the horses, so there is no new obligation, other than the joint inspection. This agreement is being proposed as a one-year agreement, because it makes sense to try it out for a year and to make sure that it works for all parties involved. If all is well in a year, and depending upon the feeling of the Sombrero and Thomasson representatives, this agreement may be extended to a 3-5 year document. If the Board doesn't have any challenges, the staff recommendation is for the Board to enter into the Right-of-Way License and Agreement with Sombrero Stables, and

authorize the Mayor to sign the same. Hale noted that Cody Rex Walker and Josh Matheny were present.

During discussion with Mr. Walker, Town Manager Hale mentioned that a home owner along West Portal Road complained that the horses create a dip in the dirt alongside the pavement which he has to drive over to access his property.

Although it is not spelled out in the draft agreement, Mr. Walker agreed to keep the dip filled in.

Trustee Peterson then moved to enter into the Right-of-Way License and Agreement with Sombrero Stables, and authorize the Mayor to sign the same. Trustee Lewis seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION OF ORDINANCE NO. 9-2010, AN ORDINANCE REPEALING AND REPLACING CHAPTER 7, ARTICLE 8 OF THE TOWN OF GRAND LAKE MUNICIPAL CODE, ALSO KNOWN AS THE TRAFFIC CODE, TO REFLECT THE ADOPTION, BY REFERENCE, OF THE 2010 EDITION OF THE MODEL TRAFFIC CODE FOR COLORADO, AND REFLECTING CERTAIN DELETIONS AND ADDITIONS THERTO - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Town Attorney has requested the Town adopt the 2010 Edition of the Model Traffic Code for Colorado. The Town is currently using the 2009 Edition of the Model Traffic Code. The 2010 Edition is the most current version. The proposed ordinance was drafted by the Town Attorney. The Grand County Sheriff's Department was advised of the proposed ordinance and has not recommended any changes. Staff recommends that the Board adopt Ordinance No. 9-2010.

Trustee Lewis moved to adopt Ordinance No. 9-2010, an Ordinance Repealing and Replacing Chapter 7, Article 8 of the Town of Grand Lake Municipal Code, Also Known As the Traffic Code, to Reflect the Adoption, by Reference, of the 2010 Edition of the Model Traffic Code for Colorado, and Reflecting Certain Deletions and Additions Thereto. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION OF ACCEPTANCE OF AN AS-BUILT PLAT AND PARTIAL RELEASE OF SUBDIVISION IMPROVEMENT AGREEMENT FUNDS FOR SHADOW VIEW TERRACE PLANNED DEVELOPMENT - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Town has received an As-Built Plat from Mr. Brian Howard, developer of Shadow View Terrace Planned Development. Mr. Howard is seeking the Town Board's consideration of a three-tiered retaining wall as well

as for the utility improvements for the development. Mr. Howard is asking the Town for the release of \$22,208; \$12,520, \$980 less than the \$13,500 the Town is holding for the retaining wall as well as \$9,688 for the remaining of the utilities. As members of the Board may remember, Shadow View Terrace, a five-lot development located on Park Avenue, was approved in 2006. To date, two of the lots have been developed with single family residences owned by Burelson and Nassar. Included on the approved plat was a two-tiered retaining wall. As Municipal Code 12-9-6C indicates: *“Should the Town staff determine that substantial differences exist between the approved and recorded development plat/plan and the as-built plat...Town staff shall place the development in question on the agenda of the next Planning Commission Meeting for discussion and review....As-built plats that have been discussed by the Commission may be referred to the Board of Trustees for their review, should circumstances dictate, before signature by the Mayor.”* As the As-Built Plat indicates, the three-tiered retaining wall, located in the Park Avenue Right of Way – to be maintained by the HOA, may be considered a *substantial difference* and was brought before the Commission for the Commission’s recommendation to the Board. At the time of the Commission’s review, the retaining wall had not been planted and, therefore, the Commission’s recommendation included that the Board’s approval should be contingent on *“...the Board’s decision for the determination of the definition of “plantings” and the cost of those plantings, to be retained by the Town until the plantings have been completed.”* Since the time of the Planning Commission’s review, Mr. Howard has landscaped the two lower terraces of the three-tiered wall. As Mr. Howard’s Landscape Plan indicates, plantings include:

