

*Town of Estes Park, Larimer County, Colorado, February 12, 2008*

Minutes of a Regular meeting of the Board of Trustees of the Town of Estes Park, Larimer County, Colorado. Meeting held in the Town Hall in said Town of Estes Park on the 12<sup>th</sup> day of February, 2008. Meeting called to order by Mayor Baudek.

Present:           John Baudek, Mayor  
                  Bill Pinkham, Mayor Pro Tem  
                  Trustees Eric Blackhurst  
                  Dorla Eisenlauer  
                  Richard Homeier  
                  Chuck Levine

Also Present:     Jacquie Halburnt, Town Administrator  
                  Lowell Richardson, Deputy Town Administrator  
                  Jackie Williamson, Town Clerk  
                  Cynthia Deats, Deputy Town Clerk

Absent:           Wayne Newsom, Trustee

Mayor Baudek called the meeting to order at 7:00 p.m. and all desiring to do so, recited the Pledge of Allegiance.

**SWEARING-IN CEREMONY.**

Chief Kufeld introduced Officer Rudy Solano and Officer Jeremiah Polucha stating both have completed the probationary period for police officer. Town Clerk Williamson conducted the formal Swearing in Ceremony.

**MUSEUM ADVISORY BOARD RECOGNITION.**

Dir. Kilsdonk stated that the Museum Advisory Board has been dissolved and that a committee of the Estes Park Museum Friends and Foundation will be fulfilling the duties formerly provided by the advisory board. She recognized the following former board members and thanked them for their service and dedication to the museum throughout the years: Gene Oja, Nancy Schiaffo, Mike Oline, Lyle Polson, Bob Hamblin, Sybil Barnes, and Susan Harris.

**PUBLIC COMMENT.**

None

**TOWN BOARD COMMENTS.**

Trustee Blackhurst reminded the public of two upcoming meetings. The Housing Authority will meet on Wednesday, February 13<sup>th</sup> at 8:30 a.m. in Room 130, and the Public Works Committee is scheduled to meet on Thursday, February 14<sup>th</sup> at 8:00 a.m. in the Town Board room.

**1. CONSENT AGENDA (Approval of):**

1. Town Board Minutes dated January 22, 2008.
2. Bills.
3. Committee Minutes:
  - A. Public Safety, January 23, 2008:
    - Police
      1. Estes Valley Victim Advocates Contract – \$7,500 Budgeted.

2. 2008 Dodge Charger, vehicle replacement fund – \$21,362, Budgeted.

B. Community Development, February 7, 2008:

CVB

1. Horse Contracts:

- a. Rocky Mountain Miniature Horse Club – June 18-22
- b. Team Penning Event – July 18-20
- c. Colorado Arabian Horse Club – July 2-6
- d. Westwood Equestrian Development – June 26-29
- e. Colorado Springs Dressage Association – July 18-20
- f. Colorado Junior Rodeo Association – August 15-17

It was **moved and seconded** (Pinkham/Levine) **the Consent Agenda be approved**, and it passed unanimously.

**2. ACTION ITEMS:**

**1. ORDINANCE #01-08 LIONS CLUB STANLEY FAIRGROUND CONCESSION STAND LEASE RENEWAL.**

Dir. Pickering stated that the Lions Club has been operating the Stanley Park Fairground Concession Stand for the past 52 years as their vehicle to raise funds for programs that benefit the community, and that the lease is up for renewal this year. Attorney White read Ordinance #01-08, approving a lease agreement for the concession stand at the fairgrounds at Stanley Park, into the record. The Trustees discussed the inventory list and the insurance coverage levels currently being carried. It was **moved and seconded** (Levine/Eisenlauer) **to approve Ordinance #01-08**, and it passed unanimously.

**2. RESOLUTION #4-08 RE-APPROPRIATION OF 2007 ENCUMBERED FUNDS TO THE 2008 BUDGET.**

Certain Town departments have entered into contracts for goods and/or services that were not fulfilled by year-end December 31, 2007. In order to keep only one budget year open, 2007 encumbered funds are re-appropriated into the current budget year. Finance Officer McFarland requested that Resolution #4-08 be approved, re-appropriating approximately \$1.3 million to be carried forward into the current budget year, and explained that the re-appropriation will have no net effect on the fund balances. It was **moved and seconded** (Pinkham/Blackhurst) **that Resolution #4-08 be adopted**, and it passed unanimously.

