



2011

Minturn Council Meeting

Wednesday July 6, 2011

Work Session: **6:00pm**
(Town Center)

Regular Session: **6:30pm**
(Town Center)

TOP FIVE COUNCIL PRIORITIES:

- Entry Signs
- Sidewalk Installations
- Street repairs with drainage (by priority)
- 100% completion of Telemetry
- Implement Streetscape Plan



Agenda

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday July 6, 2011

Work Session – 6:00pm
Regular Session – 6:30pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding holidays.

Work Session – 6:00pm

- Discussion/Action – Holy Cross Franchise agreement – White (30min)

Regular Session – 6:30pm

- 1. Call to Order**
 - a. Roll Call
 - b. Pledge of Allegiance
- 2. Approval of Agenda**
 - a. Items to be Pulled or Added
- 3. Approval of Minutes and Action Report**
 - June 15, 2011

- Action Item Report
- 4. **Public comments on items, which are NOT on the agenda (5 minute time limit per person)**
- 5. **Special Presentations/Citizen Recognition**
- 6. **Planning Commission Update**
- 7. **Town Manager's Report**
- 8. **Town Council Comments**

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

- 9. **Discussion/Action – Feasibility report and discussion on the placement of the south entrance Town sign – White (25min)**
- 10. **Discussion/Action – Resolution 4 – Series 2011 a Resolution approving a subdivision exemption plat for the Maloit Park Area – Cerimele (20min)**

EXECUTIVE SESSION

- 11. **Executive Session – Pursuant to CRS 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations and instruct the negotiators for the purpose of discussing the Town's annual Market contract and Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property – White/Christensen**

FUTURE AGENDA ITEMS

- 12. **Next Meeting – July 20, 2011 (Official Meeting start time 6:30pm)**
 - **Work Session Review: Discussion/Action – Ordinance 8 – 2011 (_____ Reading) an Ordinance allowing the sale of Medical Marijuana (45min)**
 - **Work Session Review: Discussion/Action – Ordinance 5 – 2011 (____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (30min)**
 - **Work Session Review: Discussion/Action – Ordinance 5 – 2011 (_____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (Meeting 15min)**
 - **Discussion/Action – Ordinance ____ – 2011 (_____ Reading) Holy Cross Franchise Agreement – White (30min)**

13. Future Meeting

- Discussion/Action – Ordinance ____ – 2011 (____ Reading) Holy Cross Franchise Agreement – White (15min) (8/3/11 Meeting)
- Discussion/Action– Ordinance 5 – 2011 (____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (15min) (8/3/11 Meeting)
- Discussion/Action – Ordinance 8 – 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana (TBA Meeting 45min)
- Discussion/Action – Ordinance 8 – 2011 (Second Reading) an Ordinance allowing the sale of Medical Marijuana (TBA Meeting 30min)

14. Set Future Meeting Dates

a) Council Meetings:

- July 20, 2011
- August 3, 2011
- August 17, 2011

b) Planning & Zoning Commission Meetings:

- July 13, 2011
- July 27, 2011
- August 10, 2011

c) Other Dates:

15. Adjournment

TOWN OF MINTURN (~~02-04-2011~~5-26-11)

TOWN OF MINTURN

ORDINANCE NO. _____

(Series of 2011)

AN ORDINANCE OF THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH A PORTION OF THE TOWN OF MINTURN, DEFINED AS THE SERVICE AREA, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE SERVICE AREA FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID SERVICE AREA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

ARTICLE 1

SHORT TITLE

- 1.1 This Ordinance shall be known and may be cited as the "Holy Cross Energy Franchise Ordinance."

ARTICLE 2

DEFINITIONS

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

- 2.1 "Town" is the Town of Minturn, Eagle County, Colorado, the municipal corporation as is now constituted or as the same may be enlarged or expanded from time to time through annexation.
- 2.2 "Company" refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.
- 2.3 "Service Area" refers to all land inside the municipal boundaries of the Town, as of the enactment of this Ordinance, and all land annexed within such boundaries hereafter, within the area certified to the Company by the Public Utilities Commission of the State of Colorado.
- 2.4 "Council" refers to the legislative body of the Town, known as the Town Council of the Town of Minturn, Colorado.
- 2.5 "Facilities" refers to all overhead and underground electric facilities, buildings and structures owned by the Company which are necessary to provide electricity into, within and through the Town including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines, structures, anchors, cabinets, cables, conduits, guy posts, guy wires, meters, microwave, communication facilities, overhead and underground

