

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

MEETING MINUTES

Wednesday, February 25, 2015 – 7:00 P.M.

Call to Order

The Town of Milliken Board of Trustees convened a regular session on Wednesday, February 25, 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, Community Development Director Martha Perkins and Town Attorney Bruce Fickel. Absent: 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 did not have any additions to the agenda.

Citizen Comments

Colorado Department of Transportation (CDOT) representatives Jared Fiel and Robin Stoneman addressed the Town Board and provided them with a handout pertaining to a road closure on State Highway 257 that is scheduled to take place between March 16, 2015 and April 10, 2015. The road closure project will provide permanent repairs to both bridge abutments over the Big Thompson River. Mr. Fiel explained that the detours for traffic will be on WCR 17, WCR54 and SH 60.

Mayor Tokunaga asked if there will be a pedestrian crossing addition to this project. CDOT representative Stoneman explained that this project is for the

repairs only, any additional items will require additional funding. She explained that there has been HUD money applied for.

Mr. Fiel explained that there will be a message board posted and notices sent to the residents in Mad Russian subdivision, the liquor store and the Mad Russian Golf Course.

Minutes of Previous Meeting

- February 11, 2015 – Approved as distributed.

Acknowledgement of the Paid List of Bills

- February 2015 List of Bills

CONSENT AGENDA

There were not any items.

ACTION AGENDA

1. Consideration of a Potential Conflict of Interest on Previous Board Action at the January 28, 2015 Meeting

Town Administrator Brown asked the Town Board to review and consider any actions necessary due to allegations of conflict of interest and ethics violations resulting from the award of a contract for Building Department Services at the Town Board meeting on January 28, 2015. The Administrator explained that there were allegations brought to the Town's Attorney from the attorney with a company that did not receive the bid. Administrator Brown explained the RFP process and that, out of the proposals received by the Town, three (3) companies were interviewed. At the January 28th meeting the Town Board awarded the contract to ProCode. He explained that the allegations made regarding the conflict involved Trustee Ken Kidd and ProCode, Inc., specifically Jonathan Gesick who is the president of ProCode. The allegations included that there were several connections between Jonathan Gesick and Ken Kidd and these were not disclosed before or during the meeting when the vote occurred. Administrator Brown explained that these allegations are the reason this has been brought forward to the Town Board at this meeting.

Trustee Beck moved to have the memo written by Town Attorney Fickel, which he provided to the Board at its Executive Session on February 11, 2015, disclosed to the public.

Trustee Beck explained that her reason for this motion, is that this item is now on a public agenda and the citizens of the Town have no way of knowing why the Board is addressing this issue, unless they have some background information and documentation. She further explained that without this information, the public is hearing this information in a vacuum and may be speculating about circumstances that did not even happen. The public is entitled to know everything the Town Board knows, now that this has become a public issue. Trustee Beck stated that since the Town Board has nothing to hide from the public, regarding this issue, the Board should not be concealing the document that brought this issue before the Board. Therefore she would like to make a motion that those documents are disclosed to the public.

Trustee Beck motioned that the public receive the same documents that were provided to the Board at the meeting on February 11, 2015 during the Executive Session. Mayor Pro Tem Measner seconded.

Mayor Tokunaga asked for clarification of which documents were being proposed for disclosure. Trustee Beck responded, all the documents.

Discussion: Trustee Jemiola asked if the Board thought the documents were factually correct that were provided by Attorney Fickel. Trustee Beck stated that she is not saying that the documents were valid and correct, she is only saying that should would like the public to have access to the documents.

Trustee Jemiola asked if Trustee Beck had any help from the Town Attorney to prepare her statement. Trustee Beck replied she had and that she has another statement to make. Discussion was held regarding whether the Town Attorney, who is the Town Board's attorney, could assist a single Trustee.

Town Attorney Fickel indicated that Trustee Beck contacted him as she is required under the Policies and Procedures manual that was adopted by the Town Board. It states that when any Board member believes there is a conflict of interest they are to contact the Town Attorney. Trustee Beck contacted him as stated.

Vote: All in favor, none opposed. Motion Carried

Trustee Beck read a statement to the Board and the Public. (See attached document).

Trustee Beck would like to motion, that this issue to go to a Public Hearing.