**3. 4<sup>TH</sup> QUARTER FINANCIAL REPORT.**

The calendar year is complete with the exception of end-of-year adjustments that will result from the annual audit to be performed in March 2008. The General Fund indicates revenues at 97.7% of budgeted levels, although December sales tax figures are not included in the totals. When December sales tax is received, it is estimated that revenues will be approximately 101% of budget, indicating that 2007 was a healthy year for sales tax. Expenditures are currently 94% of budget and the inclusion of the encumbrances from 2007 will take expenses to 97%.

Finance Officer McFarland reviewed the Enterprise Fund and stated that the Light & Power bond issuance was successful receiving a rate of 3.83%. This rate is 50 basis points lower than anticipated which will save approximately 10% on debt service over the life of the bond.

Trustee Levine and Administrator Halburnt recognized Finance Officer McFarland and the Finance Department as recipients of the Government

Finance Officers’ Association Certificate of Achievement for Excellence in Financial Reporting. The award was based on the Comprehensive Annual Financial Report (CAFR) which met the organization’s high standards for governmental financial reporting.

4. **ADOPTION OF 2008 ORGANIZATIONAL CHART.**

The Municipal Code directs the Town Administrator to present an administrative organizational chart to the Town Board annually. In addition to town employees, the chart includes standing committees, advisory boards and commissions. The 2008 organizational chart reflects changes in direct supervisory authority over town departments to be divided between the Town Administrator and the Deputy Town Administrator. It was **moved and seconded** (Eisenlauer/Homeier) **to approve the 2008 organizational chart as presented**, and it passed unanimously.

5. **MARY’S LAKE WATER TREATMENT FACILITY DESIGN MODIFICATION / EXPANSION – PHASE I.**

Construction at the Mary’s Lake Water Treatment Facility is scheduled to begin in the summer of 2008 utilizing membrane filtration technology. Each membrane manufacturer has unique requirements for the installation of their product, which impacts the design and construction of the treatment facility improvements. Due to the high cost of manufacturing the membrane filters, these companies require a contract with a payment schedule based on key milestones. Once the membranes have been ordered, the membrane supplier will provide the engineers with the necessary drawings to complete the design.

Two manufacturing companies produce submerged membrane filtration systems appropriate for retrofitting the treatment facility: US Filter (a subsidiary of Siemens Corporation), and Zenon (a subsidiary of General Electric), and both responded to Membrane Procurement bids solicited at the end of 2007 by HDR, Engineering, Inc.

HDR recommends Zenon/GE based on the lowest 20-year present worth cost for a 4 million gallon per day (mgd) treatment facility. The Zenon proposal also provides the Town with three stages of treatment, reducing the total wastewater discharge to sewer and reducing potential wastewater fees. All equipment can be located within the existing treatment building, providing the flexibility to expand to 6 mgd in the future. Following are the estimated costs for the project, reflecting the cost savings in construction resulting from utilizing the Zenon system.

Zenon/GE Membrane Procurement	\$2,518,348
Construction Contract (estimate)	<u>\$2,500,000</u>
<b>Total Cost</b>	<b><u>\$5,018,348</u></b>
Power and Water Bond not to exceed amount	\$5,500,000

Staff recommends accepting the Zenon/GE proposal for \$2,518,348 for a 4 mgd membrane filtration system with the first payment due upon signing of the contract, and funds being reimbursed In June 2008 with bond proceeds in accordance with Reimbursement Resolution #12-07. The remaining payments will be due incrementally, with the expectation that the Town will accept delivery of the membrane equipment in September or October 2008 and complete acceptance testing in March 2009.

After a presentation by Sarah Clark, Senior Engineer and Project Manager for HDR, and a discussion related to the process that was followed in moving forward with this project and approval of the contract, it was **moved and seconded** (Homeier/Pinkham) **to extend the contract for membrane filters to Zenon/GE at a cost of \$2,518,348 from account #503-7000-580-32-22 with**

**funds reimbursed by bond proceeds in accordance with Reimbursement Resolution #12-07 as presented, and it passed unanimously.**

**6. APPEAL OF STAFF'S DETERMINATION**

Mayor Baudek opened the public hearing for the appeal of staff's determination that the commercial roasting operation by Kind Coffee LLC, located at 552 W. Elkhorn Avenue is a use by right in the "CO" Commercial Outlying zoning district.

