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

MEETING MINUTES

Wednesday, June 8, 2016

Call to Order

The Town of Milliken Board of Trustees convened a regular session on Wednesday, June 8, 2016 at 7:00 P.M. Those present: Mayor Beau Woodcock, Mayor Pro Tem Linda Measner. Trustees: Elizabeth Austin, Katy Burack, LeRon Ehrlich, Nick Ehrlich and Ken Kidd. Also Present: Town Administrator Kent Brown, Town Clerk Cheryl Powell, Community Development Director Martha Perkins, and Town Attorney Linda Michow. Absent: Parks Director Josh Roseberry, Community Engagement Specialist/Planner Seth Hyberger, Accounting Technician Courtney Diller and Public Works Director Bill Landwehr.

Pledge of Allegiance

Mayor Woodcock called the meeting to order.

Roll Call

Trustee's: Austin, L. Ehrlich, Burack, N. Ehrlich and Kidd, Mayor Pro Tem Measner and Mayor Woodcock.

Agenda Approval

Staff had no changes to the Agenda. Trustee LeRon Ehrlich requested to move the first Executive Session and Action Item #3 to the end of the meeting. Trustee Austin seconded.

Trustee LeRon Ehrlich motioned to approve the agenda with changes. Trustee Austin seconded.

All in favor, none opposed.

Citizen Comments

Mrs. Lois Ann Onorato, who resides at 340 Heidi Lane, Milliken, would like to invite the Town Board to the Historical Society Museum on Sunday from 1pm-4pm and advised the Board that the Museum will be open the 2nd and 4th Sundays in June, July and August. If they have items that they would like placed

in the Historical Society Museum, the item would be appreciated and be placed with their name as the donor.

Minutes of Previous Meeting

- May 25, 2016

Minutes approved as distributed.

Trustee Austin motioned to approve the minutes. Mayor Pro Tem Measner seconded.

All in favor, none opposed.

CONSENT AGENDA

There were not any items.

ACTION AGENDA

1. **Appointment of New Planning Commissioner**

To consider and chose one of the two applicants for the vacant Planning Commissioner position. Duane Flack and Andrew Hladik were previously interviewed during the Work Session for the vacant position.

Trustee Nick Ehrlich moved to appoint Andrew Hladik to the Planning Commission. Trustee Austin seconded.

Roll Call Vote: Trustee Austin – yes, Trustee L. Ehrlich – yes, Trustee Burack – yes, Trustee N. Ehrlich – yes, Mayor Pro Tem Measner – yes, Mayor Woodcock – yes, Trustee Kidd – yes. Motion carried.

Trustee Kidd asked if an alternate Commissioner appointment could be made to Duane Flack. Town Attorney Michow explained that an Ordinance could be drafted that allows this person to sit on the Commission but he could only vote if there is an absence on the Commission. Also, the Ordinance could allow this person to move into a Commissioner position if there is a resignation.

Mayor Pro Tem Measner moved to appointment Duane Flack as the alternate to the planning commission. Trustee Kidd seconded.

Roll Call Vote: Trustee Austin – yes, Trustee L. Ehrlich – yes, Trustee Burack – yes, Trustee N. Ehrlich – yes, Mayor Pro Tem Measner – yes, Mayor Woodcock – yes, Trustee Kidd – yes. Motion carried.

2. **Reconsideration of Resolution 16-13, to Amend Section 3**

Town Administrator Brown asked the Town Board to reconsider Section 3 in Resolution 16-13. Section 3 pertains to the effective date of May 25, 2016 for the fee for system development established in Resolution 16-13. He explained that he heard from and met with several builders in Town who understood the fee, but due to the timeliness of the effective date, this fee will impact homes already under contract. This was discussed during a work session and also at a previous meeting regarding when to start the date for this fee.

Town Attorney Michow explained that they could extend the date to July 1st or to exempt the lots that had already been under contract prior to the May 25, 2016 date.

