# REGULAR MEETING
# TOWN OF GRAND LAKE BOARD OF TRUSTEES
# MONDAY, JULY 9, 2012 7:30 P.M.

CALL TO ORDER: The regular meeting of the Board of Trustees was called to order by Mayor Judy Burke at 7:37 p.m. at the Town Hall, 1026 Park Avenue.

ROLL CALL
PRESENT: Mayor Burke; Trustees Gasner, Lanzi, Lewis, Ludwig, Peterson, and Weydert; Town Manager Hook, Town Clerk Kolinske, Town Planner Biller and Town Attorney Krob.

ABSENT: None.

APPROVAL OF MINUTES
June 11, 2012: Trustee Lanzi moved to approve the minutes of the June 11, 2012 regular meeting as written. Trustee Peterson seconded the motion and all Trustees voted aye.

June 25, 2012: Not available.

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

Mayor Burke announced that Music in the Park, sponsored by the Chamber of Commerce, will be every Wednesday at the Town Park Gazebo from 5 – 7 p.m.

Mayor Burke announced that the 65th Annual Buffalo Barbeque Celebration will include a pancake breakfast, a 5K run and walk, a parade, a barbeque, bingo, used book sale and food vendors, the weekend of July 14 & 15.

Mayor Burke then announced that antique and classic wooden boats will be on display July 14 and 15 on Grand Lake at the Town's docks.

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 Lewis announced that she had a conflict with the Liquor License Transfer of Ownership Application for the Lariat Saloon.

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.

At 7:39 p.m. Trustee Lewis excused herself and left the room.

LIQUOR LICENSING AUTHORITY: **CONSIDERATION OF A TRANSFER OF OWNERSHIP APPLICATION FROM EUGENE M. STOVER ESTATE, D/B/A LARIAT SALOON TO GRUMPY'S SALOON, INC., D/B/A LARIAT SALOON** – Mayor Burke asked Town Clerk Kolinske to present this matter to the Board. Kolinske explained that the Town received a Transfer of Ownership Application for the Tavern Liquor License from Eugene M. Stover Estate, d/b/a Lariat Saloon at 1121 Grand Avenue to Grumpy's Saloon, Inc., d/b/a Lariat Saloon. The Lariat has been operating under a Temporary Transfer Permit issued on June 6, 2012. The fees have been paid and all the proper application documents have been completed. A letter has been received from the Grand County Sheriff's Department which states that they have found no adverse information that would affect the transfer of the license. Town Attorney Krob has reviewed the application documents and is satisfied. The Water Department reports that the account is paid in full through the 2nd quarter of 2012, and is therefore considered current. Water bills for the 3rd quarter of 2012 are not yet due. The Lariat has a current Business License but has not been open long enough to have a history of sales tax returns. Kolinske stated that on June 11, 2012, the Board of Trustees made a motion to consider this transfer without a public hearing. She noted that Dustin Barnes, President/Owner was present.

Trustee Peterson then moved to approve the transfer of the Tavern Liquor License from Eugene M. Stover Estate, d/b/a Lariat Saloon to Grumpy's Saloon, Inc., d/b/a Lariat Saloon. Trustee Weydert seconded the motion and all Trustees voted aye.

At 7:41 p.m. Trustee Lewis resumed her seat while Trustee Ludwig excused himself and left the room.

LIQUOR LICENSING AUTHORITY: **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 Attorney Krob to present this matter to the Board. Krob went through the procedure of the hearing by explaining that the Town Clerk will read into the record the notice that went to the license holder so that the Board is aware of the nature of alleged violations. Sheriff Johnson will then give a presentation on behalf of staff. Following the presentation, the license holder's Attorney, Rich Newton, will be allowed to ask questions of Sheriff Johnson and any witnesses that Sheriff Johnson may call. Then the license holder will have the opportunity to present whatever they would like the Board to consider. The Board can ask questions of any of the witnesses that are called. Once both sides have presented what they want the Board to consider then public comment can be taken by the Board. The Board will then



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have a two step decision process. The first step will be to decide whether or not the Board believes that there have been any liquor law violations. If the Board does not believe that there have been any violations there is no need to proceed to the second step. If the Board concludes that there have been one or more liquor law violations, then the Board will proceed to the second step which is to determine what possible penalties or sanction should be imposed for those violations.

Town Clerk Kolinske then entered the attached notice into the record (see attached Exhibit A).

Sheriff Rod Johnson was then asked to give his presentation. He handed out copies of his presentation to each Board Member, to Town Attorney Krob, to Town Clerk Kolinske and to the license holder's Attorney, Rich Newton. He then began with his presentation (see attached Exhibit B).