Attorney White provided the Trustees with background information related to the process and standards for review used to make a use classification determination. He stated that noise, odors, and variances are not pertinent to the appeal discussion and that the Board's responsibility is to uphold or reverse staff's determination.

Staff Report

The Estes Valley Development Code (EVDC) sets forth a process for classification of uses not specifically noted in the Use Tables. Dir. Joseph reviewed the process and the steps he followed in making the use classification determination. The standards for review include:

1. The actual or projected characteristics of the subject use compared to the stated characteristics of each use classification allowed in the zoning district.
2. The relative amount of site area or floor space and equipment devoted to the use.
3. Relative amounts of sales from the subject use compared to other permitted uses.
4. The relative number of employees in each use.
5. Hours of operation.
6. Building and site arrangement.
7. Vehicle used with the use.
8. The relative number of vehicle trips generated by the use.
9. Signs expected in conjunction with the use.
10. How the use advertises itself.
11. Whether the use is likely to be found independent of other uses on the site.
12. Any other potential impacts of the subject use relative to other specific uses included in the classification and permitted in the applicable zoning district.
13. Whether the subject use is consistent with the stated intent and purposes of the Code and the zoning district in which it is to be located.

Upon completion of the review, staff arrived at a determination that the Kind Coffee business is an allowed use, as it is similar to a brew pub which is a permitted accessory use in an outlying district. Dir. Joseph stated that Kind Coffee's primary business is a boutique retail coffee shop and office space with coffee roasting as an accessory use; and that warehousing is not a dominant element of the business. In addition, heavy trucks as are normally associated with warehousing and loading docks, rarely visit the site.

Appellant Presentation

Verd Bailey, secretary of Elkhorn Plaza Condominium Association presented an Appeal Position Statement which focused on the following points: a variance granted by staff in 2006 to allow a concrete landing; the dimensional standards for non-residential zoning districts; retail sales at Kind Coffee; food and beverage sales at Kind Coffee; warehousing activities and a loading dock; coffee roasting; and the noise and odors associated with coffee roasting.

Mr. Bailey took issue with staff's comparison between Kind Coffee's roasting operations and a brew pub, and stated that the small coffee shop cannot be described as a restaurant. In addition, he argued that the existence of the

concrete loading deck, double doors, and the electric palette lifter constitute warehousing activities. Mr. Bailey stated that the coffee roasting operation, and the noise and odor associated with it, have adversely affected the quality of life for residents of Elkhorn Plaza Condos and other nearby residential areas. He concluded by stating that Kind Coffee is operating a manufacturing process that does not belong in the “CO” zoning district, but rather in a light industrial zoning district.

Public Comment

Amy Hamrick, stated that she has owned Kind Coffee since 2002 and that all of the locations occupied by Kind Coffee since that time have been in the “CO” zoning district. She stated that after obtaining approval to conduct business at the 552 W. Elkhorn location, she proceeded with remodeling of the building and obtained approvals from the sanitation department and the health department. She stated that the equipment she uses for roasting is designed to minimize environmental impact, that she has raised the height of the stack to help eliminate odor and residue, has limited roasting times and does not roast on weekends, has changed the venting system, operates the roaster only during regular business hours, and has applied to obtain an air quality permit from the State of Colorado. She reported that Andrew Hart, Code Compliance Officer, conducted a noise assessment and determined that operation of the roaster did not create a noise violation and stated that she received one official complaint from the Community Development Department and took steps to make changes to her operations based on the complaint letter.

James Burnstein, President of Elkhorn Commercial Properties, LLC, has owned the commercially-zoned property at 552 W. Elkhorn since 2001. He stated that specific renovations were made to the building to accommodate retail sales, house the main business office for Kind Coffee, and to roast and distribute coffee, stating this is consistent with the retail and small sales use classification outlined in the staff report.

Estes Park residents Linda Farrell, Judy Ayres and Bob Ayres, all voiced their dissatisfaction with the use classification determination for 552 W. Elkhorn citing the following points: manufacturing is a major use in the building and has changed the nature of the neighborhood; the roasting operation has a negative impact on the pristine mountain air and surroundings; noise, odors, and gas emissions coming from the roaster stack; residents can no longer enjoy sitting outdoors on decks; odors permeate their condos, even with doors and windows closed; roasting operations have had an adverse affect on quality of life and property values; and health issues, such as headaches and nausea have resulted from odors and emissions.

