

AGENDA
TOWN OF LYONS
7:00 P.M., MONDAY, NOVEMBER 1, 2010
BOARD OF TRUSTEES MEETING
SHIRLEY F. JOHNSON COUNCIL CHAMBER
LYONS TOWN HALL, 432 5TH AVENUE, LYONS, COLORADO

I. Roll Call and Pledge of Allegiance

Roll Call. Present: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

II. Recognition of our Citizens in the Armed Forces

III. Sgt Kevin Parker, Lyons Substation Supervisor, Report – Sgt Parker stated the Halloween Parade over the weekend went very well and was attended by approximately 1,600 people. Sgt Parker thanked the Lyons Fire Dept for helping with traffic control.

IV. Audience Business - All comments will be limited to 4 minutes per person – No Audience Business

V. General Business

1. Introduction of Craig Eicher – Xcel Energy – Gas Franchise Renewal Process

Town Administrator introduced Mr. Eicher, Boulder Regional Manager of Government Affairs for Xcel. Mr. Eicher introduced Steve Lopez, Director of Operations for Xcel who lives in Lyons. Mr. Eicher gave a brief description of the franchise agreement, and the process. Mr. Eicher has been working with Town Administrator Simonsen and Town Clerk Anthony on the process. Staff will present the BOT with the draft agreement at the November 22, 2010 BOT agreement. Mr. Eicher stated the last agreement between the Town and Xcel was for 25 years this one will be for 20 years. The process will take several months to complete and there will be a public hearing.

2. Resolution 2010-40, a Resolution Approving an Agreement with Jacob A. Starkovich of Starkovich Law, LLC to Serve as the Lyons Municipal Prosecutor

Town Administrator Simonsen introduced Mr. Starkovich to the BOT. Mr. Starkovich stated he works for several other municipalities and loves the prosecution work. Mr. Starkovich stated he will do a good job for the town and asked the BOT if they had any questions. Several of the trustees asked if they could sit in on court or a trial Mr. Starkovich stated they are welcome to come and observe.

Motion: Trustee Kathy Jacobson moved to approve Resolution 2010-40.

Action: Approve, **Moved by** Trustee Kathy Jacobson, **Seconded by** Trustee Kathy Carroll.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

3. Resolution 2010-34, a Resolution Approving the Transfer of the Cable Television Franchise Agreement and Headend Lease Agreement with Champion Cable, LLC to CAMS Cable and Media Services.



Town Administrator Simonsen stated at the October 18, 2010 BOT meeting a motion was made to continue this item until the November 1, 2010 meeting pending further information. Staff has talked with Mr. Haverkate, previous owner and met with Mr. Stone on two occasions. Mr. Haverkate has provided both a verbal and written notice that the assets of Champion Cable, LLC has been purchased by CAMS Cable and Media Services effective June 30, 2010. Mr. Stone reported he has discontinued his service in Limon Colorado and will be using the physical assets for their system to enhance the Lyons service. Guernsey, Wyoming provided the Town with a copy of Mr. Stone's contract with their community. Mr. Stone has since provided a deposit check of \$1,600 (equal to approximately four months of franchise fees as currently reported), a signed affidavit as approved by the Town Attorney, and met with the finance director to review his financial statements. While the agreement requires CAMS to submit financial statements audited by a CPA to the Town, the Town agreed to work with CAMS to waive the CPA requirement and instead have CAM'S balance sheet reviewed by Finance Director McClurkin. Mr. Stone was not willing to provide detailed financial information for Ms. McClurkin to conduct a basic audit. The BOT instructed staff to reduce the deposit amount from \$2,500 to \$1,600 which has occurred. The BOT also tried to accommodate Mr. Stone by not requiring an independent audit by a CPA, and offered the serviced of the Town's Finance Director for a financial

review. This did not occur as Mr. Stone was not willing to provide the amount of detail necessary for an audit decision to be made. Staff appreciates that the BOT would like to provide cable and internet services to its residents, but is unable to recommend a contract with Mr. Stone without verifying the number of customers, the charges and accurate collection and distribution of franchise fees for use of the Town's right-of-way. The cable franchise agreement that Mr. Stone signed clearly requires the proposed transferee (CAMS) to submit financial data to the Town in order to allow the Town to make a determination as to whether or not the transferee is solvent (and therefore in a financial condition to meet its obligations under the remaining term of the franchise, including whether it has the financial capability to maintain and operate the cable system).

Mayor Van Domelen asked Mr. Stone to speak.