Part way through Johnson's presentation, Attorney Rich Newton objected by saying that the facts that have been given have no relevance to the issues at hand. The fact that there was an accident, the fact that a warrant was issued has nothing to do with the service of alcohol at the El Pacifico.

Town Attorney Krob then advised the Board to keep in mind that the issue before them is to decide whether or not there have been any violations of liquor law.

As Johnson continued he was referring to statements made by the victims/witnesses. Attorney Rich Newton again objected and made the comment that an investigator from the Sheriff's Department went to the YMCA Camp to interview these individuals through an interpreter, Nicole Stiles. He then asked Johnson if he knew what level of Spanish that Stiles can speak, what dialect she speaks and if he knew her ability to understand what people are saying to her in Spanish. Johnson responded by saying no he does not. Newton then said that the statements are the result of what Stiles wrote down, based on what she perceived the person to be saying or by the investigator when Stiles told the investigator what that person was saying. Newton explained that Town Attorney Krob will say that the rules of evidence are relaxed in an administrative hearing such as this. He then spoke of hearsay evidence and said that hearsay evidence is where somebody tells something to somebody else and the second person then repeats what was said. The reason that hearsay is generally prohibited is because it prevents the parties from examining the speaker of the facts. He said, "Cross examination is the touch stone of the American judicial system. It allows us to explore people's prejudices, people's ability to observe, people's motivation to be telling or not to be telling the truth, people's recollection as opposed to what other people may recall. This is one of



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the most egregious forms of hearsay that I have encountered in the almost forty years of practicing law. We have to rely on what somebody with unknown abilities has translated."

Town Attorney Krob responded by saying that in an administrative hearing such as this, hearsay is admissible and that the Board is entitled but not required to rely on it. Whether the Board relies upon it or not depends on whether the Board concludes that the hearsay testimony and the other evidence presented is sufficiently trustworthy and reliable.

Sheriff Johnson continued with his presentation. Upon conclusion, he answered questions. Among some of the questions asked, Attorney Rich Newton specifically confirmed the fact that Charlie Varela and his wife Maria Rios went to the Sheriff's Department on their own and assisted the investigator to go through El Pacifico's computer records. They were able to show the investigator that no sales had been rung up after about 10:30 p.m. on the night of January 14, 2012. Both Charlie and Maria submitted statements to the investigator. They stated that Armando Varela-Burrola was not employed by the El Pacifico and that they refused to provide rides for the people from the YMCA to the El Pacifico on that night. Charlie and Maria were also very cooperative with the investigator in submitting their phone records.

Trustee Weydert then asked Sheriff Johnson if the liquor license holder is responsible for whatever action that occurs pertaining to their establishment. Johnson responded by saying yes and as a matter of fact, even if he was not present or was not working in the establishment, as a licensee, he is held responsible.

Trustee Gasner asked Sheriff Johnson if any action was taken from the Sheriff's Department toward El Pacifico on any of this. Johnson responded by saying no not as a business. Gasner then confirmed with Johnson that it is not against the law to transport people from one place to another place.

Having no other questions, Mayor Burke called for a recess at 8:53 p.m. and at 9:01 p.m. the meeting reconvened.

Attorney Rich Newton then called Jesus Varela, a/k/a Charlie Varela, 920 Grand Avenue, as his first witness. The questions and answers were as follows:

Newton: Has El Pacifico ever provided rides for people at the YMCA in the past?
Varela: Yes, we have in the past.

Newton: Did you bring underage people to your bar, not check I.D.'s and serve them alcohol?
Varela: We always check I.D.'s.

Newton: Did you receive a phone call on the night of January 14, 2012 from someone at the YMCA looking for a ride?
Varela: Yes.

Newton: Who was it?
Varela: Yesica.

Newton: Do you know Yesica?
Varela: Yes.

Newton: You know that she is underage. Have you served her in the past?
Varela: No.

Newton: Yesica wanted you to come pick them up and so that they could come to the El Pacifico.
Varela: Yes.

Newton: Why did they want to come to the El Pacifico?
Varela: To dance. We play music and they dance.

Newton: On January 14, 2012 when she called what did you tell her?
Varela: We are not doing this anymore. There were three witnesses that heard what I said to Yesica.

Newton: How many times did she call you that night?
Varela: Probably three times.

Newton: What was your answer each time?
Varela: I said no.

Newton: Did you ever call anyone else to try to set up a ride for them?
Varela: No.

Newton: Did you call Armando?
Varela: No.

Newton: Did you authorize Armando at any time to pick these people up?
Varela: No.

Newton: Why would they have called Armando?
Varela: Maybe because they were friends, I don't know.

Newton: Did you personally serve drinks to anyone?
Varela: No.

Newton: Were you tending the bar?
Varela: No, I was in the back playing darts.

Newton: Was anyone serving drinks?
Varela: No.

