

RECORD OF PROCEEDINGS

REGULAR MEETING
TOWN OF GRAND LAKE BOARD OF TRUSTEES
MONDAY, JULY 25, 2011 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.

ROLL CALL
PRESENT:

Mayor Burke; Mayor Pro-Tem Peterson; Trustees Johnson, Lanzi, Lewis, Ludwig, and Weydert; Town Manager Hale, Town Clerk Kolinske and Town Planner Wittman.

ABSENT: Mayor Burke announced that Trustee Weydert was absent due to vacation. Trustee Peterson moved to excuse Trustee Weydert's absence. Trustee Johnson seconded the motion and all Trustees voted aye.

APPROVAL OF MINUTES
June 13, 2011:

Trustee Johnson moved to approve the minutes of the June 13, 2011 regular meeting as written, seconded by Trustee Peterson. All Trustees voted aye except Mayor Burke, who abstained.

ANNOUNCEMENTS:

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

Mayor Burke announced that the Rocky Mountain Repertory Theatre is now presenting its third production of the 2011 Season, "*Chess the Musical*", in their new facility.

Mayor Burke announced that Music in the Park, sponsored by the Grand Lake Chamber and the Grand Arts Council, will present "*Jubilant Bridge*" on July 27th in Town Square beginning at 5:30 p.m.

Mayor Burke announced that the Grand Lake Yacht Club Regatta will be held July 30 – August 7.

Mayor Burke announced that the Grand Lake Historical Society presents "*History Day*" on August 6, 2011 from 1 – 4 p.m. at the Kauffman House Museum. Costumed characters bring history alive.

Mayor Burke then announced that the 10th Annual Grand CraftFest, an arts and crafts fair, sponsored by the Grand Lake Metro. Rec. District will be held August 6 and 7 in Town Square.

PRESENTATIONS:

None.

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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.

No Trustees had a conflict of interest with any items on the agenda.

REPORTS: SALES TAX CASH FLOW REPORT FOR JULY 2011:

Mayor Burke asked Town Clerk Kolinske to present the sales tax cash flow report. Kolinske reported that the amount of revenue received in July 2011 for the month of May is \$36,023. This amount is 3.82% above what was received through July 2010.

REPORTS: FINANCIAL REPORT FOR JUNE 2011:

Mayor Burke asked Financial Trustee Peterson to present the Financial Report for June 2011. Peterson reported that General Fund expenditures through the end of June totaled \$504,935.44 or 34.4% of budget. He said the Water Fund expenditures for the same period totaled \$169,226.87 or 34.5% of budget, the Marina Fund expenditures totaled \$95,348.00 or 28.6% of budget and the PAYT Fund expenditures totaled \$1,225.00 or 19.1% of budget.

LIQUOR LICENSING AUTHORITY: CONSIDERATION OF A SPECIAL EVENTS LIQUOR PERMIT APPLICATION FROM THE GRAND ARTS COUNCIL FOR "COWBOY CABARET" A FUNDRAISING EVENT FOR MIKE SMITH – Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske explained that an application for a Special Events Liquor Permit has been received, with the appropriate state fee, certificate of good corporate standing, and floor diagram, from the Grand Arts Council. The request is to sell malt, vinous and spirituous liquor by the drink for consumption on the premises only. The requested date is Sunday, August 21, 2011 from 3:00 to 10:30 p.m. for "Cowboy Cabaret" a fundraising event for Mike Smith. The proposed location is the Grand Arts Center at 913 Park Avenue. It has been the most recent procedure of this Board to receive the application and then schedule consideration of approval of the permit as a regular item of business at the following meeting. Although a Public Hearing is not required by statute, the Board may choose to set one. The premises are required by statute to be posted for at least 10 days prior to approval of the permit. Approval of the requested permit may be scheduled for the August 8th regular Board meeting, as either a Public Hearing or regular item of business. Kolinske noted that Jim Cervenka, Treasurer, was present representing the Arts Council.

Following brief discussion, Trustee Peterson moved to act on this request as a regular item of business at the August 8, 2011 Board meeting. Trustee Lewis seconded the motion, and all Trustees voted aye.

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OLD BUSINESS:

CONSIDERATION OF RESOLUTION NO. 14-2011, A RESOLUTION ESTABLISHING MUNICIPAL INSURANCE REQUIREMENTS FOR THE TOWN OF GRAND LAKE – Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that the Town Attorney has been working with CIRSA, the Town’s insurance company, to develop requirements for insurance to further guide the Town when entering into contracts or for when individuals are working on municipal lands as well as to ensure the Town is completely protected if an accident should occur. Town Attorney Krob has drafted this resolution for the Board’s consideration. Staff recommends the Board discuss, if desired, the draft resolution and once all desired discussion has taken place, staff recommends the Board adopt Resolution No. 14-2011.