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- lines, pedestals, poles, regulators, sectionalizers, switchgears, transformers, various pad mounted and pole mounted equipment, vaults, wires and all other related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.
- 2.6 "Public Easements" refers to easements created by general dedication and available for use by any public utility for its facilities
- 2.7 "Private Easements" refers to easements created by deed, specific dedication to specific grantees or acquired by the Company by prescriptive right and available only for use by the Company for its Facilities, or by the Company and other users or utilities specifically named as grantees in the deed of dedication or which have also acquired the easement by prescriptive right.
- 2.8 "Residents" refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the boundaries of the Town.
- 2.9 "Revenues", unless otherwise specified, refers to and are the gross amounts of money that the Company receives from its customers within the Town from the sale or delivery of electrical energy for any particular period of time.
- 2.10 "Streets and Other Public Ways" refers to streets, alleys, viaducts, bridges, roads, lanes and other public ways in the Town, subject to limitations stated herein.

ARTICLE 3

GRANT OF FRANCHISE

- 3.1 Grant of Right to Serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company a non-exclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the Service Area, all necessary and convenient Facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the exclusive right and privilege to furnish, sell and distribute said electrical energy to the Residents for light, heat, power and other purposes.
- 3.2 Scope of Grant. Such grant includes the non-exclusive right and obligation to furnish electrical energy using the Company Facilities on, over, under, along, across and through any and all Public Easements and all Streets and Other Public Ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such new Public Easements and Streets and Other Public Ways as may be hereafter laid out, opened, located or constructed within the Service Area. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all Streets and Other Public Ways and Public Easements. Any such excavation, occupation and use must be in accordance with Town standards and regulations, and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Service Area and supplying electrical energy to the Residents.
- 3.3 Service to Town Facilities. The Town hereby grants to the Company the non-exclusive right, privilege and authority to provide street and security lighting to the Town, and to serve all Town owned or operated structures, plants, equipment

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or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

ARTICLE 4

SPECIFIC ELEMENTS OF GRANT

- 4.1 Recreational Areas. The Company shall not have the right to locate, build or construct Facilities under, across or through public parks or recreational areas, open space or other Town owned property located within the Town except as expressly set forth in this Franchise or with prior written approval granted by the Council. Said approval shall not be unreasonably withheld.
- 4.2 Trees and Shrubs. The Company shall have the right to trim or cut down such trees and shrubbery and to control the growth of the same by ~~chemical means, machinery,~~ or otherwise but shall not use chemicals for such purpose, only as may be reasonably necessary to protect its Facilities as provided for in the Company "Vegetation Management Guidelines" as such may from time to time be amended.
- 4.2-4.3 Location of Company's Facilities. Wherever reasonable and practicable, the Company will endeavor to install its Facilities within Public Easements. The Company shall locate its Facilities within the Town so as to cause minimum interference with any of the Town's facilities or property, including without limitation water lines, sewer lines, storm drains and the proper use of Streets and Other Public Ways, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets and Other Public Ways.
- 4.3-4.4 Restoration of Public and Private Improvements. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or any other public or private improvement, the Company shall at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement after the installation of its Facilities. However, upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the required work and charge the Company for all reasonable costs thereof. Nothing hereinabove shall be construed to obligate the Company to pay for the removal and relocation of its Facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 4.4-4.5 Use of Facilities. The Company shall have the right to make such use of its Facilities and other property owned by Company, for uses other than the uses contemplated in this Franchise Ordinance, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy, consistent with the then current zoning.
- 4.5-4.6 Changed Conditions (Overhead). If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company located within

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Public Easements or Streets and Other Public Ways to permit the Town to lay, make or change street grades, pavements, sewers, water mains, storm drains or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. Any necessary position change of overhead electrical facilities of the Company located within Private Easements will be paid for by the person, or private or public entity requesting such change. The Town shall consult with the Company during the design of any such Town works which may require relocation of existing overhead electrical facilities of the Company and work with the Company to ensure that any relocation necessary is minimized and that a location for the relocated Facilities is provided.

4-6-4.7 Compliance with Town Ordinances. The Company shall comply with all Town ordinances and regulations regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance of request.

4-7-4.8 Town Review of Construction and Design. Prior to construction of any significant Facilities within the Town, as determined jointly by the Company and Town, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, (1) that all applicable laws including building and zoning codes, air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.

