

**TOWN OF NEDERLAND
BOARD OF TRUSTEES
REGULAR MEETING MINUTES:
January 3, 2012, 7:00PM**

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

A. CALL TO ORDER

Meeting convened at 7:12 PM, late due to technical difficulties.

B. ROLL CALL

Present: Mayor Joe Gierlach, Mayor Pro Tem Kevin Mueller, Trustees Chris Perret, Randy Lee, Annette Croughwell, Janette Keene Taylor, and Peter Fiori.

Also present: Alisha Reis, Town Administrator, Teresa Myers, Town Clerk, and Carmen Beery, Town Attorney.

C. CONSENT AGENDA

- Approval of January 3, 2012 Accounts Payable
- Approval of December 6, 2011 Regular Meeting Minutes

Motion to approve the Consent Agenda was made by Trustee Taylor, seconded by Trustee Perret, and approved unanimously, with Mayor Pro Tem Mueller abstaining due to his absence at the previous meeting.

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

Sylvia Iorio, of Nederland, asked about the Town's policy towards squatters living in buildings with no utility hook-ups. Town Clerk Myers explained that the property in question was in the process of a foreclosure and the Town would be pursuing the matter with the bank once it took possession of the property.

Gail Eddy, of Nederland, asked if applicants to Town boards were going to be required to be present at the Board meetings in which their application will be considered. She also expressed concerns about the ballot language related to the DDA and who would be allowed to vote on it. Town Administer Reis and Town Attorney Beery responded to her concerns and noted that the bond counsel attending to the DDA ballot materials was still working on the some of the legal matters.

Kayla Evans, of Eldora Road, complained about the heating components for the BackDoor Theater during evening showings. Reis will follow up with Evans to work on the heating system concerns.

The Mayor shared a request he received to declare January Radon Action Month in Nederland, and read the Mayoral Proclamation into the record. The Board unanimously supported the proclamation.

E. INFORMATIONAL ITEMS

1. Sustainability Scorecard, as developed by the Sustainability Advisory Board.

Reis introduced the item and explained the scorecard. She anticipates that the SAB will be bringing it forward for adoption following the joint BOT/SAB meeting. Trustee Taylor asked some questions about the genesis of the scorecard and how it would be used. She noted that the scorecard could become a model for other communities.

2. Update on Snow Removal Policy

Reis explained the efforts staff was making to ascertain how many residents would need additional assistance during a snow event.

F. ACTION ITEMS

1. Consideration of Ordinance 702, adopting revised boundary lines for the DDA.

Reis introduced the item and provided the background, explaining that agricultural and residential properties within the DDA would be exempt from DDA taxation and representation in ballot issues.

Donna Kirkpatrick, of Nederland, asked whether the ordinance would make the original election illegal; she is of the opinion that the original election was illegal. Beery explained that

proper election procedures were followed and so the election was legal, and the time for challenging that election has passed and wouldn't be entertained by a court. The ordinance would not affect the legality of the original election.

Arden Buck, of Nederland, asked if this ordinance was an expansion of the boundaries, but was informed that it was not an expansion, but a confirmation of current boundaries and practice.

Roger Cornell, of Nederland, asked if the medical marijuana grows in town would be deemed agricultural and Beery explained that the determination would be made by the County Assessor's office.

Gail Eddy, of Nederland, said that she is concerned that the packet includes a map of the DDA boundaries that she was told at the last DDA meeting was not accurate. She also felt that the language of the ordinance was inappropriate.

Paul Turnburke, DDA Executive Director, explained that the errors on the maps had to do with the land uses labeled on the map, per the Boulder County Tax Assessor. Zoning per the Nederland Code was not in error, nor were the boundaries.

Betsy Buck, of Nederland, asked that the ordinance be postponed and studied more.

Beery explained the origin and use of the emergency language in the ordinance.

Trustee Fiori explained that he thought the ordinance change was an improvement to the original ordinance (Ordinance 599). He specifically noted that the residents will not be taxed under the DDA language, but they will also not have voting privileges on DDA ballot questions.

Trustee Perret asked why the ordinance was before the Board at the 11th hour.

Trustee Croughwell noted that this is a band-aid effort to clear up some confusion and doesn't change any of the current boundaries.

Trustee Lee noted that it is simply a clarifying ordinance of current practice, but he suggested striking the "agricultural" language from the ordinance.

Trustee Taylor opined that the folks who pay the taxes should be the ones voting, and this clarifies that. She also noted that last minute emergency ordinances needed to stop and asked the DDA to take a longer view when planning.

