

RECORD OF PROCEEDINGS

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REGULAR MEETING  
TOWN OF GRAND LAKE BOARD OF TRUSTEES  
MONDAY, AUGUST 22, 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 Lewis, Ludwig, and Weydert; Town Manager Hale, and Town Clerk Kolinske.

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

APPROVAL OF MINUTES

July 25, 2011: Trustee Peterson moved to approve the minutes of the July 25, 2011 regular meeting as written, seconded by Trustee Lewis. All Trustees voted aye except Trustee Weydert, who abstained.

August 8, 2011: Trustee Ludwig moved to approve the minutes of the August 8, 2011 regular meeting as written, seconded by Trustee Peterson. All Trustees voted aye except Trustees Lewis and Weydert, who abstained.

ANNOUNCEMENTS:

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

Mayor Burke announced that school opens Wednesday, August 24<sup>th</sup>. Please be cautious of school buses and drive carefully.

Mayor Burke announced that Brews and Crews and Grand Lake Car Show, sponsored by the Grand Lake Chamber of Commerce will be held on Saturday, August 27<sup>th</sup>. Contact the Chamber for details.

Mayor Burke announced that the Grand Arts Council will hold its 14<sup>th</sup> Annual Tombstone Tales on Sunday, September 4. Shuttle busses will leave the Gateway Inn every 20 minutes between 11:00 a.m. to 2:00 p.m.

Mayor Burke then announced that a fall Arts and Crafts Fair, sponsored by the Grand Lake Chamber of Commerce will be held September 10 & 11 in Town Square.

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.

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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.

Trustee Peterson then announced that he had a conflict with consideration of Resolution No. 20-2011, a Resolution Authorizing the Release of an Approve Building Permit for a Proposed Employee Housing Structure to be Located at Lots 9-12, Block 19, Town of Grand Lake because his wife is on the Rocky Mountain Repertory Theatre's board.

REPORTS: SALES TAX  
CASH FLOW REPORT  
FOR AUGUST 2011:

Mayor Burke asked Town Clerk Kolinske to present the sales tax cash flow report. Kolinske reported that the amount of revenue received in August for the month of June is \$114,038. This amount is 9.07% above what was received through August 2010.

REPORTS: SECOND  
QUARTER SALES TAX  
COLLECTION BY VENDOR

APRIL-JUNE: 2007-2011: Town Clerk Kolinske noted that Town Treasurer/Clerk Pro-Tem Dzinski provided a report consisting of the Second Quarter Sales Tax Collection by Vendor report for April-June 2007-2011.

REPORTS: FINANCIAL  
REPORT FOR  
JULY 2011:

Mayor Burke asked Financial Trustee Peterson to present the Financial Report for July 2011. Peterson reported that General Fund expenditures through the end of July totaled \$627,901.02 or 42.8% of budget. He said the Water Fund expenditures for the same period totaled \$194,677.91 or 39.6% of budget, the Marina Fund expenditures totaled \$111,701.44 or 33.5% of budget and the PAYT Fund expenditures totaled \$2,968.20 or 46.2% of budget.

At 7:42 p.m. Trustee Ludwig excused himself and took a seat in the audience.

LIQUOR LICENSING AUTHORITY: CONSIDERATION OF RENEWAL OF THE HOTEL AND RESTAURANT LIQUOR LICENSE FOR TOMLYNSON, INC., D/B/A 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 Lewis seconded the motion and all Trustees voted aye.

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Trustee Ludwig then excused himself and left the room.