Cameron Stone, Colorado Springs gave a brief review of how he came to own the cable franchise. Mayor Van Domelen asked for clarification of what the Town needs from Mr. Stone. Finance Director McClurkin stated the normal financial balance sheet that includes assets from day one until now, income statements and expenses. We currently have no way to prove his calculations are correct you are just taking him at his word.

Motion: Mayor Pro Tem Kirk Udovich moved to approve Resolution 2010-34 if Mr. Stone provides the town with the financials that were requested.

Action: Approve, Moved by Mayor Pro Tem Kirk Udovich, Seconded by Trustee Ed Bruder.

Mayor Pro Tem Udovich stated I feel like we did the right thing the last time Mr. Stone came before us, we gave him the opportunity by lowering the deposit and telling him he did not need to hire an independent CPA to look at his financials. Mr. Stone did sign the agreement; I would like to see the customer base so we can see what the franchise fee is based upon. Trustee Bruder stated he agrees with Mayor Pro Tem Udovich the town did so in the spirit of intention to be business friendly. I think we should take this seriously, we are not being provided with the information staff needs, we have made concessions to a small business owner and I am not sure I feel he has met us half way. Trustee Johnson stated you always have to give financial information even when applying for a grant maybe we could ask for a tax return. Trustee Jacobson stated Mr. Stone did sign the affidavit and the franchise agreement by doing so we expect to see them. Mr. Stone stated he would be willing to show the billing system for the Town of Lyons but did not feel he should have to provide information concerning Wyoming. Finance Director McClurkin stated it is part of the business and should be included. Mr. Stone stated he did not see it as a risk to the town even if he did fail. Mr. Stone stated he was not happy with the administrative staff and the Finance Director has been a hand full. Finance Director McClurkin stated Mr. Stone was arrogant and rude. Finance Director McClurkin stated she had been given a directive from the BOT to look at the financial health of CAMS Cable. Mayor Van Domelen stated it is not our business what goes on in Wyoming and suggested a list of customers and charges from CAMS for assurance that we are getting paid what is owed the town. Finance Director McClurkin stated what really bothers me is Mr. Stone does not want to provide the basic financial information. Mayor Pro Tem Udovich stated we want to see what is behind the paper so we know what we are receiving is correct. Trustee Bruder stated he was a little put off by Mr. Stone's attitude and wanted to make sure this would not become a pattern and that the customers would not be compromised. Mr. Stone explained his customer service has increased, you now get a live person on the phone and that he does not answer those calls, I am trying to bring in more channels and provide better service for the customers, I have no problem with the customers, it is the staff. Mayor Van Domelen stated from what I am hearing from the BOT they are concerned we do not have a valid way to check on the franchise fees owed to the town. Mayor Van Domelen asked Mr. Cameron if he would let Finance Director McClurkin look at the billing, provide a list of customers and an income tax statement when available. Mr. Stone stated all of the billing and customer lists are online and he could fax it.

Motion: Mayor Pro Tem Kirk Udovich moved to amend his motion to approve Resolution 2010-34 providing the town receive the backing behind the number of the franchise fees which includes billing statements and customer lists along with income tax statements when available.

Action: Amend, Moved by Mayor Pro Tem Kirk Udovich, Seconded by Trustee Ed Bruder.

Trustee Bruder asked staff if they were willing to work with Mr. Stone. Finance Director McClurkin stated she would. Mayor Van Domelen stated 3.6 in the contract states the town has the right to cancel if the rules are not being followed. Discussion between the BOT included what physical property CAMS has in the town's right of ways, Mr. Stone's current insurance, the franchise agreement outlines the roles and responsibilities of both Mr. Stone and the town, having Town Attorney Cox look at 3.6 to make sure it is reflected correctly with the changes and the fact that Mr. Stone signed the franchise agreement and affidavit but is unwilling to provide the documents listed. Mayor Van Domelen stated there are red flags all over this but in reality we have citizens hooked to this service, let's find a way to keep this going and keep an eye on it, if it does not go well we can pull the franchise agreement. Mr. Stone agreed to hand over to the town a list of customers and billing statements now and the income tax statement when available.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

4. Confirmation of SFC Grant Submittal

Town Administrator Simonsen stated she wanted to let the BOT know Ashley Ahrens had finished the grant for the Community Outreach Program. If the town gets the grant it would be used for recycle bins in the Park, Main Street and High Street and to update signage in front of the Eco Cycle bins. Trustee Carroll stated she would write the letter of support from the BOT for the Mayor to sign. The BOT agreed and thanked SFC for submitting the grant. Trustee Carroll stated we should know by mid December.

