

# TOWN OF NEDERLAND BOARD OF TRUSTEES REGULAR MEETING MINUTES: February 1, 2011, 7:00PM

NEDERLAND COMMUNITY CENTER  
750 Hwy 72 Nederland, CO 80466

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## A. CALL TO ORDER

Meeting convened at 7:00 PM.

## B. ROLL CALL

Present: Mayor Sumaya Abu-Haidar, Trustees Rob Joseph, Keith Nowicki and Kevin Mueller. Trustee Perret arrived at 7:04PM. Mayor Pro Tem Joe Gierlach arrived at 7:24PM.

Trustee Wheelock was absent.

Also present: Alisha Reis, Town Administrator, Eva Forberger, Town Treasurer, and Teresa Myers, Town Clerk.

## C. CONSENT AGENDA

- Approval of February 1, 2011 Accounts Payable
- Approval of January 18, 2011 Regular Meeting Minutes

Motion to approve the Consent Agenda was made by Trustee Joseph, seconded by Trustee Mueller, and approved unanimously.

## D. PUBLIC COMMENT ON NON-AGENDA ITEMS (Speakers limited to 3 minutes)

No public comment was received.

## **E. INFORMATIONAL ITEMS**

### **1. Wastewater Treatment Plant Bid Schedule report**

Reis explained the informational memo and answered some general questions about meetings with TEC and the bid vetting process.

## **F. ACTION ITEMS**

### **1. Consideration of Ordinance 688, concerning the application for and issuance of special event and public assembly permits.**

Myers explained that the ordinance as before the Board incorporated the Board's previous concerns as expressed during the discussion period at the last meeting.

Randy Lee, 171 E. First, asked a question about whether the special events permit would apply to events organized by nonprofits that aren't clearly "events" – such as Town clean-up days. Myers acknowledged that such an "event" would probably not be a "special event" requiring permitting, but that it isn't possible to define all types of events in ordinance.

Cathleen Chippi, Magnolia Star Route, expressed concerns about the number of people that tripped the requirement for a special event permit.

Teresa Warren, address not provided, talked about the struggles to host a zero-waste event. She shared that when Frozen Dead Guy Days contracted with Eco-Cycle to do a zero-waste event, it cost them \$2200 and they only reached an 80% target.

Trustee Nowicki asked questions about the difficulty of defining a "special event."

Trustee Perret asked whether there was currently a form for nonprofits to

appeal the charge of fees to the Board without having to appear at a Board meeting, and was advised that there is such a form.

Trustee Joseph questioned where the number 25 came from as the assemblage tipping point, and whether we could incorporate a 6-month review of the process. Myers explained that the number was selected based on law enforcement numbers of when “crowd mentality” can happen.

Trustee Mueller agreed that a review later in the process would be useful. Mayor Abu-Haidar also agreed that a review at the end of the special event season would be useful and informative. She also pointed out that the Town was limiting its subjectivity in issuing special events with this ordinance, and that this year would be a learning curve for the zero-waste targets.

Motion was made by Trustee Perret to approve Ordinance 688, seconded Trustee Joseph, and approved unanimously.

**2. Consideration of Ordinance 689, concerning the issuance of Town business licenses.**

Trustee Joseph asked some questions about how the licensing program would be rolled out.

Cathleen Chippi, Magnolia Star Route, made several suggestions to the ordinance and complained about the existing business license process.

Mary Jarel, 304 [inaudible] St., felt that more work needed to be done on the ordinance and encouraged the Board to postpone a decision.

Randy Lee, 171 East First, was concerned that there wasn't a requirement that the Town Clerk send out renewal notices to businesses.

Teresa Warren, owner of Off Her Rocker, talked about how the Town history that included businesses refusing to complete business license applications and refusing to pay the fees, and advised that the Clerk's office conduct additional outreach.

Trustee Mueller expressed concern with some of the language in the section concerning suspensions, based on public comment. The language would permit the Town to suspend a business license for any violation of federal, state, or local law by an employee or business owner.

Trustee Joseph understood the public concerns with the suspension language but felt that some degree of trust in Town decisions and appeal processes needed to be engaged. He spoke about the grievance process and his support of it.

Mayor Pro Tem Gierlach noted that less than 10% of the existing code was modified by this ordinance draft. He also discussed the suspension language, and suggested the addition of a 90-day probationary period, at the end of which the license would be revoked if no changes were made, or the decision appealed if an appeal were filed.

Trustee Nowicki had concerns, not with the new language but with some old language, particularly that concerning violations of federal law.

