

RECORD OF PROCEEDINGS

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REGULAR MEETING  
TOWN OF GRAND LAKE BOARD OF TRUSTEES  
MONDAY, FEBRUARY 9, 2015 7:30 P.M.

CALL TO ORDER: The regular meeting of the Board of Trustees was called to order by Mayor Judy Burke at 7:30 p.m. at the Town Hall, 1026 Park Avenue.

ROLL CALL

PRESENT: Mayor Burke; Trustees Baird, Gasner, Jenkins, Lanzi, Lewis, and Sabo; Town Manager White, Town Clerk Kolinske, Town Planner Biller, Town Code Administrator Rendon and Town Attorney Krob.

ABSENT: None.

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

Mayor Burke then announced that a snowmobile Poker Run to benefit Flight for Life Colorado and the Right to Ride will be held Saturday, February 21<sup>st</sup> beginning at 9 a.m. in the Grand Lake Community House.

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 third item under New Business pertaining to amending the Town's Deferred Compensation Plan to permit loans.

UNSCHEDULED PUBLIC COMMENTS:

Mayor Burke announced that this time is reserved for members of the public to make a presentation to the Board on items or issues that are not scheduled on the agenda. The Board will not discuss/debate these items, nor will the Board make any decisions on items presented during this time, rather, the Board will refer the items to staff for follow up. She then asked if there were any unscheduled public comments and noted that comments are limited to 3 minutes.

Suzi Maki, 1590 W. Portal Road, was recognized from the audience. She complimented the Town on what a great job they did preparing the bed sled course for Winter Carnival. Having twelve years experience of being in charge and going through a couple of no snow years such as this one, she said she was terrified of what it would look like and they did an excellent job.

SCHEDULED PRESENTATIONS/

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DELEGATIONS: None.

CONSENT AGENDA: Mayor Burke introduced the Consent Agenda which contained the following: Minutes from the November 10, 2014 Meeting and Accounts Payable for January 2015.

Trustee Gasner moved to approve the Consent Agenda as presented. Trustee Jenkins seconded the motion and all Trustees voted aye.

LIQUOR LICENSING AUTHORITY: None.

OLD BUSINESS: **PUBLIC HEARING – DISCUSSION REGARDING THE TRANSFER OF THE GRAND LAKE ELEMENTARY SCHOOL BUILDING FROM THE EAST GRAND SCHOOL DISTRICT TO THE TOWN OF GRAND LAKE** – Mayor Burke asked Town Attorney Krob to present the matter to the Board. Krob began by saying that the Town has been talking with the School District (District) for some time now about the conveyance of the Elementary School Building to be used as primarily a Community Center. Following back and forth discussions between attorneys, Krob presented the Board Members with two documents; a Restrictive Covenant and Deed Restriction and a Bargain and Sale Deed. He explained that the Restrictive Covenant and Deed Restriction governs what happens during the first five years. In talking with the District, they had two concerns. The first being, whatever the Town uses the building for, it not compete with what the District is trying to do which means it cannot be used for any type of K-12 education, including charter schools, online programs or private schools. Their other concern was that they didn't want to convey the building to the Town then the Town turn around and either sell it or lease it for a substantial amount of money and have their constituency question why the District didn't sell or lease the building and make money for the District. Krob stated that the restrictions as depicted in the first document read as follows: "The Property shall be used only for community purposes as a Town of Grand Lake community center, which use may include, but not be limited to, preschool facilities, tutoring services, athletic programs, recreational programs, adult education programs, and other uses typically associated with a community center, all for the benefit of the community and citizens of the Town of Grand Lake, Colorado (collectively referred to herein as "Community Purposes"). Another provision in the document that pertains to the sale or lease of the building reads, ". . . if sold or leased in the sixth month, the School District will be entitled to receive 54/60 or 90% of the proceeds and if sold or leased in the 54<sup>th</sup> month, the School District will be entitled to receive 6/60 or 10% of the proceeds." At the end of the five year period the deed restriction goes away. Krob then explained that the second document is the Bargain and Sale Deed and this document will be executed at the same time as the Restrictive Covenant and Deed Restriction. So between the two documents, the Town is limited to Community Purposes broadly defined for the first five years then after that the property is the Town's to do anything it wants to do with it including leasing or selling as

long as it is not used for any combination of a K-12 grade education program as previously mentioned.