4-8-4.9 Capital Improvement and Major Development Projects. The Company and the Town shall endeavor to inform one another of any capital improvement and major development projects anticipated within the Town that may impact the Facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements and major developments.

4-9-4.10 Maintenance of Facilities. The Company shall install, maintain, repair, replace and upgrade its Facilities to ensure both the adequacy of and quality of, electric service to the Town and all Residents. All excavation and construction work done by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents. The Town shall have the right to inspect any portion of the Facilities located in the Streets or Other Public Ways. However, the Town will not require construction of the Facilities in such a manner that would not meet the National Electrical Safety Code and other governing entity requirements or standard utility engineering practices. The Company agrees to cooperate with the Town in conducting the inspection.

4-10-4.11 Town Not Required to Advance Funds. Upon receipt from the Town of an authorization to proceed and a promise to pay for construction, the Company

Comment [dg1]: Minturn comment – Town doesn't have any ordinances re this.

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shall extend its Facilities to the Town for municipal uses therein or for any municipal facility outside the Service Area and within the Company's certificated service area, without requiring the Town to advance funds prior to construction.

~~4.11~~ 4.12 Scheduled Interruptions. The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected Residents, of planned service interruptions of significant duration.

~~4.12~~ 4.13 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility or company in connection with work under this section.

~~4.13~~ 4.14 Annual Review of Franchise. At the request of either the Town or the Company, the parties hereto shall meet to discuss any topic of concern.

ARTICLE 5

RATES, REGULATIONS, UNIFORMITY OF SERVICE AND UPGRADES

- 5.1 Furnishing Electrical Energy. The Company shall furnish electrical energy within the Service Area, and to the Residents thereof at the Company's applicable and effective rates and under the terms and conditions set forth in the Company's Electric Service Tariffs, Rules and Regulations and Consumer Service Facilities Metering and Use Guidebook adopted by and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law. The Company shall not, as to rates, charges, service, Facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Resident, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.
- 5.2 Facility Upgrades. The Company will, from time to time, during the term of this Franchise make such improvements, enlargements and extensions of its Facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Electric Service Tariffs, Rules and Regulations, Consumer Service Facilities Metering and Use Guidebook or other customary practices in effect and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law.
- 5.3 Reliable Supply of Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers is interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.
- 5.4 Maps and Regulations. The Company shall, submit copies of its Consumer Services Facilities Metering and Use Guidebook, Electric Service Tariffs, Rules and Regulations and maps of its Facilities within the Service Area to the Town Clerk. All changes in such information shall be submitted to the Town as the same may from time to time occur.

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- 5.5 Subdivision Review. The Company shall analyze any subdivision plats or planned unit development plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its Facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Town's Subdivision Regulations. The Town will require the developers of such projects to meet all applicable provisions of the Company's Electric Service Tariffs, Rules and Regulations and other customary practices, as such may from time to time be amended.
- 5.6 Interrelationship of Laws, Rates, Regulations and Ordinances. The Company shall comply with all County, State or Federal laws and rules and regulations related to the subject matter hereof. The Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Franchise Ordinance shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers as shall be necessary to provide a safe, continuous and uninterrupted service to each and all of such customers and the proper measurement thereof and payment therefor. Any such rules, regulations, terms and conditions must not be inconsistent with this Franchise Ordinance, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy, or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers.

ARTICLE 6

USE OF COMPANY FACILITIES

- 6.1 Use of Poles by Town. The Town shall have the right, without cost, to jointly use all poles and suitable overhead structures within the Service Area for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include generation, distribution or transmission of electricity. However, the Company shall assume no liability, or any additional expense, in connection therewith, and said use shall not interfere in any unreasonable manner with the Company's use of same, or the use thereof by the Company's permittees, licensees or other existing users of such Facilities. The Town is not authorized to assign its right to jointly use the Company's Facilities to any third party. The Company, in its sole discretion, may allow third parties to use its Facilities upon such terms and conditions as the Company deems appropriate.
- 6.2 Joint Use of Trenches. The Company, upon receiving a written request from the Town, shall permit the Town to install additional conduit in any trench excavated for the Company's Facilities, for the express purpose and use of the Town, provided such additional installation shall be in accordance with sound engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's Facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its

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Facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