Nicole Smith, Estes Park resident, is an employee of Kind Coffee. Her job includes office duties, advertising, marketing, packing and shipping, and roasting coffee. She stated roasting occurs for only one hour per day.

Seth Smith and Steve Lane, Estes Park residents, spoke on the following points: refer matters such as this to professionals who work with the EVDC every day; Elkhorn Condos are surrounded by non-residential properties; multi-faced businesses in Town do not always fit clearly into the code; need to rely on professionals to make reasonable judgments based on common sense and understanding of code; and noise and odor are regulated by other agencies and are not a use classification issue.

Anthony Schiaffo, Estes Park resident, stated he helped install the roaster at Kind Coffee, working with the health department to meet all codes and requirements. The roaster is certified meeting all EPA standards and height requirements, and produces less emission than restaurant stacks located in Estes Park.

Mr. Bailey summarized that the EVDC defines an accessory use as incidental and subordinate, stating that Kind Coffee's roasting operation does not fall under that definition, nor does it fall into the definition of a restaurant, which would make this a non-permitted use. He also stated that a warehouse is not permitted on an arterial road and believes the use classification determination should be overturned.

Mayor Baudek closed the public hearing.

Discussion among the Trustees ensued on the following topics: the amount of space vs. amount of time used in determining an accessory use; the magnitude and scale of current business vs. future growth; if the location's primary use changes, it could result in a zoning violation; the Board of Trustees is not in the position of negotiating neighborhood disputes; utilizing semantic manipulation of the code with a narrow focus on words or phrases to create fallacy of diversion; noise and odor problems are different issues; request that staff report to the Board on implications of odor and noise complaints and what has been done to address these complaints; three zoning districts are intertwined in this area, not all necessarily compatible; other businesses in Town have shorter hours in winter or are not open year 'round, the Town cannot dictate a business' hours of operation; 552 W. Elkhorn location is site of Kind Coffee's primary business office; it is not possible to list every allowed use in commercial zoning district; request that the State of Colorado expedite air quality permit; staff followed code and proper steps when arriving at decision; and options available to the Town Board are to: affirm staff decision, overturn staff decision, or table to another meeting.

At the conclusion of discussion, it was **moved and seconded** (Homeier/Blackhurst) **to uphold staff's use classification determination for Kind Coffee, located at 552 W. Elkhorn Avenue**, and it passed unanimously.

**7. FIRE DEPARTMENT FEE FOR SERVICE IN THE COUNTY.**

A recommendation was made at the January Public Safety Committee meeting to address charges for fire protection services to county residents and to propose the formation of a Fire District Task Force. The task force would be charged with researching options related to fire protection services; one option being the creation, by election, of a fire district that would operate independently of the Town and charge the same mil levy rate to everyone in the district. Don Widrig, a county resident, initially suggested the formation of a committee charged with developing a plan upon which the Estes Valley residents would vote. He suggested the committee be comprised of a senior member of the Town staff, a Town Trustee, the Fire Chief, and five Estes Valley residents appointed by the Board, three of whom would be from the County. Staff recommends including a volunteer firefighter on the panel for a total of nine members. In the interim, staff proposes charging county residents an optional, annual subscription fee.

Two previously proposed fire districts failed at election in both 2004 and 2006, at which time the Town said it would be necessary to implement a "charge for fire services" to county residents, being unable to continue to provide fire services without an additional funding source. Several sessions have been held regarding charges for fire services to allow for public input, with participants requesting a fair and equitable solution for both Town and county residents.

50% of the volunteer Fire Department's calls are located outside of the Town limits. Larimer County and the Larimer County Sheriff's Department entered into an IGA with the Town to allow charges to county residents for fire services. The proposed fee would not be based on the number of fires in the Estes Valley,

but rather offset the cost of the fire department's ability to be prepared to fight a fire if it occurs. This includes personnel, training, equipment, and in 2008 a total operating budget of \$921,027. An amendment to Paragraph 4 of the IGA to allow the Town to enter into agreements with "individual private residents or property owners" not part of a recognized homeowners association or other governing entity, will be sent to the County and to the Sheriff's department for approval. With the support of Larimer County, staff recommends charging a subscription fee of \$130 with a reduced rate of \$120 per unit to a homeowners association of ten units or more. If a fire occurs at a property where the subscription has not been paid the property owner will be charged for the fire call based on the Colorado State Forest Service's Cooperator Rate Agreement for apparatus and personnel.

