



# Nederland Planning Commission

## MINUTES

Wednesday, August 24, 2011 ~ 7:00 pm  
Nederland Community Center  
750 Highway 72 North

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### 1) Call to Order

The Chairman called the meeting to order at 7:10 PM.

### 2) Roll Call

Present: Chairman Bill Martin, Commissioners Denise Jackson, Kris Larsen and Mikki Osterloo, Trustee Kevin Mueller

Also present: Town Administrator Alisha Reis, Deputy Town Clerk Kristen Edwards.

Absent: Commissioners Roger Cornell, Steve Williams

### 3) Approval of minutes from July 27, 2011

The motion to approve the minutes was made by Commissioner Larsen, seconded by Commissioner Jackson and unanimously approved.

### 4) Action Items

a. Vacation of Right of Way Application from Wendy Williams (442 W. 4<sup>th</sup> Street); and

b. Vacation of Right of Way Application from Michael and Janet Pelkey (422 W. 4<sup>th</sup> Street)

Applicant Wendy Williams, 442 W. 4<sup>th</sup> Street, explained that the road basically dead ends in her yard. She treats the property in question as their yard at the moment and would like to formalize that agreement. She also has concerns about liability, particularly with the creek running through the property, and would like to have the property in question covered under her homeowner's insurance

policy. She clarified for the Commission which property pertains to her vacation request and which pertains to the Pelkeys'. Reis clarified that per State law, a vacation divides the street in half, with each half going to the directly adjacent property.

Commissioner Martin noted that the only two vacations since 2006 have been the Library and the Rambo property on Lower W. 3<sup>rd</sup>, both of which were commercial. He asked if there are any different considerations given that this is a residential property. Reis explained that often vacations have been used to relieve the burden of maintenance on the municipality or State. The other significant consideration is often the public benefit aspect; in the cases of the library and the Rambo vacation, the argument for public good was found to be persuasive. She explained that it should be thought of as vacating not by property but by Street, i.e. the 4<sup>th</sup> Street vacation and, separately, the Tilden Street vacation. She explained that traditionally communities seek compensation for land they vacate, but Resolution 2006-10 specifically says that the Town shouldn't sell streets, only vacate them. Reis reminded the group that a Resolution is less binding than an Ordinance which has been turned into Code, but emphasized that in good faith they should follow the intent of the Resolution. Chairman Martin wondered if the Commission can recommend compensation; Reis explained they can, but the Board of Trustees would need to revisit the policy set in 2006 in order to follow that recommendation. Commissioner Jackson wondered if the Town Attorney's memo could be interpreted to mean that as the Town only has an 'interest' in the land and doesn't technically own it, the land can't be sold per se, and that is what is driving the language in the 2006 Resolution. Reis said that is not her understanding and reiterated that many vacations involve compensation; she will clarify the point with the Town Attorney.

In response to questions, Reis noted that vacations of right-of-way are not common. To have two in the past five years is surprising; normally when towns have an interest in land they don't readily relinquish it.

Ms. Williams asked what would happen if there were a cost associated with the vacation vis-à-vis the property owner on the other side of the street (Leonard Kottenstette). She wondered if there were a cost for the vacation, would Mr. Kottenstette also be required to pay it? Reis asserted that is normally the case, but reminded the group that per current policy that option is off the table.

Mr. Kottenstette raised the question of whether or not the vacations would create new buildable lots. He noted that while the current owners may not choose to build, the next ones might. He suggested that a deed restriction or something similar should be put in place to prevent future owners from building. Reis clarified that the vacations wouldn't create new separate buildable lots and that the vacated property would be added to the current lots. Commissioner Jackson said she didn't think putting restrictions on the property would be permitted. Reis pointed out that the Town could maintain the easement on the property and, as you can't build a permanent structure on an easement, potential building would be restricted in that manner.

Commissioner Larsen wondered if the current use of roadway easements is the only use for the properties. Do the properties have to be used as a road, or could the Town put in solar panels or build a shed or any number of other things? The group agreed that in this case the geography precludes most other uses, but agreed that it is an important question in general for potential future vacations of roadways and impacts the higher level policy. Staff agreed to clarify the point with the Town Attorney and have a clear answer prior to the item going before the BOT.

The Commission went through Resolution 2006-10 point by point, with a particular focus on points 2, 3, 4 and 8 as emphasized in the Staff memo. The Commission found #2 problematic, as there's not really a "substantial benefit to the public." Ms. Williams noted that the aesthetic enhancement portion of #3 is one of the applicants' primary arguments, as they take care of and maintain the properties. The Commission found no direct benefits amongst the many listed in #3, and found no other indirect benefits other than the aesthetic enhancement piece. Chairman Martin noted that vacating the land could be considered a 'direct taking' of open space, as the land shifts from public to private property. Commissioner Larsen made the argument that vacating the land could possibly protect it better, as it eliminates the possibility that a future Town government could again use it as a road. Chairman Martin countered that future private property owners pose an equal threat of building on the property.

The Commission classified #4 as a 'sticking point', noting that significant benefit goes to the individual property owners. Chairman Martin wondered if any compelling benefits to the Town

exist or if there are any reasons for the Town to want to get rid of the properties. Mr. Pelkey noted that the high and fast stream poses a danger to children and is a potential liability to the Town. Reis pointed out that if an incident occurred, the Town would likely be protected by governmental immunity and the Town would not be liable. Ms. Pelkey noted that there are a number of trees on the property; were the trees to become beetle-infested, the Pelkeys would bear the burden of the tree removal instead of the Town. Reis said that could be a condition of the vacation.