Following brief discussion, Trustee Johnson moved to adopt Resolution No. 14-2011, a Resolution Establishing Municipal Insurance Requirements for the Town of Grand Lake. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A DEED RESTRICTION FOR LOTS 1-3 AND 14-16, BLOCK 13, TOWN OF GRAND LAKE, PROPERTY OWNED BY KRYSZYNA SOBON AND KNOWN AS THE SPIRIT LAKE LODGE - Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that the Town of Grand Lake received a building permit application from Krystyna Sobon, owner of Spirit Lake Lodge, located at Lots 14-16, Block 13, Town of Grand Lake, for the permanent construction of a gazebo on Lots 1-3, Block 13, Town of Grand Lake. The gazebo, and Accessory Use, is desired for use in conjunction with the motel, a Primary Use, located on the lots across the Block 13 alleyway; the Town of Grand Lake does not permit Accessory Uses when there is no Primary Use on the same property. When an Accessory Use is proposed for a lot which neighbors a lot with a Primary Use, the Town has the property owner enter into a Lot Line Agreement indicating the two lots are to remain one building site but that the agreement may be removed if all the provisions of the Zoning Regulations have been met. In discussions with the County Assessor’s Office, the Town would have to vacate the Block 13 alleyway to enter into a Lot Line Agreement with the property owner. Given that this alleyway provides the only access for properties to the west of Spirit Lake Lodge, Town staff determined this might not be a suitable request for the property owner to make. Town staff worked with Town Attorney Krob to create a Deed Restriction regarding the use of Lots 1-3, Block 13, Town of Grand Lake. The proposed Deed Restriction binds the Accessory Uses on Lots 1-3 to the Primary Uses of Lots 14-16. It further states that if any or all lots are sold, not in conjunction with one another, then Lots 1-3 must come into compliance with the Town’s Zoning Regulations. Ms. Sobon has received a copy of the Deed Restriction and is willing to execute it upon the Board’s approval. If the Board is favorable to accepting the Deed

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Restriction, it will be recorded against the property. There is one thing, however, that must be discussed by the Town Board prior to the execution and recording of this document. In 1990 the Town approved a Conditional Use for the garage that is located on Lot 1, Block 13, Town of Grand Lake. Garages are considered Accessory Uses, which is why it was conditionally approved in the past; though the Town Board minutes do not reflect this sentiment, the Planning Commission's recommendation for approval of the Conditional Use was on the basis that the garage, for repair and storage of snowmobiles, was incidental to the uses located on Lots 14-16 of the same block. The Board must determine if they would like to include this Accessory Use as a part of the Deed Restriction. As it is written, all Accessory Uses must come into compliance with the Zoning Regulations of the Town if the lots are sold, conveyed, etc. separately from one another; this would include the garage, as well. Staff would like the Board's determination if they would like to continue to see the conditionally-approved, Accessory Use Garage to be a part of the Accessory Uses outlined in the Deed Restriction. Town staff will have to alter the draft restriction prior to execution depending on what the Board is amenable to. If the Board is favorable to accepting this Deed Restriction, the Board may:

1. Indicate they would not like to see the garage, an Accessory Use to the Primary Use, as a part of the Accessory Uses outlined in the Deed Restriction that must be removed prior to the sale of Lots 14-16, if the sale is not done in conjunction with the sale of Lots 1-3, as this was a previously-approved Conditional Use and runs with the land in perpetuity; or
2. Indicate they would like to see the garage specifically outlined as one of the Accessory Uses and that it must come into compliance with the Town's Zoning Regulations prior to the sale of Lots 14-16, if the sale is not done in conjunction with the sale of Lots 1-3.

Staff would like the Board to strongly consider that if the Board was to not bind the garage as part of the Accessory Uses that must be removed, the Town could end up with a lot that contains another non-conforming structure given there is no Primary Use to Lot 1, Block 13, Town of Grand Lake. Based on the Board's discussion, the Board should move to either:

1. Not accept the Deed Restriction and deny the building permit for Lots 1-3, Block 13, Town of Grand Lake on the basis that no Primary Use exists on the same lot; or
2. Accept the Deed Restriction, direct staff to amend the restriction to reflect the desire of the Town Board in regards to the garage located on Lot 1, Block 13, Town of Grand Lake, and authorize the Mayor to sign the Deed Restriction.

