

RECORD OF PROCEEDINGS

REGULAR MEETING
TOWN OF GRAND LAKE BOARD OF TRUSTEES
MONDAY, AUGUST 8, 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, and Ludwig; Town Manager Hale, and Town Clerk Kolinske.

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

APPROVAL OF MINUTES

June 27, 2011: Trustee Johnson moved to approve the minutes of the June 27, 2011 regular meeting as written. Trustee Peterson seconded the motion and all Trustees voted aye.

July 11, 2011: Trustee Peterson moved to approve the minutes of the July 11, 2011 regular meeting as written. Trustee Lanzi 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 the Heart of the Mountain Hospice open water swim fundraising event will be held August 13th. Participants will swim from Point Park to the Town beach.

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 Ludwig announced that he had a conflict with the Local Liquor Licensing issues as he holds a license for The Rapids Lodge and Restaurant.

OLD BUSINESS: None.

LIQUOR LICENSING AUTHORITY: CONSIDERATION OF APPROVAL FOR A SPECIAL EVENTS LIQUOR PERMIT FOR THE GRAND ARTS COUNCIL'S 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. Public notice was posted on the premises on July 26, 2011 and attested to by Grand County Sheriff Deputy Payne. The Grand County Sheriff’s Department reviewed the application and found no adverse information which would affect this permit. She then noted that Jim Cervenka, Treasurer, and Kevin Leppke were present on behalf of the Arts Council.

Following brief discussion, Trustee Peterson moved to approve the Special Events Liquor Permit for the Grand Arts Council’s *Cowboy Cabaret*, a fundraising event for Mike Smith. Trustee Johnson seconded the motion, and all Trustees voted aye.

At 7:43 Trustee Ludwig excused himself and left the room.

LIQUOR LICENSING AUTHORITY: **CONSIDERATION TO SET A SHOW CAUSE HEARING REGARDING THE HOTEL AND RESTAURANT LIQUOR LICENSE ISSUED TO EL PACIFICO, LLC, D/B/A EL PACIFICO** - Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske explained that on June 28, 2011 she was notified by the Sheriff’s office of an incident that occurred on June 17, 2011 at El Pacifico. At this evening’s meeting the Board of Trustees, acting as the Local Liquor Licensing Authority, will need to decide whether to set this matter for a hearing to determine whether El Pacifico’s liquor license should be suspended or revoked. She said that the Board can take one of two actions:

1. The Board can set this matter for a Show Cause Hearing to be held on August 22, 2011, to determine whether the license should be suspended or revoked.
2. The Board can decide to not have a Show Cause Hearing for the reason that this is not something this Board has done in the past.

This is a quasi-judicial matter. Therefore, other than to decide whether the nature of the alleged violations is sufficient to necessitate a Show Cause Hearing, the Board should refrain from discussing the validity or merits of the allegations or any possible penalties it may impose if it

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concludes the violations have occurred until the time of the Show Cause Hearing.

Employee Bret Martin completed TIPS Training on June 15, 2011 and on June 17, 2011 sold to a minor during a compliance check. Martin was summonsed to appear in court on July 19, 2011 where, according to the Court Clerk, he plead guilty, was given a 1 year deferred judgment, he must complete 24 hours of community service by July 1, 2012 and must make a charitable contribution in the amount of \$75.00. There was no fine but he paid \$184.50 in court costs and surcharges. Kolinske noted that Lt. Grinstead, Jesus Varela and Maria Rios, owners, were present.

Lt. Grinstead was recognized by the Chair. He introduced himself as Lt. Duane "Buddy" Grinstead. He said that employers can teach their employees right from wrong but what they do on their own accord is an action of their own. This employee has paid a penalty for his actions. He said that what concerns him the most is, according to the deputies, on the day that this happened following the incident that occurred, the owner, Jesus Varela, was behind the bar on the phone with what they believe to be was other establishments letting them know that there was an underage operation going on in Town. Because of this, an operation such as this is only good for one or two establishments and the cost of these investigations are going up due to having to make repeated trips to Grand Lake. He said that it is disheartening to know that businesses are cooperating with one another like this.