LIQUOR LICENSING AUTHORITY: CONTINUATION OF CONSIDERATION TO SET A SHOW CAUSE HEARING REGARDING THE HOTEL AND RESTAURANT LIQUOR LICENSE ISSUED TO EL PACIFICO, LLC, D/B/A EL PACIFICO RESTAURANT - Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske explained that this matter was continued from the August 8, 2011 meeting to consult with the Town Attorney to find out whether or not this Authority can proceed with a Show Cause Hearing if the employee's plea was a nolo contendere plea and to verify what the plea actually was. She continued by saying that Bret Martin entered a plea of guilty to the charge, subject to a deferred judgment and sentence. Town Attorney Krob addressed the following questions:

- (1) Can the Board of Trustees, acting as the Local Liquor Licensing Authority, hold a Show Cause Hearing in light of the deferred judgment and sentence that was entered in the criminal case?
- (2) If the Board has the authority to hold such a Show Cause Hearing, should they exercise that authority in this instance?
  1. The Board, as the Local Liquor Licensing Authority, has the power to hold a Show Cause Hearing if it has reasonable cause to believe there has been a violation of the liquor laws. The fact that there was a citation for violating the liquor laws, particularly combined with the fact that the defendant pled guilty to the charge, provided ample cause for the Local Liquor Licensing Authority to hold a Show Cause Hearing, if it chooses to do so. The fact that the defendant's guilty plea is subject to a deferred judgment and sentence does not alter this outcome. The criminal case and the licensing proceeding are two separate and independent processes. The issue in the criminal case is whether it can be shown beyond a reasonable doubt that the defendant violated the liquor laws. This is a very high standard of proof. The question in a liquor licensing proceeding is whether it can be shown by a preponderance of the evidence that there was a violation of the liquor laws. In this instance, for example, even if the defendant had entered a plea of "no contest" (sometimes referred to as a "nolo contendere" plea), in the criminal case, that would not prevent the local liquor licensing authority from proceeding with a Show Cause Hearing.
  2. If, in the past, the Local Licensing Authority has set first offenses for sale to a minor for show cause, then it should do so here. Or if the Local Licensing Authority has established a policy of setting Show Cause Hearings for a first offense of sale to a minor, then it should follow that policy. On the other hand, if it is neither the practice nor the policy of the Local Licensing Authority to set a show cause for a first offense for sale to a minor, then Krob said that he is not aware of anything in connection with

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this particular case that should cause the Local Licensing Authority to vary from its past practice or policy.

Town Attorney Krob concluded with the following:

1. The Board, acting as the Local Liquor Licensing Authority, has the authority to hold a Show Cause hearing, despite the entry of a deferred judgment and sentence in the related criminal case.
2. The Board should not set this matter for a Show Cause Hearing unless that has been its policy or prior practice for a first offense of sale to a minor, or unless there is some reason to depart from the authority's past practice of policy in this instance.

Kolinske noted that it has not been the Board's practice in the past to show cause on the first offense. Also, it is one thing for the employee to violate the law but it is entirely another thing for the owner to violate the law. She said that Jesus Varela and Maria Rios, owners, were present.

All Board Members concurred that this is matter that is taken very seriously but in light of the fact that this is a first offense and it was an employee who violated the law, a Show Cause Hearing should not be held.

Trustee Peterson then moved to not set a Show Cause Hearing regarding the Hotel and Restaurant Liquor License issued to El Pacifico, LLC, d/b/a El Pacifico. Trustee Lewis seconded the motion and all Trustees voted aye.

**LIQUOR LICENSING AUTHORITY: CONSIDERATION OF RENEWAL OF THE BEER AND WINE LIQUOR LICENSE FOR PIZZA DEL LAGO, INC., D/B/A GRAND PIZZA** - 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. The Grand County Sheriff's Department found no adverse information that would affect the status of the license. She then concluded by saying that Jay Jackson, President/Treasurer and Delores Jackson, Secretary, were present.

Trustee Lewis moved to approve the renewal of the Beer and Wine Liquor License for Pizza Del Lago, Inc., d/b/a Grand Pizza. Trustee Weydert seconded the motion and all Trustees voted aye.

**LIQUOR LICENSING AUTHORITY: CONSIDERATION OF RENEWAL OF THE 3.2 PERCENT BEER RETAIL LIQUOR LICENSE FOR MOUNTAIN FOOD MARKET, INC., D/B/A MOUNTAIN FOOD MARKET** - Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske reported that the fees have been paid; all the renewal documents are in order and indicate no changes. The business license and sales tax accounts are all

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current. She said that the Town of Grand Lake Water Department reports that the building is serviced by a private well. The Grand County Sheriff's Department found no adverse information which would affect the status of the license. She then concluded by saying that Jon Linton, Vice President, was present.