Quantity	Planting	Cost Per Plant	Total Cost
8	Arborvitae Emerald Green	\$19.50	\$156.00
4	Juniper Andorra	\$17.50	\$70.00
26	Juniper Sargenti Green	\$17.50	\$455.00
2	Juniper Blue Rug	\$19.50	\$39.00
40			\$720.00

The total cost for the landscape plan, including \$240 of labor, amounts to \$960.00. While none of these plantings are listed in the Town’s Urban Forestry Management section of the Municipal Code, none of the plants are listed as “Desirable Plantings.” Additionally, the area does have evidence of weeds. Staff encourages individual site visits for

greater understanding of the site conditions by all Board Members. According to the Arbor Day Foundation, the Arborvitae, while suitable for hardiness zones 2-7; the Town of Grand Lake falls into the 3-4 range, is "susceptible to damage in winter from ice and snow." The Juniper Andorra hardiness zone is 4-9; the Juniper Sargenti Green and the Juniper Blue Rug have hardiness zones of 3-9. While these plants may grow well in Grand Lake, staff does have concern of whether or not the plantings will survive. A recent site visit showed that many of the root balls of the plants were exposed above the soil level. Additionally, there is concern that a permanent irrigation system has not been installed. The developer indicated, by email on Tuesday June 8, 2010, that an auto sprinkler system was going to be added that week. Mr. Jack (Bud) Burelson, owner of Lot A, has indicated that use of his garden hose has been the means for irrigation to this point. As a reminder to the Board, no irrigation system is noted as a part of the Final Development Plan. While all applicable utilities have been installed and approved by the utility company, the utilities depicted are also not developed according to the Final Development Plan. While staff does not see this as something that is an issue, as the services are provided and installed, but the service lines are not depicted for those improvements that have been made. This is an oversight on the part of staff and will have to be a condition of approval. On July 1 and July 8 property owners within Shadow View Terrace discussed with Town Hall staff their misunderstanding with the development schedule and expressed their concerns for signing on the As-Built Plat, as certain improvements affect their properties. There are some items, not associated with approved plans, the As-Built, etc., that have come up with the development. While both property owners, Nassar and Burelson, have indicated they will sign on the As-Built plat, this has been contingent on Mr. Howard's willingness to meet items outlined in a mutual HOA agreement; this agreement indicates certain improvements and actions will be conducted by the end of July, 2010. While this seems like a moot point at this time, staff questions the Town's acceptance of an As-Built, contingent on their signatures, when property owners are not wholly satisfied with the developer and may change their mind if the agreements are not met. Additionally, execution of the As-Built Plat will need to occur for Mr. Howard and his surveyor. Prior to the Town's execution, however, the Town will need to have an executed mylar plat submitted, all with original signatures, as this is the new requirement for Grand County Recorder's Office for all oversized plats. The developer has not provided an affirmation that all improvements have been paid for, as this is a requirement of the SIA, staff recommends making the release contingent on this certification. Lastly, the outstanding Letter of Credit (LOC) is set to expire on July 28, 2010. Staff has advised the applicant of this and has not received word that the LOC will be updated by the deadline date. Allowing a LOC to expire is not only a direct violation of the Subdivision Improvement Agreement; it is also places the Town in a

position where securities may not be held if the LOC expires. The Board should discuss:

1. The Board's willingness to accept a three-tiered retaining wall (as opposed to a two-tiered wall); and
2. The Board's willingness to accept the landscape plan (including all planting suitability); and
3. The Board's willingness to accept the landscape plan without permanent irrigation (despite the Final Development Plan not having irrigation); and
4. The Board's willingness to authorize the mayor to sign the As-Built and release funds of \$22,208 or \$23,188 (the total amount for all utilities, the retaining wall and the plantings).

