

MINUTES  
PLANNING COMMISSION  
REGULAR MEETING  
December 5, 2018  
6:30 P.M.

CALL TO ORDER: Chairman Hayden Southway called the regular meeting of the Grand Lake Planning Commission to order at 6:32 p.m. on December 5, 2018 at the Town Hall, 1026 Park Avenue.

ROLL CALL

PRESENT: Chairman Hayden Southway; Chairman Pro-Tem Robert Canon, Commissioners Paul Gilbert, John C. Murray, James Shockey, Judy Burke, and Steve Kudron; and Town Planner Nate Shull.

ABSENT: Commissioner Lanzi was noted as absent due to a personal emergency. Commissioner Burke moved to excuse Commissioner Lanzi. Seconded by Commissioner Murray. All others voted aye.

APPROVAL OF  
MINUTES:

NONE

UNSCHEDULED  
CITIZEN  
PARTICIPATION:

Chairman Southway asked if there were any unscheduled public comments and noted that comments are limited to 3 minutes.

Susan Carlson, 229 Mountain Ave – Ms. Carlson requested to learn more information about the proposed “event center” that was being created at the home at the bottom of Park Ave and W. Portal Rd. She asked what the zoning is for the property and whether the house would be converted into a private wedding venue, as well as what traffic and parking impacts this would cause.

Commissioner Kudron explained that the home is zoned single family high residential and is licensed through the Town as a short-term nightly rental. The home sleeps 20 people and has a capacity for 75 people. Events will be held there; however, they will be part of the nightly-rental package as opposed to reserved separately. He assured that all parking would take place on the property or in designated areas (not on the streets).

CONFLICTS OF  
INTEREST:

Chairman Southway asked if any members of the Commission had a conflict of interest, or the appearance of. Commissioner Canon suggested that as an employee of the National Park Service he may have a conflict

OTHER ITEMS OF  
DISCUSSION:

with the item of business

**Case Study Research; Administrative Plat Amendments – Lot Consolidation and Lot Line Adjustments** – Chairman Southway asked Planner Shull to explain the matter. Planner Shull began by first welcoming the newest commissioner, Steve Kudron, to the Planning Commission. He then delved into the discussion item, providing background information on the matter and referencing sections of the Municipal Code that spell out existing procedures for redevelopment and replatting. He concluded by requesting direction from the Commission on how to proceed with making changes to the Code regarding plat amendments (if warranted, based on staff analysis and case study research)

Commissioner Murray suggested that many of the case study regulations seem cumbersome and lengthy as compared to how Grand Lake currently handles these types of replats. Commissioner Burke stated that she believes the current Lot Line Agreement is a workable program as it is, arguing that no major difficulties have resulted from it (as compared to HOA properties). Commissioner Shockey stated he likes the direction staff is going by trying to establish a regulatory process for this rather than simply have an Agreement form. He backed this up by saying as with a formal process, the zoning maps would change to reflect the replat (compared to an agreement which is only found by searching title).

Planner Shull clarified that a formal review process, or even administrative approval written into language in the Code, would be warranted to make the procedure clearer and more official. He suggested that numerous Lot Line Agreements have been signed (by himself and previous staff) and that until a true regulatory process is established for them, there is no correct way to revoke or reverse them.

Commissioner Kudron questioned whether most of the requests for lot consolidation or adjustment fall within a subdivision process or not. Planner Shull clarified that these actions (consolidation and adjustment) are inherently subdividing actions, but that requests for these are more often to allow a larger building footprint or to avoid paying higher taxes. He read some criteria listed under 12-9-8 Redevelopment to explain existing requirements if such an action were taken.

Chairman Southway expressed his concern with someone (either currently as applied or if language is changed in Code) vacating the lot line for taxing purposes, then later requesting the line be put back in order to see the lots separately again. Attorney Krob suggested that a re-subdivision process would prevent that from happening (so long as it states upon consolidating lots in the approval process that it is in perpetuity).

**Grand Lake Area Historical Society Memorandum – Request to be added to list of Development Review Agencies** – Planner Shull explained that he received a letter from Jim Cervenka of the Grand Lake Area Historical Society as a request to be placed as a formal agency on the list of referrals under section 12-9-2 [Land Development Regulations]. He asked if any of the Commissioners had specific concerns or opinions on the request.

