



## Town of Grand Lake Board of Trustees Workshop & Meeting

The Town of Grand Lake upholds the Six Pillars of Character: Citizenship, Trustworthiness, Respect, Responsibility, Fairness and Caring

### 3-8-2021 Board of Trustee Workshop & Evening Meeting This Virtual Meeting will be streamed live online

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#### **Monday March 8, 2021 – Work Session 4:30 PM**

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1. Call to Order
2. Roll Call
3. Conflicts of Interest
4. Heckendorf Encroachment (**Pg W2**)
5. 2020 Recap (**Pg W11**)

#### **Monday March 8, 2021 – Evening Meeting 6:00 PM**

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- A. Call to Order
- B. Pledge of Allegiance
- C. Announcements
- D. Roll Call
- E. Conflicts of Interest
- F. Public Comments (limited to 3 minutes)
- G. Meeting Minutes – Consideration to approve meeting minutes dated February 22, 2021 (**Pg. E2**)
- H. Financial Review – Approve Accounts Payable for March 2021 (**Pg. E7**) Revenue & Expenditures Summary 1/31/2021(**Pg. E13**) Draft of Long-Term Debt & Financial Commitments (**Pg. E14**)
- I. Consideration of Resolution 03-2021, a Resolution to Grant an Encroachment License into the Mountain Avenue Right of Way for Certain Improvements Located Adjacent to Lot 1, Block 33, Town of Grand Lake; More Commonly Referred to as 328 Mountain Avenue (**Pg. E15**)
- J. Consideration of Resolution 02-2021 – Adoption of a Multi-Hazard Mitigation Plan (**Pg E30**)
- K. Discussion of EV Charge Station (**Pg E32**)
- L. Managers' Report
- M. Mayors Report
- N. Future Items for Consideration
- O. Adjourn meeting

Statement of Purpose: Workshops are held in the afternoon prior to each Board of Trustee meeting. Workshops are conducted:

- 1) To ensure that the Board Members have adequate information and background to make informed decisions on various items.
- 2) To provide the Trustees with a forum to frame emerging issues and to discuss potential alternatives to address these issues.
- 3) To learn about important events affecting the Town and to provide a chance for citizens to bring "for your information" items to the Trustees.
- 4) To make efficient and effective use of citizens time at Board meetings but allow citizens time to make their comments known in a recorded meeting.



To: Mayor Kudron and the Grand Lake Board of Trustees  
From: John Crone, Town Manager  
Re: Heckendorf Encroachment  
Date: March 8, 2021

### **Background**

The Heckendorf encroachment has a very long history. The Heckendorfs own a cabin that sits on .075 acres of Town-owned right of way. The cabin was originally placed on the property in 1955. The Heckendorfs have owned it since 1957.

In 2008, the Heckendorfs first came to the Town to seek a vacation of the parcel. Since then the proposal has been in front of the Board many times. In 2011, the Heckendorfs were granted an encroachment easement by the Town. The easement was updated in 2012. The easements have always contained a 45-day repeal provision allowing the Town to disallow the Heckendorfs use with just forty-five day's notice. The last time that the Board considered it was in 2018 when Mayor Kudron and Trustees Southway and Bruton were on the Board.

Several times in the past, the Heckendorfs have informed the Town of the difficulties that they have acquiring adequate insurance for the property. This has become an issue once again following the fires. The Heckendorfs have asked the Town to come up with a resolution that will allow them to continue using the land with long-term assurances that the Town will not rescind the use or a solution that will give them ownership of the land.

### **Statutes**

Town code requires that any encroachment is insured for the Town's benefit. There is no limit on the time frame of an encroachment easement. If the Town vacates the property, it will become part of the Heckendorfs property.

Under state statute, the Town cannot sell the land without a vote of the citizens. If the Town wants to create a lease of longer than one year, the Board will need to pass an ordinance.

## ORDINANCE NO. 05-2012

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 18-2011, AN ORDINANCE GRANTING AN EASEMENT FOR THE ENCROACHMENT INTO THE ELLSWORTH AVENUE PUBLIC RIGHTS OF WAY OF CERTAIN EXISTING ENCROACHMENTS ON THE ELLSWORTH AVENUE RIGHTS OF WAY AND LOTS 1-5, CAIRNS ADDITON TO GRAND LAKE.