Once discussion has taken place and if the Board is favorable, the Board can move to accept the As-Built Plat for the retaining wall and utilities, authorize the mayor to execute the As-Built Plat, and to direct the Town manager to authorize the release of \$22,208 or \$23,188 for the improvements in association with the Shadow View Terrace Planned Development, contingent, in addition to any other conditions the Board deems necessary, on:

The Town's receipt of an updated Letter of Credit; and

The Town's receipt of an affirmation that all improvements have been paid for; and

The Town's receipt of an executed mylar As-Built plat with the amendment of existing service lines to be added to the plat.

The Board may also elect to continue consideration until the aforementioned conditions, as well as any other items discussed, have been met by the Developer.

Brian Howard, #7 Shoreline Way, was recognized from the audience. He further explained his request while giving a brief Power Point presentation.

During discussion, the consensus of the Board was to accept a three-tiered retaining wall as opposed to a two-tiered, to accept the landscaping as currently planted and to accept the irrigation plan proposed by Mr. Howard. Howard had explained to the Board that he will install a timer system to the garden hose currently attached to Jack (Bud) Burelson's property, which is Lot A. The Board also discussed holding back funds from the release for the replacement of any plantings that do not survive by September 1, 2011.

Following discussion, Trustee Lewis moved to accept the As-Built Plat for the retaining wall and utilities, authorize the Mayor to execute the As-Built Plat, and to direct the Town Manager to authorize the release of

\$21,688.00, which is the \$23,188.00 less \$1,500.00 that the Town will hold back for plantings, for the improvements in association with the Shadow View Terrace Planned Development, contingent upon:

1. The Town's receipt of an updated Letter of Credit for the remaining balance.
2. The Town's receipt of an affirmation that all improvements have been paid for.
3. The Town's receipt of an executed mylar As-Built Plat with the amendment of existing service lines to be added to the plat.

Lewis also added that any plantings that do not survive by September 1, 2011 be replaced with larger plantings that are listed in the Town's Urban Forestry Management section of the Municipal Code. Furthermore, if numerous plantings die and must be replaced, it will be with the understanding that it will not be on a one for one basis as the new larger plants will take up more space and be more expensive for the developer. Trustee Weydert seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN THE ENGAGEMENT LETTER WITH BONDI & CO. LLC FOR THE DECEMBER 31, 2010 AUDIT - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Town's auditor, Bondi & Co., LLC, has submitted a letter of engagement outlining the terms and objectives as well as the nature and limitation of services to be provided in connection with the 2010 audit. The fee for the December 31, 2010 audit engagement is estimated to be about \$13,500 based on the understanding that Gay Dzinski, Town Treasurer, will be preparing the financial statements this year. If Bondi were to prepare the statements, the cost would be approximately \$15,750. Both estimates are based on the assumption that no unexpected circumstances will be encountered during the audit that would require significant additional time. Out-of-pocket expenses will be billed in addition to the fee. At this time, Dzinski does not anticipate meeting the federal threshold (\$300,000) that would trigger a Circular A-133 audit. Staff recommends that the Board of Trustees authorize the Mayor to sign the Engagement Letter with Bondi & Co. LLC for the December 31, 2010 audit.

Trustee Johnson moved to authorize the Mayor to sign the Engagement Letter with Bondi & Co. LLC for the December 31, 2010 audit. Trustee Lewis seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION TO SET A PUBLIC HEARING TO CONSIDER ORDINANCE NO. X-2010, AN ORDINANCE AMENDING CHAPTER 7 OF THE GRAND LAKE TOWN CODE BY THE ADDITION OF A NEW ARTICLE 5, PROHIBITING CERTAIN USES RELATING TO MEDICAL MARIJUANA -

Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Board was updated at its first meeting in June that the State legislature adopted two bills to address medical marijuana, summarized as follows:

The first bill adopted is HB 10-109, regulating patients to undergo a physical examination by a M.D. or D.O. to receive a recommendation, not a prescription, for medical marijuana. HB 109 goes further to separate the relationship between the doctor and the marijuana center, prohibiting any compensation going from the dispensary to the doctor. The second and much more significant bill was HB 10-1284, concerning the regulation of medical marijuana. This bill managed to work through the constitutional protections for medical marijuana while preserving the local land use authority in a few ways. First, if someone has five or fewer patients that they provide for, they are considered a primary caregiver as outlined in the constitution, and will not be regulated in any way. If an operation would like to provide marijuana to six or more patients, then they will be considered a medical marijuana center, the term dispensary goes away. MMC's can and will be regulated as follows:

1. Most importantly, any local jurisdiction will have the authority to allow or prohibit these centers, and this option can either be exercised by the Board through an ordinance, or by the voters.
2. If the Town does allow this use, we can license these much as we currently do for liquor license establishments. Regardless, there is broad latitude for regulation, including increased distances from schools for example, or even an added local distance requirement from say a race cart track. Local fees can be added to cover the costs of processing the application; the hours of operation can be restricted, etc.
3. This bill places a de facto moratorium on operations not already in place by July 1, 2010 until July 1, 2011. Any dispensary currently in operation will be required to file for a state license and pay the license fee no later than August 1, 2010, and all MMC's must certify that they grow at least 70% of their product no later than September 1, 2010.

As staff explained in June, the Board now has the authority to outright ban MMC's in Town, to allow the use with or without regulation, etc, or to refer this decision to the voters. After a good discussion at that meeting, the Board directed staff to bring back a draft ordinance that will outright prohibit this use in Town. For your information, it looks as though Grand County, Granby and Fraser will refer this question to the voters, while Winter Park and Kremmling's current bans may be kept in place without any additional consideration to the voters. If the Board continues to prefer this direction, then staff recommends that we set this matter for a Public Hearing on August 9, 2010.

RECORD OF PROCEEDINGS

Following brief discussion, Trustee Peterson moved to set a Public Hearing for August 9, 2010 to consider an ordinance amending Chapter 7 of the Grand Lake Town Code by the addition of a new Article 5, prohibiting certain uses relating to medical marijuana. Trustee Johnson seconded the motion and all Trustees voted aye.

ACCOUNTS PAYABLE

June, 2010:


Trustee Lewis moved to examine the Accounts Payable and Prepaid for all Funds for the Town of Grand Lake. Trustee Peterson seconded the motion and all Trustees voted aye. Trustee Lewis then moved to approve the Accounts Payable and Prepaid for all Funds for the Town of Grand Lake. Trustee Peterson seconded the motion and all Trustees voted aye.

CITIZEN PARTICIPATION: Peter Ralph, 403 County Road 371, Parshall, CO, was recognized from the audience. He introduced himself to the Board and stated that he is a Democratic candidate for County Commissioner, District 3. He explained a little bit about himself and his issues and told the Board that he would like to come back and talk to the Board about their issues.


Trustee Benton Johnson, 612 Grand Avenue, was then recognized by the Chair as a citizen and owner of The Bears Den. He asked the Board about conducting a free concert consisting of three bands at the Grand Lake Hardware Store on July 31st to raise funds for the Town to replant trees donated by Boulder County and to consider waiving the 30 day requirement for a Special Events Permit. The consensus of the Board was that they were okay with the idea, they would waive the 30 day requirement for submission of a Special Events Permit and would consider approval of the permit at their next regularly scheduled meeting to be held on July 26, 2010.

ADJOURNMENT:

Trustee Peterson moved to adjourn, seconded by Trustee Lewis. All Trustees voted aye, and the meeting was adjourned at 8:48 p.m., July 12, 2010.



JUDY M. BURKE,
MAYOR

ATTEST: 

RONDA KOLINSKE, CMC,
TOWN CLERK