Mayor Burke then opened the Public Hearing and introduced Sara Straub, Committee Speaker for the Livability Committee. Sara explained that this committee was formed out of the Federal Lands Livability Initiative, "An Action Planning Workshop to Improve Livability in Grand Lake" that was held December 3, 2014. She said that the committee's mission is to address the needs of what would become of the school building as a community center. The committee has met two times thus far and will continue to meet. She said she was present that evening to give a broad overview of what they have come up with. Their Vision Statement is, "To provide a self-sustaining facility wherein outdoor and environmental education enriches the community." She mentioned that the key word in the statement is "self-sustaining" meaning that they are not looking for the building to make money but don't want the Town to foot a big bill for what they are proposing. Her presentation included Potential Outdoor and Environmental Education Opportunities, an Action Plan, Potential Financial Estimates, Research Links and Committee Information. Following her presentation, Mayor Burke thanked the committee for their efforts and said that the information will be very helpful. She said that some of the concerns that people have is what is it going to be used for, how it is going to be used or what the Town can expect to garner in an income. She said she hopes the committee will continue to meet. She mentioned that the Town will probably be forming a group to help establish programs and such and said she hopes the committee will be part of that.

Jim Peterson, 1590 W. Portal Road, was recognized from the audience. He said, "We have not seen a business plan. Do we have potential projections? Will we be able to break even? As a Town we must hold ourselves to the same standard we have held other people to. I want this to go over because the loss of the school was devastating to the Town but I would like to see some projections."

Robert Canon, 516 Park Avenue, was recognized from the audience. He expressed his disappointment with the loss of the Elementary School.

Having no other public comment Mayor Burke closed the Public Hearing and turned the matter over to the Board of Trustees.

Trustee Jenkins asked Town Attorney Krob if the District needs the Town to act on right away or does the Town have some time to do some surveying and maybe put together a business plan. She noted that it will take longer than two weeks. It may take as long as a half of a year. She also volunteered to participate in putting a business plan together. She mentioned that she is in favor of this but also wants to make sure the community is comfortable with this as well.

Krob responded by saying that he does know that the District wants to reach resolution but at the same time it is their preferred alternative to see it go to the Town. He said that he could inquire as to how time sensitive this is.

Mayor Burke said that it's difficult to ask people to spend time putting together what we already have as a plan without knowing that it's going to come to some resolution. She said that she has already had several discussions with the Rec. District and they plan to sit down and begin developing plans for recreation uses for the facility as soon as we get the building. She said, "I don't know that waiting six months is going to fit the bill and I don't think that the School Board will wait that long." Burke further explained that she felt it was very important to have the facility open and operating before the start of the summer tourist season.

Trustee Lewis said that even with all the ideas, she is still very hesitant about spending that much money on maintenance when that money could be used for other things. She said that she is not against it and she's not in favor of it, she would just like to know that the Town is getting into something that was positive. She agreed with Jim Peterson's idea about seeing a business plan.

Trustee Sabo suggested that the term "community center" in the Restrictive Covenant and Deed Restriction be changed to "community facility". He said that he felt like the term center is very restrictive.

Trustee Lanzi said that he was in favor of moving forward.

Trustee Baird said that she wants to see a place where kids and adults can go do things together and feels that the school building is going to be that place but she also worries about the money part of it.

Trustee Gasner said, "I'm 100 percent for this but we are in no hurry. Don't let the School Board push us into thinking we have to do this now. We have time to get a business plan. We can sit on this, get our plans together and know what we need to do. We are in no rush to buy this thing. We are in no hurry here." He mentioned that the Town needs time to get things done; to get a survey, to get an inspection to know what needs to be fixed and how much it is going to cost. He said, "We're buying something we know nothing about."