BE IT ORDAINED BY THE GRAND LAKE BOARD OF TRUSTEES THAT:

Section 1. An easement is hereby granted to F.A. Heckendorf Jr., Susan Carlson, and Carl C. Heckendorf, as owners (hereinafter the "Grantee") of Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 for the purpose of allowing the preexisting encroachments of 6'3"X6'3" of the corner of the garage (hereinafter the "Garage") and a 14'6"X19'6" one-story, log-sided cabin (hereinafter the "Cabin").

This easement shall remain in full force and effect for the benefit of the Grantee, its successors, heirs and assigns, for so long as the present buildings remain on the lots. Grantee may perform normal maintenance and repairs but may not enlarge them further into or above the public right-of-ways.

Section 2. Should any portion of the Garage or Cabin (hereinafter the "Buildings") be destroyed by fire or other casualty to the extent their reconstruction is not feasible; or if the Buildings or a portion of the Buildings are removed as a result of the obsolescence or structural deterioration or if option 3b in Section 4 is chose; the associated encroachment with either the Garage or Cabin as a part of this easement shall become null and void. Any new construction or reconstruction shall take place only within the confines of the property lines of Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 and shall in all ways comply with the applicable zoning regulations, building codes and all other development regulations then in effect.

Section 3. An easement is hereby granted to F.A. Heckendorf Jr., Susan Carlson, and Carl C. Heckendorf, as owners (hereinafter the "Grantee") of Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 for the purpose of allowing the preexisting encroachments of a 90' long by 3' wide stone wall fence (hereinafter the "Wall").

This easement shall remain in full force and effect for the benefit of the Grantee, their heirs, successors and assigns, until such time as the Town, in its sole determination, determines that this easement should end. At such time, within 45 days of the Town providing notice to the Grantee, Grantee shall remove the improvement and restore that portion of the Town right-of-way to pre-existing condition or better at Grantee's expense. The Grantee may perform normal maintenance and repairs to the improvement, but may not enlarge it further into or above the public right-of-way.

Section 4. The Improvement Survey Plat (attached hereto as Exhibit 'A') purports to describe the encroachments which are the subject of this Ordinance. This Ordinance shall not apply to any encroachment other than the encroachments listed herein and are in conjunction with the Cairns Addition to Grand Lake Lot 1-5 and A .16 AC Tract North of Lot 1-5.

This easement is contingent on the following:

- A. Failure to comply with the dates for work completion submitted in the Rehabilitation Plan (attached as Exhibit 'B') shall cause this easement to become null and void. Competition dates are listed as follows:

1. Demolition of existing unpermitted encroaching carport and covered walkway shall be completed by November 15, 2011; and
  2. Repair of the Wall shall be completed by November 15, 2011; and
  3. The Garage shall be completed no later than October 15, 2012 by either
    - a. Rehabilitation as proposed
    - b. Demolition
  3. Restoration of the Cabin shall be completed no later than October 15, 2012.
- B. Restoration of the log rails of the Wall shall be completed no later than October 15, 2012.
- C. Removal of all other fencing on the Ellsworth Avenue Right-of-Way (not including the fence located on the western property line, delineating the subject parcel and the neighboring property) shall be removed no later than October 15, 2012.
- D. If permitted or unpermitted purposeful destruction of any or all of the permitted or unpermitted encroachments occurs, the following shall apply:
1. The Grantee shall be required to submit to the Town an updated Improvement Survey Plat depicting the new improvement size; and
  2. The Town of Grand Lake may requirement amendment to the encroachment easements permitted in this Ordinance to reflect the new improvement size.

Section 5. In granting said easement, the Town of Grand Lake expressly reserves to itself the right to construct and maintain all municipal utilities and permanent improvements, and further reserves the same right to all utility companies operating under a Town franchise or license or paying utility tax to the Town.

Section 6. The easement granted by this Ordinance will not become effective until both of the following shall has occurred as evidenced:

- A. Grantee shall pay to the Town the sum of Two hundred Dollars (\$200.00); and
- B. Grantee shall deliver a full executed Indemnification Agreement (attached hereto as Exhibit 'C'); and

DULY MOVED, SECONDED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE THIS 27TH DAY OF AUGUST, 2012.

(SEAL)

Votes Approving	6
Votes Opposed	0
Absent	1
Abstained	0

ATTEST:

TOWN OF GRAND LAKE

\_\_\_\_\_  
Ronda Kolinske, CMC, Town Clerk

\_\_\_\_\_  
Judy M. Burke, Mayor

**John Crone**

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**From:** Kirsten Heckendorf <kirsy573@msn.com>  
**Sent:** Wednesday, February 3, 2021 6:10 PM  
**To:** John Crone  
**Subject:** Heckendorf Property Recap

Hi John,

Thanks for your time today.

