TOWN OF MILLIKEN
BOARD OF TRUSTEES
MILLIKEN MEETING HOUSE, 1201 BROAD STREET

MEETING MINUTES

Wednesday, June 24, 2015 – 7:00 P.M.

Call to Order

The Town of Milliken Board of Trustees convened a regular session on Wednesday, June 24, 2015 at 7:00 p.m. Those present: Mayor Milt Tokunaga, Mayor Pro Tem Linda Measner, Trustees: Linda Beck, LeRon Ehrlich, Jordan Jemiola, Ken Kidd and Lois Ann Onorato. Also present: Town Administrator Kent Brown, Town Clerk Cheryl Powell, Treasurer & Accounting/Finance Director Patrick Murphy, Police Chief Benito Garcia and Town Attorney Bruce Fickel. Absent: Community Development Director Martha Perkins and Community Engagement Specialist/Planner Seth Hyberger

Pledge of Allegiance

Mayor Tokunaga called the meeting to order.

Roll Call

Trustee's: Ehrlich, Onorato, Jemiola, Mayor Pro Tem Measner, Mayor Tokunaga, Trustee Beck and Trustee Kidd.

Agenda Approval

Town Administrator Brown indicated that Staff had no changes to the Agenda. Mayor Pro Tem Measner would like to pull the Special Events Permit for a liquor license from the Consent Agenda and have it placed on the Action Agenda. Trustee Jemiola would like to move Action #4 to the Consent Agenda. Mayor Tokunaga indicated that he had a question on that Action Item and would like it to remain on the Action Agenda

Citizen Comments

None.

Minutes of Previous Meeting

Approved as distributed.

List of Bills

Mayor Tokunaga had a question regarding the payment to Nathan, Bremer, Dumm & Myers P.C. for $3,840.00 and asked if this was for the investigation regarding the alleged conflict of interest. Finance Director Patrick Murphy responded yes.

CONSENT AGENDA

1. **Consideration and Approval for Resolution 15-13, for use of Fireworks at the Town's Annual Beef 'N Bean Day Celebration**

   To consider for approval Resolution 15-13 for use of Fireworks at the Town's Annual Beef 'N Bean Day celebration. This year's fireworks display will be provided by Tri-State Fireworks.

   Mayor Pro Tem Measner moved to approve the Consent Agenda. Trustee Onorato seconded.

   Discussion: None.

   Vote: All in favor, none opposed. Motion passed

ACTION AGENDA

1. **Public Hearing for the Review and Recommendation for Approval of Ordinance 711, to Approve an Annexation of 152 Acres known as the Martinez-Hahn Annexation**

   Mayor Tokunaga spoke about and read the quasi-judicial hearing procedures to the Town Board and Members of the Public. Mayor Tokunaga asked if any Trustees felt that they had a conflict.

   Community Development Director Perkins swore in those who would like to speak during the Public Hearing.

   Public Hearing Opened at: 7:10 P.M.

   Community Development Director, Martha Perkins asked the Board to review and consider Ordinance No. 711, for the purpose of annexing approximately 152 acres of the land 100% owned by the Martinez Family into the Town of Milliken, located at 9333 CR 52. The annexation will take place in three separate applications known as the Martinez-Hahn Annexation 1, 2 and 3. In addition,

with the annexation, the Martinez family is requesting to zone the land R-1 "Single Family Residential". The Applicant may be open to other zoning. Director Perkins would like her staff report made as part of the record. A Power Point depiction of the property was shown as part of the presentation. Director Perkins indicated the areas on the property that will be left as open space as a donation to the Town of Milliken.

Trustee Kidd asked what the Planning Commission's recommendation was regarding this item. Director Perkins explained that the Planning Commission denied the request and also explained that the applicant did not speak during the Planning Commission meeting, due to their attorney not being present.

Mr. Bob Penny with the firm of Wick & Trautwein, LLC represents the Martinez family. He has asked Mr. Craig Hau, who is a realtor, to speak about the property during tonight's public hearing. Mr. Penny provided general background on the property stating that it was owned by Connie Hahn who passed in 2009 and her husband who passed away in 2012. Ms. Hahn's Will indicated that the Town of Milliken was to receive the house and property located on 417 Broad Street in Milliken and a portion of the property located on CR 52 that is located in Weld County. The property on CR 52 was to be used as an additional museum. Ms. Hahn also wanted a section of the property to be used by the Town as a trail/walking path for people to view wildlife, etc. She also gave some artifacts, etc. to the Town for the museum. Mr. Penny explained that instead of annexing only the portion of the property that would be owned by the Town, it was decided by the family to annex the entire property. Parcels 2 & 3 will continue to be owned by and used as agricultural area for farming, by the children of Adam Martinez until it is decided to be sold. The property will be sold to a developer or someone who can develop the land. His clients are fairly certain that they would like to zone the property R-1 (Residential) and if the annexation and zoning do not go through, the family may withdraw their petition for annexation.