Chairman Martin raised the question of what precedents are being set in the case of vacation. Commissioner Osterloo said her biggest concern is setting a precedent that could lead to the Town giving away significant amounts of property. Commissioner Jackson said she would love to sell the property to the applicants, but unfortunately policy prevents that from happening. As is, she doesn't think the application meets the criteria for vacation. She would strongly recommend that the Board of Trustees consider a change of policy to allow the receipt of financial compensation. Chairman Martin pointed out that #10 does allow for some form of compensation to come to the Town, albeit not direct financial compensation.

Ms. Williams pointed out that if the vacation isn't granted, she would argue that it is the Town's responsibility to maintain the space, including plowing and pruning. Reis noted that the road would be at the bottom of the plowing list, behind emergency and school routes.

Ms. Williams also made the point that the total property tax increase would be more than the \$12 that would go to the Town annually, including moneys going to the school district and other places that could be considered 'public benefits.' Staff will ask the Town Treasurer to calculate the total increases for all categories before the item goes to the Board of Trustees.

The Commission went around the table for final thoughts. Chairman Martin acknowledged that one could make the argument that the vacation is convenient and would keep the properties clean, but he doesn't find it a compelling argument and he doesn't believe the proposal meets the conditions of the 2006 Resolution. Commissioner Osterloo agreed that the proposal doesn't meet the 2006 guidelines, but she isn't against the concept of vacations overall and thought the Board would do well to look at the policy more closely. She doesn't

find the 'increased taxes' argument to be a significant enough 'public benefit' to be persuasive. Commissioner Larsen noted that it would take around 15 years to 'break even' with the valuations vis-à-vis the increase in property taxes. He is in favor of the proposal; while acknowledging that the benefit to the Town is slight, he thinks that would be more benefit than the Town gets now. Trustee Mueller is in favor of public ownership of land and thinks that is only way to preserve said land. He doesn't believe that this situation meets the burden of the 2006 policy statements. Commissioner Jackson said she is concerned about the Town receiving a deluge of vacation requests if the land is vacated for free and again emphasized that she'd like the Board to revisit the option of receiving compensation for vacations, particularly in the current economic times. Commissioner Larsen reiterated the importance of the question of what, if anything, can be done with the land other than using it as a road. Trustee Mueller asserted that the Town can always designate it as an area to be preserved and argued that would be the highest and best use.

The motion to recommend denial of both applications to the Board of Trustees was made by Commissioner Jackson, seconded by Commissioner Osterloo and approved 3-1, with Chairman Martin and Commissioners Jackson and Osterloo in favor and Commissioner Larsen against.

The Commission made an additional recommendation for the Board of Trustees to revisit point #8 in Resolution 2006-10 and consider changing the policy to allow the Town to receive financial compensation for vacations.

## **5) Discussion Items**

### **a. Nederland Comprehensive Plan Update**

Reis took the Commission through a packet of materials she'd prepared in anticipation of the upcoming RFQ going out to consulting firms. The packet included a draft RFQ, sample RFQs from other towns, and a number of articles discussing important considerations when going through this process and selecting a consultant. She explained that the RFQ can be released to a wide vendor list in November after the budget is finalized. Then the targeted RFP can go to a narrower group who rank the highest of the RFQ respondents.

Staff will email the electronic version of the draft to the group. Commissioners should send comments and edits back to Staff, who will generate a draft to approve at the September meeting.

## **6) Other Business**

Edwards reminded the group that Boulder County recently announced the commencement of their Comprehensive Plan update. They are holding a number of community meetings throughout the County, with the one in Nederland happening the following Wednesday night. She encouraged the Commission to attend the meeting and relayed that the County Planner with whom she spoke was very enthusiastic about the ways in which the two plans and processes could overlap and support each other. Reis noted that the overlap is particularly important vis-à-vis the three-mile 'zone of influence' around the Town.

Trustee Mueller updated the group on the recent Board of Trustees' workshop regarding Phase 2 of the sidewalk project, held so as to give the BOT more information as to whether or not to move forward with the project and accept the funding from CDOT. He noted that many of the details have not yet been fleshed out. Reis noted that she recommended design reviews at the 30%, 50% and 90% completion points, as was the process with the wastewater plant. She emphasized that it is not yet decided whether or not the project will move forward; the BOT will be hearing further public discussion on the matter at an upcoming meeting.

Reis noted that Safe Routes to School put out a call for grants, which the Town is looking to possibly use to complete the trail connection and make the highway crossings by the Community Center and at the library. The grant application is due in December; if the funds are obtained and used for that purpose, it would effectively complete the missing pieces in the trail system.

Reis reiterated the need for the Commission to adopt a set of bylaws and the need to elect a Vice Chair as well as a Chair for the Commission.

Chairman Martin reminded the group that he has a conflict and will miss the next meeting. Commissioner Larsen volunteered to lead the meeting in his absence.

## **7) Adjournment**

The motion to adjourn was made by Commissioner Larsen, seconded by Commissioner Jackson and unanimously approved at 8:41 pm.

Approved by the Planning Commission,

A handwritten signature in black ink, appearing to read "Bill Martin", is written over a horizontal line.

Bill Martin, Chair, Planning Commission

ATTEST:

A handwritten signature in blue ink, appearing to read "Kristen Edwards", is written over a horizontal line.

Kristen Edwards, Deputy Town Clerk

