

**TOWN OF NEDERLAND
BOARD OF TRUSTEES
REGULAR MEETING MINUTES:
March 4, 2014, 7:00PM**

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

A. CALL TO ORDER

Meeting convened at 7:00 PM.

B. ROLL CALL

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

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

C. CONSENT AGENDA

- Approval of March 4, 2014 Accounts Payable, Schedule A.
- Approval of March 4, 2014 Accounts Payable, Schedule B.
- Approval of February 18, 2014 Regular Meeting Minutes.
- Approval of contract for flood-related Inflow and Infiltration (I&I) repairs.
- Approval of JAG grant renewal for restorative justice program (TEENS Inc.).
- Approval of Boulder County Economic Development Program Agreement for 2014 NedWEB Program.

A few Board members had questions, which staff answered. Trustee Perret asked about the \$29,610.34 paid to Boulder County and Forberger said she would send an email with the exact breakdown of that amount.

Motion to approve the Consent Agenda, Schedule A, the February 18, 2014 regular meeting minutes, the contract for flood-related I & I repairs, the JAG grant renewal for restorative justice program for TEENS Inc., and the Boulder County Economic Development Program for 2014 NedWEB program was made by Trustee Fiori, seconded by Trustee Perret and passed, with Mayor Pro Tem Mueller abstaining.

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

D. PUBLIC COMMENT ON NON-AGENDA ITEMS

E. INFORMATIONAL ITEMS

1. Request for Proposal (RFP) to Landscape Architects for the performance space.

Reis introduced the item. As a follow-up from the February 11 work session, staff had been directed to draft a RFP so that a solid, final design could be created for the performance space, which would then be submitted through the Nederland Planning Process (NPP). Mayor Pro Tem Mueller suggested that the Comprehensive Plan and Resolution 2011-21, Preservation of Nederland's Character and Sustainability of its Community, should be part of the initial documents for a RFP.

The Board discussed at length the history of the change orders with Aslan, the grading that was already paid for, the Frchetti drawings, differing opinions on what has been through the NPP process already, and the mixed messages given as direction to staff. Mayor Gierlach was adamant that this space be usable by July 4th.

More discussion took place on leaving the performance space portion of the project out of the plan and just focus on the final grading, so that it is completed by June. Reis said it would cost approximately \$5,000 to hire an excavator to finish the grading. Mayor took a straw poll and the Board was split on rushing to get the grading done by July 4th vs. putting the existing plan through the NPP process and having the schedule reflect that.

After much deliberation, clear direction was made to staff to skip the RFP at this time, finish the final grading as per Frchetti's plan, the noxious weed removal and green reseeding as per the Ecologist's recommendations, and have the space finished by June. Five were in favor; Trustees Lee and Perret were opposed.

F. ACTION ITEMS

1. Consideration of Special Review Use (SRU) application for Club Ned Cannabis for-profit club use at 154 Highway 72.

Reis introduced the item. She went through the history of this application from when the applicant had first applied for a business license for this use in February of 2013, the denial of that application due to the absence of this use under zoning code, the applicant's application to the Planning Commission (PC) for an interpretation of a determination as to whether this specific use is permitted, and subsequently, the Board adopting Ordinance 722 to amend Chapter 16 Zoning to provide for club uses, separating uses to allow for non-profit and for-profit clubs. Ordinance 722 required a for-profit club, located in the Central Business District, to submit a Special Review Use application before the PC. The applicant had complied, and the application was heard before the PC on February 26, 2014. The PC recommended unanimous approval of the Special Review Use along with several conditions.

Mayor Gierlach reminded the Board that the action before them was whether or not the five Special Review Use approval criteria were met: Is eligible for a special review under Section 16-32; Is generally compatible with adjacent land uses; Meets all requirements of Section 16-52; Is consistent with the Comprehensive Plan; and The Town has the capacity to serve the proposed use with water, sewer, fire and police protection. All Board members were in agreement that the criteria had been met.

Trustee Lee caught a typo under item 2b of the agreement, in regards to egress lighting, it should read that it has been installed, not that it must be installed.

Mayor took public comment.

Mark Rose, of Nederland, spoke in support of this proposal. He urged folks not to listen to fears in the community. He said he heard these same fears in 2009 when he started his medical marijuana dispensary and the sky hasn't fallen yet. He said he believes this is a logical step similar to bars for liquor.