Mr. Craig Hau a broker, with The Group Inc., Real Estate Company explained that approximately 30-35% of the land could be developed as single residential family lots, due to the land's topography. R-1 zoning may bring approximately 200 homes due to the limitations of the land. The proposed water line is a mile and half away and sewer is quite a distance away. In his opinion it may be ten (10) years before the property is developed. Due to the open space area on the property, it will be an attraction to those around the area. Mayor Tokunaga asked if the valuation would be different from PUD, R-1 or AE zoning. Mr. Hau explained that the value will be dropped in half if R-1 was not approved. Mr. Hau explained that with the AE Zoning, there may only be 15 estate lots as compared to the density of an R-1 and it may not be cost effective for a developer to develop.

Mrs. Paul Nelson who lives on CR 52 spoke to the Board and explained they did not hear that all the land would not be developed. She explained that there is

only about 30 acres of good farm land, the pasture was not the best. There is not any water on the property. If houses are built she hopes that the driveway will go out on the east end of 52 or Hwy. 257. The reason for this is CR 52 is very hilly right there and people drive very fast.

Mr. Fred Martin, who lives on Mill Iron Court in the Mill Iron Subdivision across the road, explained that their homes are on 2 ½ acre lots. The proposed 200 houses are far out of Town and the police and fire services may be stretched. Mr. Martin explained that placing water and sewer infrastructure out to the property would be very expensive and the open space is going to require more staff in order to maintain it. He cannot see that many people utilizing the open space. A previous developer said 60% of the land could be developed on which would mean more than 200 homes. The R-1 zoning will detract from the area and thinks that Agricultural Zoning is more suited for the area.

Trustee Ehrlich asked if they are only asking for R-1 Zoning and there is not a Plat or PUD forthcoming. Director Perkins indicated that this is an annexation and the applicant is requesting R-1 zoning. Perkins explained that when the land is preliminary platted, it will be seen before the Planning Commission and then the Town Board. The Planning Commission and Town Board would see this a few times before a final plat. Trustee Ehrlich asked if the developer would bring in the water and sewer. Director Perkins replied yes, but the cost to insert this infrastructure has not yet been determined at this point in the process. Trustee Jemiola asked if this area is prone to flooding. Mr. Penny spoke saying that his clients do not have flooding, that the water drains and goes under the road to a pond.

Trustee Kidd stated that it sounds as if this is a deal breaker if it isn't zoned R-1 and that it isn't feasible to extend the Town's services to the property. Milliken needs an upgraded subdivision so that families that currently live in starter homes can have homes to upgrade to. His opinion is to have bigger lots.

Mayor Tokunaga asked if the applicants were open to other zoning. His understanding is the Planning Commission was uncomfortable with the R-1 zoning not the annexation. Director Perkins indicated that it is her opinion that the Planning Commission was uncomfortable with the R-1 zoning. She indicated it is up to the applicants on what type of zoning they would like. Mr. Penny indicated that due to the cost of development his clients would like it to be R-1 zoning. Mayor Tokunaga indicated that if other development happened in that area that the costs may not be as cost prohibitive. Mr. Hau responded that he concurs that the zoning should be R-1. If it gets annexed as Agricultural it sets the platform and may make it difficult for the zoning to change at a later time. Due to the open space conveyances in the will that is to be giving to Milliken the family determined that the whole property would be annexed. Mr. Hau indicated that perhaps annexing the 2.36 Acres into Milliken and leaving the rest of the property in the County. His recommendation is that if the property cannot be

annexed as R-1 zoning, to leave the rest of the property in the County.

Mr. Reid Hobler, who resides at 800 Mill Iron Rd., spoke to the Board and from a public standpoint he would like to see this area remain quiet, however as a business owner in Milliken, he would like to see the Town grow. Other communities around Milliken are growing and taking up land. As a resident he is fine with not annexing the property, but as a business owner annexing is more appealing. Other municipalities are encroaching on areas around Milliken.

Mr. Fred Martin spoke to Director Perkins earlier and she indicated that normally they annex a property as R-1, unless there are any objections. He indicated that when the other parcel on Hwy. 257 was annexed as R-1, no one was around to object. Mayor Tokunaga asked if the parcel on the Northeast quadrant of Hwy. 257 and CR 52 annexed and is it zoned R-1. Director Perkins and Town Administrator Brown indicated that it is annexed.

Mayor Tokunaga asked if the property tax rate will remain as agricultural until developed. Director Perkins replied yes.