Mr. John Smedley, who resides at 2455 E. School House Drive in Milliken, supports managing our own water supply. He supports additional fees for system development. Mr. Smedley explained to the Town Board that he is contracted to sell homes at a certain price and that resolution 16-13 could cause a financial difficulty for himself and perhaps the person who purchased the lot. He asked the Town Board to exempt certain lots which were purchased before the fee was established. Mr. Smedley explained that the title company is a third party who is not biased, could provide the documentation needed to show proof that these properties were purchased prior to the May 25th date. He is asking the Board to either reconsider the date or to provide an exemption.

Ms. Lisa Hall who is the manager of Windmill Homes explained to the Town Board they presell their houses first, plans with specs are sent to the engineer and then the town. It's about a five-week process from start to finish.

Trustee LeRon Ehrlich asked how many homes they had under contract. Ms. Hall did not have the exact figure on hand, but believes it is around 12 homes. Mayor Pro Tem Measner asked if these 12 homes were prior to May 25th. Lisa Hall indicated yes, but is not exact on the number of home, but it is around 12.

Trustee LeRon Ehrlich asked Ms. Hall if she could bring the same documents that John Smedley indicated that he could provide. She said she could.

John Smedley indicated that there is another builder in Town that also has approximately 3-4 contracts that this would effect.

Trustee Austin motioned to exempt the builders with contracts signed prior to May 25, 2016 provided fully executed and verifiable documentation is provided. Trustee Burack seconded.

Roll Call Vote: Trustee Austin – yes, Trustee L. Ehrlich – yes, Trustee Burack –

yes, Trustee N. Ehrlich – yes, Mayor Pro Tem Measner – yes, Mayor Woodcock – yes, Trustee Kidd – yes. Motion carried.

DISCUSSION AGENDA

1. **Policy Direction on the Use of Encroachment Licenses**

Community Development Director Martha Perkins asked the Town Board whether the Town should engage in the use of encroachment licenses. She indicated that she has had several requests which is why this is being brought to the Board. The homeowners realize that if necessary the building, etc. could be torn down if there is a problem.

Town Attorney Linda Michow explained that these types of issues occur in every community. There are a lot of circumstances that private improvements are placed in the public right-of-way. How does the Board want to recognize this issue? Does the Board wish these encroachments to be taken down or does the Board want to allow the encroachment with documentation? This basically acknowledges that a private improvement exists.

Trustee LeRon Ehrlich asked about adverse possession. Michow explained that a private individual can't adversely possess against a public entity.

Community Development Director Perkins explained that most of these issues are brought to the Town's attention by the Title Company.

Town Administrator Brown indicated that with the license agreement if a structure needs to be moved or taken down, it can be done at the expense of the homeowner. Trustee Nick Ehrlich asked that even without the license agreement can't the Town still charge the homeowner for the relocation or demolition. Attorney Michow explained that this documentation provides whose responsibility this private improvement is and therefore protects the Town from any liability.

Mayor Pro Tem Measner explained that it appears that resolution 15-15 already addresses this issue. She does not think a license is necessary. She indicated that the title company should note that there is an encroachment on this property. Trustee LeRon Ehrlich is in agreement with the Mayor Pro Tem.

Trustee Kidd asked if in a town the size of Milliken will this situation occur very often. Discussion from the Board and the Attorney indicated that these encroachments most likely exist in the older section of Town or by fences constructed without the initial fence permit being submitted to the Town.

Town Administrator Brown indicated with the License Agreement it makes the encroachment more specific.

Trustee Kidd indicated that he is not opposed to the License Agreement and indicated that all new improvements need to come to the Town.

Andrew Hladik 200 S. Olive Ave., Milliken, wanted to know the definition of pre-existing. These types of occurrences happen when someone does not pull a permit to build a shed. Would it be arbitrary and cupreous manner? Town attorney Michow explained that these would not be quasi-judicial which is where the arbitrary and cupreous manner would apply.

Trustee LeRon Ehrlich asked the Attorney if the town acknowledges an encroachment and provides a license what happens if someone is injured. How would the town be protected if they have licensed an encroachment to occur?

