

TOWN OF GRAND LAKE
ZONING BOARD OF ADJUSTMENT
Regular Meeting 6:00 P.M.
Thursday, May 2, 2013

AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
 - A. Introduction of new Board Member John Murray
- III. APPROVAL OF MINUTES
 - A. March 7, 2013 (*page 2*)
- IV. CONFLICTS OF INTEREST
- V. ITEMS OF BUSINESS
 - A. Consideration to Re-Elect Chairwoman Southway (*page 6*)
 - B. Consideration to Re-Elect Vice Chairwoman Weber (*page 7*)
- VI. DISCUSSION
 - A. Town Attorney Scott Krob (*page 8*)
- VII. FOR YOUR INFORMATION
 - A. Code of Conduct/Ethics Handbook (*page 9*)
- VIII. ADJOURNMENT

**To insure that the Board of Adjustment will have a quorum please contact
Chairwoman Southway if you will not be able to attend.**

MINUTES
TOWN OF GRAND LAKE
BOARD OF ADJUSTMENT
THURSDAY, MARCH 7, 2013
6:00 P.M.

CALL TO ORDER: Chairwoman Cindy Southway called the meeting of the Town of Grand Lake Board of Adjustment to order at 6:02 p.m. on March 7, 2013 at the Town Hall, 1026 Park Avenue.

PRESENT: Chairwoman Cindy Southway; Board Members Roger Brandt, Diane Mahoney, John (Mickey) Rourke and Dot Weber; Town Planner Joe Biller and Town Manager David Hook.

ABSENT: Board Member Jane Kemp.

APPROVAL OF MINUTES: Board Member Rourke moved to approve the minutes of the February 7, 2013 meeting as written seconded by Board Member Mahoney. All Board Members voted aye except Board Members Brandt and Weber, who abstained.

CONFLICTS OF INTEREST: None.

ITEMS OF BUSINESS: **CONSIDERATION OF A SIDE YARD SETBACK VARIANCE REQUEST FOR LOTS 41-42, CAIRNS ADDITION TO GRAND LAKE**
– Chairwoman Cindy Southway asked Town Planner Biller to present this matter. Town Planner Biller explained that

The Town has received a variance request to the zoning regulations which requires the Boards review. Specifically, the variance request is for the construction of a new single family residence within the side yard setback for Lot 41-42, Cairns Addition to Grand Lake.

Municipal Code 12-3-5 Powers and Duties of the Board states:

(a) Variances may only be granted if all of the following conditions are found to exist:

- (1) by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations; and*
- (2) literal interpretation of the provisions of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations would deprive the applicant of rights commonly enjoyed by other properties*

- in the same district under the terms of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations; and*
- (3) the special conditions and circumstances do not result from the actions of the applicant; and*
 - (4) granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district; and*
 - (5) the granting of the variance does not pose a detriment to the public good and does not substantially impair the intent and purpose of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations.*

As required by the Municipal Code, staff caused certified letters to be mailed to all property owners within 200' and caused legal publication of this Public Hearing to run in the Middle Park Times. At the time this memo was prepared, the Town had received only one response. Jane Kemp and Richard McQueary had no objection to the variance request.

Staff has reviewed the site plan for Lots 41-42, Cairns Addition to Grand Lake. According to the Town Municipal Code 12-3-5, variances may only be granted if all 5 hardships are found to exist. Staff has the following opinion concerning the 5 hardships as outlined in the Code:

1. The lot is not exceptional in shape or size. The majority of all town parcels are rectangular in shape and likewise only 50' in width. The topography is sloping with approximately 6' in fall across the width of the lot. The proposed building is already encompassing the entire side to side width of the building envelope, which does not appear to induce a hardship.
2. The required setbacks and interpretation of the Municipal Code does not preclude the construction of a single family residence with architectural relief. Architectural relief can be achieved in other ways besides additive massing to the exterior of a structure beyond the setback lines. Subtractive massing from an exterior wall is one example, vertical breaks in walls and rooflines can also achieve architectural relief.
3. The special conditions and circumstances surrounding the lot, including size, shape, topography and setback requirements should have been known by the property owner during their due diligence. The applicant purchased the property in 2010, well after the zoning regulations were in place.
4. The applicant would be granted special privilege if allowed to construct a building larger than the property line setback requirements permit. The applicant is simply proposing a residence to large for the parcel. Town staff strictly enforces the zoning setback requirements for all parcels in town including lots zoned single family residential.