Public Hearing Closed at: 7:54 p.m.

Mayor Pro Tem Measner moved that after hearing testimony, examination of the documents presented and the findings of fact finds the application substantially complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution and the Municipal Annexation Act of 1965 and the Town of Milliken's Municipal Code Chapter 16 "Land Use Code" and recommends the Town Board approve Ordinance No. 711 for annexation of certain territory to the Town of Milliken, Colorado to be known and designated as "Martinez-Hahn Continuous Annexations No. 1-3 and an amendment to the Town of Milliken's Official Zoning District Map for the Martinez-Hahn Continuous Annexations No. 1-3 to be zoned as R-1 "Residential Single Family" Zoning District. Trustee Beck seconded.

Discussion: Trustee Ehrlich stated that Milliken needs to annex land and that this property will be difficult to develop. He also indicated that even though the property was approved to be annexed with an R-1 zoning, it does not necessarily mean that is what will occur. The development of this property will be brought before the Planning Commission and Town Board a few times prior to the development being approved.

Vote: Trustee Ehrlich, Trustee Onorato, Trustee Jemiola, Mayor Pro Tem Measner, Mayor Tokunaga, Trustee Beck yes and Trustee Kidd no. Motion passed.

2. 2014 Audit Acceptance

Finance Director Patrick Murphy stated that the deadline for filing the Audited Financial Statements with the state is the end of July and that this submission was ahead of schedule. In addition, he indicated that the numbers submitted to the Board in the Financial Report in April are the same as what is in this final Audit Report. Mr. Allen Holmberg with Anderson and Whitney is present and Director Murphy stated that the auditors for the Town are hired by the Town Board.

Mr. Holmberg pointed out some highlights of the audit report. He went through what is the responsibility of the Auditing firm and what is the responsibility of the Town. Mr. Holmberg reviewed the Management Letter with the Town Board.

He went through the Town's funds and their net positions. He also provided a comparison between 2013 and 2014 in both revenues and expenses. He pointed out the debt services. He indicated that the Milliken Housing Authority is a Component Unit of the Town.

Mr. Holmberg indicated that there were not any audit adjustments. He also indicated that there needs to be more frequent reconciling of Petty Cash, personnel files should be reviewed for content and journal entries need to be signed off by someone who understands accounting processes. These are controls that will strengthen the accuracy and to control from fraud or theft.

Trustee Jemiola asked if there were any material deficiencies. Mr. Holmberg responded no.

Mayor Tokunaga asked about the Cash Clearing Account in Caselle and asked if it is a software issue. Mr. Holmberg replied yes, it may be a glitch in the software. Mr. Holmberg mentioned there was a violation in revised statues regarding the Trash and Impact fee funds. There was more money that came into the funds and budget should have been revised accordingly.

Mayor Tokunaga commended the Finance Staff, stating that the audits for the last few years have been on time and without any adjusting entries.

Trustee Jemiola motioned to accept the 2014 audit and financial statements that were prepared by Anderson and Whitney and approve them as audited and submit a copy to the State of Colorado. Trustee Ehrlich seconded.

Discussion: None

Vote: All in favor, none opposed. Motion passed

3. **Consideration and Approval of Ordinance 714, to Amend Chapter 18 of the Milliken Land Use Code Regarding Building Code Changes**

Trustee Kidd recused himself from the discussion and left the meeting room.

Building Official Jonathan Gesick asked the Town Board to consider for approval an amendment to Chapter 18 of the Milliken Land Use Code to adopt a Building Code Board of Appeals, amend sections that deal with the violation and abatement process to make it clearer and easier and also to define a new schedule for permit expiration timeframes.

Trustee Jemiola asked if it is possible to change the expiration dates prior to setting up the Building Board. He also asked if there will be enough interest for qualified people in Town to be on the Board. Mr. Gesick responded that he believes there would be enough interest.

Discussion was in regard to the number of people who would serve on the Board and if five (5) people would have interest. Mr. Gesick explained that he believes a Board of three (3) would be sufficient.

Mayor Pro Tem Measner is concerned with the timeliness of permits and asked if you haven't finished construction within the 180 days, would you need to apply for another building permit. Mr. Gesick explained that extensions are allowed. It is more of a way to keep track of the permits instead of having expired permits and then contacting the permit holder to see where they are at on their project.

Trustee Ehrlich says there is a section that states you can apply for and receive a permit for half the fee if it has already expired. Mr. Gesick explained that this section is currently in the Code.

Trustee Jemiola stated that it should be called a Building Inspection Code Board of Appeals. Mr. Gesick explained the purpose of this Board, saying that if the owner or applicant disagrees with Mr. Gesick, they can bring it to the Board of Appeals. The Board of Appeals will follow the Town's Code. It provides the applicant or permit holder another avenue instead of it ending with the Building Official.