Barb Hardt, of greater Nederland, thanked the Board for all their hard work, and respectfully asked them to deny the proposal. Hardt had sent the Board an email on March 3 expressing her concerns. She said does not feel the parking has not been resolved and wondered if the applicants' personal vehicles were considered when determining how many spots would be required. She encouraged Board members to visit the site to see the small size of the existing

spots. She noted that a large number of signatures on the petition that Fanelli provided were not Nederland residents. She said she believes the applicant should register her business as a marijuana dispensary or retail store so as to fall under the laws of marijuana businesses.

Cheryl Fanelli, the applicant, was available to answer questions. She introduced her attorney Jeff Gard and her husband Dave Fanelli. She went on to describe her proposal, which includes a Mission Statement and Code of Conduct. They plan to offer packaged food and provide a cozy, safe place for folks to enjoy their own cannabis, which they must bring on their own.

Trustee Fiori asked both the Town attorney and Gard how this proposal would hold up in court in regards to the Colorado Clean Indoor Air Act. Gard responded that since this café falls into a similar private club category as an Elks Lodge, Lions Club, etc., meets the criteria of the number of employees and the revenue it generates is primarily through membership fees and not food, alcohol or the like, and as long as they stay in compliance, it would survive a legal challenge.

Mayor Pro Tem Mueller asked if the exterior of the building would change, and the applicant replied no.

Trustee Lee brought up signage. Fanelli said they haven't determined what their sign would look like yet, but would certainly comply with all Town code and submit an application for a permit when ready. She said they planned to keep it low-key, so as not to bring in people off the street. Lee suggested that no cannabis leaf be portrayed in the sign. Fiori showed the Board a picture of a beer banner that the current Kathmandu restaurant on N. Jefferson Street hangs on their building.

Laura Kriho, former Nederland resident, said she has known the Fanelli family for over 20 years and spoke in support of this proposal and their good character.

Trustee Lee recommended changing 2d of the agreement to say "prior to commencement" that the air scrubber would be installed. Lee also suggested adding to section 2 another condition for no representation of any cannabis leaf on the sign. He went on to say that while he would vote for the proposal, because it me all the conditions of an SRU, he sympathizes with residents on what message this approval is sending in regards to tolerance and embracing the cannabis culture, and he said he personally thinks it is a mistake. He said he is also concerned about marijuana tourism, and that the Town has a responsibility under Amendment 64 for local users, but that is as far as it should go. He said he feels they should be deemphasizing cannabis

tourism, not encouraging it.

Trustee Perret said that another aspect to be looked at is education of pot smokers, of youth, and what the laws are. He said he liked the condition the PC required of a six-month review and to see if neighbors have any issues at that time.

Trustee Fiori said he felt this offers a safer atmosphere for tourists, as they cannot go back to their hotel room and smoke and he said they would end up smoking in their car or in the forest. Fiori said he feels the Board is sending a positive message to youth when 73% of the voters who voted for Amendment 64, now have a place to legally smoke. He suggested the 2,000 square foot industrial air scrubber the applicant is proposing is overkill, and they should just provide one for their 500 square foot space.

Mayor Pro Tem Mueller was also concerned with the message being sent, but then acknowledged the seniors coming forward in support of marijuana due to it helping them cope with their ailments.

Trustee Long said he appreciated Pastor Hansen Wendlandt's letter and perspective of the situation.

Trustee Croughwell said she particularly liked the applicant's Code of Conduct and agreed that the world is watching Nederland right now. She thanked the applicant for their due diligence and said that even though the criteria were met, she would still be voting no on behalf of the concerned residents. She said a number of residents have come to her in regards to this application, and she does not want to dismiss those concerns and fears of neighbors.

Motion to approve the Special Review Use application for a for-profit club use at 154 Highway 72, including the two recommendations by Trustee Lee, was made by Trustee Perret, seconded by Trustee Fiori, and approved by a vote of 6 to 1 with Trustee Croughwell opposed.

2. Consideration of Resolution 2014-03 to appoint the Town Clerk as the Designated Election Official (DEO) and to allow the Clerk to appoint Election Judges for all future elections.

Beery introduced the item. She said it is common practice to designate a DEO and that the Board may delegate its authority to appoint election judges to the Clerk and has in every previous election. This would be a perpetual delegation, which can be taken back again by

resolution, if the Board desires.

There was no public comment.

All Board members were in favor, except Trustees Fiori and Perret who preferred to do this every two years.