5. The intent of the single family residential setback regulations, in staff's opinion, is to allow view corridors, open space, and separation of buildings from adjoining property. The open space adjoining this parcel allows the public to view, access and use Grand Lake. By allowing the construction of a building within this side yard setback, the view corridor and green space will be reduced.

Staff's opinion is the proposed building footprint does not fit the lot. The property owner has many options to create a great custom home on the lake without encroaching the side yard setback. The Town code already allows exceptions to the setback regulations by permitting roof overhangs into the setback of up to 3.5'.

Staff's opinion is that all 5 hardships identified in the Town Municipal Code have not been met by the applicant. Staff would like to remind the Board that this is purely staff's opinion on the variance request. The Board has the ultimate authority to deny or grant this variance.

After staff's presents the matter to the Board, the applicant may choose to address the Board on the variance request, then the Board should take any public comment, and then turn the matter over to the Board for discussion.

Once all discussion has taken place, the Board should take action on the variance request.

The Board has the following three (3) options:

1. Grant the variance as requested, thus allowing the construction of a new single family residence in the setback as shown on the site plan; or
2. Grant part of the requested variance, thus allowing the construction of a new single family residence into the setback for a lesser distance than requested and such distance shall be determined by the Board; or
3. Deny the variance, thus not allowing any construction in the side yard setback.

Barbara Swebel -- Owners Architect

Ms. Szwebel address the Board stating a large boulder near the front of the property line was creating a design constraint. This large boulder would interfere with the garage unless it was removed.

Kathleen Davis -- Property Owner

Ms. Davis agreed with Planner Biller that she was aware of the zoning regulations prior to purchase. She continued by explaining some history of the lot and surrounding area including the existing garage currently straddling the neighboring property line.

She explained the design of the building footprint and how the preservation of the existing boulders and vegetation played into the layout leading to this variance request.

Board Member Brandt inquired about the proposed garage the existing boulder.

The applicant and architect explained the proposed below grade garage would be hinder by the existing boulder unless removal occurred.

Board Member Weber inquired about the existing garage.

The owner stated she was not planning to tear down this garage, but she did have the option to.

Ms. Davis stated if meeting the setback requirements were required; the long, narrow lot would create a long and narrow structure in order to maximize the building footprint.

Planner Biller cited some setback encroachments that would be allowed by the Municipal Code including chimneys, flues, and roof overhangs.

The Board briefly discussed non-conforming lots.

The Board briefly commented on the view corridors, utilizing existing features, the open space parcel adjacent to the property, and the five (5) hardships required for a variance.

Board Member Brandt moved to not grant a variance to the side yard setback, seconded by Board Member Rourke. All members voted aye.

FOR YOUR
INFORMATION:

Board Member Vacancy.

The Board discussed the vacancy with staff.

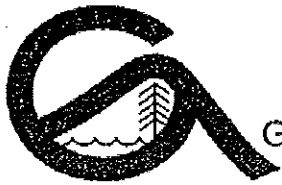
ADJOURNMENT:

Board Member Rourke moved to adjourn, seconded by Board Member Mahoney. All members voted aye, and the meeting was adjourned at 6:40 p.m.

Cindy Southway, Chairwoman

ATTEST:

Ronda Kolinske, CMC, Town Clerk



TOWN OF
GRAND LAKE

April 22, 2013

To: Chairwoman Southway and Zoning Board of Adjustment Members
From: Joe Biller, Town Planner

RE: Consideration to Re-Elect Chairwoman Southway

Attachments: None.

Purpose

The Board elected Chairwoman Southway to a one (1) year term on May 3, 2012.

Municipal Code

Municipal Code 12-3-4 Organization and Rules

(A) The Zoning Board of Adjustment shall elect its Chairman from among its members and create and fill such other of its offices as it may determine. The term of the Chairman shall be one (1) year, with eligibility of re-election.