I wanted to recap what we discussed for your records.

The property was purchased by my husband's family in 1956. The guest house was where it currently is and had a water tap that had already been put in place by the town. We have been paying on that water tap to the town since that time. We have not turned that water on since we purchased the property in 2013 but continue to pay the tap. If the Cannan (sp?) family had not been given permission to have the guest cabin where it now sits why did the town provide a water tap?

That piece of property has been used by the owner's of the property since the first owners back when the property was built. The Cannan family used it as a pass-thru to the main cabin and the Heckendorf family used the area for Suzie Carlson's horse and then Carl Heckendorf lived in the tiny cabin.

Four years ago the board approved our purchase of the property and we were asked to do another survey. We had already done a few but the town required it so we paid for another.

Immediately after the town planner who was responsible for this, Joe Biller, quit. The new town planner, Nate Shull, started and was overwhelmed and we fell to the bottom of the heap. Totally understandable and I know he feels badly about it.

We know that the area is not used for snow removal per Bernie and the one time someone, not Bernie, attempted to push snow into that area they disrupted the utilities lines that are buried and Bernie had to come back and repair the damage prior to his retirement.

We know from historical documents that the road itself cannot be used as a road except for emergency vehicles. There is likely a letter in our file from the then fire chief to that effect. In addition, because the town already vacated the corner to Eagle's Landing and built the retaining wall under Eagle's Landing for the retaining wall that the road no longer meets the width to be a road. As it stands now it is dangerous for vehicles because of the blind corner going each direction.

We now believe that the town has created somewhat of a hardship issue for us.

During the fire in October, I contacted my insurance company to make sure we would be covered only to find out that because we have to indemnify the town for the property we get thrown into a surplus supply for insurance and we are super limited. We can't get enough coverage for the cabin and boathouse because of it and we can't split the property to separate that piece out either. Because we have never had a claim the

insurance company allowed us a slight increase but it would not be enough for fire/flood and we cannot <sup>W6</sup> because of this policy file for FEMA should there be any fire/flood issues.

This is not ideal. We have done everything we have been asked. We jumped through every single hoop presented to us and the town has not honored its side of this. We have been exceedingly patient. This tiny piece of property means nothing to anyone except us.

I am asking that based on the above that the property be vacated and added to the current property for tax basis.

Thank you for your consideration and I look forward to coming to a resolution soon.

Kirsten Heckendorf

## Historic Timeline of Actions – Heckendorf Guesthouse

October 5, 1955 – Mayor Heckert presented a letter from Ms. Cannan (owner of present-day Heckendorf property) asking that the property onto which their small house is to be moved be declared legally vacated by the Town. Motion was made that the clerk take this matter to Mr. Gilmore (Town Attorney) to have a resolution written that will vacate this land. Motion carried.

- Ordinance No. 39 – An Ordinance providing the vacation of a portion of the intersection of Lake Ave and Ellsworth St (triangle parcel now known to be Tract 0.16 acres north of Lots 1-5, Cairns Addition to GL)

November 2, 1955 – A letter from Hugh Gilmore was read plus an Ordinance vacating that triangle at the corner of Ellsworth and Lake Ave. Motion was made and carried to pass the Ordinance on first reading.

1957 – Heckendorf Sr. purchases Lots 1-5, Cairns Addition AND Tract 0.16 acres north of said Lots from Cannon

October 31, 1986 – Personal Representative’s Deed verified to transfer property between Francis A. Heckendorf Jr (personal representative of Francis A. Heckendorf Sr. through Francis A. Heckendorf Sr’ Will and Testament) and himself, Susan Carlson, and Carl C. Heckendorf, being Lots 1-5 and Tract 0.16 acres north. No mention of 0.075 acres Tract on which the guesthouse sits

January 24, 2008 – Then Code Admin Dan Korkowski drafts a letter to then Mayor Burke to receive guidance on a request by Carl C. Heckendorf to vacate the 0.075 acre Tract on Ellsworth St. He provided staff recommendation to draw up an encroachment license for the existing cabin and portion of garage on the 0.075 acre Tract which, through his research, did not appear to have been vacated to date. A note was made that *there was no mention in the County records of the small cabin being moved after its construction in 1947*

- Dan K sends Carl C. Heckendorf Vacation (land use review form) and example of encroachment agreement on March 11, 2008

October 14, 2009 – Property Owner Francis A. Heckendorf, Jr. writes a letter to Attorney Scott Krob, attempting to argue that Ordinance 39 – 1955 unintentionally

left out the 0.075 acre Tract (described as Parcel “B” in the letter) and that it was meant to have included this Tract. He supported this argument because the small cabin had obviously been moved to its current location (Parcel “B”), and therefore, was thought to have been placed on the “vacated parcel”.

