

**TOWN OF NEDERLAND
BOARD OF TRUSTEES
REGULAR MEETING MINUTES:
August 6, 2013, 7:00PM**

**NEDERLAND COMMUNITY CENTER
750 Hwy 72 Nederland, CO 80466**

A. CALL TO ORDER

Meeting convened at 7:02 PM.

B. ROLL CALL

Present: Mayor Joe Gierlach, Mayor Pro Tem Mueller, Trustees Randy Lee, Ledge Long, Chris Perret, Peter Fiori and Annette Croughwell.

Also present: Alisha Reis, Town Administrator, Carmen Beery, Town Attorney, Eva Forberger, Town Treasurer, Jake Adler, Police Chief, Jason Morrison, Public Works Manager, and Michele Martin, Town Clerk.

C. CONSENT AGENDA

- Approval of August 6, 2013 Accounts Payable, Schedule A.
- Approval of August 6, 2013 Accounts Payable, Schedule B.
- Approval of July 16, 2013 Regular Meeting Minutes.
- Approval of professional services agreement related to Interim Municipal Judge TJ Cole.

Trustee Lee questioned the selection process for Judge TJ Cole. Reis explained Judge Cole was a recommendation of our previous judge to fill in as interim while the selection process occurs. Request for Proposals have been out since July 24.

Trustee Fiori joined the meeting at 7:04 p.m. after roll call was taken.

Motion to approve the Consent Agenda, Schedule A, the minutes of July 16, 2013, and the approval of professional services agreement related to Interim Municipal Judge TJ Cole, was made by Trustee Lee, seconded by Trustee Croughwell, and passed.

Motion to approve the Consent Agenda, Schedule B, was made by Trustee Perret, seconded by Trustee Fiori, and passed, with Trustee Lee abstaining.

D. PUBLIC COMMENT ON NON-AGENDA ITEMS

Arden Buck, of Nederland, wanted to express his appreciation to the Board for the good work they are doing and to say thanks.

E. INFORMATIONAL ITEMS

There were no informational items scheduled.

F. ACTION ITEMS

1. Consideration of contract award re: Sustainability Coordinator/Sustainable Design Assistance.

Reis introduced the item. A \$15,000 grant was received from Boulder County to support sustainability coordination and design assistance for implementation of the Town's Comprehensive Plan, Master Infrastructure Plan, and to finish producing the Town's sustainability action plan.

Requests for Proposals were received July 22, and the Submission Review Committee consisted of Alisha Reis, Eva Forberger, and Mayor Pro Tem Mueller. Reis, Forberger, and Jason Morrison met with each firm. The committee recommended C2 Sustainability, LLC unanimously.

There was discussion on section IIB of the contract, where it prevented sharing information with non-designated third parties without written consent. Also, discussion on the \$3,360 of additional services was debated.

Conor Merrigan, of C2 Sustainability, thanked the Board for this opportunity, and said he felt this position would be a natural flow to the work C2 is currently doing in Town in regards to the NedPeds project.

There was no public comment.

Motion to approve the contract award for C2 Sustainability, striking Section IIB of page one from the contract and allowing for \$620.00 of additional services for GIS assistance, was made by Trustee Lee, seconded by Trustee Croughwell, and approved unanimously.

2. Consideration of application for a Special Review Use (SRU) permit for mixed uses at 55 Indian Peaks Drive.

Trustee Fiori has an interest in this application and has recused himself. He will act as an individual and the applicant, not as a Trustee.

Reis introduced the item. The property in question has been in operation as Len's Excavating from 2002 through 2013. The property was zoned General Commercial (GC) in April 2001 as part of an agreement between the Town and Len Cole for trade of property. A mixed use is permitted under a Special Review Use permit, per Town code. The applicant is proposing to move his music production business, Sweetwave Audio, from Louisville to this site. He also proposes to add an assembly space/venue for events, thus the mixed use application. The public hearing for this application was conducted on July 24 before the Planning Commission. The Commission reviewed the application and provided the following recommendations:

1. The applicant shall provide for private security and crowd control, including providing personnel to direct traffic away from the site and to the adjacent highway (Highway 72) at the conclusion of any events at the building.
2. The applicant must at all times meet all requirements related to noise and/or sound prescribed by the Nederland Municipal Code.
3. The applicant shall use downcast lighting on the property, designed to minimize to the greatest extent reasonably practicable leakage of light beyond the property line. The applicant shall make every reasonable effort to provide a night sky-friendly site, including use of lights only as needed for site and patron security.
4. All music event activities must be contained indoors at the site. No outdoor music events are permitted.
5. The applicant shall adopt and to the greatest extent reasonably practicable enforce a policy that all smoking at the site must be restricted to the north side of the building.
6. SRU agreement is non-transferable in the event of property sale.