Trustee Lewis moved to approve the renewal of the 3.2 Percent Beer Retail Liquor License for Mountain Food Market, Inc., d/b/a Mountain Food Market. Trustee Weydert seconded the motion and all Trustees voted aye.

At 7:58 p.m. Trustee Ludwig resumed his seat.

OLD BUSINESS:

None.

NEW BUSINESS:

**CONSIDERATION OF ORDINANCE NO. 14-2011, AN ORDINANCE AMENDING THE TOWN OF GRAND LAKE MUNICIPAL CODE CHAPTER 7, ARTICLE 4 TO REFLECT CHANGES MADE TO THE COLORADO REVISED STATUTES** – Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that staff found that the Colorado Revised Statutes referred to in Municipal Code Section 7-4 have been changed, and that Municipal Code 7-4 needs to be changed to reflect those changes. CRS Title 25, Article 1, Part 6 which the Municipal Code refers to has been repealed and the sections which are applicable to municipal authority on nuisances and abatement of nuisances have been moved to CRS Title 25, Article 1, Part 5. Staff recommends the Board adopt Ordinance No. 14-2011.

Trustee Peterson moved to adopt Ordinance No. 14-2011, an Ordinance amending the Town of Grand Lake Municipal Code Chapter 7, Article 4 to reflect changes made to the Colorado Revised Statutes. Trustee Weydert seconded the motion and all Trustees voted aye.

NEW BUSINESS:

**CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A LETTER DEMANDING ABATEMENT OF A NUISANCE, AS AUTHORIZED BY MUNICIPAL CODE, AT 406 GRAND AVENUE** - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that Town staff received several complaints about the property located at Block 35, Lots 7-8, more commonly referred to as 406 Grand Avenue. The complaints were about “junk” being stored in the open on the property. On July 14, 2011 staff was able to talk with Bill Zick, the owner of the property, and he advised he would get everything separated into trash, which he would throw away, and items he intended to sell at a garage sale. It appears that there has been very little done to accomplish the stated goals since that conversation and staff is now asking the Board to take action as required by the Municipal Code. If the Board determines that the condition of the property does violate Municipal Code 7-6-13, the following actions on the property need to be taken. Under Municipal Code 7-6-13 Additional

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Provisions, the property needs to be declared a nuisance by the Board of Trustees. Also under Municipal Code 7-6-13, the Board of Trustees is given the power to authorize the Mayor to send a certified letter ordering the owner of the property to correct the issue. This letter gives the owner a ten (10) day period after receipt of the notice to correct the issue. If the owner does not correct the issue, then the Town may issue a summons. The Town may also have the issue corrected and all charges for that correction will be assessed to the owner/person in charge of the property. The owner then has ten (10) days to pay that assessment. If the owner does not pay the assessment, then notice is posted in the local paper for two (2) weeks for a public hearing in front of the Board of Trustees. If there are no objections to the assessment or there are objections but they are not sustained, then the owner has ten (10) days from the hearing date to pay the assessment. If the assessment is still not paid, then the Town can certify the assessment and have it placed on the County Treasurer Tax list with an additional ten percent (10 %) penalty to defray costs. Staff recommends that the Board authorize the Mayor to send a certified letter demanding abatement of the nuisance as authorized by Municipal Code.

Trustee Peterson moved to authorize the Mayor to send a certified letter demanding abatement of the nuisance as authorized by Municipal Code. Trustee Weydert seconded the motion and all Trustees voted aye.

At 8:01 p.m. Trustee Peterson excused himself and left the room.