Newton: What happened at 2:00 a.m.?
Varela: The place closed.

Newton: Did you serve any drinks after 2:00 a.m.?
Varela: No.

Newton: Did anyone at El Pacifico serve any drinks after 2:00 a.m.?
Varela: No.

Newton: Why were these people still there?
Varela: They were waiting for a ride.

Newton: Was Armando drinking in the bar that night?
Varela: No. He showed up with them then he left. He showed back up maybe around 3:00 a.m. or some where's around there.

Newton: Did Armando get any drinks at the bar?
Varela: No.

Newton: Is he allowed to get any drinks at the bar?
Varela: No, he doesn't work there.

Newton: Has Armando ever worked for you?
Varela: Before yes.

Newton: When did he last work for you?
Varela: 2011.

Attorney Rich Newton then called Maria Rios, 920 Grand Avenue, as his second witness. The questions and answers were as follows:

Newton: You were at the El Pacifico on the night that we are talking about?
Rios: Correct.

Newton: Do you remember the phone calls?
Rios: I do.

Newton: Did you and Charlie talk about whether or not you were going to give these guys a ride?
Rios: Yes and I said no. No rides to El Pacifico. It's too hard for me to take them back. I take the responsibility of driving them home safe when I go and get them. They said that El Pacifico called them to pick them up and I asked the officer to show me the records of the phone call to them from the restaurant, our cell phones, or any phone that we have and I never got anything.

Newton: You gave them all of your telephone records didn't you?
Rios: The office, the restaurant and our cell phone. We have one cell phone that we share.

Newton: And there's nothing in those records that indicate that you called the YMCA.
Rios: Nothing.

Newton: Do you know that Charlie told them that he would not send anyone to pick them up?
Rios: Yes.

Newton: Do you know, while you were there, did Charlie ever call Armando and make arrangements for him to pick them up?
Rios: Never.

Newton: Do you remember those people arriving that night at the El Pacifico?
Rios: Yes. They showed up around 11:30 and wanted to party.

Newton: Did you serve any beer or alcohol to anybody?
Rios: Yes I did. I served Marisa who is 21, she showed me her passport. I served her three beers.

Newton: Did she pay with a credit card?
Rios: Yes she did.

Newton: And that credit card was in the records that you gave to the Sheriff wasn't it?
Rios: Correct.

Newton: There were no other charges to any of these people on any of your credit card records or in your cash register receipts.
Rios: No charges because they don't spend any money.

Newton: You turned all of those records over to the Sheriff's Department.
Rios: I did.



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Newton: You gave a statement to the Sheriff's Department.
Rios: Yes.

Newton: You showed the Sheriff's Department how to go through your computer to see if there had been any entries after 2:00 a.m. on the morning that we are talking about.
Rios: Yes.

Newton: There weren't any entries were there?
Rios: Nothing.

Newton: Did you serve Yesica any drinks?
Rios: No, I know that she is underage. I've known that since 2011.

Newton: Did you see Armando that night?
Rios: I was not in when he dropped them off. I was probably finishing in the kitchen but when I came in he was gone. When he came to pick them up outside I was in.

Newton: Were these people most of the time standing outside smoking and waiting for a ride?
Rios: Oh yeah they smoke a lot. When I went out to clean in the morning I found a lot of empty beer cans.

Newton: So they may have brought alcohol with them?
Rios: Yeah probably. I didn't see it but I picked up some bottles.

Newton: So the next morning you picked up bottles outside your restaurant?
Rios: Yeah.

Newton had no further questions of this witness. Trustee Weydert then asked Maria Rios the following:

Weydert: You and Charlie were there during this whole time?
Rios: All the time we were there. When we have somebody in the night, we have an event or something, we are always always there. We don't like anyone to run our business especially the bar.

Weydert: Your computer records only show if a drink was rung up. That does not preclude anyone from mixing a drink and just not registering it.
Rios: They have to. They have to ring everything they sell.

Weydert: Could anybody go and fix a drink? Could I go in and grab a beer out of the cooler?



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Rios: No you can't because it's my business.

Weydert: I understand that, so say could you go and take a beer out of the cooler.
Rios: Yes I can. I can mix a drink for myself.

Weydert: And there would be no record of that.
Rios: No record.

Newton: Did anybody from that group go behind the bar that night?
Rios: No, nobody can go behind the bar.

Newton then asked Charlie Varela if anyone went behind the bar that night.
Varela: No. No one could go behind without me seeing them. I was in the next room playing darts.

Attorney Rich Newton then called Bob Ramsey, 431 Lake Avenue #3, as his third witness. The questions and answers were as follows:

Newton: Were you in the El Pacifico on the night of January 14, 2012?
Ramsey: Yes I was.