Town Attorney Krob said that when this discussion first started, the consensus of the Town Board and of the School Board was to go ahead and do the documents and close it. It was felt that the Purchase Contract was an unnecessary step but there is nothing at this point wrong with saying the Town is interested in pursuing it but would like a date by when the Town needs to let the District know for sure.

Discussion ensued regarding obtaining an inspection, a survey, an O & E (an Ownership and Encumbrance report from a title company) and perhaps verification of expenses.

Trustee Gasner asked Town Attorney Krob if it's possible to enter into a Purchase Contract with the District at this point contingent upon obtaining the things discussed. Krob responded by saying that he could certainly ask them but doesn't have a sense for what they would say.

Mayor Burke said that most of the people that have talked about using it and getting things set up are not going to want to wait another six months.

Following a lengthy discussion, Trustee Gasner moved to direct staff, to include Town Attorney Krob, to prepare a contract for the purchase of the school and then notify the School District by mid May whether the Town intends to proceed with the purchase. Prior to mid May the Town will do its due diligence to obtain an inspection, a survey and title work. Trustee Lewis seconded the motion and all Trustees voted aye except Mayor Burke, who voted nay.

NEW BUSINESS:

**CONSIDERATION TO GRANT A SPECIAL EVENT PERMIT TO BRAD FITCH AND FRIENDS FOR A JOHN DENVER TRIBUTE CONCERT** – Mayor Burked asked Town Code Administrator Rendon to present this matter to the Board. Rendon explained that staff is in possession of a Special Event Permit (SEP) Application submitted by Brad Fitch and Friends to conduct a John Denver Tribute Concert. This is a pecuniary event for Brad Fitch and Friends. The John Denver Tribute Concert is proposed to be held in the Community House the evening of Saturday, August 1, 2015, from 8:00 a.m. until 9:00 p.m. The concert will take place from 7:00 p.m. until 8:30 p.m. Final clean up will occur immediately after the event. Because this is a first time event, action by the Board of Trustees is required.

According to the Town of Grand Lake Municipal Code, Chapter 11, Article 6, Section 3(C) Special Event Permit Application Review and Approval:

*11-6-3(C)2(b) - Approval by Board of Trustees*

*If approval is not obtained by 11-6-3(C)2(a) Approval by the Mayor, The Board of Trustees shall review the SEP application.*

*11-6-3(C)1 - Review Considerations*

*The following factors shall be considered prior to approval of a SEP:*

- (a) The predominant use of the primary facility being used; and*
- (b) The proposed event and the event hours; and*
- (c) Neighborhood compatibility; and*
- (d) Effect of the proposed event on the community; and*
- (e) The Town's anticipated cost in staff time and equipment use; and*
- (f) The benefit to non-profit from the event; and*

- (g) The benefit to local businesses from the event; and*
- (h) Duplication of services or sale items; and*
- (i) Nature of the past event issues or similar past event issues.*

*The Board shall review and may approve the application based on 11-6-3(C)1 - Review Considerations. The Board, at its discretion, may require one or more of the following:*

- 1. Require review of the SEP at a Public Hearing; and/or*
- 2. Permit all or only a portion of the SEP application; and/or*
- 3. Impose permit conditions on the event.*

Staff believes that this event is not in conflict with the consideration factors listed above and should be a successful event for Brad Fitch and Friends. Staff believes that this event should not require a public hearing. Staff recommends approval and execution of the Special Event Permit with the stipulation that all fees and deposits required, as outlined in the Special Event Permit Application, be paid by Brad Fitch and Friends after the Board of Trustees approval is obtained. Failure to pay the required deposits and fees will result in cancellation of this special event and, as outlined in the Agreement for Payment of Fees for Review and Processing of Special Event Permits, additional fees may be applicable. The Board should review and discuss the application, taking into consideration the factors listed above. Additionally, the Board should decide if a public hearing is necessary. The Board should approve, modify, deny or table the Special Event Permit application. Rendon noted that Catherine Lewis was present.