### NEW BUSINESS:

**CONSIDERATION OF RESOLUTION NO. 20-2011, A RESOLUTION AUTHORIZING THE RELEASE OF AN APPROVED BUILDING PERMIT FOR A PROPOSED EMPLOYEE HOUSING STRUCTURE TO BE LOCATED AT LOTS 9 – 12, BLOCK 19, TOWN OF GRAND LAKE** - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that on August 17, 2011 the Town received a request from Rocky Mountain Repertory Theatre (RMRT) for the Board's consideration of a waiver of Affordable Housing Fees (Fee) associated with a, soon to be, proposed building permit application for the construction of a new six-bedroom, lodge-style, employee housing unit on 450 Broadway, otherwise known as the "Betty Dick Off Broadway Cabins". The unit proposed at this time would be an addition to the existing housing units located in this area. RMRT's request does remind the Board of the 2009 agreement between the Town and RMRT which waived the Fee for the construction of their new theatre structure, located on Vine Street and Grand Avenue, on the basis that RMRT provides 97% of their staff with housing. The Board should discuss this matter with RMRT for Board determination as to whether or not the Board would be favorable to entering into a new, or modifying the existing Agreement, with RMRT for the waiver of the Fee. Based on discussions between the Town Board and RMRT, staff will draft an agreement and bring an executed agreement back to the Town Board for the Board's formal consideration as an item of business in a regular meeting. Similar to the process the Town has followed in the past, staff has drafted a resolution for the

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Board's consideration to allow for the release of the building permit while a decision has been made about a possible waiver of fees or the payment of fees in full. Staff is proposing to follow a similar method, as it has in the past, as a building permit application has not yet been submitted by the property owner. While the general contractor for the project has indicated the proposed structure, including unfinished basement, will be 3120 square feet with two, sixteen square foot patios, Town staff would feel most comfortable drawing up an agreement, or modifying the existing one, when a permit application is submitted for final determination of the entirety of the structure and the total Fee waived. If the Board is favorable to the request, the Board should to adopt Resolution No. 20-2011. Hale noted that Carol Wolff, Executive Director, Ed Bittle and Pat Spicles, Board Members, were present.

Following discussion, Trustee Weydert moved to adopt Resolution No. 20-2011, a Resolution Authorizing the Release of an Approved Building Permit for a Proposed Employee Housing Structure to be Located at Lots 9-12, Block 19, Town of Grand Lake. Trustee Lewis seconded the motion and all Trustees voted aye.

At 8:16 p.m. Trustee Peterson resumed his seat.

### NEW BUSINESS:

**CONSIDERATION OF RESOLUTION NO. 18-2011, A RESOLUTION GRANTING A LICENSE FOR THE ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY OF CERTAIN IMPROVEMENTS LOCATED ADJACENT TO LOT 3, BLOCK 34, TOWN OF GRAND LAKE** - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that on August 16, 2011, the Town staff received an Encroachment License request from Sharon Heideman and Ken Smith, located at 316 Park Avenue, Lot 3, Block 34, Town of Grand Lake, for the installation of a new set of wood stairs to be constructed in the exact same location as set of temporary wood stairs. The temporary wood stairs were constructed in this location after a previous set of stairs to access the property were unintentionally demolished numerous years ago. Staff has been in discussions with the property owner over the past three years about the replacement of adequate stairs in this location. A set of proposals was submitted to Town staff for determination of the best solution for the construction of a new stairway access to this property. A significant grade change occurs from the Park Avenue driveway to the edge of the road right-of-way and the subject parcel. Staff, including Public Works Director McGinn, conducted a site visit of the property for determination of the most feasible access route while minimizing impacts to Town services, such as snow plowing, as well as overall encroachment width into the Park Avenue right-of-way, and the neighborhood driveway access. The proposed 12' encroachment has been determined by Public Works Director McGinn, the property owner and the adjacent neighbors as the most suitable solution. In addition to the request, staff has received an executed Indemnification Agreement as well as the \$100 License Fee. The Board should discuss this matter with the property owner's representative, Mr.

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Geoff Elliot; Mr. Elliot is aware approval of the license does not constitute approval of a building permit. A building permit will need to be obtained for the construction of the stairway access. Once all discussion has taken place, staff recommends that the Board of Trustees move to adopt Resolution No. 18-2011. Hale noted that Geoff Elliot, representative, was present.