Commissioner Shockey stated he did not have an issue with the request and welcomed it. Commissioner Murray also supported the request. Commissioner Kudron suggested that having GLAHS review any developments would provide another layer of certainty, especially in understanding the historic significance of a building.

**Planning Commission Review of Land Use and Zoning Matters per the Municipal Code** – Planner Shull shared that this discussion item stemmed from a conversation with Chairman Southway about having staff consider sending more review items to Planning Commission. He suggested that he was open to adding more items under “discretionary” review that currently don’t require review by the Commission. He asked the Commission for any comments or input.

Commissioner Shockey suggested that staff consider placing all design review proposals under discretionary, or even required, review (especially commercial project proposals). Chairman Southway requested to see more “conceptual” design ideas for all projects that might be contentious. Planner Shull asked attorney Krob about what level of discretion staff should give to putting certain “conceptual” ideas being proposed in front of Planning Commission. Attorney Krob stated that the Board has the authority to change any level of approval by the Planning Commission, and that he concurred with Commissioner Shockey’s suggestion from before. Planner Shull agreed and noted that a major gap in the town’s Code is that there is no formal site plan review process which typically covers review of commercial projects. He expressed an openness to adding more design review for complex residential and most commercial projects.

Attorney Krob further suggested that in amending the Code to change certain approval processes to be reviewed by Planning Commission, that some may simply state that staff can, at their discretion, forward the matter along to the Planning Commission (which gives both options). He also explained what Quasi-Judicial items are and how to determine which requests would fall under that category. Examples of quasi-judicial items would be variances, and appeals to code enforcement. Planner Shull promised to indicate on future agendas the items that are quasi-judicial.

Chairman Southway followed this by expressing his concern about the informal dissolution of the Board of Adjustment, that variance matters

should be going in front of the Board of Adjustment rather than the Planning Commission, and that Planning Commission should not act in place of the Board of Adjustment. He agreed that a workshop should be held to discuss matters of the Board of Adjustments and those of quasi-judicial nature. Scott Krob explained that any denial of a decision by the Board of Adjustment would go to the district court (if pursued).

ITEMS OF BUSINESS:

**PUBLIC HEARING – CONTINUATION OF CONSIDERATION TO APPROVE THE PD AMEDNMENT FOR THE GRAND LAKE LODGE PLANNED DEVELOPMENT ON PROPERTY LOCATED AT 15500 US HWY 34, TOWN OF GRAND LAKE** – Chairman Southway opened the public hearing and invited Planner Shull to speak on the matter. Planner Shull introduced the item of business and explained the details of the request. He skipped over to staff comment, explaining that the applicant has formally requested to postpone review of their proposed PD Amendment until Wednesday, Jan 16<sup>th</sup> 2019 in order to address a few remaining outstanding items. He further explained that he would like to use this time (before any motion is to be made) to resolve the previous legal claims brought up at the September 5<sup>th</sup> 2018 public hearing. Planner Shull laid out a process for conducting this discussion and invited Attorney Krob to speak.

Attorney Krob summarized his understanding of the two legal claims (referred to as the “MOA” and the “Covenants”, respectively) and provided his opinion on the application of these two claims to the applicant’s property. His conclusion was that neither of these claims apply (supported by the National Park Service Solicitor’s response to the MOA and the applicant’s attorney’s response to the Covenants). He then requested of Chairman Southway to allow the applicant’s attorney to come to the podium to argue his position on the Covenants issue.

Mark Painter, Holland and Hart, Boulder CO – Mr. Painter began by thanking the commission for allowing him to speak. He briefly readdressed the MOA issue, providing a thorough explanation of how the specific language within the MOA currently does not apply to the applicant’s property. He then handed out packets to each Commissioner and staff member containing an aggregate of research documents on both the MOA and the Covenants issues.