Wittman noted that Michael Sobon was present representing his mother, Krystyna Sobon.

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Following brief discussion, Trustee Lewis moved to authorize the Mayor to sign the Deed Restriction for Lots 1-3 and 14-16, Block 13, Town of Grand Lake, property owned by Krystyna Sobon and known as Spirit Lake Lodge which includes the garage. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION OF RESOLUTION NO. 15-2011, A RESOLUTION UPDATING THE COMBINED FEE AND DEPOSIT SCHEDULE FOR THE TOWN OF GRAND LAKE, COLORADO - Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that the Town has combined all fees and deposits into one resolution for annual updating and revising; this was designed to easily provide staff and applicants with a clear understanding of all fees and deposits. In May, 2011 the Town Board updated the schedule to reflect changes that were made when Municipal Code changes were made; staff missed one thing that should have been addressed by the Board – Encroachment Agreements. The Board authorized Town staff to enter into Encroachment Agreements for Minor Encroachments, at-grade improvements such as landscaping, drainage and driveways. Given this, a fee for these types of agreements was not discussed. In discussions at Town Hall, these types of agreements should not only take far less time for Town staff to review, as they are not above grade and should not affect the Public Works Department as severely as above-grade improvements, but, too, do not necessarily need to be recorded against a property. Given these two things the Town's rate of \$50/hr./staff should be minimal cost and the recording fees would not be necessary. Staff is proposing a \$50 fee to cover the costs associated with these agreements. Staff has drafted a resolution based on this. The Board should discuss whether they think a \$50 fee for encroachments should be acceptable or whether they would like to amend the attachment to the resolution. After all discussion has taken place, the Board should move to direct staff to amend the resolution, if applicable and make a motion on the matter. Staff recommends the Board move to adopt Resolution No. 15-2011.

Following brief discussion, Trustee Johnson moved to adopt Resolution No. 15-2011, a Resolution Updating the Combined Fee and Deposit Schedule for the Town of Grand Lake, Colorado. Trustee Lewis seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION OF RESOLUTION NO. 16-2011, A RESOLUTION UPHOLDING THE PLANNING COMMISSION'S RECOMMENDATION FOR THE TOWN OF GRAND LAKE TO REQUIRE IMPLEMENTATION OF THE GRAND CAMP STORMWATER MANAGEMENT PLAN (AMENDED MAY, 2011) AT 600 MARY DRIVE

AND

CONSIDERATION OF RESOLUTION NO. 17-2011, A RESOLUTION RELEASING CERTAIN FUNDS IN ASSOCIATION WITH IMPROVEMENTS ASSOCIATED WITH GRAND CAMP, A COMMERCIAL SUBDIVISION LOCATED AT 600 MARY DRIVE, CONTINGENT ON CONDITION SET FORTH WITHIN - Mayor Burke asked Town Planner Wittman to present this matter to the Board. Wittman explained that on June 2, 2011, the Town of Grand Lake received Certification of Partial Completion, from Mr. John Enochs, for the construction of infrastructure for Grand Camp, a commercial subdivision located at 600 Mary Drive – at the intersection of Mary Drive and US Highway 34. The request is not only for those items that have been 100% completed but, too for those items that are partially completed and for materials that have been purchased and have not yet been utilized. These items are currently sitting onsite. The total request for a Letter of Credit (LOC) reduction is \$89,889.92. While the Board may have been able to hear this request in June of this year, staff wanted to bring certain items before the Planning Commission prior to the release of funds; the Planning Commission held a Planning Commission Special Review of the development at their last regularly-scheduled meeting held on July 20th. Staff would like to note contact with the developer was attempted on June 7th for determination of whether the June 15th Planning Commission meeting, and, subsequently, the June 27th Board of Trustees meeting, would work for the developer but staff did not hear from the developer. Staff scheduled the matter for the July 20th Planning Commission as the first Planning Commission meeting in July was cancelled. Additionally, at the same time of submittal of the LOC reduction request, the developer submitted an amended Stormwater Management Plan (SWMP). It was indicated to staff that in order for the developer to seek financing for this “interim” SWMP, that the developer would need the Town to require the SWMP. Staff brought this matter before the Commission; they recommended the Town Board approval of the Amended SWMP and indicated the Board should require this as part of the development due to the current site conditions. Staff has drafted Resolution No. 16-2011 for the Board’s consideration at this meeting.