Following discussion, Trustee Lewis moved to adopt Resolution No. 18-2011, a Resolution Granting a License for the Encroachment into the Public Right-of-Way of Certain Improvements Located Adjacent to Lot 3, Block 34, Town of Grand Lake. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS:

**CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN AN APPLICATION FOR A GREAT OUTDOORS COLORADO (GOCO) GRANT**

**AND**

**CONSIDERATION OF RESOLUTION NO. 19-2011, A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION LAND ACQUISITION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOOR COLORADO TRUST FUND FOR THE ACQUISITION OF THE 8 ACRE PARCEL KNOWN AS THOMASSON PARK** - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that staff is putting the final touches on the grant application for the acquisition of Thomasson Park. The application packet is due to GOCO by August 26<sup>th</sup>. The last two housekeeping issues are signing the application and adopting the resolution in support. You'll note that the Town is asking for \$240,000 from GOCO; while they have different requirements for in-kind and cash matches, they also will not fund more than 70% of a project's overall costs, so the \$240,000 request would put them at 69.6% of the overall costs, while keeping the Town's share under the \$100,000 mark that staff was trying to achieve. Cross your fingers, but don't hold your breath. Two separate motions are required:

The staff recommendation is for the Board to authorize the Mayor to sign the application for a Great Outdoors Colorado Grant; and,

Adopt Resolution No. 19-2011.

Following discussion, Trustee Weydert moved to authorize the Mayor to sign the application for a Great Outdoors Colorado Grant. Trustee Peterson seconded the motion and all Trustees voted aye.

Trustee Weydert then moved to adopt Resolution No. 19-2011, a Resolution Supporting the Grant Application for a Local Parks and Outdoor Recreation

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Land Acquisition Grant from the State Board of the Great Outdoor Colorado Trust Fund for the Acquisition of the 8 Acre Parcel Known as Thomasson Park. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS:

**CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A LETTER OF SUPPORT FOR THE RENEWAL OF THE SPECIAL USE PERMIT FOR BRP US, INC.** - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that the Town received a letter from the USFS regarding the renewal of the Special Use Permit for BRP. While no one from BRP has asked the Town to comment, this is an operation that is conducted when the Town's revenues are at its lowest, and the Town is in no position to lose them. Thus, staff has drafted a letter of support to help strengthen their case. The staff recommendation is for the Board to authorize the Mayor to sign the letter of support for the renewal of the special use permit for BRP US, Inc.

Trustee Peterson moved to authorize the Mayor to sign the letter of support for the renewal of the special use permit for BRP US, Inc. Trustee Weydert seconded the motion and all Trustees voted aye.

NEW BUSINESS:

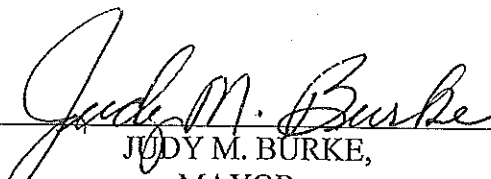
**CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A PROCLAMATION THAT PROCLAIMS SEPTEMBER 16, 2011 AS TIM THORPE DAY** - Mayor Burke asked Town Manager Hale to present this matter to the Board. Hale explained that staff has drafted a proclamation declaring September 16, 2011 as Tim Thorpe Day. The staff recommendation is for the Board to authorize the Mayor to sign a proclamation that proclaims September 16, 2011 as Tim Thorpe Day.

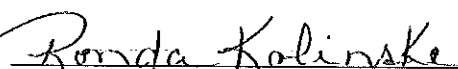
Trustee Weydert moved to authorize the Mayor to sign a proclamation that proclaims September 16, 2011 as Tim Thorpe Day. Trustee Peterson seconded the motion and all Trustees voted aye.

CITIZEN PARTICIPATION: None.

ADJOURNMENT:

Trustee Peterson moved to adjourn, seconded by Trustee Weydert. All Trustees voted aye, and the meeting was adjourned at 8:39 p.m., August 22, 2011.

  
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JUDY M. BURKE,  
MAYOR

ATTEST:   
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RONDA KOLINSKE, CMC,  
TOWN CLERK