Mayor asked if three (3) is too few to serve on the Building Inspection Code Board of Appeals. Mr. Gesick responded no, a Board of three (3) would be able to make good decisions. Trustee Jemiola asked if the number serving on the Building Inspection Code Board of Appeals could be reduced to three (3) with two (2) alternates and indicate that it is for Building Code issues only.

Trustee Jemiola moved to adopt Ordinance 714, amending Chapter 18 of the Milliken Municipal Code and amending the 2012 editions of the International Building Code, International Residential Code, and the International Property

Maintenance Code and also amending the 1997 edition of the Uniform Abatement of Dangerous Buildings promulgated by the International Code Council. Reducing the Board size from 5 to 3 with 2 alternates and specification that this Board is for Building Code only. Trustee Onorato seconded.

Discussion: Trustee Ehrlich stated that he does not want someone to have to pay for a building permit again and would like to see 180 days changed to one year. Mr. Gesick indicated that he will review this.

Vote: All in favor, none opposed.

4. **Consideration and Approval of Resolution 15-15, a Resolution Confirming the Use of Town's Real Property**

Community Development Director Martha Perkins asked the Town Board to consider for approval a Resolution for the purpose of providing notice that various individuals and entities have made and are making use of real property owned by the Town of Milliken without either the written or verbal permission of the Town's Board of Trustees. The Town will continue to assert all of its legal rights to all real property which it owns in fee simple or through which it has easements or rights of way and may at some point in the future move, destroy, and/or demand removal of structures, pipelines, or other facilities located on the Town's real property along with an assessment for the costs of doing so. Director Perkins indicated that through Code Enforcement and sales of homes the Town is finding that this has been occurring.

Attorney Fickel said that adverse possession cannot happen. He indicated that residents are encroaching with fences, etc. onto the Towns property which the resident believes gives them a right of ownership. He stated that this resolution does not preclude them from coming in and asking for a vacation of the Town's easement or right-of-way.

Trustee Jemiola discussed instances in Town where this is occurring. Attorney Fickel explained that this resolution will provide general guidelines for people to refer to.

Trustee Kidd wanted to know how residents are going to be notified. Attorney Fickel responded that this resolution is going to be recorded with Weld County, so that Title companies are provided this information.

Discussion from the Town Board were regarding instances where this has happened and that with the Town now having a full-time Code Enforcement Officer, this problem has become more apparent.

Trustee Ehrlich moved to approve Resolution 15-15, a Resolution of the Town of Milliken, Weld County, Colorado confirming the legal position of the Town with

respect to the use of the Town's Real Property by unauthorized persons or entities. Trustee Jemiola seconded.

Discussion: None.

Vote: All in favor, none opposed. Motion passed.

5. **Consideration and Approval of Ordinance 715, Amending Chapter 13 of the Milliken Municipal Code Regarding the Waste Water Department and Sewer Code**

Town Attorney Bruce Fickel asked the Town Board for consideration and approval of Ordinance 715, adopting by reference an amendment to the Milliken Municipal Code and repealing all Ordinances in conflict. Attorney Fickel spoke about the pages regarding violations. At the last meeting the comment that the Mayor indicated has been changed in the code.

Trustee Ehrlich moved to approve Ordinance 715, and Ordinance of the Town of Milliken, Weld County, Colorado adopting by reference an amendment to the Milliken Municipal Code and repealing all Ordinances in conflict therewith. Trustee Kidd seconded.

Discussion: None

Vote: All in favor, none opposed. Motion passed.

6. **Consideration and Approval of Special Events Liquor License Permit for the Beef 'N Bean Day Beer Garden**

Trustee Jemiola, Mayor Pro Tem Measner and Trustee Beck recused themselves since they are members of the Johnstown-Milliken Rotary Club and left the meeting room

To consider for approval a Special Events Permit Liquor License for the Town's annual Beef 'N Bean Day Event Beer Garden. The Beer Garden will be run by the Johnstown-Milliken Rotary Club.

Trustee Ehrlich motioned to approve the Special Events Liquor License Permit and Trustee Onorato seconded.

Discussion: None.

Vote: All in favor, none opposed. Motion passed.

DISCUSSION AGENDA

INFORMATIONAL AGENDA

ASSIGNMENT AND PROJECT UPDATE(S)

Other Business

Summary of Meeting (Review of Action Items, Staff Assignments & Schedule)

Adjournment

Hearing no further business, the Mayor adjourned the meeting at 8:54 P.M.

Prepared by:

Cheryl Powell, Town Clerk

Approved by:

Milt Tokunaga, Mayor