As indicated, the request outlines a matrix of those items that have been 100% completed, Water Service Lines, 8” Gravity Sewer Line, 15” Storm Sewer, and 18” Storm Sewer = \$28,490.00, as well as those items which have been partially completed, 8” Water Line, Fire hydrants, Sewer Lift Station, and 24” Storm Sewer = \$36,621.12. Additionally, the request indicates certain materials, parts for the 8” Water Line, 3” Force Main, and the 24” Storm Sewer = \$24,778.80, stored onsite, have been purchased. The Grand Camp Subdivision Improvement Agreement (SIA) states:

“Developer shall have the right ... to provide Town with a certification stamped by a professional engineer licensed in the State of Colorado (a

“Certification of Partial Completion”) stating that certain of the Developer Improvements (the “Completed Improvements”) have been installed in accordance with the Construction Drawings. Upon review and approval of the Certificate of Partial Completion by the Town (which may, if the Town deems necessary or appropriate, include review by the Town’s engineers and other agents or employees of the Town... the Town shall promptly submit ... documentation as is required to reduce the amount thereof by an amount equal to 85% of the estimated cost of the Completed Improvements....”

The Developer shall ensure that all contractors and/or subcontractors employed in connection with construction or installation of the Improvements shall be licensed, to the extent such licensing is required, before any work on the Improvements is commenced.”

Staff does have certification payments have been made on all the aforementioned items and has discussed this item with the developer’s contractor – ATH Specialties. The SIA further states:

“The Developer shall submit a Request For Initial Acceptance to the Town upon completion of the improvements or one or more of the components set forth in Exhibit B. Such request shall include a Certification of Completion, a complete list of those contractors who are owed money for the Improvements and "as built" drawings, The Town shall inspect such Improvements ... Upon a finding of satisfactory completion of one or more of the components ... the Town shall issue a Certificate of Initial Acceptance to the Developer, ... and will direct the escrow agent to pay the identified contractors in the specified amounts from the Performance Guarantee but retaining 15% as warranty security unless Developer has first provided a Warranty Performance Guarantee in a form that has been approved by the Town, in which event the Town will direct the escrow agent to pay without the 15% retention. The warranty shall not begin to run as to any portion of the Improvements until all Improvements have been initially accepted by the Town.”

To the date of memo development, a “Request for Initial Acceptance” has not been submitted to the Town and, therefore, the Town has not formally accepted these improvements. There is no warranty running with these improvements.

The Town accepted an Amendment to the Irrevocable Standby LOC in February of this year; this was an extension of the original LOC, accepted in February, 2010. The original LOC was accepted by the Town in the amount of \$293,122.48 which reflects the total cost of items outlined in the Engineer’s Opinion of Probable Cost, dated 1/23/2009. Staff must note that, as per the Subdivision Improvement Agreement, “The Developer shall furnish the Town...the Performance Guarantee...not less than on hundred twenty-five percent (125%) of the total estimated cost of the improvements”;

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the Town accepted a LOC for the exact amount of the estimated probable cost. If the Town would have accepted the additional 25% (\$73,280.62), the LOC would have been a total of \$366,403.10.

There are two items for the Board's consideration:

- Consideration of Resolution No. 16-2011: A Resolution Upholding the Planning Commission's Recommendation for the Town of Grand Lake to Require Implementation of the Grand Camp Stormwater Management Plan Amended May, 2011, at 600 Mary Drive; and
- Consideration of Resolution No. 17-2011: A Resolution Releasing Certain Funds In Association with Improvements Associated with Grand Camp, a Commercial Subdivision Located at 600 Mary Drive, Contingent on Conditions Set Forth Within

As indicated, the former resolution was based on the Planning Commission's recommendation. Staff drafted this, too, with discussions of the Commission in mind. Particularly, as noted by Commissioner Shockey, "Phase II – Immediately After Overlot Grading is Complete" indicates "If construction is to be delayed for more than 30 days, stabilization is to be achieved by both planting perennial grass seed and applying straw/hay mulch or planting a temporary cover crop. After one growing season, perennial grass seed is to be planted amongst any temporary cover crop residue if continued delay in construction". Given this, staff has incorporated into the resolution notation that while this is not a requirement of the SIA, it may be subject to various provisions of the SIA, and that a 30-day deadline, from the date of Board approval of this resolution, for the implementation of the plan must be met. Given this, staff believes the Town will have met certain provisions of the SIA so that the Town may draw on the Performance Guarantee to achieve site stability. The SIA reads:

"In the event the Developer fails to complete the Improvements ... the Town may... proceed with restoring or completing some or all of the remaining portions of the Improvements to a condition satisfactory, in the sole discretion of the Town Board of Trustees, to the health, safety and welfare of the Town. The Town shall be entitled to draw on the Performance Guarantee in order to accomplish such restoration and/or completion. The Town must give the Developer at least Thirty (30) days prior written notice of its intent to draw on the Performance Guarantee in order to restore or complete all or any portion of the Project. If the Town completes some or all of the Improvements, then the Town Board of Trustees shall have full discretion to determine the rules and regulations governing use of the Improvements and any fees to be charged for or associated with such use."