Mr. Painter then proceeded to guide the Commission through the packet to explain the sequence of logic that lead him to conclude that the Covenants do not apply to the applicant’s property, referencing specific documents at various points throughout. A summary list of specific documents mentioned is below:

- Memorandum of Agreement (Reception #2007-008854)

- Original Planned Development Plan for the Grand Lake Lodge (Reception #2001-013102)
- Final Plat for Tonahutu Ridge at Grand Lake Lodge (Reception #2002-000353)
- Final Plat for James Family Parcel (Reception #2002-002242)
- Covenants, Conditions and Restrictions of Architecture, Design, and Environmental Control for Grand Lake Lodge Development (Reception #2001-01303)
- First Amendment to Covenants, Conditions and Restrictions of Architecture, Design, and Environmental Control for Grand Lake Lodge Development (Reception #2006-004685)
- Supplemental Declaration regarding Covenants, Conditions and Restrictions of Architecture, Design, and Environmental Control for Grand Lake Lodge Development (Reception #2007-009796)
- Second Amendment to Covenants, Conditions and Restrictions of Architecture, Design, and Environmental Control for Grand Lake Lodge Development (Reception 2012-005082)

In concluding, Mr. Painter requested the Commission reject the objection of Mr. Gary Calder to the application of the Covenants on the applicant's property. Planner Shull then suggested to Chairman Southway the allowance of any of the public to respond to or ask questions of the two legal claims brought forth.

Attorney Krob interjected to share that Mr. Calder, the original objector of the Covenants issue, had sent a recent email (not included in packet) to clarify his objection, which Attorney Krob stated, stemmed from the second paragraph under 1.0 Preface of the Design Guidelines which reads "*The Covenants, Conditions and Restrictions of Architecture, Design and Environmental Control for the Grand Lake Lodge (the "Covenants") authorize these design guidelines. They apply to the property, homes and improvements at Grand Lake Lodge.*" Attorney Krob suggested he understands the origin of Mr. Calder's claim but agreed with Mr. Painter's analysis of why the Covenants do not apply. Chairman Southway then opened up meeting for public comment.

Jim Peyton, 125 Mountain Ave – Mr. Peyton addressed his concern about process for tonight's meeting, specifically the misrepresentation of the content being discussed based on the item of business posted on the meeting agenda. He questioned whether the item as posted is sufficient to cover what was being discussed. Attorney Krob stated that posting of items on the meeting agenda only needs to make notice of the development/property being discussed, but to avoid any confusion, he suggested the

Commissioners not make any formal decisions on the legal claims until the January 16<sup>th</sup> meeting. Planner Shull agreed with Mr. Peyton's concern but provided his rationale to explain why it was not mentioned explicitly.

Jim Cervenka, 236 Lakeview Dr, Grand Lake – Mr. Cervenka stated that he is the president of the Grand Lake Area Historic Society and he is speaking on behalf of them. He expressed his appreciation for the work Mr. Painter did on researching the Covenants issue and requested a copy of the documents to share with the Historic Society. Mr. Cervenka explained that the Historic Society has a vested interest in seeing the proposed amendment to the Lodge include some form of compatible, enforceable design guidelines on all new development.

Planner Shull suggested that the applicant in their resubmission has included a modified version of the design guidelines as a requirement within the PD amendment. He assured the Commissioners that they would be able to review those with the resubmission package two weeks in advance of the January 16<sup>th</sup> meeting.

Laura Peyton, 125 Mountain Ave – Mrs. Peyton shared that Mr. Painter's presentation, just like her lawyer's previous presentation, is one man's opinion and that regarding the Covenants, Tonahutu Ridge has 19 possible lawyers of its home owners who could object to Mr. Painter's analysis. Attorney Krob responded that while this is possible, it is the responsibility of these persons to request public record of these documents and provide a formal rebuttal if they feel Mr. Painter's analysis is incorrect.

Mr. Painter, Holland and Hart, Boulder CO – Mr. Painter addressed an opinion he had regarding fundamental fairness in process. He expressed that while others have the right to object to a conclusion made on outstanding issues, at some point there needs to be a resolution, especially if it's brought up in public discourse where all persons have been made aware of the meeting and have the chance to attend and speak about it. He specified that Mr. Cervenka's previous point about wanting to potentially apply architectural covenants to the applicant's property should not be permitted, as covenants are not government's domain. He requested the issue be resolved sooner than later (i.e. not at the Jan 16<sup>th</sup> meeting but at this current meeting).