ARTICLE 7

INDEMNIFICATION AND POLICE POWER

- 7.1 **Mutual Hold Harmless.** Each party, shall to the extent allowed by law, indemnify, defend and save the other party harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the indemnifying party under the provisions of this Franchise, and the securing of, and the exercise of the Franchise rights granted in this ordinance and the indemnifying party shall pay all reasonable expenses arising therefrom. The indemnifying party will provide prompt written notice to the other party of the pendency of any claim or action against the indemnified party arising out of the exercise of the Franchise rights. The indemnifying party will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the other party harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act or the intentional misconduct by the indemnified party or any of its officers, employees or agents. The indemnified party's use of independent contractors shall not constitute an avoidance or defense to the indemnifying party's duties to defend and indemnify under this section. Each party shall maintain public liability insurance in an amount not less than \$1,000,000. Each party shall be a named **additional** insured on the other party's liability insurance.
- 7.2 **Police Power Reserved.** The right is hereby reserved to the Town to adopt from time to time, in addition to the provisions herein contained, such Ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

ARTICLE 8

FRANCHISE FEE

- 8.1 **Franchise Fee.** As a further consideration for this Franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments, fees, or excises upon the Facilities or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, permit charge, or for the inspection of the Facilities or other property of the Company, and charges which would otherwise be chargeable to the Company, or otherwise, the Company shall pay to the Town a sum equal to three percent (3%) of its quarterly Revenues collected from the sale of electricity within the Service Area for electrical energy furnished

Comment [dg2]: Attorneys to discuss this paragraph.

Comment [dg3]: Replaces "7.1 Town Held Harmless. The Company shall indemnify, defend and save the Town, its officers and employees, harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this Franchise, and the securing of, and the exercise by the Company of, the Franchise rights granted in this ordinance and shall pay all reasonable expenses arising therefrom. The Town shall provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its Franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act by the Town or any of its officers, employees, or agents unless the Company shall become obligated to indemnify, defend or hold the Town harmless by virtue of the comparative negligence laws of Colorado."

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for light, heat, power and other purposes. This three percent (3%) fee shall be surcharged to the Residents within the Service Area and is in addition to any charges specified in the Company's Electric Service Tariffs, Rules and Regulations and any applicable taxes. Payment of the franchise fee does not exempt the Company from payment of property or sales taxes which are not directly related to the franchise or the occupation of the Streets and Other Public Ways. Revenues received from Town facilities will not be assessed a three percent (3%) fee under this section nor will the Town be paid the three percent (3%) fee from such revenues collected from Town facilities.

8-1-8.2 Payment. Payment of the Franchise Fee shall be made by the Company to the Town on or before 30 days after the end of each quarter of each calendar year for the preceding three (3) month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.

8-2-8.3 Revenue Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to Residents within the Service Area for the preceding three (3) month period. The Town Clerk or any official appointed by the Council shall have limited access to the books of said Company for the sole purpose of confirming the quarterly Revenues received from operations within the Service Area. Such access is conditioned on the agreement of the Town not to disclose the information to any third party.

8-3-8.4 Correction of Underpayment/Overpayment. Should either the Company or Town discover either an underpayment or overpayment of the quarterly Franchise Fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within 30 days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next quarterly Franchise payment due the Town. If any dispute arises regarding underpayment/overpayment, Company and Town agree to submit the dispute to binding arbitration, with each party to bear their own costs.

8-4-8.5 Occupancy Tax Alternative. In the event said Franchise Fee levied herein should be declared invalid and or shall be set aside by a Court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an occupancy tax upon the Company, not to exceed in any calendar year three percent (3%) of the Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power, and other purposes for that calendar year. Such occupancy tax shall be adjusted for any Franchise Fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupancy tax, in lieu of the Franchise Fee, all of the remaining terms, conditions and provisions of this Ordinance shall remain in full force and effect for the period stated herein. Such occupancy tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

Comment [dg4]: Is correct word Occupancy or Occupation? Holy Cross occupies town space, and provides the service of electricity. MINTURN to Review

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- 8.6 Franchise Fee Payment in Lieu of Other Fees. As indicated in Section 8.1, above, the Franchise Fee paid by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.
- ~~8.5~~8.7 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances arising out of the negotiations or process of obtaining this franchise.
- ~~8.6~~8.8 Street Cut Permits. The Company will provide the Town with a Corporate Bond without Sureties each year to ensure it performs all conditions imposed by such permits. Upon request from the Town, the Company will furnish the Town with the Company's estimated cost of street repair.
- ~~8.7~~8.9 Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all Franchise Fees or occupancy taxes levied herein shall be suspended as of the date the Franchise is legally terminated. Final payment of any Franchise Fee or occupancy tax owed and due the Town shall be made on or before 30 days after the date the Franchise is legally terminated.

