

**TOWN OF MILLIKEN
BOARD OF TRUSTEES
MILLIKEN MEETING HOUSE, 1201 BROAD STREET**

MEETING MINUTES

Wednesday, March 27, 2013 – 7:00 P.M.

Call to Order

The Town of Milliken Board of Trustees convened a regular session on Wednesday, March 27, 2013 at 7:00 p.m. Those present: Mayor Milt Tokunaga, Mayor Pro Tem Julie Cozad; Trustees: Linda Beck, Ted Chavez, Reid Hobler, Jordan Jemiola, and Lois Ann Onorato. Also present: Town Administrator/Police Chief Jim Burack, Town Clerk Cheryl Powell, Treasurer & Accounting/Finance Director Patrick Murphy, Community Development Director Anne Johnson, Town Attorney Bruce Fickel, Assistant Attorney Sunita Sharma, Parks and Outdoors Director Josh Roseberry and Public Works Director Jason Fowler.
Absent: None.

Pledge of Allegiance

Mayor Tokunaga called the meeting to order.

Agenda Approval

Town Clerk Powell said there were no staff additions to the Agenda.

Citizen Comments

None

Minutes of Previous Meeting – March 13, 2013 meeting.

Minutes approved as distributed.

Acknowledgement of the Paid List of Bills

March 2013 List of Bills.

CONSENT AGENDA

There were no items.

ACTION AGENDA

1. Consideration and Approval of a Professional Services Agreement with Kathleen Novak

Mayor Tokunaga asked the Town Board to consider for approval a Professional Services Agreement for Consulting/Facilitation/Training Services with Kathleen Novak. He explained the reason for this service is to formulate better communication. Part of the 2013 Town of Milliken Goals is Community Outreach which begins at the Town Board and Town Staff level. The consulting fees will be paid from funds in the 2013 budget, with a not-to-exceed amount of \$3,500.

Mayor Pro Tem Cozad moved to approve the Professional Services Agreement between the Town of Milliken and Kathleen Novak for consulting/facilitation/training services with a not-to-exceed amount of \$3,500.00 and direct the Mayor to sign. Trustee Onorato seconded.

Discussion: None.

Vote: All in favor, none opposed. Motion passed.

2. Town Administrator's Evaluation

Town Attorney Bruce Fickel spoke to the Town Board regarding the Town Administrator's evaluation. Town Attorney Fickel explained that the Town Board could choose to go into Executive Session or remain in the open meeting.

Mayor Tokunaga asked the members of the Town Board if any of the items regarding the contract could be discussed at this time. Town Attorney Fickel responded that the contract would be a separate item.

Town Attorney Fickel explained that the evaluation form was sent to the Town Board members and then returned to his office where a summary of the evaluations was compiled. Attorney Fickel explained that only five (5) of the seven (7) evaluations were returned. Mayor Pro Tem Cozad responded that she does not feel the summary is complete without all the Town Board member evaluation responses.

Trustee Hobler explained that, due to an error through email, one of the unreturned evaluations was his. Citizen questions from the audience inquired who the remaining Town Board member was who did not submit an evaluation and if the completed evaluations will be made available to the public or publicized. Town Attorney Fickel responded that the evaluations are submitted with attorney/client confidentiality.

Mayor Tokunaga gave an oral report on the summary evaluation of the Town Administrator and Trustee Hobler explained that due to his working relationship with the Administrator he will openly provide his evaluation responses to the Town Board and the audience. Mayor Pro Tem Cozad explained to those in the audience that the Town Board provides an evaluation to the Town Administrator throughout the year and not just annually.

3. Town Administrator's Proposed Contract

Town Attorney Bruce Fickel stated that the proposed contract was emailed to all the Town Board members on Monday, March 25, 2013. Attorney Fickel explained the procedure for discussing the contract to the Town Board members by suggesting that there first needs to be a motion to either accept or reject the contract. Discussion in regard to the contract will follow.

Trustee Onorato motioned to reject the contract. Trustee Jemiola seconded.

Discussion: Trustee Jemiola explained he was not comfortable with the length of the contract. He also had a question regarding the termination portion of the contract, specifically the amount of money the Town would be required to pay upon termination. Trustee Onorato explained that a four (4) year contract is too long. Mayor Pro Tem Cozad asked for further explanation from Town Attorney Fickel in regard to what the cost to the Town would be pursuant to the Town Administrator's termination. Town Attorney Fickel provided an explanation of the termination provision and also explained to the Town Board the section regarding severance.