Newton: What time did you get there?
Ramsey: I probably got there around 7:00 p.m. I play music there on the weekends, Friday and Saturday nights, and I played that night.

Newton: Were you there when the group from the YMCA arrived?
Ramsey: I believe I was, well I'm not sure because I didn't see that particular group come in but I was there from about 7:30 p.m. until closing.

Newton: You were there actually a little after closing weren't you?
Ramsey: I left after 2:00 a.m. yeah.

Newton: Did you hear Charlie talking to these people on the phone?
Ramsey: I just finished playing and it was about 9:00 or 9:30 and I walked over to the end of the bar where the phone was and, I don't want you to think that I'm laying this on thick and heavy because I'm just telling the truth; Charlie did not want to do this dance that night. He was tired and it was late but being the host that he is he was willing to accommodate them but he told them, and this is exactly what I heard him say, "we'll stay open for you if you want to come over but we're not picking you up, we're not providing transportation for you."

Newton: You were standing right there with him?
Ramsey: Yes.

Newton: Did he ever agree to call someone to go get them?
Ramsey: No. He didn't want to do the dance. He was trying to discourage them and said that we're here for you if you can get here. That's what he said and I would have been discouraged if I were them.

Newton: He didn't suggest that they call Armando?
Ramsey: No, no, no, no, no. He didn't encourage them to call anybody or try to get them there at all.

Newton: Did you hear more than one conversation?
Ramsey: With Charlie, no. Ken, the bartender at Grumpy's, offered these people a ride after hours. Ken told me that he had asked these people for a ride and they told him no that a van from the YMCA was coming to pick them up and they have to do it once a month.

Newton: You were sitting at the bar?
Ramsey: Yes.

Newton: You weren't drinking?
Ramsey: I was having dinner. I don't know, I may have had a drink but I don't think that I did that night.

Newton: Did you see Charlie or Maria or anybody else at El Pacifico serve any alcohol to these kids?
Ramsey: No, there was no bartender. For those of you who frequent the El Pacifico know that it is primarily a restaurant and margaritas and beer on top of that. Lots of times they don't even have a specific bartender on duty. The head waitress or somebody takes care of the drinks.

Newton: You were there until after 2:00 a.m.?
Ramsey: After 2:00.

Newton: None of these kids went behind the bar to make themselves a drink.
Ramsey: No.

Newton: You didn't see Charlie or Maria mix margaritas or pouring shots of tequila or any of that kind of stuff?
Ramsey: No. I think I saw Charlie come and get a drink a time or two, he and Dave were playing darts in the other room.

Newton: Who was drinking the drink that Charlie got?
Ramsey: Him and Dave I assume. It was for them he wasn't serving people.

Newton: When Charlie is playing darts he can see the bar?
Ramsey: He can see the entry way behind the bar.



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Newton: You were there from 7:30 p.m. until after 2:00 a.m.?
Ramsey: Yes.

Newton: But you were sitting at the bar from about 11:00 p.m. until after 2:00 a.m.?
Ramsey: I would occasionally go see what was going on in the dart room and talk to people but basically I hung out at the bar that night.

Newton: Did you see Armando drinking at the bar that night?
Ramsey: I did not see Armando at the bar at all that night. He must have come before or after me.

Newton had no further questions of this witness. Trustee Gasner then asked Bob Ramsey the following:

Gasner: Apparently this wasn't a scheduled event?
Ramsey: No. These dance things are an interesting thing. Since this is a local hearing and you all know Charlie and Maria you know that they raised a family through this restaurant. They have been here 10 years or so. During the age when they were about the same age as a lot of these kids from the YMCA, it was a family operation and it made it a whole lot nicer for the kids. Erick would spin the tunes and the kids would be dancing and having fun. It was never a money making proposition and it pretty much died out when their kids lost interest in it over time.

Gasner: How many people were there?
Ramsey: My guess is ten or less.

Gasner: How many people were drinking at the bar?
Ramsey: Me and my friend Duane if I was drinking. I usually have a drink but I don't remember drinking that night. Duane and I were the only two people sitting at the bar.

Attorney Rich Newton then called Dustin Barnes, 604 Marina Drive, as his fourth witness. Barnes stated the following:

I just wanted to let you guys know that I was there that night with Ken (the bartender at Grumpy's) I'm usually there almost every night closing down the bar. From the minute we close until the minute we get out of there, it is usually one hour of cleaning up. At 3:00 or 3:15 a.m., I do know Ken went over and asked them if they wanted to come inside over at Grumpy's and hang for a little while because it was freezing cold out. They refused and said that they were waiting on a ride. When I left the bar their ride still had not shown up.

Newton: You hire some internationals?

Barnes: Yes.