Motion to approve Resolution 2014-03 to appoint the Town Clerk as the DEO and to allow the Clerk to appoint Election Judges for all future elections was made by Trustee Lee, seconded by Trustee Long, and approved by a vote of 5 to 2 with Trustees Fiori and Perret opposed.

The Mayor called a brief recess, which reconvened at 9:02 PM.

G. DISCUSSION ITEMS

1. Discussion of a Non-Compete Agreement for High Peaks Art Festival.

Reis introduced the item. Cathy Stiers, Executive Director of the High Peaks Art Festival (HPAF) is requesting the Board to honor a Non-Compete agreement that she had with the Chamber of Commerce when she purchased the festival in 2011. If the Board were so inclined an agreement would be drafted.

Stiers was present to provide an overview of her request, her 35 years of experience in the art show world, and the community aspect of HPAF, as they donate 100% of net profits to Nederland Non-Profits, scholarships to the school, support of the High School trip to Belize, and other Nederland funds. HPAF promotes a different Nederland Non-Profit each year and this year is Teens, Inc. She wanted to emphasize that she was not against events in town, she is only asking for what her agreement called for which was not to have another juried art festival in Nederland during the period of June through August. She said she feels that by having another art show in the Visitor's Center parking lot during those three months would be an attempt to duplicate her event and cause confusion to her artists and the public. She said she doesn't feel the size of Nederland could support two art events.

The Board discussed the proposal. Beery advised the Town that if they chose to limit the number or type of events that they must articulate the reason why that decision would be in the Town's public interest. She said the Board could adopt a policy for a limitation for a time period or location.

Mayor Gierlach liked the idea of the Non-Compete, but not to limit it to the Visitor's Center, as

the performance space will be available in the future.

Trustee Croughwell, gave an art vendor perspective, as she has participated in shows before. She said that artists having more than one option could hurt HPAF, as they would pick and choose which weekend worked the best in their schedule. She said she felt it was important for the HPAF to have this agreement.

Trustee Fiori, said he may be convinced of the need for the agreement, because the HPAF is so well done and has such a great reputation, yet he said he feels that competition is extremely important, and noted that there was a huge difference between the Chamber of Commerce, who was a promoter, than the Town, which is the host. He said he thought the Board needed more time to reflect on this.

Motion to extend the meeting to 10:30 PM was made by Mayor Pro Tem Mueller, seconded by Mayor Gierlach, and passed with a vote of 5 to 2, with Trustees Fiori and Perret opposed.

Mayor Pro Tem Mueller was in support of the agreement and said an argument for the Town's public interest could be that in order to help support the HPAF and to keep this existing event as successful as it is, it would be in the Town's best interest to limit the number of art festivals for this time period as suggested.

Trustee Fiori asked why she is coming forth at this time. Stiers responded that a promoter has submitted an application to Town to hold an art show by the name of Alpine Arts Festival for August in the Visitor's Center parking lot.

The Board discussed several other towns and how they have limited the number of events their town holds. Trustee Croughwell suggested there must be some sort of economical capitalism formula for managing all events in a calendar year. Trustee Long said it would be a good idea to talk to some of those towns for helpful ideas.

H. OTHER BUSINESS

- Pedestrian Crosswalks

Trustee Croughwell spoke on behalf of Janette Taylor, who sent the Board an email on February 27 discussing how bad the crosswalks were and all the near misses she had witnessed. The Board discussed different options for consideration such as stop signs, big planters, blinking lights, or a large flexible pole that could be pulled down and swings up and

down to get noticed. Reis said that CDOT is responsible for the highway crosswalks and will speak to them about using a different material that lasts longer. She said that the DDA had put flags up, but they got stolen.

Trustee Croughwell wanted to let the Board know that she was halfway through her term, loves being on the Board, and always has the community's best interest in heart and mind, yet due to personal reasons she is moving out of Nederland within the next six months. With elections coming up, she thought this would be a good time to resign, but she would stay on until the day after elections to allow the Board to fill her vacancy. Beery said the Board had 60 days to fill a vacancy. Forberger asked if the compensation question passed on the ballot, would this position to fill a vacancy be paid and Beery said yes.

Mayor Gierlach thanked Croughwell for all her help and appreciated her letting the Board know in advance.

I. ADJOURNMENT

Motion to adjourn was made by Mayor Gierlach, seconded by Trustee Fiori, and approved by unanimous voice vote. The meeting was adjourned at 10:30 PM.

Approved by the Board of Trustees.



Joe Gierlach, Mayor

ATTEST:



Michele Martin, Town Clerk