Trustee Jemiola asked what the purpose of an annual evaluation is if there is a four-year contract. Trustee Hobler explained that an annual contract could either play in the Town Board's favor or not. Mayor Pro Tem Cozad explained that, typically, an Executive Director contract is for three years. A multiple-year contract provides stability for the Town. Trustee Chavez expressed that the Town Board sets the goals for the Administrator and perhaps the Town Board is not providing enough direction to the Town Administrator. Trustee Beck spoke that the Town Administrator has worked for the Town for ten years and has proved himself to the Town.

Mayor Tokunaga asked if the contract was for the Town Administrator position or for the dual role of Town Administrator and Police Chief. The pension amount being paid is into the Fire and Police Pension Association (FPPA) and additional amounts are being paid into International City Management Association (ICMA). Town Attorney Fickel responded that the Town Administrator has paid into FPPA since becoming a member and that this should continue. The ICMA retirement account is a separate 457 deferred-compensation program.

Trustee Hobler inquired as to what duties had been neglected as a result of the dual roles filled by the Administrator/Police Chief. Trustee Jemiola mentioned an issue regarding the paving contract for the Town and that the Financial Policies were not followed. Mayor Tokunaga added that the paving project was not completed until November/December and the Town was fortunate that the weather cooperated with the completion of this project.

Mayor Pro Tem Cozad stated that if there were concerns regarding the Town Administrator's performance they should have been included within the evaluation summary. There could have been additional discussion regarding his evaluation.

A roll call vote was requested by Trustee Jemiola.

Trustee Hobler - Yes, Trustee Onorato - Yes, Trustee Jemiola – Yes a one (1) year contract is sufficient, Mayor Pro Tem Cozad – Yes to allow the Town Board additional time to discuss, Mayor Tokunaga – Yes, Trustee Beck – No, Trustee Chavez – Yes. Motion passed.

Trustee Hobler commented regarding the length of contract and would like to have a contract brought to the next Town Board meeting for the Board to act on. Mayor Tokunaga would like to review the contract with Attorney Fickel. Mayor Pro Tem Cozad stated if there is a discussion regarding the contract it should include all the Town Board members.

The Mayor opened the meeting to allow for public comment.

Public Comment

Mrs. Colleen Flack, 5225 65th Avenue, Greeley – Stated that outside of three (3) or four (4) people in the audience she has never seen any of them attend a meeting. Mrs. Flack suggests they attend the two (2) meetings per month.

Michelle Bernhardt, 11263 Hwy 60, Milliken – Has a concern regarding the concrete ditch on Alice Avenue and stated that repairs need to be made to the ditch for farm irrigation. Town Administrator Burack explained the ditch is being cleaned and that a meeting with John Kielian has occurred to discuss project construction.

Dave Purvis, 6043 Hwy 60, Johnstown – Commented that declining military service by members of the armed forces is not an option and that the absence of an individual due to military service should not be in a contract.

Jared Tucker, 952 Traildust Drive, Milliken – Asked if the people covering for Town Administrator/Police Chief Burack in his absence are being compensated when he is out of Town. Town Administrator Burack explained his presence at Pearl Harbor was more time-consuming and that he is now

the lead Marine Officer to FEMA, reporting to the Denver office. Whenever he has been absent from the Town he is engaged and in touch through email and phone. He explained the roles that the Town Clerk carries to the Town Board and administratively to the Town Administrator. Finance Director Patrick Murphy responds to the Town Board in the capacity of Treasurer and to the Administrator in the capacity of Accounting/Finance Director. He explained that due to his skill sets he can add value to the Town in his dual role. When he applied in Milliken it was not for the job of Town Administrator. Due to problems that occurred, he offered his services to fill-in and his role expanded from there. He also stated that staff is not provided any additional compensation to fill in during his absence.

Mr. Tom Baker, 2180 Birdie Way, Milliken – Suggested to the Town Board that two (2) disparate positions should be under separate contracts.