Newton: Tell the Board a little bit about the issues you've had with translators and interpreters in dealing with the internationals.
Barnes: I am personally responsible for hiring all the internationals at the Daven Haven. I'm the only one that signs all their contracts to bring them overseas. This year, so that you know, it is very hard to interpret what goes on, what people are saying when they don't have at least a six or seven or higher language skill.

Newton: The point is that it is sometimes difficult to understand these people.
Barnes: Oh yeah. In working with them all the time at the Daven Haven you actually have to physically show them what to do. They misinterpret a lot.

Newton: Tell us about your experience with some of these kids using someone else's I.D.
Barnes: What I know from the YMCA, I deal with them all the time, I DJ for them, we have vending and video games out there, I see a lot of them all the time, and they have probably a staff of one hundred or two and the majority of them are internationals. I know that they like to use their friend's passports as fake I.D.'s. It's really hard sometimes, even at Grumpy's. We've caught them using other people's I.D.'s.

Newton had no further questions of this witness. Trustee Weydert then asked Dustin Barnes the following:

Weydert: As a liquor license holder you are responsible to make sure that the person is who they say they are on that I.D.
Barnes: Yes, but there are legitimate fake I.D.'s. You do your best.

Weydert: You just said that the YMCA handles hundreds of internationals.
Barnes: Yes.

Weydert: How many does the Daven Haven have?
Barnes: Four or five.

Weydert: Is it a fair assumption to say that the YMCA has a stronger background and experience in dealing with translators and interpreters making sure that they really do understand the language.
Barnes: I don't think that is necessarily true. The two companies that we dealt with, they are huge companies, two of the top three companies in the U.S. and they can make mistakes. Misinterpretations happen. What I am saying is none of these kids are here to testify. They have

nothing to lose. They can say what they want to the cops and they are gone.

Weydert: I'm referring to the discrepancy or the concern over the human resource individual at the YMCA and whether or not she was qualified to translate.
Barnes: That's really not true because they hire from all over the country. They hire internationals from places all over the world so you better be a pretty good interpreter to know all those languages.

Having no other witnesses, Attorney Rich Newton then spoke to the Board. He noted that Sheriff Johnson brought up the fact that Maritza Varela, an El Pacifico employee, and her boyfriend stopped at the scene while they were traveling home and left the scene as well. Maritza came back and gave all the victims a ride to the YMCA. Based on her actions Maritza was arrested for Accessory to a Crime, a class 4 felony. She plea bargained to a class 3 misdemeanor on a Deferred Judgment and Sentence, which is a lesser charge and the reason was that she was charged with Accessory to a Crime which meant that she was being charged with Vehicular Assault. Newton said that it made absolutely no sense. She wasn't even there when the Vehicular Assault took place. The District Attorney recognized that it was unreasonable and the Judge accepted the deal and recognized that it was unreasonable.

Town Attorney Krob then suggested that the Board open the meeting for public comment.

Bob Ramsey, 431 Lake Avenue #3, was the only one from the audience that made comment. He said that some of these employees of the YMCA may have medical bills that they need to pay and have motives to be a little dishonest but are not here to testify. He told the Board that they don't have a whole lot to go on. He said that the Sheriff's Department did a very thorough investigation but too many things are up in the air here. There are not enough facts to find Charlie Varela guilty. He concluded by saying that it is just a bad situation that shouldn't have happened.

Mayor Burke then closed the public part of the hearing and turned the matter over to the Board of Trustees.

Following discussion amongst the Board Members, Trustee Peterson moved to dismiss the allegations against the El Pacifico. Trustee Lewis seconded the motion.

During discussion, Trustee Weydert said that he would be in favor of imposing a certain number of days of suspension, none of those actively served, but all held in abeyance for a certain period of time. A pure

dismissal is the wrong message to send, not only to the Sheriff's Department, but to El Pacifico as well.

Trustee Lanzi then asked Charlie and Maria how much money this has cost them. Maria responded by saying that it has cost them $28,000. During the approximate two week period that the Sheriff's Department had their computers they were doing business with a pad and pencil. They were not able to accept credit cards and because of that they lost a lot of business.

The motion carried when all Trustees voted aye except Trustee Weydert and Mayor Burke, who voted nay.

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.

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

At 10:05 p.m. Trustee Ludwig resumed his seat.

Due to the fact that there were a number of people in the audience present for the New Business, the New Business items were considered before the Old Business.