Staff Comments

Chairwoman Southway has fulfilled her duties of office and if she does not object to another term, staff recommends the Board re-elect the Chairwoman.

Board Discussion

The Board should discuss the appointment of a Chair person.

Board Action

The Board has the following options:

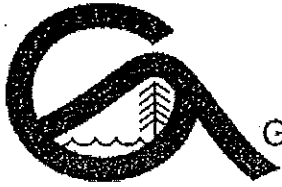
1. Re-elect Chairwoman Southway; or
2. Elect another Board Member.

Suggested Motion:

I move to re-elect Chairwoman Southway.

Or

I nominate Board Member _____ to hold the office of Chairman of the Board.



TOWN OF
GRAND LAKE

April 22, 2013

To: Chairwoman Southway and Zoning Board of Adjustment Members

From: Joe Biller, Town Planner

RE: Consideration to Re-Elect Vice Chairwoman Weber

Attachments: None.

Purpose

The Board elected Vice Chairwoman Weber into office on May 3, 2012.

Municipal Code

Municipal Code 12-3-4 Organization and Rules

(A) The Zoning Board of Adjustment shall elect its Chairman from among its members and create and fill such other of its offices as it may determine. The term of the Chairman shall be one (1) year, with eligibility of re-election.

Staff Comments

The Board has discretion of the term of office for all other positions other than the Board Chair. The Board did not specify the length of term when appointing the Vice Chair.

Vice Chairwoman Weber has fulfilled her duties of office and if she does not object to another term, staff recommends the Board re-elect the Vice Chairwoman.

The Board should also define the term of office for the position and staff recommends one (1) year.

Board Discussion

The Board should discuss the appointment of a Vice Chair person.

Board Action

The Board has the following options:

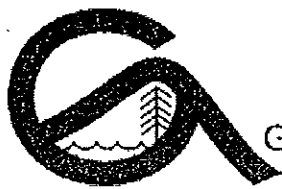
1. Re-elect Vice Chairwoman Weber; or
2. Elect another Board Member.

Suggested Motion:

I move to re-elect Vice Chairwoman Weber for an office term of one (1) year.

Or

I nominate Board Member _____ to hold the office of Vice Chair of the Board for an office term of one (1) year.



TOWN OF
GRAND LAKE

April 22, 2013

To: Chairwoman Southway and Zoning Board of Adjustment Members
From: Joe Biller, Town Planner

RE: Discussion with Town Attorney Scott Krob

Attachments: None.

Purpose

The Board was contacted by the Town Attorney prior to the 5/3/2012 regular scheduled meeting. At the meeting, the Board expressed the desire for additional information. Staff has arranged for the Town Attorney to be present for discussion.

Municipal Code

The Municipal Code 12-3-5(A)3 states the Board shall have the powers and duties,

To authorize, upon appeal in specific cases, variance to the:

- (a) Minimum area of lot.*
- (b) Minimum lot frontage.*
- (c) Minimum front yard/setback.*
- (d) Minimum side yard/setback.*
- (e) Minimum rear yard/setback.*
- (f) Maximum height of buildings.*
- (g) Minimum floor area*

The Municipal Code 12-3-5(A)4 states:

Variances may only be granted if all of the following conditions are found to exist:

- (a) by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations; and*
- (b) literal interpretation of the provisions of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations; and*
- (c) the special conditions and circumstances do not result from the actions of the applicant; and*
- (d) granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district; and*
- (e) the granting of the variance does not pose a detriment to the public good and does not substantially impair the intent and purpose of Municipal Code 12-2-8 to 12-2-24 and 12-2-29 (if applicable) Zoning Regulations.*

Board Discussion

The Board should be prepared to discuss their questions, comments, or concerns with the Town Attorney.

Board Action

No action is required.