Mr. Steven Morgan 786 S. Juniper Court, Milliken – Noted that the Chief of Police answers to the Town Administrator, so would the Chief answer to the Administrator? Town Administrator/Police Chief Burack responded yes. Mr. Morgan asked if Commander Benito Garcia is competent, why not eliminate the Police Chief role and the Commander would answer to the Town Administrator. Mr. Baker believes the dual role could be a conflict.

Mr. Duane Flack 5225 65th Avenue, Greeley – Stated he was a member of the Fire Board at the time the positions were combined and believes the positions were combined due to the fact that Milliken did not have the money. Mr. Flack said that Town Administrator/Police Chief Burack has had an admirable record and his staff makes the Town look good. Mr. Flack also commented that the Town Administrator/Police Chief lives in Milliken whereas the Fire Chief resides in Fort Collins.

Mr. Bob Carnahan, 707 S. Olive Avenue, Milliken – Mr. Carnahan commented that the Town Board needs to give the Administrator more direction, but that the Town Administrator directs the Board. Asked if the four (4) years are not fulfilled is the Town Administrator required to pay the Town back. Trustee Hobler responded that the Town Administrator came to the Town Board with a contract renewal since the Town Board did not present a draft to him. His contract was due to expire.

Mayor Tokunaga directed discussion to address each item in the contract separately.

Trustee Hobler proposed a motion to approve a three (3) year contract. Mayor Pro Tem Cozad seconded.

Discussion: Mayor Tokunaga asked if this contract covered Police Chief and Town Administrator. Mayor Pro Tem Cozad asked if the positions going to be separated.

Mayor Pro Tem Cozad withdrew her motion. Trustee Chavez seconded. Trustee Jemiola requested a roll call vote:

Trustee Hobler - Yes, Trustee Onorato - No, Trustee Jemiola - No, Mayor Pro Tem Cozad - No and explained without defining the position there needs to be further discussion, Mayor Tokunaga - No explaining there needs to be discussion on the agreement regarding the description, Trustee Beck – No explaining the contract needs to be reviewed, Trustee Chavez – No he stated the Contract just speaks of Town Administrator.

Attorney Fickel explained that the Town Board could direct the Administrator to hire a Chief of Police.

Mayor Pro Tem Cozad motioned to postpone the negotiation and further discussion until the next meeting. Trustee Jemiola seconded.

Discussion: Trustee Hobler asked what further discussion items there would be so that can they be discussed in order to avoid extending a contract. Trustee Chavez suggested the terms. Mayor Pro Tem Cozad responded that the discussion would address the terms, benefits and severance package. Trustee Jemiola added his concern over the reimbursement of professional dues and subscriptions.

Town Attorney Fickel suggested that Administrator Burack address the items that were requested.

Mayor Pro Tem Cozad withdrew her motion and Trustee Jemiola withdrew his motion.

The Town Board members requested a recess of approximately twenty (20) minutes.

Town Administrator Burack addressed the Town Board regarding the content of the contract and explained it had been a standard contract for previous Administrators. Town Attorney Fickel responded that, due to a previous contract with an Administrator, the contract was reviewed by the Town's Insurance company, CIRSA, and they incorporated some changes.

The Town Administrator spoke about the contract term length and explained the reason for a four-year term is due to the goals set forth by the Town Board, stability for his family, etc. The severance portion of the contract is a negotiable item that can be reduced, but something that would still provide some security for his family. He explained that the Police Chief in Johnstown's salary is approximately \$100,000 annually and the contributions are made to FPPA. Administrator Burack suggested that the matching portion of the ICMA 457 Deferred Compensation Plan be a performance measure if he meets or exceeds the performance standards and goals set for

him. The Dues and Subscription portion of his contract are necessary for him in his capacity as Town Administrator for professional organizations such as the International City Management Association (ICMA) and the Colorado Municipal League (CML).

Trustee Jemiola stated his reason for supporting the contract term of one year is in case Milliken would like a change and that the Town Board would still be offering a contract.

Mayor Pro Tem Cozad stated a three-year term for a contract is consistent with other executive positions. There are ways to terminate the contract if needed. She explained that there are some co-mingled items for both positions and perhaps they need to be separated. Finance Director Murphy responded that the dues items are consistent with what would be provided for an Administrator. Town Attorney Fickel explained the outside activities and suggested a not-to-exceed amount of \$2,500 for these items. He also explained that the cell phone is provided by the Town and the additional pension benefits could be a performance measure when the Town Board's goals are met. The severance package could be adjusted to four (4) months.