Following brief discussion with Ms. Lewis, Trustee Lanzi moved to authorize Mayor Burke to sign the Special Event Permit for the Brad Fitch and Friends event known as a John Denver Tribute Concert as presented, upon confirmation from staff that all other application requirements have been met and the Permit is ready for signature. Trustee Lewis seconded the motion and all Trustees voted aye.

NEW BUSINESS:

**QUASI JUDICIAL – CONSIDERATION TO GRANT A VARIANCE TO EXCEED THE MAXIMUM BUILDABLE AREA FOR A STRUCTURE LOCATED AT LOT 10-11 (WEST), CAIRNS 2<sup>ND</sup> ADDITION TO THE TOWN OF GRAND LAKE; MORE COMMONLY REFERRED TO AS 1207 W. PORTAL ROAD** – Mayor Burked asked Town Planner Biller to present this matter to the Board. Biller explained the Town has received an appeal request to retain an existing non-conforming deck. The deck was required to be removed as part of an issued building permit #13-0354GL to comply with the area regulations of the Municipal Code. Barbara Edwards is the applicant and she is requesting not to remove the deck as required by the building permit which is thereby considered a variance.

June 2013 - Town staff discussed the maximum building envelope requirements with the applicant prior to the issuance of a building permit.

Staff acknowledged the existing building and existing deck encroach into the front yard setback which thereby the structures are non-conforming to the setback requirement only. Staff explained to the applicant repairs and maintenance would be allowed, however, a building permit would not be issued for an addition that exceeded the maximum building area allowed by the Municipal Code.

July 2013 - The applicant revised the site plan of the building permit application to include the removal of the front deck in order to comply with Municipal Code. The Town issued the building permit accordingly.

October 2014 – The Town conducted a final inspection and denied final inspection based on the front deck not being removed as required.

November 2014 – The applicant submitted a request to not remove the front deck as required by the building permit.

January 2015 – The Planning Commission reviewed the variance request at a Public Hearing and determined the applicant could comply with the area regulations by adopting Resolution 02-2015 which allows a portion of the deck to remain.

Municipal Code 12-2-12(D) [Regulations for Single Family Residential – High Density – RSH] Area Regulations states:

1. *Minimum and Maximum Floor Area*

(a) *Single Family Dwelling Unit*

1. *Minimum: Eight Hundred square feet (800 sq. ft.) per Dwelling Unit.*

2. *Maximum: Governed by this Section.*

Municipal Code 12-2-27(B) [Supplemental Regulations for Setback, Height and Area] Variance Request Procedure states:

2. *The Town Board of Trustees shall hear the variance application, with Planning Commission recommendation, at their next regularly scheduled meeting. The Board of Trustees may elect to hold a Public Hearing regarding the variance application. The Board of Trustees shall grant or deny the variance within 45 days of receipt from the Planning Commission.*

3. *The following factors should be considered by the Planning Commission and Town Board of Trustees in determining whether to issue a variance:*

(a) *The compatibility of the proposed action with the surrounding area; and*

(b) *Whether the proposed action is in harmony with the character of the neighborhood; and*

(c) *The need for the proposed action; and*

(d) *The effect of the proposed action upon future development in the area; and*

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- (e) *The shape, size, topography, slope, soils, vegetation, and other physical characteristics;*
- (f) *Whether alternative designs are possible; and*
- (g) *With due consideration for the Town's Comprehensive Plan.*

To clarify, the Commission granted a change to a non-conforming structure as allowed by Municipal Code 12-2-32 to retain a portion of the existing deck. However, the applicant has chosen to pursue the variance request without a favorable recommendation from the Planning Commission. This is considered "new" construction which requires the applicant to obtain the following two (2) variances:

1. A variance for an additional 100± sq.ft. of buildable area for this deck.
2. A variance to the deck to extend 21' into the 25' front yard setback.