Jesus Varela, 920 Grand Avenue, was recognized from the audience and denied calling any other establishment to alert them of what was going on. He admitted to being on the phone but said that he was calling his wife Maria, who was upstairs sleeping, to let her know what had just happened. He said that they would provide phone records of that evening if asked to do so.

Troy McElroy, 945 W. Agate Ave., Granby, was recognized from the audience. He said that he is a somewhat retired criminal prosecuting attorney from another jurisdiction. He said that he had been doing research on Colorado law and, like in other states, didn't feel that the Local Liquor Licensing Authority could conduct a Show Cause hearing because the employee, Bret Martin plead nolo contendere or no contest in court which is not a guilty plea. He advised the Authority to consult with the Town's Attorney on whether or not a nolo contendere plea can be transferred into any other proceeding. In his state, it cannot.

Town Clerk Kolinske said that she was told by the Court Clerk that Bret Martin's plea was guilty.

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McElroy said that it would behoove the Authority to check on it. He stated that his son and Bret are friends and are both in the military. McElroy said that Bret had a talk with him and told him that he told the prosecutor that he would rather go to trial if they would not accept a nolo contendere plea because he didn't believe under the circumstances that he was guilty. He was told that the judge accepted the nolo contendere plea.

Town Manager Hale said that perhaps the Authority would consider tabling this matter for two weeks to consult with the Town's Attorney to find out whether or not this Authority can proceed with a Show Cause if the plea was a nolo contendere plea and to verify what the plea actually was.

Robert Ramsey, 438 Lake Avenue, was then recognized from the audience. He said that Bret Martin could not attend the meeting this evening but had prepared a statement and asked him to read it (see attached Exhibit A). He then appealed to the Authority that there is no reason for a second hearing regarding this matter.

Following discussion, Trustee Peterson moved to table consideration of setting a Show Cause Hearing until the next regularly scheduled meeting giving staff enough time to consult with the Town Attorney to find out whether or not this Authority can proceed with a Show Cause if the plea was a nolo contendere plea and to verify what the plea actually was, seconded by Trustee Lanzi.

During discussion, Trustee Johnson said that it is the Authority's obligation to make sure that everyone is abiding by the law. He then questioned the infraction. There was a sale to a minor by an employee but the employee's case is now out of the way. The issue that Lt. Grinstead brought up about Jesus being on the phone alerting others is hearsay and is not a reason to set a Show Cause Hearing. He said that he himself does not think the infraction was severe enough to call for a hearing.

Following further discussion, the motion passed when all Trustees voted aye.

LIQUOR LICENSING AUTHORITY: CONSIDERATION OF RENEWAL OF THE HOTEL AND RESTAURANT LIQUOR LICENSE FOR EL PACIFICO, LLC, D/B/A EL PACIFICO RESTAURANT - Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske reported that the fees have been paid; the renewal documents are in order and indicate no changes from the previous renewal. The water, business license, and sales tax accounts are all current. She concluded by saying that Jesus Varela and Maria Rios, owners, were present.

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Maria Rios, 920 Grand Avenue, was recognized by the chair. She explained that she and Jesus put in a lot of hours and work very hard for the success of their business. She said that they have a meeting with their employees every day but cannot be there every minute of every day to watch them. She tells her employees, "Card, card, card, no ID, no sale."

Trustee Johnson moved to approve the renewal of the Hotel and Restaurant Liquor License for El Pacifico, LLC, d/b/a El Pacifico Restaurant. Trustee Elmer seconded the motion and all Trustees voted aye.

At 8:34 Trustee Ludwig resumed his seat.

NEW BUSINESS:

CONSIDERATION OF ORDINANCE NO. X-2011, AN ORDINANCE AMENDING THE TOWN OF GRAND LAKE MUNICIPAL CODE TO ALLOW FOR ADMINISTRATIVE ENFORCEMENT AND PENALTIES INSTEAD OF CRIMINAL ENFORCEMENT AND PENALTIES FOR SPECIFIC PORTIONS OF THE GRAND LAKE MUNICIPAL CODE – Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that per the direction of the Board of Trustees the Town staff has been working on preparing a draft ordinance for the enactment of an administrative enforcement process instead of criminal enforcement for certain violations of the Municipal Code. Staff recommends that the Board set this matter for a Public Hearing due to the nature of the changes involved and the fact that some of the Municipal Codes involved require a Public Hearing. The first available date would be September 26, 2011 in order to comply with legal noticing for a Public Hearing.