Town of Grand Lake Code of Conduct/Ethics Handbook

SECTION I: PURPOSE AND CHARACTER

The purpose of this handbook is to promote public confidence in the Town government, to maintain conformity with the provisions and intent of the Town Code and to provide guidance in the event of potential, perceived or real conflicts of interest to the members of the Town Board of Trustees and to the Boards, Commissions, Committees and other authorities operating on behalf of the Town. This handbook is intended to foster public trust by defining the parameters of honest government and by prohibiting the use of public office for private gain. While it is impossible to identify every ethical challenge that you might face, the handbook is designed to encourage officials to seek advice when they are unclear of their ethical obligation and to always act in a manner that will instill public confidence.

While it is critical that Board members follow both the letter and spirit of this handbook, it is equally important that they strive to avoid situations that may create public perceptions of violations of this handbook. Perceptions of such violations can have the same negative impact on public trust as actual violations. Thus, it is important that each official conduct themselves in a manner that is consistent with the character of the position. In other words, the public expects certain positive attributes be exemplified by its public officials, and these character traits are easily identifiable, and certainly worth aspiring to.

The “Six Pillars of Character” were identified by the Josephson Institute as Citizenship, Trustworthiness (includes Integrity, Reliability and Loyalty), Respect, Responsibility, Fairness, and Caring. These “pillars” represent values that are easily recognized in Grand Lake as being desirable and worthy of emulation, and should serve you well when you are faced with a situation that doesn’t feel right.

CITIZENSHIP

By volunteering our time, we are displaying our willingness to be great Citizens; to engage in participatory democracy, to stay informed, and to have a voice in the issues that challenge this community. A great Citizen never takes more than he or she gives, instead treating the benefit of participating in society and democracy as the true privilege that it is.

TRUSTWORTHINESS

By being either elected or appointed to the position that we now hold, we have been entrusted with an awesome responsibility. We have been given the public’s trust, but the only way to honor that gift is to be a Trustworthy person in everything that we do. To be Trustworthy is to be Truthful: it is always our intent to convey the Truth, to be Sincere, and to be Candid, Fortright and Frank when we deal with other people. This requires Courage; it will never be easy to tell our neighbor that we intend to vote differently than they would prefer, but we need to Respect them enough to be Honest.

INTEGRITY

We were elected or appointed because people know who we are and they Trust us. Regardless of our background, we have been put into this position because of who we are. As we go about the business of the Town, we should always do so with Integrity. In this sense it could also be known as being consistent, Integrity means that we behave at home in the same way that we behave at work, that we behave in a predictable and consistent manner when we make decisions, even when situations are different.

RELIABILITY

By volunteering for this position, we have made a commitment to fulfill the many obligations and commitments that come with it, not the least of which is showing up to meetings prepared and ready to make a positive contribution. Furthermore, Reliability in its essence is Promise Keeping—it's following through with what everyone believes that we have already committed to do. We should always be a person of our word, keep our promises, and live up to the expectations that we have committed to.

LOYALTY

There will certainly be a time when our personal interests are intersected and challenged by interests of the community. In other words, the community may only benefit with a decision that will require our personal sacrifice, such as a vote on signage that will negatively affect our business, or a vote on a water rate increase that will raise our bill. While no one can tell us how to vote, please keep in mind our Loyalty to the Town and to our position to make all of our decisions based upon the merit of the idea without weighing our personal interests in the matter.

RESPECT

Civil discourse is a two-way street; it is imperative that we treat each person addressing the Board with all of the Respect that we would ask be afforded to us; it honors their Worth and Dignity, and is owed to all citizens regardless of their personal views or agenda. This courtesy should be extended to all persons that we deal with in the course of doing business; citizens, staff and our fellow elected or appointed officials.

RESPONSIBILITY

Being Responsible means being in charge of our choices—being Accountable for what we do and who we are. There are many Responsibilities that we have taken on by volunteering for this position; we must hold ourselves Accountable for showing up to meetings and participating, but on a deeper level it is our Responsibility to pursue excellence in government, and to help insure that this organization is better because of our efforts.

FAIRNESS

The simplest yet most poignant definition of Fairness or Justice is that “people get what they deserve”. In this position we will likely sit as a judge at one point or another, neighbor versus developer, paving versus gravel, everyone versus the Town—just as likely, as in most times of conflict, the issue won't simply be black and white. Because

of this, it is important that we take a few steps to ensure that our decision is as Fair as possible: seek out the facts, make our decision impartially, and consider all of the parties involved.