Mayor Pro Tem Measner was concerned that the licenses may cause a debate over fairness. If one property owner is allowed and another one isn't, there could be an issue.

Trustee Kidd asked Director Perkins how often this issue has come up. Perkins replied quite a few times.

Trustee Kidd asked if there is a downside to this license agreement. Attorney Michow explained that she does not see one. She explained it is not only for structure types of improvements, but indicated that it could be used if a developer would like to improve a Town median with landscaping and lights, etc. This license indicates that the Town is in agreement, but the maintenance, etc. would fall on the developer.

Discussion from the Town Board is to leave the policy regarding encroachments as is and not implement licenses.

2. **Board Direction to Staff on How to Address Land Use Code Revisions**

Community Development Director Perkins indicated that at the last Town Board meeting on May 25, 2016, the Board requested a discussion on proposed revisions to the Land Use Code, known as Chapter 16 of the Town's Municipal Code. Perkins addressed the Town Board indicating that the current Code has many discrepancies. A Power Point presentation was given showing the various ways the Town can address the Land Use Code and the revisions. Some of the options would be to hire an outside consultant that would probably use another municipality's code as a template. This option could cost approximately $100,000, and staff time would be used to oversee the process. Another suggestion was to use another municipality's Code which could be modified for Milliken or that Milliken's existing Code could be modified section by section by Town Staff where the discrepancies occur.

Discussion by the Town Board was whether another municipalities Code should be used as a basis or if the current Code should be revised where the inconsistences occur. The proposed option of hiring an outside consultant to revise or rewrite the Code was an expensive option and the Board suggested that this could be reviewed during the budget sessions for 2017.

Executive Session

Mayor Pro Tem Measner motioned to go into Executive Session under C.R.S. 24-6-402(4)(f). Trustee LeRon Ehrlich seconded.

Roll Call Vote: Trustee Austin – yes, Trustee L. Ehrlich – yes, Trustee Burack – yes, Trustee N. Ehrlich – yes, Mayor Pro Tem Measner – yes, Mayor Woodcock – yes, Trustee Kidd – yes. Motion carried.

A ten-minute recess was called.

Resume Regular Meeting with Action Item 3

The regular meeting resumed at: 9:16 P.M.

3. **Consideration and Approval of the Ratification of the Town Administrators Contract**

Town Attorney Linda Michow asked the Town Board to consider for approval pursuant to C.R.S. Section 31-4-304, the appointment of the Town Administrator. This appointment was postponed by the Town Board of Trustees at their meeting on May 25, 2016 due to the summary of the evaluation of the Town Administrator not being complete at that date.

Trustee LeRon Ehrlich motioned to approve the ratification of the Town Administrators Contract with a 3% cost of living increase retroactive to January 1, 2016. Trustee Austin seconded.

Discussion: None.

Roll Call Vote: Trustee Austin – yes, Trustee L. Ehrlich – yes, Trustee Burack – yes, Trustee N. Ehrlich – yes, Mayor Pro Tem Measner – yes, Mayor Woodcock – yes, Trustee Kidd – yes. Motion carried.

Executive Session

Mayor Pro Tem Measner moved to go into Executive Session C.R.S. 24-6-402(4)(a), for the purchase, acquisition, lease, transfer or sale of any real, personal, or other property interest. Trustee Kidd seconded.

Roll Call Vote: Trustee Austin – yes, Trustee L. Ehrlich – yes, Trustee Burack – yes, Trustee N. Ehrlich – yes, Mayor Pro Tem Measner – yes, Mayor Woodcock – yes, Trustee Kidd – yes. Motion carried.

The time is: 9:23 P.M.

Resume Regular Meeting

The regular meeting resumed at: 9:40 P.M.

INFORMATIONAL AGENDA

There were not any items.

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

Adjournment

Trustee Ehrlich moved to adjourn. Trustee Austin seconded.

All in favor, none opposed.

Hearing no further business, the Mayor adjourned the meeting at: 9:41 P.M.

Prepared by: Approved by:

Cheryl L. Powell, Town Clerk Beau Woodcock, Mayor