Trustee Jemiola asked which Trustee's she thinks have already made up their mind regarding this issue. Trustee Beck stated that what was spoken was in

Executive Session so she could not comment on that specifically. Town Attorney Fickel responded that only the memorandum that his office compiled, and he handed out to the Board in the Executive Session, can be provided to the public.

Town Attorney Fickel commented on the recusal and indicated that Trustee Beck felt that some of the Board members had already determined their stance on this issue, based on what was said and indicated during the Executive Session, and should recuse themselves from any discussion or vote regarding this matter. He said that each individual Town Board member needs to decide if they should recuse themselves.

Mayor Tokunaga asked Town Attorney Fickel about the Public Hearing and if Public Hearings were not typically for Land Use issues. Town Attorney Fickel responded that there is a provision that if a Board member is charged with some violation that the Board feels is inappropriate, that Board member is entitled to notice and a Public Hearing. The Board would sit in a Quasi-Judicial capacity. Town Attorney directed the Board to page six (6) of his memo referencing C.R.S. 31-4-307.

Mayor Tokunaga doesn't think this is the Public Hearing that Trustee Beck is requesting. Attorney Fickel is assuming that Trustee Beck is wanting to implement C.R.S. 31-4-307 and that would require a majority vote of the Board to determine if that issue needs to be brought forth, and a written document prepared to which Trustee Kidd is entitled to respond. Attorney Fickel indicated that this could be done in a less formal manner since it is his understanding that Trustee Kidd is prepared to respond to the allegations that were indicated in his memorandum. He further explained that the Board can schedule a Public Hearing in a Quasi-Judicial manner.

Mayor Tokunaga asked if it would be appropriate for Trustee Kidd to respond and then act on Trustee Beck's motion.

Trustee Kidd was not sure what he should say that he hasn't already discussed with the Board. Mayor Tokunaga explained that the explanation occurred during an Executive Session and not a public venue. Mayor Tokunaga suggested responding to the letter from Odandahl (SAFEbuilt's attorney), that was included in the Town Board packets and expand on what was provided during the Executive Session.

Trustee Kidd explained that in October, Jonathan Gesick came to Trustee Kidd wanting to become partners in his company. Trustee Kidd told Mr. Gesick that his company at this time could not support two (2) families. Trustee Kidd explained that he told Mr. Gesick if he wanted to obtain business with a few more towns they would then review it. Trustee Kidd explained that they put together the brochures and Jonathan was going to be

the Vice President of his company and he would be the President. Mr. Gesick dropped off a couple of brochures. In the meantime the contract for inspection services in Milliken came up and Mr. Gesick decided that he would proceed and try to get the contract with Milliken. Mr. Gesick started his own company with his own insurance. The brochure was still out there that said he was the Vice President. Trustee Kidd said that Mr. Gesick was never the Vice President and broke off the whole thing. Mr. Gesick applied for and received the contract for Milliken. Trustee Kidd has no financial gain that he will ever receive from ProCode. The information that was given out by SAFEbuilt stating that Jonathan was the Vice President, he never was. Trustee Kidd and his wife are the only ones listed in the Corporation. There was other information given out by SAFEbuilt's attorney that Jonathan Gesick is the Vice President of his company is not true, Trustee Kidd could understand there was a perception, but did not understand there was a conflict of interest perceived or he would have recused himself. Trustee Kidd would like to see the list of contractors that said that Ken Kidd was taking over the inspection service and he was going to hire a building inspector. Trustee Kidd is not sure why they are here to discuss this, they were given four (4) options at the last meeting that Trustee Kidd could go over and he thought the option that the Board decided to take was a re-vote. Trustee Kidd will not participate in the re-vote and will recuse himself, since he has had a working relationship with three (3) of the four (4) companies that submitted proposals.

Trustee Jemiola asked Trustee Kidd if he had any financial or other gain from ProCode. Trustee Kidd stated absolutely not, he realizes that would be a conflict. Trustee Ehrlich asked Trustee Kidd if he had any financial gain from the other two (2) companies that submitted proposals. Trustee Kidd indicated that he did not. Mayor Tokunaga asked what type of relationship Trustee Kidd has with Jonathan Gesick and the other companies that submitted proposals. Trustee Kidd responded that Jonathan Gesick has assisted him the last three (3) years with inspections in Eaton. He (Kidd) was employed with SAFEbuilt from June of 2000 until September of 2001 and at that time Phillip Godard with Code Consultants International (CCI) was employed with SAFEbuilt. SAFEbuilt's name at that time was Colorado Inspection Agency.