CARING

We are in this position because we Care for the Town; we love this community and want to see it continue to thrive for years to come. Furthermore, it's hard to imagine that we'll take any of the above to heart if we don't Care for our fellow citizens and their general welfare. The decisions that we make do affect the people that live and work in Grand Lake; sometimes to the better, other times to the worse, and if each of us is a Caring person, then we'll feel both the positive and negative emotional responses.

SECTION II: DEFINITIONS

The following terms and words, for purposes of this handbook, shall have the meanings indicated:

Appear on behalf of shall mean to act as a witness, advocate or expert or otherwise to support the position of another person.

Board shall mean the Town Board of Trustees, the Planning Commission, the Board of Adjustment and such other boards, commissions, committees or other authorities operating on behalf of the Town as the Town Board of Trustees may from time to time establish.

Board Member shall mean a Member of any Board, including regular and alternate members and the Mayor, but does not include any full-time or part-time Town employee, unless the employee is also a Board member.

Bona Fide shall mean authentic and genuine; sincere and honest, without any intention to deceive.

Business shall mean any corporation, limited liability company, partnership, sole proprietorship, trust, foundation, or other individual or organization carrying on a business, whether or not operated for profit.

Chair shall mean the person in charge of a meeting, committee, including the Mayor, etc.

Conflict of interest shall mean a personal or financial interest of a Board Member that interferes with or influences or may interfere with or influence the performance of his or her duties on behalf of the Town.

Contract shall mean any arrangement or agreement pursuant to which any land, material, service or other thing of value is to be furnished for a valuable consideration.

Excused Absence, except in cases of medical or personal emergencies, shall mean an absence that the Board determines is excused after following this process: The Board

Member notifies the Chair at least 24 hours prior to the meeting with the reason for the absence, the Chair, or Vice Chair in the case of an absence or unavailability of the Chair, shall forward the reason for the absence on behalf of the absent Board Member to the Board. While not completely inclusive, the following constitute good cause for nonattendance at meetings: personal illness, family emergencies, work obligations, military absences, jury duty, family weddings, family graduation exercises, and bona fide business and vacation trips. At the beginning of the meeting, and upon considering the reason for the absence, the Board shall determine by a majority vote of the members present, whether the absence shall be excused.

Family shall mean any Board member's parents, siblings, spouse and children and the spouse of any of them.

Financial Interest shall mean a substantial interest held by a Board Member that is:

- a. An ownership of securities of a corporation or of any beneficial interest in a partnership or firm, the aggregate amount of which securities or interest owned by the Board Member and the Board member's family is five percent (5%) or more of any class of securities of such corporation or five percent (5%) or greater ownership in such partnership or firm.
- b. A creditor interest in an insolvent business;
- c. An employment or a prospective employment for which negotiations have begun, or a contractual relationship that directly relates to a matter under consideration;
- d. An ownership interest in real or personal property;
- e. A loan or any other debtor interest; or
- f. A directorship or officership in a business.

Official Action shall mean any vote, decision, discussion, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

Personal Interest shall mean a direct or indirect interest having value peculiar to a particular Board member, whether monetary in value or not, which value may accrue to such Board Member or result in such Board member's deriving or potentially deriving a personal benefit as a result of the approval or denial of any ordinance, resolution, order or other official action, or the performance or nonperformance thereof, and which interest is not shared by the general public.

Related Subject Matter shall mean a matter that is related to the topic dealt with or the subject represented in the discussion or debate.

Trustee or Town Board of Trustees shall mean the Grand Lake Town Board of Trustees, including the Mayor.

Town shall mean the Town of Grand Lake

SECTION III: BOARD MEMBER EXPECTATIONS

Attendance

The effective operation of a Board depends upon regular attendance of the members at duly noticed meetings. Frequent absences from duly noticed meetings by any Board Member denies the Board that person's input and denies the citizens of Grand Lake full representation. Duly noticed meetings of the Town of Grand Lake include regular Board meetings, special Board meetings, workshop/study sessions, executive sessions, budget review meetings, long-range planning retreats and commission/committee meetings to which a Board member is assigned.