Reis then went on to discuss the criteria for the Board to review and approve a SRU.

Peter Fiori, applicant, addressed the Board. He said he would like to encourage the Board to go

along with the Planning Commission's recommendations. Fiori read from a statement he had prepared, which elaborated on his character, experience, and his commitment to the community. He said he plans on using sustainable practices and anticipates this being the first zero waste facility in the country. Fiori said he plans to bring jobs, commerce and culture to Nederland, and reminded the Board members that the main objective is whether to allow a mixed use on the property, as both uses by themselves are already a use by right in the GC zoning district.

The Board discussed the previous concerns regarding the unique sewer system challenging that site. Fiori said he is now proposing a septic system. Reis confirmed that a septic could be permissible under code; however, Town staff must sign off on all utilities after a thorough engineering review.

The Mayor opened the meeting for public comment.

Martin Cheshes, of Nederland, said he recalled an Intergovernmental Agreement (IGA) with Boulder County regarding this site, and said he had contacted Ron Stewart, Boulder County Parks and Recreation Director, to ask his recollection of this IGA. Cheshes said Stewart's recollection was that this parcel was zoned Industrial, not General Commercial.

Charles Wood, of Nederland, spoke to the inadequacy of the sewer system for this proposed public use.

Elizabeth Guertin, of Nederland, said she thought this proposal was not a compatible use in this family-oriented neighborhood and to the other public facilities located there, such as the elementary school and ice rink. Guertin said this is a quiet, residential neighborhood, and said that if this proposal were approved that residents would not feel safe any longer walking around at night.

Carolyn Armstrong, of Nederland, spoke to the potential affects this venue could have on the neighborhood. Armstrong said she had lived on Second Street before, lived through other music events in Town and witnessed attendees using private property as their bathroom and garbage site. Armstrong said she thought there would be no way to control people after they leave a show.

Kim Mayhew, of Nederland, said she didn't have an issue with Fiori's primary business of

Sweetwave Audio, that the residents only had an issue with the proposed assembly space. Mayhew reiterated that one cannot predict human behavior, especially when there is a combination of a bar, music venue and large crowds, and this could create a potential for a liability, either for Town or Fiori. Mayhew encouraged the Board to not allow a mixed use at this site.

Arden Buck, of Nederland, agreed with his fellow neighbors that there are valid concerns over the potential commotion, noise, and parking overflow issues. Buck said that he would encourage the strict monitoring of the noise levels. Buck said he believes this proposal has been well thought out, and that this proposal would enhance the Town as a music town and the sustainable design would also provide benefits.

Reis responded to some of the concerns. Reis did review the Mud Lake IGA and it was an IGA related to the conveyance of the property; it did indicate the use of industrial, but did not preclude rezoning. Reis and the Town Attorney also had reviewed the agreement approved by the Board in 2001, which stated GC zoning with a variance for industrial use specifically for Len's Excavating. Reis said a parking analysis was conducted, and it is in line with the Town's parking code. There is no overflow parking specifically allowed on the street.

Morrison said this was the first he had heard of septic being proposed, which of course would alleviate the sewer concerns. Morrison agreed that a properly engineered septic system could handle the development that is proposed.

Mayor offered to hear one-minute comments from the public for those who did not sign-up to speak for the allowed three minutes.

Roger Cornell, of Nederland and of the Planning Commission, wanted to clarify that the Commission made recommendations in addition to what staff had already recommended.

Chris Eddy, of Nederland, said he and his wife, Gail, are in strong support of this mixed-use application and on a personal note, said he believes this request would continue to support a great tradition of music in Nederland, as well as offer economic diversity.

Mark Rose, of Nederland, said he thought this proposal was long overdue and feels this is a needed space in Town, which supports the Town's musical heritage.

Lloyd Fanning, of Nederland, is in full support of this application.

David Hardy, of Nederland, said he is also in full support.

Fiori commented on concerns raised. He noted that this will be the second-largest parking lot in Town and said he believes the biggest problem residents have with the proposal is the GC zoning. He said he bought the lot zoned that way, and he is not planning on full-time venues. He reminded the Board that they were to review and approve his mixed use application, and not his assembly space on its own.