Mayor Pro Tem Mueller explained that he hadn't realized that voting rights were being taken away, and staff clarified that the voting rights hadn't been legitimate in the first place, as the residential properties were never taxed and can't be taxed under DDA law. He also asked about how the electorate would be determined and how land use would be determined. Staff informed him that the County Assessor's office would be determining land use, and providing the list of eligible electors. He also had some questions regarding opting in and opting out of the DDA district.

The Mayor spoke to the clarifying goal of this ordinance and noted that it was not proposing any changes to current boundaries or practice.

Staff further clarified that the map in the packet was for boundary purposes only, not the Tax Assessor land use determination, which will be updated before the election by Boulder County. They also clarified that there is no opt-out provision from the DDA district, just as there is no opt-out provision from school district taxes or fire protection district taxes.

Trustee Taylor noted that this is not a question of whether the DDA boundaries were originally legal; they were. This is merely a clarification of existing practices.

Motion was made by Trustee Lee to approve Ordinance 702, adopting revised boundary lines for the DDA, seconded by Trustee Taylor, and approved by a vote of 6 to 1, with Trustee Perret voting no.

2. Consideration of Ordinance 703, adopting formal language for the 2012 ballot regarding reallocation of sales tax percentages for the utility funds for the purpose of debt repayment.

Reis introduced the item and explained the basis for the ordinance. The question would change the allocation of existing sales tax amounts that are directed toward debt repayment in the water and sewer utility funds. Currently, the sales tax is first directed to water debt

repayment, and leftover amounts beyond that are then directed to sewer debt repayment. This question would ask voters to approve the sales tax to be instead a 50-50 split to both of the utility funds. This action would have the effect of better balancing the burden of debt repayment among the 800+ water customers and 550 sewer customers.

Trustee Lee asked why the ordinance wasn't skewed more toward the sewer side, given that the Town has more debt for the wastewater treatment plant than for the water plant. Reis explained that the State Revolving Loan Fund worked with Town Treasurer Forberger to create the ratios based on the Town's debt.

Cornell expressed support for this ordinance.

Evans asked if the ratio could be revised in the future, after the water plant was paid off, and Reis replied that it could and likely would.

The Trustees had no comments or questions.

Motion was made by Trustee Taylor to approve Ordinance 703, adopting formal language for the 2012 ballot regarding reallocation of sales tax percentages for the utility funds for the purpose of debt repayment, seconded by Trustee Perret, and approved unanimously.

3. Consideration of Ordinance 704, adopting formal language for the 2012 ballot regarding a proposed lodging tax.

Reis introduced the item and explained the policy basis for the tax. Mayor Gierlach provided the history of the lodging tax initiative on the 2010 ballot. Specifically, he highlighted the need for additional revenue to cover additional services needed due to the presence of visitors to the Town, such as police coverage and road repairs.

Trustee Lee asked if Town staff has the resources to enforce this tax, and Reis answered that it does.

Turnburke noted that this tax would mostly affect one business in town.

Evans stated that she was glad her lodging business is not in Nederland.

Trustee Croughwell asked if it would be possible to assess a tax on other businesses that create burdens on Town services and resources, and Beery replied that certain occupational taxes could be examined. Trustee Croughwell also noted that many other municipalities have lodging taxes.

Trustee Fiori felt that the tax would create a competitive advantage for those lodging facilities located right outside of Town. He also noted that it was already offered in 2010 and defeated. The vote, however, was 255 to 216, which wasn't a strong decision, in his mind.

Trustee Lee and Trustee Taylor also felt that the tax created a competitive disadvantage for one business in particular.

No motion to approve the ordinance was made, and the item was tabled indefinitely. The Board directed staff to continue to examine other occupational tax options.

4. Consideration of Ordinance 704 (formerly listed as Ordinance 705), adopting a vacation of right-of-way at 422 West Fourth St.

Reis introduced the item and provided necessary background and explained how the vacation of a right-of-way worked.

Mayor Pro Tem Mueller noted that the property is located in the Neighborhood Commercial district, and so could provide access to a commercial property in the future. Secondly, the Citizen's Sustainability Resolution approved by the Board requires the Board to consider protection of the creek. The Mayor Pro Tem asked if the property could be vacated with certain environmental restrictions. Beery replied that the Board could convey the property with certain restrictions, but she would need to research the parameters of permissible restrictions during a vacation.

Trustee Taylor asked the Mayor Pro Tem what kind of restrictions he would be seeking, and he explained generally what he was thinking, in terms of protection of the creekside's biodiversity and ecology.