5. Discussion/Decision regarding public art (Pam Soloman & 2 applications for permanent art from Parks & Rec)

Mayor Van Domelen stated the BOT will have to approve any permanent art for the Town but the LAHC could approve temporary art. Trustee Banta stated the LAHC reviewed the proposal from Pam Solman for the donation of the large Adirondack Chair. We used this piece to develop a fifteen item review form titled LAHC First Contract Art Proposal Document. This piece received 14 of 52 possible points. Although the piece was ranked highly exciting and interesting to the public the concerns were it appears to be a play structure, it is not constructed to the level of safety and durability required of a play structure. In addition the LAHC does not consider this piece an aesthetic contribution to the Town's art collection. The LAHC does really appreciate Mr. Solman's proposal but after careful consideration does not recommend accepting the donation of this piece.

Motion: Mayor Pro Tem Udovich recommended against accepting the Adirondack Chair donation from Pam Solman.

Action: Approve, Moved by Mayor Pro Tem Kirk Udovich, Seconded by Trustee Kathy Jacobson.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

Trustee Banta stated the Parks Dept proposed a wood raccoon and a bear chain saw carving be placed as permanent art. The bear at the Black Bear Hole and the raccoon at Bohn Park/St Vrain River/water dog park access. The LAHC went through the same process and the carvings scored 48 out of the 52 points. LAHC recommends the BOT approve the placement of the bear and raccoon. The Parks Dept will be responsible for regular maintenance.

Trustee Banta stated temporary art does not have to be approved by the BOT and will only be in place for 1 – 2 years and the LAHC hopes to be able to give the artist \$500 for the use of the art. Permanent art would be looked at first by the LAHC and then a recommendation made to the BOT but the BOT would have final approval on permanent art.

Motion: Trustee La Vern Johnson moved to approve accepting the bear and raccoon chain saw carvings as permanent art.

Action: Approve, Moved by Trustee La Vern Johnson, Seconded by Trustee Sandy Banta.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

6. Resolution 2010-42, a Resolution Modifying the Agenda, Order and Manner of Business of Meetings of the Town of Lyons Board of Trustees and Repealing Resolution 2008-24

Town Administrator Simonsen stated this is an effort to streamline the agenda and make it more public friendly. Public input will be scheduled first and internal matters will be at the end of the meeting. If an item under General Business takes more than 15 minutes it will be scheduled for a workshop. Mayor Van Domelen is going to attach time limits to items on the agenda in an effort to keep the meetings to a maximum of 2.5 hours. Trustee Bruder asked why the moment of silence was missing from the new agenda. Mayor Van Domelen stated she was not sure how or why it started, not even Colorado Springs includes this in their agenda, I don't think this is a normal part of business; it appears to have been political in the past. Mayor Van Domelen stated she understands the importance but it could be used for moment of silence to reflect on what you felt important for the day. Mayor Van Domelen asked the BOT their feelings on this. Trustee Johnson stated we have boys from town serving and I think it is nice to let them know we are thinking about them. Trustee Carroll stated she agreed. Mayor Pro Tem Udovich stated he was in favor or a moment of silence to support the troops, that it is nice to have a moment to get centered before the meeting starts. Mayor Van Domelen stated she did not want to make the moment of silence political. After discussion the BOT agreed to Motion: Trustee Sandy Banta moved to approve Resolution 2010-42 with the following changes. Change the moment of silence for those in the Armed Forces to a Reflective Moment of Silence and to add Items Removed from the Consent Agenda after General Business.

Motion: Trustee Sandy Banta moved to approve Resolution 2010-42 with the following changes. Instead of a moment of silence for those serving in the Armed Forces a Reflective Moment of Silence and add Items Removed from the Consent Agenda to after General Business.

Action: Approve, Moved by Trustee Sandy Banta, Seconded by Trustee Ed Bruder.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

VI. Staff Reports

Town Administrator Simonsen stated SAFEbult submitted the third quarter building inspection report for 2010. Building inspection revenues are exceeding 2009 year to date numbers by 30%, despite a lower evaluation of the permits submitted.

Mountain Transit Study – Boulder County has completed their Mountain Town Transit Feasibility Study, The stake holders group is meeting a final time to go through the results. Administrator Simonsen, Mayor Van Domelen, Trustee Carroll all have copies of the study for your review.

Northern Colorado Water Conservancy District is hosting their Fall water users' meeting November 18, 2010 from 8 am – 2 pm. If anyone is interested in attending please let me know.