Mr. Heckendorf also states *“the long period of actual occupancy and possession of Parcel B by the Cannons and the Heckendorfs, the actual moving of the small cabin to Parcel B shortly after the 1955 vacation ordinance was adopted, and erection of the stone wall by the Heckendorfs, all without objection from the Town, do lend support to an estoppel agreement, a claim of detrimental reliance, a lost grant, or a recently discovered mutual mistake, adequate for reformation of the vacation ordinance.”*

Mr. Heckendorf continues by stating *“While such vacation would be a desirable resolution from our point of view, we suggest a compromise that would allow the Town to repossess and use as a part of Ellsworth St that portion of Parcel B east of the stone wall (as extended) but granting the Heckendorfs either record title in fee (ownership) or a permanent easement for the garage encroachment, the guest house, and fence. A revocable license, as suggested in the January 2008 memo (by Dan K) would not solve the dilemma faced by the Heckendorfs in attempting to sell their property.”*

February 10, 2010 – Attorney Krob responds to letter from Francis A. Heckendorf Jr, stating that the Tract described as Parcel B was not mentioned in Ordinance 39 1955 because it was not *supposed* to be included in the vacation, as was explicitly described in the legal property description. Also (therefore), the moving of the small cabin onto the non-vacated Tract – Parcel B – was a mistake by then property owner Ms. Cannon, and thus, estoppel cannot be claimed.

December, 2011 – Francis A. Heckendorf Jr. expresses his frustration to then Planner Abby Joe Wittman regarding inability to get property insurance as explained by their agent/broker Mulnix.

## General Notes

### **Andy Murphy**

- Possibly relook at Ordinance No 05-2012 to perform certain improvements on the land (i.e. create pathway, landscape, etc.) and/or modify to eliminate paragraph which permits Town to terminate the encroachment easement
  - o Might as well lease land to them? (gives them more flexibility)

### **Steve Kudron**

- Consider making Heckendorfs find alternative private land that Town may find valuable to exchange in a land swap/trade.

## Final Preferences

**Andy Murphy** – Sell OR Lease only necessary portion of property. If Heckendorfs disagree to this, continue maintaining easement

**Steve Kudron** – Continue working towards a solution that would be a win-win for them and Town. Lean towards land swap/trade.

**Tom Goodfellow** – Sell OR Lease only necessary portion of property.

**Cindy Southway** – Lease only necessary portion of property. If not, prefer land swap/trade to land sale

**Tom Bruton** – Sell OR Lease only necessary portion of property

**Mayor Peterson** – Keep encroachment easement. If not, Lease only necessary portion of property. If sale, want Heckendorfs to pay for everything

## Meeting with Heckendorfs

1. Provide list of potential actions (i.e. leasing portion of land, selling portion of land, land swap/trade) and see which they are willing/open to pursuing
2. Explain, in the case of sale or land swap, that they will have to pay for updated property survey and appraisal (with caveat that doing this does not guarantee Town will sell property in the end)
3. Gauge their opinion and interest to continue





To: Mayor Kudron and the Grand Lake Board of Trustees  
From: John Crone, Town Manager  
Re: 2020 Recap and Review  
Date: March 8, 2021

### **Background**

In 2020 the Town experienced a year unlike anything ever before. Although we persevered, there were many things that we did right *and* many things that we did wrong. This discussion is intended to be a Trustee driven discussion identifying areas in our responses to these issues that we can learn from as we move forward.

The format of the discussion should start follow the following outline:

1. Identify the area of concern
2. Overview of the situation
3. Identify the good and the bad in the Town's responses
4. Discuss how a similar situation should be dealt with in the future

Although the topics will be Trustee driven, it is important that the Board discuss both the Town's response to the COVID crisis and the Town's response to the fires (especially the East Troublesome Fire).