Don Widrig questioned the addition of a ninth member to the Task Force and whether having the Fire Chief and a volunteer firefighter on the panel would create conflict.

Bud Durea, President of the Windcliff Property Owners Association and Fred Day, county residents, both spoke in favor of implementing the fee requesting that the Board move forward as soon as possible to give individuals and HOAs the choice to subscribe to fire protection services. Mr. Day stated commercial properties should have a different subscription fee structure than residential properties.

Discussion took place on the following topics: the optional nature of the subscription fee; several homeowners associations want to subscribe to fire protection as soon as possible; charging a fee to county residents might create bad feelings; methods of soliciting interest in serving on the Task Force and an application process; invoice for the subscription fee by April 1, 2008; the Task Force should be given a time frame in which to work; could take up to 18 months to prepare a fire district proposal for an election; and the issue must be voted on at a November election.

**It was moved and seconded (Pinkham/Levine) to approve the formation of a nine-member Task Force to consist of a senior member of the Town staff, a Town Trustee, the Fire Chief, a volunteer firefighter, and five Estes Valley residents appointed by the Board, three of whom would be from the County, to research a fire district and report their findings to the Town Board no later than October 1, 2008, and it passed unanimously.**

**It was moved and seconded (Eisenlauer/Pinkham) that, in the interim, county residents be charged a voluntary flat fee of \$130 for fire protection services, with a reduction given to homeowner's associations of ten units or more of \$120 per unit. If a fire occurs at a property where the subscription is unpaid, the owner will be charged for the fire call based upon the Colorado State Forest Service's Cooperator Rate Agreement for apparatus and personnel, and it passed unanimously.**

**It was moved and seconded (Homeier/Levine) to adopt an amendment to the Larimer County Fire Agency Intergovernmental Agreement allowing the Town to enter into fire subscription agreements with individual private residents or property owners, and it passed unanimously.**

**8. STANLEY FAIRGROUNDS MULTI-USE BARN CONCEPT AND FINANCING.**

This item has been removed from the meeting agenda.

**9. ESTES PARK URBAN RENEWAL AUTHORITY LOAN REQUEST.**

A primary goal of the Town and the Estes Park Urban Renewal Authority (EPURA) Board is to connect the Riverwalk throughout downtown. Recently, it

has become feasible to do this with the cooperation of Sharon Seeley, owner of the Park Theater Mall and the River Shops, who has agreed to allow EPURA to connect the Riverwalk through the Mall and along the area of the River Shops to Moraine Avenue. In order to minimize inconvenience to the merchants the work must be finished by May 2008. EPURA has the financial resources to do this project in the form of property tax increment from 2007 that will be received over the course of 2008. The project cost is estimated at just under \$1.5 million, as is the property tax increment to EPURA.

Due to the fast track schedule of the project, EPURA would receive invoices from the contractor and the consultants before the property tax increment is received. In order to make payments in a timely manner, EPURA is requesting a loan in the amount of \$600,000 from the Town. An estimated \$500,000 would be paid back by the end of July 2008 with the remaining \$100,000 paid back when the property tax increment becomes available, or no later than the end of 2008. In the event of a minor shortfall, any difference would be paid from EPURA's 2009 funding.

Finance Officer McFarland stated that the interest rate charged to EPURA will be 3.82%, the same rate charged to other entities such as the Estes Park Housing Authority, with the funds coming from the General Fund due to the short term of the loan.

It was **moved and seconded** (Levine/Eisenlauer) **to approve a loan to the Estes Park Urban Renewal Authority in the amount of \$600,000 with interest at a rate of 3.82% to complete the Riverwalk connection through the Park Theater Mall with repayment to be made from property tax increment funding to be received by end of year 2008**, and it passed unanimously.

**10. TOWN ADMINSTRATOR REPORT.**

Administrator Halburnt stated that staff, as directed by the Town Board, is gathering additional information and community input as to the types of uses the public envisions for the multi-use barns at the Stanley Fairgrounds and financing options. Surveys and questionnaires on the topic will be distributed to the community through the local newspapers and available on-line at [www.estesnet.com](http://www.estesnet.com).

Whereupon Mayor Baudek adjourned the regular meeting at 11:56 p.m.

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John Baudek, Mayor

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Cynthia Deats, Deputy Town Clerk