Trustee Chavez spoke about Jim's contribution to Milliken, Weld County, etc. and he supports a three (3) year contract.

Trustee Onorato stated that she supports a one-year contract and if everything goes well then it will be renewed. She does not have a problem with the other items in the contract.

Mayor Tokunaga spoke about the co-mingling of the benefits in the contract for both Town Administrator and Police Chief. Town Attorney Fickel spoke about the 4% being the incentive amount when the goals are achieved.

Board discussion covered what other municipal Administrator/Manager contracts resemble. Further discussion was regarding the severance package and that the health insurance amount would continue during the severance period the same as if the Administrator was still an employee. Town Attorney Fickel explained that the benefits would continue for four (4) months unless a new employer provided equivalent benefits. If not, after the four (4) months, the Administrator would be entitled to a COBRA benefit plan like any other terminated employee.

Discussion regarding the contract term among the Town Board included a possible two (2) year term, that a longer contract employment could include a shorter severance package, and a shorter contract could include in a longer severance package.

Trustee Beck suggested a three (3) year term and that Town Managers in some municipalities receive more than a six (6) month severance package. Paid dues and subscriptions are part of being an executive. She stated that

the Town Administrator/Police Chief has worked for the Town for eleven (11) years and has provided a great benefit to the Town and if there are issues, they need to be discussed. Trustee Jemiola asked Trustee Beck where her information for a Town Administrator/Manager position was arrived from. Trustee Beck responded that she was a staff member for the Town of Timnath.

Mayor Pro Tem Cozad motioned to approve the employment agreement for a three (3) year term, dues and subscriptions not-to-exceed \$2500.00 and to change the severance package from six (6) months to four (4) months, retirement benefit of a 6% contribution by the Town and employee and the additional 4% match after establishing the goals set by the Town Board and as part of the severance package, for the period of four (4) months the employee would continue paying his insurance portion as if he was an employee. Trustee Chavez seconded.

Discussion: Mayor Tokunaga asked to see the complete contract before he votes. Trustee Hobler asked the Town's legal counsel to revise the contract for the Town Board to review, in order to make a decision at the next meeting. Mayor Pro Tem Cozad stated that the main issues of the contract have been discussed.

Trustee Jemiola asked to amend the motion to a one (1) year contract for the Administrator. Trustee Onorato seconded.

Trustee Jemiola asked for a roll call vote on the amended motion.

Roll Call Vote: Trustee Hobler - No, Trustee Onorato - Yes, Trustee Jemiola - Yes, Mayor Pro Tem Cozad - No, Mayor Tokunaga - Yes, Trustee Beck - No, Trustee Chavez – No. Motion failed.

Roll Call Vote on the original motion.

Roll Call vote: Trustee Hobler - Yes, Trustee Onorato - No, Trustee Jemiola - No, Mayor Pro Tem Cozad - Yes, Mayor Tokunaga - No, Trustee Beck - Yes, Trustee Chavez - Yes. Motion passed.

Town Administrator Burack accepts the contract offer.

DISCUSSION AGENDA

There were not any items.

INFORMATIONAL AGENDA

1. **Transfer of Centennial Lake Lease from Lot Holding Investment to Centennial Crossing Metropolitan District**

Town Administrator Burack commented on the notification letter from Lot Holding Investments to notify the Town Board of Trustees of the assignment of the lease to the Centennial Crossing Metropolitan District.

Executive Session

Mayor Pro Tem Cozad moved to go into executive session according to C.R.S. §24-6-402(4)(e), for determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators. Trustee Beck seconded.

Vote: All in favor, none opposed.

Executive Session commenced at 9:59 p.m.

Resume Regular Meeting

Mayor Tokunaga stated: "The time is now 10:12 p.m. and the Executive Session has been concluded. If any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I ask that you state your concerns now."

There were no concerns.


Adjournment

Hearing no further business, the Mayor adjourned the meeting at 10:14 P.M.

Prepared by:

Approved by:


Cheryl L. Powell, Town Clerk


Milt Tokunaga, Mayor