Trustee Beck requested to make a motion since she feels there is a conflict of interest, there are facts that need to be brought back to a Public Hearing. Trustee Jemiola wanted to know what the conflict would be other than a perceived conflict. Trustee Beck indicated that Trustee Kidd should have admitted that he knew Jonathan Gesick and was aware that Mr. Gesick was named as Vice President on Trustee Kidd's business website. Trustee Beck indicated that during Executive Session Trustee Kidd disclosed what his future is with Mr. Gesick. Trustee Jemiola does not believe there is a conflict. Trustee Beck also mentioned that Mr. Gesick signed a contract with the Town indicating that he did not have any interest that would conflict in any manner or degree with the performances of its services hereunder. Trustee Beck

indicated that it is not clear to her that Mr. Gesick does not have ties financially or personally to Trustee Kidd, which presents a conflict. Mayor Pro Tem Measner asked for clarification from Trustee Beck regarding Mr. Gesick signing a contract with the Town he has relationship other than a possible working relationship. Trustee Beck responded that Mr. Gesick signed a contract assuring that he has no interest in any other company that would conflict with his working for the Town. Trustee Beck felt that information provided during the Executive Session and the websites she thinks there was a thought process in relation to what had occurred. She indicated that if Trustee Kidd had originally disclosed that he knew Jonathan Gesick and recused himself there would not be a problem. Trustee Jemiola believes a conflict of interest would be if Trustee Kidd were to receive something in exchange and if it was a perceived conflict of interest, than it was an oversight then the Board should conduct another vote for the contract excluding Trustee Kidd.

Trustee Beck motioned to have this issue to come to the public in a Public Hearing so that Trustee Kidd could have his responses in more detail for the public and why Trustee Beck believes this is a conflict. There was not a second. Mayor Tokunaga stated that the motion dies due to no second.

Trustee Jemiola motioned to exclude Trustee Kidd on an upcoming approval for Building Department Services for the Town.

Town Attorney Fickel indicated that Trustee Kidd already stated that he would recuse himself from the re-vote.

Town Attorney Fickel said there is not a motion required if the Board chooses to not ask Trustee Kidd to come back during a Public Hearing. He said that if the Board chooses to have Trustee Kidd explain some of the issues that the Board has, more than what has already been discussed during this meeting. He will prepare upon direction of the Town Board a set of changes and claims and provide this to Trustee Kidd for his response in public.

Trustee Jemiola does not view this as a conflict of interest since Trustee Kidd is no longer conducting business with Mr. Gesick. Trustee Kidd is a new Trustee and if there was any building inspector of the three (3) companies interviewed, there could be a potential conceived conflict of interest. Town Attorney Fickel stated that if the remainder of the Town Board does not think there was an appearance of impropriety and if they don't think they need more information from Trustee Kidd or for him to respond to anything spoken about this evening or in Attorney Fickel's memorandum then no further action needs to be taken.

2. Consideration and Approval of an Agreement by and Between the Town of Milliken and ProCode, Inc. for Building Department Services for the Town

Mayor Tokunaga would like the Board to go through a re-vote due to the information that was provided to the Town Board and the perceived conflict and Trustee Kidd would need to recuse himself from the vote.

Mayor Pro Tem Measner moved to approve the Agreement by and Between the Town of Milliken and ProCode, Inc. for Building Department Services for 2015. Trustee Jemiola seconded.

Discussion: Trustee Beck would like the building inspection services to go out to bid again.

Trustee Jemiola requested a call for vote.

Vote: Trustee Ehrlich – yes, due to savings to the Town. Trustee Onorato – yes, Trustee Jemiola – yes, echoed Trustee Ehrlich's comments and the service turn-around times are much faster than SAFEbuilt's, Mayor Pro Tem Measner – yes, Mayor Tokunaga - yes. Trustee Beck – no. Motion passed. Trustee Kidd recused himself from the discussion and vote.

3. Consideration and Approval of an Agreement with Walt Elish to Provide the Town with Economic Development Services

Town Administrator Brown asked the Town Board to consider and approve an Agreement in principle with Walt Elish at an hourly rate for up to ten (10) hours per week. Administrator Brown commented on the presentation that Mr. Elish made to the Town Board in a previous Work Session and that Mr. Elish currently provides services to the Town of Berthoud.