The following tables summarize the existing conditions and proposed conditions.

Description of approved Conditions	Area (sq.ft.)*
Existing Building	375.8
Proposed Addition	612.1
Total Building Area Approved by building permit	987.9
Maximum Building Envelope	1,072.7
Building Area Remaining	84.8

Description of requested Conditions	Area (sq.ft.)*
Existing Building	375.8
Proposed Addition	612.1
Existing Deck	178.5
Total Building Area	1,166.4
Variance to Maximum Area allowed	93.7

\*Areas provided by applicant on site plan in building permit B13-0354GL

Staff believes the applicant has the following options:

1. Remove the deck and build a patio as shown on the building permit submitted thus complying with the building permit requirements.
2. Submit a plan change to remove a portion of the existing deck to comply with Planning Commission Resolution 02-2015. The deck would be approximately 16ft x 5ft (80 sq.ft.).
3. Seek the required approval from the Board of Trustees and the Board of Adjustment. (Chosen option by the applicant.)

Staff recommends the Board deny the applicant's request to retain the entire existing deck of 178.5 sq.ft.



The Board should first determine if a Public Hearing is necessary. If the Board determines a Public Hearing is not necessary the Board should discuss the variance request made by the applicant.

The Board has several options to consider including:

1. Grant the variance request; or
2. Grant the variance request conditions; or
3. Deny the variance request, thus requiring the applicant to comply with the issued building permit and/or Planning Commission Resolution 02-2015.

Biller noted that Barbara Edwards and her husband Ken Edwards were present.

Barbara and Ken Edwards were both recognized by the Chair. Ken began by saying that the deck has been there for decades. He said that he and Barbara never agreed with their contractor when he said he was going to do this, but evidently the contractor proceeded with that idea to obtain a building permit. He expressed his frustration with the fact that because of a rule they are supposed to tear down a structure that matches the house and looks nice and then it would be permissible to pour an ugly concrete slab covering the exact same square footage. He then mentioned that the neighbors on both sides of them were granted variances to their buildings and both of them have exceeded their allowances. He doesn't understand why they were able to keep their structures and they can't keep a simple deck. He said they just want to get what other people have gotten.

Barbara then expressed her frustration with the idea that they are being asked to remove all but approximately 5' of the deck and feels that a 5' deck would be useless. Then during discussion she said that she would be happy to remove the portion of the deck that needs to be removed if both of her neighbors were asked to remove a portion of their structures.

Town Attorney Krob asked the Edwards's when did they first become aware that their contractor had made this agreement. Ken said that the contractor had discussed it with them and they said that they would never agree to it. Krob then asked them when did they then become aware that he had agreed to it. Barbara responded by saying when he came back with the building permit and the final plans. Krob asked them if they stopped the contractor at that point. They said that they spoke with Town Planner Biller and Biller told them that they don't have a chance. Krob said that the part that he is troubled with is it's almost like it's easier to ask for forgiveness then permission. He said that they had a permit that was agreed to by their contractor, they knew about it before the work was done then they come back after the fact and ask that they not be bound by that permit. Krob said that his only concern for the Board is the precedent value that they may be setting because if it's said that you can get a permit, build something different and then at that point come back and ask that

it be okay that you build something different it may open up problems for any permit that is issued.

Trustee Gasner then moved to deny the variance request and stand behind the Planning Commissions Resolution 2-2015 and their recommendations seconded by Trustee Baird. A roll call was taken and the motion carried when Trustees Baird, Gasner, Jenkins, Lanzi and Mayor Burke voted aye. Trustees Lewis and Sabo voted nay.

At 8:43 p.m. Trustee Lewis excused herself and left the room.