Trustee Peterson moved to set a Public Hearing for September 26, 2011 to consider Ordinance No. x-2011, an Ordinance Amending the Town of Grand Lake Municipal Code to Allow for Administrative Enforcement and Penalties Instead of Criminal Enforcement and Penalties for Specific Portions of the Grand Lake Municipal Code. Trustee Johnson seconded the motion and all Trustees voted aye.

NEW BUSINESS:

CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF GRAND LAKE AND THE RIDGE AT ELK CREEK, INC. - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Board was approached by staff two years ago regarding the Ridge at Elk Creek's possible annexation and subdivision. Staff highlighted its concern that since this development has been in negotiations for six years now, that it may be better to just deny the annexation petition and to reconsider this

annexation when re-approached by the developer, when he is actually ready to move forward. During that discussion, Mr. Stanley advised that he would prefer to memorialize the agreements that had thus far been negotiated for a year due to a sluggish economy, with the idea that he would need to re-approach the Board once it expired to again discuss the status of the project. Mr. Stanley has submitted a letter requesting a renewal of the MOU; staff is not in possession of the signed copy of the MOU as of this date. Additionally, Mr. Bill Hayne, the Principal Engineer on this project, submitted a letter last year stating that the preliminary plat engineering is substantially complete, meaning that there will be little in Mr. Stanley's way in moving forward when he's ready to do so. For review, the MOU simply references the three documents that the Town and Developer have negotiated to-date: Annexation and Development Agreement, Municipal Water Service Agreement, and the Maintenance and Repair Agreement. Staff would point out that these documents are in the exact state that we had left them when negotiations ceased and would obviously need to be updated prior to execution. Staff's only reservation for the Board's consideration is whether or not the negotiated agreements will be the best deal for the Town once Mr. Stanley is ready to annex and develop. The annexation petition was dated November 3, 2006, and staff began discussions with Mr. Stanley in 2004, so there are elements that made perfect sense to staff at the time, that may make less sense when it comes time to execute. For example, whether or not "local employee units being an average of 1,250 square feet in size, at a base price of \$138" will be important or relevant, or that the Town has an option to buy if not sold within 6 months, or whether a municipal improvement district is the best tool to manage the infrastructure, etc., are all considerations that the Town will still need to make prior to executing these agreements. That's not to say that there aren't some very good elements that are in this agreement; staff just wants to point out that the further that we get out from the original negotiations, the less relevant the overall agreement will seem. Since nothing has been approved at this point, the Town will have the option of reviewing the agreement to assure that it's still relevant, but that begs the question of what preserving these agreements accomplishes other than giving everyone a jumping off point in any future negotiations. What we know at this point is that a lot of time and effort have gone into these negotiations, and the Developer would like to memorialize them once again. If the Board would like to move forward, the staff recommendation is for the Board of Trustees to make a motion to authorize the Mayor to sign the MOU between the Town and Ridge at Elk Creek, Inc. once executed by Mr. Tom Stanley.

Following brief discussion, Trustee Peterson moved to authorize the Mayor to sign the MOU between the Town and Ridge at Elk Creek, Inc. once executed by Mr. Tom Stanley. Trustee Johnson seconded the motion and all Trustees voted aye.

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ACCOUNTS PAYABLE

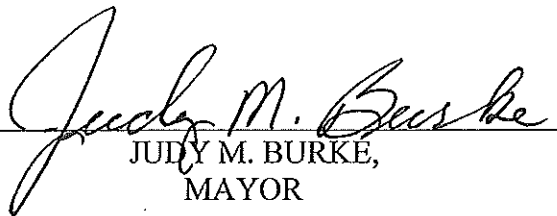
July, 2011:

Trustee Peterson moved to examine the Accounts Payable and Prepaid for all Funds for the Town of Grand Lake. Trustee Johnson seconded the motion and all Trustees voted aye. Trustee Peterson then moved to approve the Accounts Payable and Prepaid for all Funds for the Town of Grand Lake. Trustee Johnson 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 8:43 p.m., August 8, 2011.