NEW BUSINESS: **CONSIDERATION OF RESOLUTION NO. 16-2012, A RESOLUTION ADOPTING USE POLICIES FOR THE TOWN OF GRAND LAKE COMMUNITY HOUSE FACILITY** - Mayor Burke asked Town Attorney Krob to present this matter to the Board. Krob explained that the Board has expressed concern that there not be a perception of entanglement between the Town and the church that has asked to use the Community House. Krob said that in his opinion there have been several Supreme Court decisions in this area regarding the use of public buildings by religious organizations. The most recent is actually not from the Supreme Court but a discussion by the 2nd U.S. Circuit Court of Appeals, a case out of New York, that talks about all the Supreme Court cases in the status of the law. In 2011 a decision was made and was asked to be appealed to the U.S. Supreme Court and the Supreme Court declined to hear the appeal apparently not concerned

enough that the 2nd U.S. Circuit Court of Appeals ruling needed to be changed. What the 2nd Circuit said and what this resolution is intended to do is recognize the balance between the 1st Amendment Right to free expression including religious expression and the requirements of the Constitution that the government not either encourage or discourage a particular religion. He then spoke of the entanglement under the establishment clause and the concern of the appearance of the Town supporting a particular church or a particular religion. As long as the Town is not engaged in view point discrimination the Town can prohibit worship services in a building such as the Town's Community House. That is what the resolution is drafted to do, it is to recognize those concerns that the Board has expressed and to recognize that the Community House is a place to be used for a variety of social, civic and other uses but that the Board has concluded that out of concern that there not be this entanglement and this view that the Town was somehow encouraging or promoting a particular religion that it prohibits the conduct of religious worship services in the Community House.

Mayor Burke then asked for comment from the audience. Ann Gill, an attorney from a law firm in Highlands Ranch, representing the Community Church of the Rockies was recognized. She said that the church has asked her to present her understanding of the constitutional issues here. She said that it is clear that the Town has established the Community House as a public forum. The Town adopted a resolution at the beginning of January which spells out that the Community House could be used by a variety of entities specifically government, non-profit, special district and community organizations. The Town also adopted a fee schedule for the private use of the Community House. Having made the Community House a public forum we now have to look at whether it's becoming entangled since the church has been allowed to use the Community House. We do have to look at the constitutional issues. The First Amendment of the U.S. Constitution does prohibit the establishment of national religion. That same amendment also protects free speech and free exercise of religion and those are the competing interests which the Town now has to balance before they can determine whether it is appropriate to pass a resolution such as the one that is being proposed this evening. There are a series of United States Supreme Court cases that have wrestled with these issues because they do become very difficult to ascertain how to decide the competing interest of establishment of free speech and free exercise of religion. The United States has set forth three criteria for making a determination on a specific case. There must be a compelling state interest involved before you can restrict the use of the public forum. Here clearly the establishment clause and the fear of entanglement of religion is a compelling state interest. Obviously it is a very serious issue or we wouldn't be having this discussion. However the other two criteria established by the U. S. Supreme Court looks at whether the primary or principle effect of the



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policy or law neither advances nor inhibits religion. She said that she thinks the Town has concern with this resolution specifically prohibits the use as a house of worship. The third criteria cites that the policy must not foster entanglement of the government with religion. She said that this is also a problem for the Town because one of the U. S. Supreme Court cases very specifically looked at the phrase "worship service". In order to define that term or phrase the government or the court would have to get entangled with the religion because different creeds, different denominations, different faiths have different definitions of what might be a worship service. Gill then noted that she was present at the afternoon workshop and she and Town Attorney Krob disagreed on this. Krob focused extensively on the 2nd Circuit case in 2011 that prohibits use of a public school in New York for the use of a worship service and he believes that is trend that is being developed in the courts. She stated that she disagrees with him and pointed to one of her sources of disagreement and that is a decision made by the Colorado Court of Appeals issued two months ago. It was a case brought by Freedom from Religion which is a national organization and sued the State of Colorado for having annual proclamations on a day of prayer. This is a proclamation that was brought by various church organizations to the Governor asking for Colorado to engage in a clear day of prayer. The proclamations that were challenged had specific scriptural quotes from the bible that encouraged prayer on this given day and the Governor did sign the proclamation and there were ceremonies at the Capital attended by preachers, pastors, rabies and the Governor. The Court of Appeals went through the three criteria that Gill had described to the Board to determine whether there was an establishment clause violation and the Colorado Court of Appeals said that the proclamation for a state wide day of prayer was an entanglement with religion and was struck down as unconstitutional. The proposed resolution being considered this evening which would prohibit the use of the Community House for worship does create an entanglement with the establishment clause and urged the Board to think very hard about this resolution. She said that she feels that it is a very dangerous infringement on the free speech and exercise of religion.

Following discussion, Trustee Lanzi stated that church use of public property for worship is an inappropriate use and therefore moved to adopt Resolution No. 16-2012, a Resolution Adopting Use Policies for the Town of Grand Lake Community House Facility. Trustee Weydert seconded the motion and all Trustees voted aye except Trustees Lewis and Peterson.