Parks and Rec has recently completed the Bohn Park parking lot project and work at the Bohn Park Off Leash Dog Area by installing a water feature and irrigation/landscaping. Additional trees will also be planted this year. Regular maintenance of the trees, trails and Lyons Whitewater Park have been scheduled to take place over the next two months.

The shelter doors are scheduled to be replaced in Meadow Park prior to the end of the year. Repairs to the lights and electric at the Raul Vasquez Community Stage will also be repaired by year's end. The fountain feature in Sandstone Park being upgraded and repaired with Blue Mountain Stone. Parks is working to supply information for the COP Grant to Jennifer Shriver of Boulder County for new recycling receptacles for parks and public spaces grants. Plans are set for the Halloween Parade this Saturday. Parade of Lights activities are moving forward. Water Hydrant flushing continues this week in three separate neighborhoods, this was coordinated with the Lyons Fire Dept. Staff is recommending the installation of pressure reducing valves in several sections of town to reduce the likelihood of high pressure issues when jetted or opened for fire control.

VII. Trustee Reports

Trustee's Jacobson and Carroll had nothing to report.

Mayor Pro Tem Udovich stated the PCDC worked on a recommendation concerning marijuana regulations to bring to the BOT, they will be meeting next week to formalize them. PCDC is also working on the idea of additional dwelling units to be allowed in the Residential – 1, they will be researching to see how other communities deal with mother in law apartments.

Trustee Bruder stated he attended a Refreshing the Soul Service for seniors in Boulder County. Trustee Bruder talked to them about coming to Lyons, the area churches do things on their own but there is not a community master plan.

Trustee Bruder stated they are excited about coming to Lyons and working on integrating the programs to Lyons.

Trustee Bruder stated he had spent the whole day in Denver working with Matt Cook at the state working on the marijuana rules. Trustee Bruder stated the State plans on having their new rules in place by March 30th at the latest.

Trustee Bruder stated the town's moratorium says July 2010 or when the State gets their rules in place, we will need to start working on the town's rules and regulations so we are ready when the state passes theirs.

Trustee Banta stated the LAHC has placed a temporary art piece in front of the St Vrain Super Market, the artist is Bruce Campbell. Trustee Banta stated there would be another Art Show opening December 3, 2010 in the Council Chambers.

Trustee Johnson stated Parks & Rec meet today we discussed possible projects around the dog park and putting in for a Legacy Grant down the road.

Mayor Van Domelen stated she attended the DRCOG meeting the town should hear about the TIP Grant on November 17, 2010.

VIII. Consent Agenda

- 1. September 2010 Financials**
- 2. September 2010 Clerk and Treasurer's Report**
- 3. October 18, 2010 Board of Trustees Meeting Minutes**
- 4. October 2010 Accounts Payable**

5. First Reading - Ordinance 887, an Ordinance of the Town of Lyons, Colorado Repealing and Readopting Sections 1-4-6 and 5-3-16 of the Lyons Municipal Code Regarding the Penalties for Civil Traffic Infractions. Trustee Carroll asked to have the September Financial removed from the Consent Agenda.

Motion: Trustee Kathy Jacobson moved to approve items 2 -5 of the Consent Agenda.


Action: Approve, Moved by Trustee Kathy Jacobson, Seconded by Trustee Kathy Carroll.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

IX. Items Removed from the Consent Agenda

Trustee Carroll asked some questions about the fund balances on the financials. Finance Director McClurkin stated

she made adjustments to reflect only the General Fund.  Mayor Pro Tem Udovich asked if the general fund appeared to be worse than it really is due to monies not collected from CDOT yet on the Main Street Project. Finance Director McClurkin stated there is about \$600,000 out there that the town has paid for but not been reimbursed from CDOT yet. Mayor Van Domelen asked if the sales tax had been received. Finance Director McClurkin stated the property tax and sales tax are updated in the report.

Motion: Trustee Kathy Carroll moved to approve the September 2010 Financials.

Action: Approve, Moved by Trustee Kathy Carroll, Seconded by Mayor Pro Tem Kirk Udovich.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).

Yes: Mayor Julie Van Domelen, Mayor Pro Tem Kirk Udovich, Trustee Ed Bruder, Trustee Kathy Carroll, Trustee Kathy Jacobson, Trustee La Vern Johnson, Trustee Sandy Banta.

X. Adjournment - Trustee Kathy Carroll moved to adjourn.

Respectfully submitted by;

Deb Anthony, CMC – Town Clerk

Mayor Julie Van Domelen