Mayor Abu-Haidar acknowledged the need for renewal notices and outreach – general “good practices” – that are important but don't necessarily need to be codified. She suggested that business owners with concerns or questions could meet with the Clerk to clarify issues. With regard to the suspension language, she pointed out the ordinance language legalizing the medical marijuana industry in Nederland clearly states the Town's position with regard to those businesses.

Motion to approve the Ordinance 689, with the deletion of two sections, was made by Trustee Nowicki, seconded by Trustee Perret, and defeated by a vote of 4 to 2, with Trustees Nowicki and Perret voting against the ordinance.

Trustee Mueller spoke against the changes proposed by Trustee Nowicki and the need for the Town to be able to step in based on employee actions, and Trustee Joseph agreed. Mayor Pro Tem Gierlach also agreed with Trustees Mueller and Joseph and seconded the Mayor's points.

Trustee Perret explained he had concerns with the existing suspension language, particularly the references to federal law, and the impacts that language might have on the medical marijuana businesses.

Motion to approve the Ordinance 689, with addition of language adding a 90-day probationary period, was made by Trustee Joseph, seconded by Trustee Mueller, and approved by a vote of 4 to 2, with Trustees Nowicki and Perret voting no.

**3. Consideration of Resolution 2011-03, for approval of a GOCO grant proposal to provide new play equipment at Chipeta Park.**

Reis explained the inclusion of Town staff time in the amount of a \$3,000 donation. She further explained that the Town would be the grant recipient and funnel the money to the local recipient.

Motion to approve Resolution 2011-03 was made by Trustee Mueller, seconded by Trustee Perret, and approved unanimously.

**4. Consideration of an Agreement between the Town and the DDA concerning maintenance of the sidewalks.**

Mayor Abu-Haidar gave the Board some background on the evolution of this

document.

Paul Turnburke, 3259 Ridge Road, asked the Board to approve the contract, which would allow the sidewalk employees to be covered under the Town's worker's compensation program. He also acknowledged Trustee Mueller's concerns about the environmental impacts of various maintenance tools, especially those used for snow removal, and explained that the DDA would be happy to work with the Town on those concerns.

Teresa Warren, Chairman of the DDA, urged the Board to approve the agreement and stressed that she believed that the DDA and the Board are on the same team and have the same goals.

Trustee Mueller stressed his concerns that the sidewalks be maintained in a LEED-certified manner, given that they weren't constructed in compliance with LEED standards; he questioned why the Board continued passing sustainability ordinances if it was not willing to put "teeth" into its agreements that would actually support the resolutions.

Trustee Joseph and Mayor Pro Tem Gierlach agreed with Trustee Mueller's concerns and asked that Trustee Mueller provide some language and the Board be allowed to vote on it tonight.

Trustee Perret had some questions about the financial reimbursement for the tractor, and it was agreed that in order for the tractor be covered under the Town's insurance, some financial consideration must be made from the Town to the DDA to create a lease agreement.

Mayor Abu-Haidar talked about the process breakdowns that resulted in this agreement being before the Board four different times. She explained that the Board could not pass additional language without legal review (on both

the Town's part and the DDA's).

Trustee Mueller read specific language that he would like to see included in the agreement:

- Application of any chemical de-icer or salt shall be prohibited.
- Application of sand shall be minimized to prevent heavy deposit build up at the edges of walkways.
- Accumulated sand shall be removed to maintain good drainage across the walkway.
- Pruning of roots or installation of root barriers at the edges of walkways shall be considered when potential damage to walkways may occur. Pruning and root barriers shall be implemented in such a way as to minimize harm to associated flora.
- All potential walkway damage shall be brought to the attention of Town staff in a timely manner to allow adequate response that results in the removal of the source of damage.
- Implementation of any landscaping features shall be recommended that result in the following:
  - Conservation of existing natural areas and restoration of damaged areas to provide habitat and promote biodiversity.
  - Preventing sedimentation of storm water conveyance systems or receiving streams.
  - Reduction in adverse impacts on water resources by mimicking the natural hydrology of the region, including groundwater recharge.
  - Reduction in pollutant loadings from storm water discharges.
  - Reduction in peak flow rates to minimize stream channel erosion.
  - Maintained or restored chemical, physical, and biological integrity of downstream waterways.

Motion to approve the Agreement, with the deletion of Section 2(B)(2), (3), & (4), was made by Trustee Mueller, seconded by Trustee Joseph, and defeated by a vote of 4 to 2, with Mayor Pro Tem Gierlach and Trustees Mueller, Nowicki, and Perret voting no.

Mayor Pro Tem Gierlach spoke to support Trustee Mueller and remind the Board that sustainability can take place in small increments and on a contract by contract basis.

The Mayor spoke in favor of the Board's commitment to sustainability issues, but that the attorneys changed the language for legal reasons and without the Town Attorney present, she does not want to add new language and so could not support the motion on the table.