JUDY M. BURKE,
MAYOR

ATTEST: 

RONDA KOLINSKE, CMC,
TOWN CLERK

RECEIVED AUG 09 2011

Monday, August 08, 2011

Mayor Burke, members of the council and citizens of Grand Lake-

I regret that I am unable to attend tonight's meeting, but I have prepared a statement on my behalf to be read by Bob Ramsey.

Regarding the incident at issue, I did give a bottle of beer to a woman under the age of 21. I did that on my personal judgment; it was not El Pacifico's judgment.

I did ask for an ID, and when she said she didn't have it and went on to say something else about its whereabouts that suggested it might soon be available, perhaps via a boyfriend, I tried to give her the benefit of the doubt and otherwise verify her age. [I cannot quote exactly all of what was said, I couldn't distinguish all of her words, but was later told by a nearby respectable patron that it was something along those lines]

I asked her, "What year were you born?" In my experience of someone underage trying to buy alcohol, they will have already made up a birth date that makes them of drinking age, so I paid close attention to her rate of speech, her tone of voice, eye contact, and the confidence she expressed. I was looking for signs that she was lying - there were none.

I am engaged in a military career and I have been deployed twice to Iraq and once to Afghanistan, I am in preparation now to deploy to Mogadishu Somalia, I have been a part of many "interviews" with suspected insurgents. We rarely pay more attention to *what* is said than we pay to *how* it's said.

My experience was part of my downfall that evening - I made an error in judgment. If I had *intended* to serve a minor I wouldn't have bothered to ask for an ID and then also ask for her birth date. Further, I think it's important to add, I just completed and passed the TIPS certification program the day before the incident at issue. [Copy of certificate is available on request] In one of the videos I was shown during the training it states that if ever in doubt [about a customer's age] ask for their birth date and watch for signs of hesitation or thinking.

The main thing I regret about the incident is not following El Pacifico's policy. Charlie and Maria have both told me numerous times, "Card, Card - no ID, no sale."

Monday, August 08, 2011

Members of the board, I made an error in judgment on my own accord. Charlie and Maria were not at fault, and I just want to say they do not deserve to be admonished for my conduct. They had trained me to do the right and lawful thing – they simply can't watch their employees every moment to prevent the employee from making a mistake.

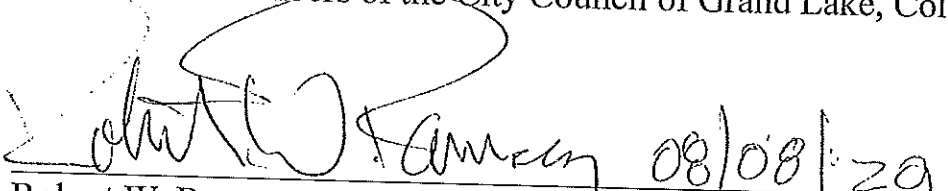
Charlie and Maria embody the definition of the American Ethos. Neither one of them come from wealthy families, yet, through their own hard work and determination, they have gotten to where they are today - the owners of a prospering business while successfully raising a very nice family. It is an honor and a privilege to work with them and they are the type of people who make me proud to fight for this country.

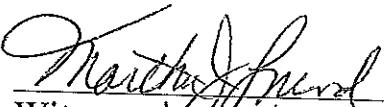
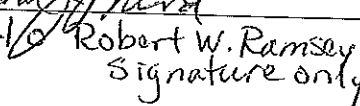
In closing I want to focus on the good I see coming out of this incident. I will strictly follow the *no ID, no sale* rule if there can *possibly* be *any* doubt about the customer's age being over 21.

Ladies and Gentlemen, thank you for your time and consideration tonight. If I may, I would also propose a moment's silence in honor of the troops and Navy Seals who paid the price of freedom for all of us this past week.

Yours truly,
Bret J. Martin

I hereby swear, under oath and penalty of perjury, that this document was presented to me on August 8, 2011, by Bret J. Martin for me to read on his behalf to the members of the City Council of Grand Lake, Colorado.


Robert W. Ramsey August 8, 2011


Witness  Signature only August 8, 2011