For Boards which meet monthly, any Board Member with unexcused absences from three consecutive meetings or four unexcused absences from meetings during the calendar year shall be referred by the Chair to the Board of Trustees for possible replacement. For Boards that meet more frequently than monthly, any Board Member with unexcused absences from three consecutive meetings or six unexcused absences from meetings during the calendar year shall be referred by the Chair to the Board of Trustees for possible replacement.

Upon notice to the board member, and following a hearing before the Board of Trustees at which the board member is afforded the opportunity to be heard, any Board Member, except a Member of the Board of Trustees, may be removed from office by a simple-majority vote of the Board of Trustees present, if the Board Member has been absent more than the permitted number of unexcused times, as set forth above. Any Member of the Board of Trustees may be removed as outlined in the Violations and Penalties section below.

Resignation

Any Board Member wishing to resign should submit a letter of resignation to the Chair of the Board as well as to the Board of Trustees at least one month prior to the desired termination date.

Rules of Conduct for Board Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Board Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Boards and Commissions, the Staff or Public. Inappropriate behavior by a Board Member should be noted to the Mayor, and the Mayor should counsel the offending

Member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Board of Trustees for further consideration and possible removal from that Board or Commission, pursuant to this Handbook.

The following shall apply to all Board Members:

(1) There is no prohibition for any Board Member to have a direct or indirect personal or financial interest in any contract with the Town, provided that the subject matter of the contract is unrelated to the Board member's official duties, and further, provided that the financial interest is disclosed in the contract. Any such contract entered into in violation of this Section shall be void. The prohibition of this Section shall not apply to any contract determined by the Board of Trustees to be an incidental transaction. Transactions of two thousand five hundred dollars (\$2,500.00) or less shall be considered to be of an incidental nature.

(2) No Board Member may use any information obtained by virtue of his or her public position in furtherance of any personal or financial interest or the personal or financial interest of any other person.

(3) Under the council-manager form of government, the Board of Trustees appoints the Town Manager, who directs the day-to-day operations of all employees. No Board Member shall try to privately influence the decisions or recommendations of Staff members, expressly or implicitly give orders or direction to Staff, or intervene directly with Staff on behalf of a particular constituent or organization on a pending matter. Board members are encouraged to work through the Town Manager, or key Staff assigned as a liaison to the applicable Board, on any question, issue, concern or challenge that may arise.

(4) No Board Member shall engage in political campaigning at Town meetings or within Town buildings. They shall also not use public resources for political campaigning, or make campaign speeches at Board meetings touting their, or another's candidacy, nor urge residents to vote for them or another, through words, signs, buttons or other means, during duly noticed meetings of the Town Board, Planning Commission or other committee or citizen advisory board meetings.

(5) No Board Member, in his or her official capacity, may solicit or accept from any donor a present or future gift, favor, loan, service or thing of value, whose cumulative value is more than fifty dollars (\$50.00) per annum, or under circumstances that would lead a reasonably prudent person to believe that such gift, favor, loan, service or thing of value was made or given primarily for the purpose of influencing or attempting to influence such Board Member in connection with an official act, or as a reward of official action he or she has previously taken. This prohibition shall not apply to:

- a. Acceptance of food and refreshment at conferences, seminars, training sessions, luncheon and dinner meetings, special occasions and other instances in conjunction with Town business.

b. Campaign contributions reported under the Fair Campaign Practices Act.

c. Gifts intended for the Town rather than as a personal gift to a Board Member. These items are Town of Grand Lake property, and shall be promptly turned over to the Town Manager for public display or other appropriate handling.

(6) No Board Member shall engage in a substantial financial transaction for his private personal or business purposes with a person whom he inspects or supervises in the course of his or her official duties.

(7) No Board Member shall perform an official act that directly and substantially affects or provides an economic benefit to a business or other undertaking in which such Board Member has a substantial personal or financial interest; or that directly and substantially affects or provides an economic detriment to any business or other undertakings when such Board Member has a substantial personal or financial interest in a competing business or undertaking.

(8) No Board Member shall perform any official act under circumstances that give rise to an appearance of impropriety on the part of the Board member.