Trustee Jemiola moved to approve an Agreement in with Walt Elish for services in Economic Development for 2015. Trustee Onorato seconded.

Discussion: Mayor Tokunaga would like to receive a review of the services that Mr. Elish provides on a frequent basis. The Mayor would like Mr. Elish to coordinate his work in conjunction with the Milliken Business Association (MBA) and Chamber and also to coordinate with the owners of the Industrial Park. The Mayor would like to see what the Town can expect within a 2-5 month period. Town Administrator Brown would like to see how the services provided with Mr. Elish progress within this limited engagement and see if it is productive for the Town and whether or not to expand it or continue with Mr. Elish. Mayor Tokunaga would like the Town to stay connected with Upstate.

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

DISCUSSION AGENDA

There were not any items.

INFORMATIONAL AGENDA

Town Administrator Brown introduced Mr. Bill Landwehr as the new Public Works Director to the Town Board. Mr. Landwehr will begin his employment on Monday, March 2nd.

Mr. Landwehr explained that he has done work in all kinds of municipal developments. He hopes to provide his expertise regarding work on Water and Wastewater, infrastructure and streets. Mr. Landwehr explained that he plans to obtain his water and wastewater certification and will be working with the City of Thornton to obtain these.

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 7:55 P.M.

Prepared by:

Approved by:

Cheryl Powell, Town Clerk

Milt Tokunaga, Mayor

I know that all of my fellow Trustees do not feel as strongly about this as I do. That is certainly your right and privilege. However, I do know that you all feel as strongly as I do about being responsible and responsive to our citizens and also believe that the Board should be open and transparent in its actions on behalf of the citizens of the Town.

I believe we have been elected not only to legislate new and better ordinances, regulations and rules for our citizens, but we are also charged with ensuring that these ordinances, rules and regulations are properly enforced. For those purposes we have made specific provisions and funding for a well-qualified police force; a code enforcement officer; and, finally, this evening again, a building inspector. We have charged these people with enforcing the laws that we have created.

Last fall this Board reviewed and adopted the Policies and Procedures Manual, as I have stated previously. Trustees Jemiola and Kidd played an integral role in addressing the language with respect to conflicts of interest.

In this Manual, the Board specifically stated, "The Board of Trustees shall provide for enforcement of its ordinances." [Page 5, 3.3(n)]

We also included in the Manual that, "When a Trustee believes that he has a personal or private interest, potential conflict, or **appearance of conflict** in a matter proposed or pending before the Board, the member **shall** request to speak when the agenda item with which the member has a conflict is called, and either disclose the personal or private interest, potential conflict or appearance of conflict and then not participate in the discussion and step down from the Board. Or, the Trustee shall request legal advice from the Town Attorney." [Page 22, 13.6(a)]

This section also provides that, "If a Trustee believes that another Trustee has a personal or private interest, the Trustee should discuss the potential conflict with the Town Attorney prior to the meeting." I want you to know that I have done so. I have asked the Town Attorney to bring extra copies of his memo, which he

provided to this Board in Executive Session at its last meeting on February 11, 2015.

I firmly believe that each of us as Trustees wants to provide as fair and as impartial an opportunity to hear both sides in this situation as we possibly can. However, I know that some of you have a long-standing personal and social relationships with both Mr. Kidd and Sherri Kidd which may cause you to question your ability to really be objective in this situation. I would ask that you consider recusing yourself from this discussion in order that you can preserve your friendship and continue your relationship as it has been in the past and also fulfill your duties to our citizens.

I am also aware that some of you have made up your minds on this issue before Mr. Kidd has had an opportunity to state his version of the facts. In one instance you have attempted to influence other Board members and asked them to commit to taking a position on this matter before you have even had a chance to read Mr. Fickel's memo or hear Mr. Kidd's statement. I would ask that you too recuse yourself because you have already made up your mind.

Finally, as I just stated, we are the entity elected by the citizens to enforce our ordinances. If we find that our ordinances, rules, regulations and procedures have been violated we must take appropriate action. We have sworn an oath as Trustees when we were given this privilege of serving our community. Now we must now follow the rules we have established and allow Mr. Kidd to explain his understanding of the situation and provide us with the facts that he wishes to provide. We must then vote on how we as a Board should respond.