The Board discussed how to incorporate Trustee Mueller's concerns without approving language that has not received legal review and approval.

Motion to approve the Agreement, with the deletion of Section 2(B)(2), (3), & (4), and section 3(A), and the amendment of the tractor rental fee of \$10 per month to \$1 per month, and the addition of Trustee Mueller's language was made by Trustee Mueller, seconded by Trustee Nowicki, and was approved by a vote of 5 to 1, with Mayor Abu-Haidar voting no.

**5. Consideration of a new IT services contract.**

Mary Jarel commented that the contract didn't have any financial numbers included and so shouldn't be approved.

Motion to approve the agreement was made by Trustee Joseph, seconded by Trustee Nowicki, and approved unanimously.

**6. Consideration of Amendment for Use Tax Collection IGA with Boulder County.**

Motion to approve the Amendment to the IGA was made by Trustee Joseph, seconded by Trustee Perret, and approved unanimously.

**7. Consideration of appointment of Gabe Manzione to the PROSAB.**

Motion to approve the appointment of Gabe Manzione to the PROSAB was made by Trustee Perret, seconded by Trustee Joseph, and approved unanimously.



## **G. DISCUSSION ITEMS**

### **1. Discussion of draft medical marijuana licensing ordinance.**

Myers highlighted a few issues in her background memo.

Bryan Swanton, owner of Nedicare, spoke in support of the proposed ordinance and stressed the desire of the MMJ businesses to be good neighbors in Town.

Cathleen Chippi, Magnolia Star Route, has a problem with much of the language as written, especially the cap on MMCs, and questioned the authority of the Task Force to draft the ordinance.

Trustee Mueller commended staff for accurately summarizing the Planning Commission's deliberations and recommendations.

Trustee Joseph commended staff and the Task Force's work and thanked Trustee Perret for chairing the Task Force.

Trustee Mueller explained the Planning Commission's recommendations and offered support for the CBD change. Trustee Joseph also expressed support for both the increased cap and the zoning change to allow grow operations in the CBD.

Trustee Perret explained that the Task Force had settled on the cap of 5 in recognition of the residents who already felt that the Town has too many medical marijuana businesses. He also expressed support for the CBD change.

Trustee Nowicki expressed concerns that there has not been enough public

comment on the draft ordinance. Myers clarified that the State final regulations are anticipated to be handed down March 1<sup>st</sup> and enforcement of state law and regulations intensified at that time. She noted that under the existing zoning requirement in State law, only one of the Town's MMCs would be "legal."

Trustee Joseph said that he sees the value in a workshop but is concerned that it could not be accomplished quickly and does not want to leave the existing centers exposed to State enforcement in March.

Mayor Pro Tem Gierlach offered a work session on February 8<sup>th</sup> to go through the document and put it forward for action on February 15<sup>th</sup> or March 1<sup>st</sup>. Trustee Perret agreed, as did Trustee Mueller.

The Mayor is not available for the work session on February 8<sup>th</sup>, and questioned the necessity of the work session, but supports the Board if it feels it is necessary.

Staff was directed not to include the new language concerning the CBD zoning inclusion for review at the work session scheduled for Tuesday, February 8<sup>th</sup> at 7:00, but to encourage and seek public input on the existing draft, as reviewed by the Planning Commission.

**2. Discussion of a Boulder County Zero-Waste grant to support a composting facility in Town.**

This item was postponed due to the inclement weather which prevented the granting agency's representative from attending the meeting.

**H. OTHER BUSINESS**

Trustee Nowicki reported that the Community Wildfire Protection Plan is being re-edited currently.

Trustee Joseph had some questions about the meeting format of categorizing agenda items as discussion and action items and wondered aloud if it was working for the Board. Trustee Nowicki agreed that the format possibly does not lend itself to accuracy and a robust debate. Mayor Pro Tem Gierlach disagreed and said that he felt the format was useful and gave the meeting some structure. Trustee Perret suggested that discussion items should be placed on the agenda prior to action items, so that members of the public who are attending to contribute to discussion items could leave afterwards if they so chose.

Mayor Abu-Haidar asked the Board to direct staff to investigate a potential land swap between the Forest Service and Boulder County to determine the impacts and opportunities that might be felt by Nederland. She also commended staff on publication of the budget book.

## **I. ADJOURNMENT**

Motion to adjourn was made by Trustee Nowicki, seconded by Trustee Perret, and approved unanimously. The meeting was adjourned at 9:46 PM.

Approved by the Board of Trustees.

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Sumaya Abu-Haidar, Mayor

ATTEST:

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Teresa Myers, Town Clerk