The second item for the Board's consideration is Resolution No. 17-2011: A Resolution Releasing Certain Funds in Association with Improvements Associated with Grand Camp, a Commercial Subdivision Located at 600 Mary Drive, Contingent on Conditions Set Forth Within. Staff has drafted

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the Resolution indicating a conditional release of \$19,677.75. This number was based on the following:

- A \$65,111.12 request for those items that are 100% complete (\$28,490) and those that are partially complete (\$36,621.12), minus a 15% contingency for these items, equals \$55,344.45.
- When staff configures \$55,344.45 out of the Letter of Credit, a remaining balance of \$237,778.03 would exist.
- If the remaining balance, of \$237,778.03, was to have an additional 15% contingency, as it was originally a requirement to have a Performance Guarantee of 125% of the total estimate of costs, then the total amount the Town should be retaining would be \$273,444.73.
- This retainage would include 15% of the total cost of those improvements made to date as well as 115% of the total cost of those improvements yet to be installed and completed.

Staff drafted Resolution No. 17-2011 based on what would be best for the Town of Grand Lake in the event the Town did have to implement the provisions of the SIA, to, in essence, make all of the improvements outlined in the SIA. Staff recommends the Board individually discuss Resolution No. 15-2011 and 16-2011 with the developer for Board and Developer understanding of the two resolutions. If the Board is favorable to the two resolutions the Board should move, in separate motions, to:

1. Adopt Resolution No. 16-2011: A Resolution Upholding the Planning Commission's Recommendation for the Town of Grand Lake to Require Implementation of the Grand Camp Stormwater Management Plan Amended May, 2011, at 600 Mary Drive; and then to
2. Adopt Resolution No. 17-2011: A Resolution Releasing Certain Funds In Association with Improvements Associated with Grand Camp, a Commercial Subdivision Located at 600 Mary Drive, Contingent on Conditions Set Forth Within.

Staff strongly recommends the Board uphold the Planning Commission's recommendation and adopt Resolution 16-2011. Staff has no recommendation for the Board regarding Resolution No. 17-2011. Wittman noted that Morris King, Developer, was present.

Morris King, 92 County Road 452, was recognized from the audience and said that he would be glad to answer questions that anyone might have.

Trustee Johnson asked Morris what his plans are since nothing is happening. Morris responded by saying that as of now he will work with his bank to

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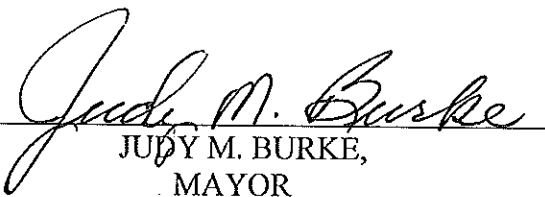
continue to move forward on the project. The bank has stated that they do not want any progress at this time. He said that the bank has not given him any indication that they are backing out, they are probably just waiting to see if the economy turns around.

Trustee Peterson moved to adopt Resolution No. 16-2011, a Resolution Upholding the Planning Commission's Recommendation for the Town of Grand Lake to Require Implementation of the Grand Camp Stormwater Management Plan Amended May, 2011, at 600 Mary Drive seconded by Trustee Lewis. During discussion, Morris said that he understands that he has thirty days from the date of approval of the resolution to complete but said that he needs to obtain bank approval before he can begin. Following discussion the Board agreed to hold the thirty days as drafted. The motion then passed when all Trustees voted aye.

Trustee Lewis moved to adopt Resolution No. 17-2011, a Resolution Releasing Certain Funds in Association with Improvements Associated with Grand Camp, a Commercial Subdivision Located at 600 Mary Drive, Contingent on Conditions Set Forth Within. Trustee Peterson seconded the motion and all Trustees voted aye.

CITIZEN PARTICIPATION: None.

ADJOURNMENT: Trustee Johnson moved to adjourn, seconded by Trustee Peterson. All Trustees voted aye, and the meeting was adjourned at 8:22 p.m., July 25, 2011.


JUDY M. BURKE,
MAYOR

ATTEST: 
RONDA KOLINSKE, CMC,
TOWN CLERK