Mayor Pro Tem Mueller asked Fiori to consider taking the funds to install a septic and putting them towards upgrading the sewer instead. Fiori said he would be amiable to that.

The Board discussed their decision.

Motion to approve the Special Review Use permit for mixed uses at 55 Indian Peaks Drive, with the addition of a provision to revisit this SRU if spillover parking occurs on Indian Peaks Drive or Highway 72, as per Chapter 16, Section 16-61 was made by Trustee Lee, seconded by Trustee Long, and approved by a vote of 5-1, with Trustee Perret opposed and noting that Fiori abstained.

The Mayor called a brief recess, the meeting reconvened at 9:16 PM.

G. DISCUSSION ITEMS

1. Introduction of an ordinance to amend NMC Chapter 6 to adopt a new section related to recreational marijuana business licensing.

Reis introduced the item. Reis had prepared this packet item, which included the draft ordinance and recommendations offered by the Mayor's Task Force on Retail Marijuana, reviewed and annotated by Town staff, Town Attorney and the Planning Commission. State law defines four types of licensed retail marijuana establishments, and the proposed Town ordinance maintains those definitions: Retail Marijuana Stores, Marijuana Testing Facilities, Marijuana Product Manufacturing Facilities, and Marijuana Cultivation Facilities. The question before the Board tonight is whether the Board wishes to make further amendments to the proposed ordinance or to forward it for action as is at its next regular meeting on August 20 to keep in timeline with the statutory deadline of October 1 to have a local ordinance in place. Staff is looking for direction from the Board on a few substantive sections of the ordinance, such as allowing co-location of medical and retail marijuana businesses, zoning allowances,

distance from a school, limiting the number of licenses, and allowing more than one retail marijuana business in one building.

Discussion ensued on code violations, what is already in place for enforcement, odor control, home occupations and special review uses.

Trustee Lee said he spoke to the Director of Teens, Inc., who said he would be in support of an additional prohibition of these licenses in the gateway park area.

Trustee Fiori, Chairman of the Mayor's Task Force on Retail Marijuana, explained some of the reasoning behind the Task Force's recommendations and how they had come to some of their decisions.

In regards to the zoning issues, Reis stated that the Planning Commission had recommended Home Occupation Licenses for residential districts and a Special Review Use (SRU) in Central Business District for cultivation facilities, and SRUs in the Neighborhood Commercial (NC) District for all four types of licenses.

Motion to continue the meeting to 10:30 PM was made by Trustee Lee, seconded by Mayor Pro Tem Mueller and approved by a vote of 6 to 1, with Trustee Perret opposed.

Mayor took a straw poll on the co-location issue; all were in favor.

Mayor took a straw poll on the 100-foot distance from a school; supported by a majority of 6 to 1, with Trustee Lee opposed.

Mayor took a straw poll on allowing more than one retail establishment in one building, supported by a majority of 6 to 1, with Trustees Perret opposed.

Motion to continue the meeting to 11:00 PM was made by Trustee Fiori, seconded by Mayor Pro Tem Mueller and approved by a vote of 5 to 2, with Trustees Perret and Lee opposed.

It was agreed to continue the discussion of limiting the number of licenses to the next meeting.

Mayor took a straw poll on the zoning as per Planning Commission's recommendation; supported by a majority of 6 to 1, with Trustee Croughwell opposed to having cultivation in residential zones. It was suggested to offer a reduced fee and review time for a retail

marijuana-related SRU application. Reis will double check if a mixed-use is allowed in the NC or if an SRU is required.

Reis mentioned that the operating fees for these establishments can be discussed in September during budget meetings, as these will be part of the approved fee schedule and can be enacted by Resolution and ready by October 1.

Staff will prepare a public hearing notice for the consideration of adopting this ordinance at the next meeting on August 20.

H. OTHER BUSINESS

Trustee Lee said that next week was Firefighter Appreciation week and suggested some acknowledgement on the Mayor's blog for our firefighters.

Mayor Gierlach said he had recently been to a conference where Firewise communities made specific recommendations on building codes in fire areas. Mayor will send out the final report for reference.

I. ADJOURNMENT

Motion to adjourn was made by Trustee Perret, seconded by Trustee Lee, and approved by unanimous voice vote. The meeting was adjourned at 10:59 PM.

Approved by the Board of Trustees.


Joe Gierlach, Mayor

ATTEST:


Michele Martin, Town Clerk