(9) Except as provided in subsection (c), no Board member, during his or her term with the Town, may appear or be affiliated with a firm appearing before the Board concerning any transaction with the Town, except under the following circumstances:

a. A Board Member, other than a member of the Board of Trustees, may appear on his or her own behalf before any Board of which he or she is not a member.

b. A Board Member, other than a member of the Board of Trustees, may appear on behalf of another person before any Board except the body of which the Board Member is a member.

c. A Board Member, other than a member of the Board of Trustees, may appear before the body of which the Board Member is a member only if the matter before the Board directly and substantially affects the Board Member, a member of his or her immediate family, or property owned by the Board Member, provided the Board Member has fully disclosed their interest in the matter and recused himself or herself as provided in this Code of Ethics Handbook.

(10) No Board Member shall disclose or use any confidential information acquired in the course of his official duties.

(11) No Board Member shall engage in or accept private employment or render service, for private interests, when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his or her independence of

judgment or action in the performance of his official duties, unless otherwise permitted by law and unless disclosure is made as provided in this Handbook.

(12) No Board Member shall request or permit the unauthorized use of Town-owned vehicles, equipment, materials or property for personal convenience or profit.

(13) No Board Member shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(14) The foregoing Subsections (1) through (13) shall continue to apply to all Board members appointed or elected for a period of one (1) year after termination of their Board terms.

(15) No Board Member appointed or elected after the effective date of this Handbook shall, at any time within one (1) year after expiration of his term of office or other termination from the Town:

a. Appear on behalf of another person before any Board in relation to any matter concerning which the Board Member performed an official act; or

b. Appear on behalf of the interest of any Board Member before any Board in relation to any matter concerning which the Board Member performed an official act, or on behalf of the interest of any other person in any other matter before any Board, without disclosing to the Town the Board Member's prior relationship to the Town and present relationship to the interest.

(16) The following shall apply to all members of the Town Board of Trustees:

a. During the term in office, no Member of the Board of Trustees, including the Mayor, shall be a salaried employee of the Town, except as a Board Member.

b. Except as provided in subsection (c), no Member of the Board of Trustees shall appear on behalf of himself or herself or any other person before the Board of Trustees or any other Board. A Member of the Board of Trustees may be affiliated with a firm appearing on behalf of or employed by another person concerning any transaction with the Town before the Board of Trustees if the Trustee follows the procedures prescribed by "participation in official action prohibited in certain instances" section below.

c. A Member of the Board of Trustees, including the Mayor, may appear before the Board of Trustees or any other Board if the matter before the Board directly and substantially affects the Trustee, a member of his or her immediate family, or property owned by the Trustee, provided the Trustee has fully disclosed their interest in the matter and recuses himself or herself as provided in this Code of Ethics Handbook.

d. If a newly elected or appointed Member of the Board of Trustees, including the Mayor, finds himself in violation of any portion of this Handbook, he shall have forty-five (45) days after his election or appointment to either divest himself from the personal or financial conflict or to resign from the Board of Trustees. Until such divestiture has occurred, the Trustee shall not participate or attempt to influence the decision of the Board relating to such matter.

Participation in Official Action Prohibited in Certain Instances

(1) No Board Member may vote on any matter before the Board if the Board Member has a conflict of interest as defined above. On such a question, the Member shall disclose the nature of the conflict of interest to the Board prior to initiation of any discussion or official action on the subject, including discussions, site visits, Public Hearings, etc. If the Member fails to disclose a conflict of interest or requests the remaining members to determine whether the Member has a conflict of interest, the remaining members shall determine, by motion adopted by the affirmative vote of a majority of the remaining members, whether a conflict of interest exists. Such motion shall state the basis of the determination and shall be conclusive of the question of whether a conflict of interest exists.

(2) When a Board Member declares a conflict of interest or a Board by majority vote determines that a Board Member has a conflict of interest, then the Board Member shall physically remove himself from the Board and the room in which it is meeting, and shall refrain from attempting to influence the decisions of the other members of the Board of which the person is a member. After the Board has completed consideration of the matter, the Board Member may return and resume his duties as a Member of the Board.