Wendy Williams, the applicant, asked if there are restrictions on other property owners with

creekside properties. She noted that she feels such restrictions would be unfair. She argued that the applicants have been good stewards of the land – indeed better stewards than the Town – and noted that any modifications to the creek would require working with the Army Corps of Engineers. She asked that any restrictions placed on the applicants should be applied to all other property owners with creekside properties, including the Town.

Cornell related his experiences with vacations while on the Board and the Planning Commission.

Evans opined that a conservation easement might be more than the Town should be taking on, but that the Town should receive some compensation for the vacation.

Leonard Kottenstette, of Nederland, argued that the Town should not be requiring compensation for a useless piece of undevelopable property.

Mike Pelkey, of Nederland, stated that he was fine with paying the Town some measure of compensation, but that he is strongly opposed to placing environmental restrictions on the vacated property.

Trustee Taylor agreed with Williams that it isn't fair to burden one homeowner with restrictions not placed on others.

Trustee Fiori felt that the vacation should be granted for several reasons: 1) the land is undevelopable, 2) the applicants have done all that was requested of them, and 3) the homeowners have proved themselves good stewards of the land.

Trustee Croughwell feels that the Board should perhaps consider setting a conservation policy moving forward, but should not require compensation for these properties.

Trustee Perret felt that no compensation should be required for residential uses of vacated properties, only commercial properties.

Trustee Lee opined that, because the Town holds the land in the public trust, it should require some modicum of compensation, with consideration given for past stewardship.

Mayor Pro Tem Mueller expressed his disappointment in the labeling of the property as “useless,” and noted that if, indeed, it is so useless, then there is no harm in creating a conservation easement on the property as part of the vacation. He argued that preservation of the creek does not burden the current owners and does not create additional liability for the property owners. He noted that the Planning Commission voted down the vacation because it did not see a benefit to the Town. The Mayor Pro Tem urged the Board to not look at it as an issue of individual property owners, but to take a longer view and take an opportunity to preserve that section of the creek from future development.

The Mayor saw the residential use of the land as a better use than a possible future commercial development. He agrees with protecting the creek, but questioned whether the best means to do that was through restrictive conservation easements.

Trustee Croughwell agreed that preservation of the creek is important, but it doesn't seem fair to burden only those property owners, and should be an issue that the Board looks at in depth in its own right.

Trustee Fiori agreed with the Mayor Pro Tem about preserving the creek, but disagreed with the Planning Commission's reasons for not approving the vacation. He feels that a case-by-case analysis is appropriate and thinks that this particular vacation should be granted, even if future ones are not, or are granted only with restrictions.

Trustee Lee expressed his support of preserving the creek but also his discomfort with placing far-reaching restrictions on current and future owners.

Trustee Taylor argued that a change to Town policy to protect the creek should be examined and developed, but not on the back of this vacation. Trustee Fiori agreed.

The Mayor Pro Tem pointed to existing policies and noted that the Board would be ignoring existing policies if it does not consider creek preservation as part of this decision. He also stressed that this decision is not about the applicants or their stewardship of the land, but about future owners and their uses and stewardship.

Wendy Williams argued that the Board has already changed policy to encourage financial compensation in the instance of vacations, and now the Board is changing it again to add conservation restrictions.

The Mayor Pro Tem asked if Williams would be willing to accept the conservation easement in lieu of the financial compensation. Williams said she would not proceed further, if that were the offer on the table.

Motion was made by Trustee Lee to approve Ordinance 704, adopting a vacation of right-of-way at 422 West Fourth St., seconded by Trustee Taylor, and approved by a vote of 6 to 1, with Mayor Pro Tem Mueller voting no.

5. Consideration of Ordinance 705 (formerly referenced as Ordinance 706), adopting a vacation of right-of-way at 442 West Fourth St.

This item was considered in conjunction with the above item.

Motion was made by Trustee Fiori to approve Ordinance 705, adopting a vacation of right-of-way at 442 West Fourth St, seconded by Trustee Taylor, and approved by a vote of 6 to 1, with Mayor Pro Tem Mueller voting no.

The Mayor called a five minute recess. After reconvening, the Mayor pulled items 9 and 10 forward, with Board consent.

6. Consideration of Resolution 2012-01, approving Kingplace Replat amendment (Lots 1 and 2, Kingsplace Replat), and hardship waiver related to water hook-up requirement.

The Mayor opened the public hearing, and Reis introduced the item. Reis explained the staff recommendations.

Cornell spoke in support of the Planning Commission's position and reminded the Board that precedent has been to deny hardship waivers unless it is truly a serious hardship.