NEW BUSINESS:

**CONSIDERATION OF RESOLUTION NO. XX-2015, A RESOLUTION REPEALING AND REPLACING RESOLUTION NO. 4-2003, A RESOLUTION AMENDING THE TOWN OF GRAND LAKE'S DEFERRED COMPENSATION PLAN TO PERMIT LOANS** - Mayor Burked asked Town Clerk Kolinske to present this matter to the Board. Kolinske explained that the Town provides a 457 deferred compensation retirement plan for its employees through ICMA Retirement Corporation. In 2003 per Resolution No. 4-2003 the plan was amended to permit loans. This feature provides eligible plan participants the ability to borrow funds from their plan account balance. The Internal Revenue Code (the Code) also requires the Board to establish written guidelines that regulate the granting of loans. Flexibility is given when establishing the guidelines to be able to design a program that is suitable for the Town and its employees. The options chosen at that time, I feel, were in the best interest of the Town of Grand Lake. Resolution No. 4-2003 was adopted with the following options:

1. Loans are available for all purposes.
2. Participants may receive one loan per calendar year. Moreover, participants may have only one outstanding loan at a time.
3. The minimum loan amount is \$1,000. The maximum amount is \$40,000 (less balance of outstanding loans) or one-half of the employee's vested account balance, whichever is less.
4. A loan must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years. Loans for a principal residence must be repaid in substantially equal installments of principal and interest, at least monthly, over no more than thirty (30) years.
5. All loans are due and payable in full upon the employee's separation from service.

If a participant does not repay the outstanding loan amount when the loan is called, the loan is "foreclosed". This means that the outstanding loan amount is reported as a taxable distribution to the participant. Resolution No. XX-2015 is drafted with the exact same options as listed above with the exception as indicated in Number 2 which would allow for more than one loan per

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calendar year. If the Board is satisfied with the one amendment staff would recommend the adoption of the draft resolution.

Trustee Gasner moved to adopt Resolution No. 5-2015, a Resolution Repealing and Replacing Resolution No. 4-2003, a Resolution Amending the Town of Grand Lake's Deferred Compensation Plan to Permit Loans. Trustee Sabo seconded the motion and all Trustees voted aye.

At 8:47 p.m. Trustee Lewis resumed her seat.

Added to the agenda was **Consideration to approve a contribution to the Public Works Director's retirement fund in appreciation of his 35 years of service.** Mayor Burke said that Public Works Director Bernie McGinn has reached his 35<sup>th</sup> Anniversary as an employee of the Town and at the afternoon workshop the Trustees discussed the possibility of making a contribution in the amount of \$1,750.00 to Bernie's retirement fund which equates to \$50.00 per year for 35 years in appreciation to him.

Town Manager White noted that this is a milestone that is likely not to be achieved again for a very long time.

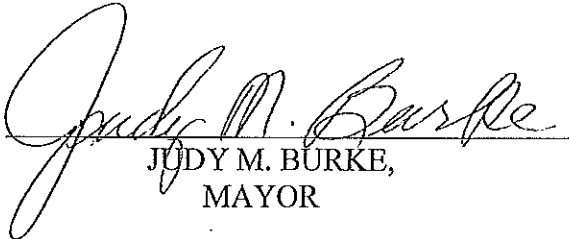
Trustee Gasner moved to approve the contribution of \$50.00 per year for 35 years to Bernie McGinn's retirement fund. Trustee Lewis seconded the motion and all Trustees voted aye.

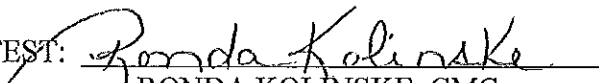
MAYOR'S REPORT  
AND COMMENT:

None.

ADJOURNMENT:

Trustee Lewis moved to adjourn, seconded by Trustee Baird. All Trustees voted aye, and the meeting was adjourned at 8:49 p.m., February 9, 2015.

  
JUDY M. BURKE,  
MAYOR

ATTEST:   
RONDA KOLINSKE, CMC,  
TOWN CLERK