However, if that member's participation is necessary to obtain a quorum, or to otherwise enable the Board to act, the interested Member may stay seated at the Board and in the room in which it is meeting, but shall refrain from attempting to influence the decisions of the other members of the Board of which the person is a member. The Member shall abstain from voting, and the abstention shall be counted as a vote which concurs with the majority vote on the motion, unless there is no such majority.

(3) No Board Member shall vote on any question concerning the member's own conduct.

Voting required

Except as provided in this Handbook, each Board Member who is present at a meeting shall vote when the question is called. Any Board Member who refuses to vote, except when required to abstain, shall be deemed guilty of misconduct in office, and a vote which concurs with the majority vote on the motion shall be cast and recorded in the Board member's name, if there is a majority.

Duties of Town Attorney

(1) Any Board Member may request the Town Attorney for an advisory opinion whenever a question arises as to the applicability of this Handbook to a particular situation.

(2) Any person alleging that a Board Member has violated any provision of this Handbook shall file a written complaint of such alleged violation with the Town Clerk, who will refer the complaint to the Town Attorney. The Town Board of Trustees hereby appoints the Town Attorney to inquire into said allegations. The Town Attorney shall make appropriate investigation and shall, within a reasonable time after receiving a written complaint, make a written finding as to whether there is probable cause to believe that this Handbook has been violated. The Town Attorney shall provide a copy thereof to the Town Board of Trustees, and the Board Member in question. If the Town Attorney determines that probable cause exists, then the matter shall be referred to the Town Board of Trustees for further proceedings, pursuant to the "Violation and Penalty" section of this Handbook. The complainant, if not a Board Member, shall be advised of the result of the investigation. Nothing in this Subsection shall limit the authority of the Town Manager to investigate the conduct of and discipline employees.

(3) Should the Town Attorney at any time determine that he has a conflict of interest in carrying out the duties of this Section, the Town Attorney may, in his sole discretion, appoint special counsel to undertake such duties, and such appointment is hereby deemed to comply with the requirements of this Handbook, otherwise requiring approval of the Board of Trustees for the appointment of special legal counsel.

Violations and Penalties

Any Board Member who violates any provisions of this Article shall be subject to the following:

(1) If a violation by any Member of the Board of Trustees is established to the satisfaction of a majority of the Board of Trustees, the violation shall be grounds for an official reprimand by the Board of Trustees, provided, however, that if such violation constitutes statutory grounds for the removal of a Town Officer, or constitutes an act declared by this Handbook to constitute misconduct in office, the violation shall be grounds for removal from office, following notice and an opportunity to be heard.

(2) If a violation by any Board Member other than a Trustee is established to the satisfaction of a majority of the Board of Trustees, the violation shall be grounds for removal of the Board Member from the Board of which he or she is a member. Any vote to remove a Member of the Board of Trustees and/or to fill a vacancy on the Board of Trustees shall be done in accordance with Chapter 2-3, Board of Trustees, as copied below:

2-3-5 Filling Vacancies in Elective Offices

The Board of Trustees shall have power, by appointment, to fill all vacancies in the Board or in any other elected office, and the person so appointed shall hold office until the next regular election and until his successor is elected and qualified. If the term of the person creating the vacancy was to extend beyond the next regular election, the person elected to fill the vacancy shall be elected for the unexpired term. Where a vacancy or vacancies exist in the office of trustee and a successor or successors to be elected at the next election to fill the unexpired term or terms, the three candidates for trustee receiving the highest number of votes shall be elected to four-year terms and the candidate or

candidates receiving the next highest number of votes, in descending order, shall be elected to fill the unexpired term or terms.

2-3-6 Removal of Officers

By the vote of four (4) Trustees, the Mayor, the Clerk, the Treasurer, the Marshall, any Member of the Board, or any other officer of the Town may be removed from office. No such removal shall be made without a charge in writing and an opportunity of Hearing being given unless the Officer against whom the charge is made has moved out of the limits of the Town. When any Officer ceases to reside within the limits of the Town, he may be removed from office. A municipal Judge may be removed during his term of office only for cause.