The Mayor closed the public hearing.

Motion was made by Trustee Lee to approve Resolution 2012-01, approving Kingplace Replat amendment (Lots 1 and 2, Kingsplace Replat), but not the hardship waiver related to water hook-up requirement, seconded by Trustee Taylor, and approved unanimously.

7. Consideration of Resolution 2012-02, adopting an Intergovernmental Agreement with CDOT for Phase II of the Sidewalk Project.

Reis introduced the item and Beery explained that she had reached agreement with CDOT on all of the sections that had concerned her.

Mayor Pro Tem Mueller asked if any of the SAB's recommendations had been considered, and Reis explained that this resolution was not about the design or placement of the sidewalks, but only about whether to accept the CDOT funding for the project.

Motion was made by Trustee Fiori to extend the meeting until 10:30, seconded by Trustee Perret, and approved unanimously.

Trustee Taylor questioned how the design process would proceed and Reis clarified how that would happen and how the Turnburke model, to be considered later in the evening, would guide that process.

The Trustees discussed the options before them and the ramifications of rejecting the offered funds.

Trustee Perret suggested that the funds be rejected and a letter provided to CDOT fully explaining that the money was being rejected because adequate planning and public input had not been obtained in advance of practical deadlines for acceptance or rejection of the funds.

The Mayor Pro Tem asked how the SAB recommendations could be incorporated and he and Reis discussed the burden of the project on existing Town resources, especially staff time.

Donna Kirkpatrick spoke in support of "option 2" (to delay acceptance of the funds until after the question can be put to the voters on the ballot) as outlined in the packet memo. She feels that the DDA has made too many mistakes and that a clean slate needs to be created and this issue should be addressed after the election.

Motion was made by Trustee Lee to extend the meeting until 10:45, seconded by Trustee Fiori, and approved unanimously. Betsy Buck, of Nederland, asked the Board to reject the funding.

Arden Buck, of Nederland, argued that the Board should reject the funding, that many residents are strongly opposed to it, that many aspects of the plan are not necessary, and that the project is generally a bad idea.

Cornell thanked the Board for their service and expressed his support for the difficult decision in front of them.

Eddy said she does not support the IGA and claimed that the DDA is seeking the money only because it is available and can be spent. She argued that development should be carefully considered and deliberately pursued, not simply because funds are available.

Karen Anderson, of Rollinsville, noted that simply because something is offered does not mean that we need it nor that we should take it.

Turnburke noted that the design process would provide ample opportunity for citizen input and development of a project that would work for the Town.

Vera Schulte, of Nederland, noted that the Town would likely not be able to pay for highway crossings without CDOT's assistance. She also reminded the Board that the majority of public input received during the official comment period was in support of the project.

Jeannette Smith, of Greater Nederland, spoke to the permanence of the sidewalks and the cement's effects on the ecology.

Evans spoke in support of the sidewalk project and feels that the project will improve pedestrian safety. She took issue with speakers who claim to be speaking for others or "a majority" of residents. She feels strongly that the Board should be considering the elderly, the disabled, and the children in the community.

Nancy Stubbs, of Nederland, spoke against the sidewalks and emphasized that the Town's

matching funds could be valuably applied to other projects. She urged the Town to postpone the decision until the electorate has spoken through the ballot.

Motion was made by Trustee Fiori to extend the meeting until 11:00, seconded by Trustee Lee, and approved unanimously.

By voice vote, the Board agreed to vote on the item in the time remaining.

Trustee Fiori shared that he does not support the plan or the IGA.

Trustee Perret said he does not support the plan and feels that the Town should reject the money.

Trustee Croughwell said she would like to delay acceptance of the funds until the DDA has polled the DDA constituency.

Trustee Lee noted that the sidewalks were part of the adopted Trails Master Plan and that the DDA had proceeded in compliance with that Master Plan in seeking funds to promote the end goals of that plan. He said he supports the IGA.

Trustee Taylor took issue with the fact that any resident would claim that they represent any view other than their own. She noted that the project would create work for some people in the midst of a bad economy. However, she said she feels that the Board needs a better sense of what the community wants and needs. So, she's voting against it.

Mayor Pro Tem Mueller responded to concerns that the Board should look out for the residents, particularly the most vulnerable ones. He noted that it is difficult to know what is best without a poll.

The Mayor argued that if the funds were turned down now, the Town would never know whether the project would have been designed in such a way as to garner favorable majority support among residents. He said that accepting the funding allows for the design process in order to properly evaluate the project.