There were a number of people seated in the audience who wanted to speak and since the Board had already adopted Resolution No.16-2012, Town Attorney Krob stated that, by motion, the Board could reopen the discussion for public comment.

Trustee Lewis then moved to reopen the discussion for public comment. Trustee Peterson seconded the motion and the motion failed when Trustees Gasner, Ludwig, Weydert and Mayor Burke voted nay. Members of the audience wishing to comment on this matter were asked to hold their comments until the Citizen Participation portion of the meeting.

OLD BUSINESS:

**CONSIDERATION OF RESOLUTION NO. XX-2012, A RESOLUTION AUTHORIZING THE PERMANENT PLACEMENT OF 2 (TWO) L.E.D. "OPEN" SIGNS ON THE EXTERIOR OF ROCKY HI SPEEDWAY LOCATED WITHIN THE ALLMACHER SUBDIVISION, LOT 8B & GRAND LAKE ESTATES 1ST FILING, BLOCK 11, LOTS 2-3; MORE COMMONLY REFERRED TO AS 510 CENTER DRIVE** – Mayor Burke asked Town Planner Biller to present this matter to the Board. Biller explained that Town staff received updated sign permit applications for Rocky Hi Speedway located in the Allmacher Subdivision, Lot 8B and Grand Lake Estates 1st Filing, Block 11, Lots 2-3; more commonly referred to as 510 Center Drive. Staff has drafted a resolution that reflects the intent of the Board of Trustees to allow an exception to the sign code for an exterior LED open sign. The applicant appealed a sign permit denial made by staff at the June 25, 2012 Board meeting. The Board approved the sign applications at its last meeting and directed staff to draft a resolution outlining the criteria of approval for this meeting. The Board has the following options:
-Approve Resolution xx-2012.
-Approve Resolution xx-2012 with conditions.

Trustee Peterson moved to adopt Resolution No. 15-2012, a Resolution Authorizing the Permanent Placement of 2 (Two) LED "Open" signs on the Exterior of Rocky Hi Speedway Located Within the Allmacher Subdivision Lot 8B and Grand Lake Estates 1st Filing, Block 11, Lots 2-3; More Commonly Referred to as 510 Center Drive. Trustee Weydert seconded the motion and all Trustees voted aye.

OLD BUSINESS:

**GRADING PERMIT UPDATE FOR LOTS 1-2, BLOCK 27, TOWN OF GRAND LAKE** - Mayor Burke asked Town Planner Biller to present this matter to the Board. Biller explained that as per Resolution No. 27-2011 part 3, written progress reports shall be submitted to the Town by July 15. Resolution No. 27-2011 is a resolution granting the extension to a grading permit for Lots 1-2, Block 27, Town of Grand Lake. The Board approved Resolution No. 27-2011 extending the grading permit until December 1, 2012. A penalty clause is written in specifying a fine of $50/day. The last update from Mr. Hammerlund was on October 10th 2011. At this time, no action is required by the Board.

NEW BUSINESS:

**CONSIDERATION OF REVIEW OF RESOLUTION NO. 23-2009, A RESOLUTION GRANTING A LICENSE FOR THE ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY OF CERTAIN IMPROVEMENTS LOCATED ADJACENT TO BLOCK 36, LOT 16, TOWN OF GRAND LAKE** - Mayor Burke asked Town Planner Biller to present this matter to the Board. Biller explained that the deadline for compliancy with Resolution No. 2-2012 expired July 1, 2012. The work has not been completed as required by the resolution. He said that staff talked with Pat Farmer, owner, on 7/5/2012. She made it clear that completing the wall was not a priority and "it is doubtful it will be done this summer". Mrs. Farmer again stated financial and personal reasons for not completing the work and additionally stated that "we are doing the best we can do for now". When staff inquired about the painting of the wall, she stated that the previous Town Planner said that this was the least amount of work needed to be done prior to the July 1 deadline. Staff asked Mrs. Farmer to estimate a time that, if an extension was granted by the Board, would be enough to accommodate the completion of the wall veneer. She stated "at least another year". An email from the property owners dated 6/26/2012 indicates "verbal" conversations with the previous Town planner. Staff has researched the email correspondence with the property owner and nothing found substantiates the claims of a painted wall being adequate. An email from the property owners dated 1/22/2012 indicates that the wall will be completed in the spring of 2012. Staff contacted the property owner, Mr. Farmer, on June 5, 2012. Mr. Farmer expressed a number of personal issues that have prohibited the completion of the veneer that is required on the concrete wall. Mr. Farmer stated that he would complete the project. Staff asked Mr. Farmer if he could give the Town a specific time frame for completion considering his personal issues. He was unable to provide a date. The concrete wall is currently painted brown in color. The Municipal Code 12-7 Design Review Standards is enforceable administratively beginning with a tier 1citation process. The owner would be given a warning and 10 days to correct the action. If left uncorrected, the owner would be given the 1st of 3 citations with 10 days to correct the action after each citation. After the 3rd citation the Town could take whatever action it deems necessary to correct the violation, as outlined in 1-1-11D. The Town Attorney has been contacted by staff and is awaiting an answer regarding the ramifications in revoking of the resolution. Mr. Krob did recommend that the threat of revoking the resolution was far more persuasive for compliance than administratively enforcing the violation. The Board shall review revocation of Resolution No. 23-2009 as required by Resolution No. 2-2012, Part 2. The Board has many options including the following:

-Revoke Resolution No. 23-2009.

-Extend the compliancy deadline of Resolution No. 2-2012 to a date determined by the Board.

-Instruct staff to enforce the Municipal Code violation administratively.
-Consider the wall complete and thus require no further action.

The Board should provide direction to staff on how to proceed with the expired compliancy deadline for the permitted encroachments adjacent to Lot 16, Block 36, Town of Grand Lake. The Board has many options including the following:
-Revoke Resolution No. 23-2009.
-Extend the compliancy deadline of Resolution No. 2-2012 to a date determined by the Board.
-Instruct staff to enforce the Municipal Code violation administratively.
-Consider the wall complete and thus require no further action.

Trustee Gasner moved to instruct staff to enforce the Municipal Code violation administratively. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS: **CONSIDERATION TO AUTHORIZE THE MAYOR TO SIGN A MEMORANDUM OF AGREEMENT BETWEEN THE GRAND COUNTY BOARD OF COUNTY COMMISSIONERS, THREE LAKES WATERSHED ASSOCIATION, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, COLORADO RIVER WATER CONSERVATION DISTRICT AND THE TOWN OF GRAND LAKE FOR CYANOTOXIN SAMPLING** – Mayor Burke asked Town Manager Hook to present this matter to the Board. Hook referred to a Memorandum of Agreement between the Grand County Board of County Commissioners, Three Lakes Watershed Association, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, and the Town of Grand Lake and explained that this agreement provides for cyanotoxin sampling in the west slope storage facilities of the Colorado-Big Thompson Project (Grand Lake, Shadow Mountain Reservoir, Granby Reservoir, and Willow Creek Reservoir). The value of Grand Lake's contribution ($1,235.57) is less than the amount allocated in the adopted 2012 budget ($1,333). Staff recommends the Board authorize Mayor Burke to sign the Memorandum of Agreement.

Trustee Weydert moved to authorize Mayor Burke to sign the Memorandum of Agreement for cyanotoxin sampling. Trustee Peterson seconded the motion and all Trustees voted aye.

NEW BUSINESS: **CONSIDERATION OF RESOLUTION NO. 17-2012, A RESOLUTION IMPOSING IMMEDIATE FIRE RESTRICTIONS WITHIN THE TOWN OF GRAND LAKE** - Mayor Burke asked Town Manager Hook to present this matter to the Board. Hook explained that the Town of Grand Lake Municipal Code 2-2-9 authorizes the Mayor and Town Manager to implement a ban on open fires and

fireworks. Additionally, the code requires that any fire ban action undertaken by the Mayor and Town Manager be presented to the Board of Trustees for review at your next meeting for ratification or modification. On June 26, 2012, staff issued a ban on open fires and the use of fireworks within the Town limits, with certain exceptions. The issuance of the Grand Lake fire ban came after consulting with Mayor Burke on a similar fire ban issued by the Board of County Commissioners on June 26, 2012. Resolution No. 17-2012 is drafted for your consideration. Staff recommends adoption.

Trustee Peterson moved to adopt Resolution No. 17-2012, a Resolution Imposing Immediate Fire Restrictions Within the Town of Grand Lake. Trustee Lewis seconded the motion and all Trustees voted aye.

ACCOUNTS PAYABLE
June, 2012:

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

CITIZEN PARTICIPATION: Dustin Barnes, Kevin McClain, Dave Gill, LeAnn McClain, Rich Olivo and Art VonEpts all spoke at this time. The comments of these members of the public followed the general line of disappointment in not being given the opportunity to speak before adoption of the resolution and expressed their opinion that church services should be allowed to be held in the Community House.

ADJOURNMENT: Trustee Weydert moved to adjourn, seconded by Trustee Gasner. All Trustees voted aye, and the meeting was adjourned at 11:21 p.m., July 9, 2012.

~~JUDY M. BURKE,~~
~~MAYOR~~
Jim Peterson,
Mayor Pro-Tem

ATTEST: Ronda Kolinske
RONDA KOLINSKE, CMC,
TOWN CLERK



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