Attorney Krob shared that while he agreed with Mr. Painter's point about not holding up decisions to hear all potential opinions, he didn't believe that the Historic Society was intending to impose covenants on the property. He refocused the Commission back to the concept of deliberating on items that are in their purview to decide vs. whether or not covenants should be created.

Dolores Esmonde, 14 GCR 4691 – Ms. Esmonde shared the importance of taking time in deciding on critical issues for the Town that have historic and character-based significance. She questioned the need for the proposed

changes and variances and expressed concern for setting precedence with this project.

Chairman Southway ended public comment and opened the discussion amongst the Commissioners.

Vice Chairman Canon alluded to a paragraph in the design guidelines that spoke about respecting the natural environment surrounding the Lodge (i.e. Rocky Mountain National Park). He emphasized his strong sentiment of making sure the applicant adheres to this guideline/intention.

Commission Murray questioned the claim of there being variances requested on this project as brought up during public comment. Planner Shull suggested he was unaware of any variance requests by the applicant. Attorney Krob commented that perhaps the term variance as used was intended to be interchangeable with the word amendment or modification. He provided a brief explanation of the concept of a Planned Development Amendment and how it differs from traditional zoning.

Planner Shull asked the Commission to weigh in on the issues of the MOA and the Covenants as first explained by Attorney Krob. Commissioner Murray stated he felt the explanation given by both attorneys on how the MOA does not apply to the property was very clear and convincing. Regarding the Covenants, he said that the applicant's attorney did a fine job analyzing through research how they (the Covenants) neither apply to the property, but felt that the meeting agenda item misrepresented what was going to be discussed and thus didn't give a fair opportunity for others to speak about it.

Chairman Southway and Commissioner Burke agreed with Commissioner Murray and suggested waiting until January 16<sup>th</sup> to make any formal decision on the legal issues. Commissioner Kudron said he is pleased with the work and evidence brought forth on the MOA and Covenants by the applicant but would be favorable to allowing time for anyone to respond to their conclusion.

Planner Shull commented that he shared the same opinion of the applicant's attorney and the Town Attorney on the two legal claims (that neither of them applies to the applicant's property) and that he would make sure to provide a complete overview of this meeting in the staff report for the January 16<sup>th</sup> meeting.

Commissioner Shockey moved to continue the review of the PD Amendment to the Grand Lake Lodge to date certain of January 16, 2019. Vice Chairman Canon seconded. All others voted aye.

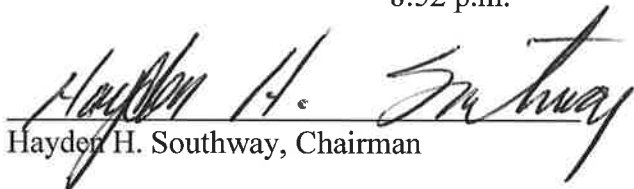
**CONTINUATION TO REVIEW THE SITE PLAN PROPOSAL FOR THE GRAND LAKE LODGE PLANNED DEVELOPMENT ON PROPERTY LOCATED AT 15500 US HWY 34, TOWN OF GRAND LAKE** – Chairman Southway asked Planner Shull to speak on the matter. Planner Shull stated the based on the motion given to the PD Amendment, a similar motion should be made for this issue. Commissioner Shockey then moved to continue the review of the Site Plan to the Grand Lake Lodge to date certain of January 16, 2019. Vice Chairman Canon seconded. All others voted aye.

PLANNING COMMISSION  
DISCUSSION

Commissioners held a brief discussion on the status of various projects around Town including the West Portal Bridge reconstruction, the Boardwalk Lofts, and others.

ADJOURNMENT:

Vice Chairman Canon moved to adjourn, seconded by Commissioner Shockey. All Commissioners voted aye, and the meeting was adjourned at 8:52 p.m.

  
Hayden H. Southway, Chairman

ATTEST:

  
Alayna Carrell, Town Clerk