ARTICLE 9

REPORTING AND CHANGE IN FRANCHISE FEE

- 9.1 Reports. The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.
- 9.2 Change of Franchise Fee. The Company shall, upon request from the Town, notify the Council of any changes in the Franchise Fee percentage made with other municipalities served by the Company under a franchise within the State of Colorado. If the Council decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by Ordinance. However, any change in the Franchise Fee percentage shall then be surcharged by the Company to the Residents of the Town.
- 9.3 Change of Franchise Fee – Town Initiated. The Town expressly reserves the right to notify the Company of its desire to revise the Franchise Fee to a different percentage of revenue prior to October 1 of the even numbered years during the term of this franchise, which revised Franchise Fee shall become effective on the next succeeding January 1, following notification. Provided, however, that the maximum amount of the Franchise Fee shall be five percent (5%) of the gross Revenues collected within the Service Area. Notification to the consumer shall be given by the Town no less than thirty (30) days prior to January 1, the effective date of the scheduled increase. All expenses associated with notification shall be paid entirely by the Town.

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ARTICLE 10 ADMINISTRATION

- 10.1 Duration of Franchise. This Ordinance shall be in full force and effect from and after its passage as by law required and the conditions, terms, and provisions herein shall remain in full force and effect for a period of 20 years from and after such enactment.
- 10.2 Temporary Extension of Franchise. Prior to the expiration of this Franchise, should the parties desire to renew the terms and conditions of this Franchise or execute a new Franchise, but have not yet done so, the parties may temporarily extend the terms and conditions of this Franchise by written agreement for a period of not longer than 180 days from such date of expiration. During such extension, all provisions of the Franchise shall continue in effect as if the Franchise had not expired.
- 10.3 Amendments. At any time during the term of this Franchise, the Town through its Council, or the Company, may propose amendments to this Franchise by giving 30 days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met. This section shall not apply to Franchise Fee changes under Article 9.
- 10.4 Revocation of Privileges by Condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the Facilities of the Company within the Service Area, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the Residents of the Service Area, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State of Colorado for such rights and Facilities by reason of such condemnation.
- 10.5 Compliance Impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.
- 10.6 Company's Failure to Perform. It is agreed that in case of the failure of the Company to perform and carry out any of the conditions, terms and provisions herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than 90 days, unless otherwise agreed by parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the failure to correct such conditions, the Council shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited and may declare this Franchise null and void.

Comment [dg5]: Town to resolve duration of Franchise. 10, 15, 20?

TOWN OF MINTURN (~~02-04-20115-26-11~~)

- 10.7 Ownership of Facilities. All Facilities used or placed by the Company either within or outside the Service Area shall be and remain the property of the Company.
- 10.8 Transfer of Rights. The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.
- 10.9 Removal of Facilities. Upon the expiration of this Franchise, if thereafter the Company Facilities shall not be used for electric, telephone, or cable TV purposes for a period of 12 successive months, the Town shall have the option of having the Company remove such Facilities or claim such Facilities as its own. If the Town elects to have the Company remove the Facilities, it shall give written notice to the Company directing it to remove such Facilities, and the Company shall remove the same no later than 90 days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any Facilities, either underground or overhead, remaining after such time that are not expressly claimed by the Town shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned Facilities, and any liability associated with Facilities abandoned by the Company shall be the liability of the Company. For any Facilities claimed by the Town, any liability associated with such Facilities shall become the liability of the Town.
- 10.10 Non-renewal of Franchise (Alternative Electric Service). If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the Residents of the Service Area, the Company shall not remove its Facilities and shall be obligated to continue electric service to the Residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public.

ARTICLE 11

COMMUNITY ENHANCEMENT FUND

- 11.1 Purpose. The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to (1) beautification projects, (2) energy conservation projects, (3) equipment and technology upgrades for schools, (4) scholarship funds, (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events and (7) undergrounding of overhead electric and other utility lines. Funds made available under this Article may be spent for other purposes only with the express written consent of the Company.
- 11.2 Payments to the Fund. The Company shall make annual payments to the fund equal to one percent (1%) of its prior year's Revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected from the sale of electricity within the Service Area, or \$2,000, whichever amount is greater. Said payments shall be made into the fund no later than February 15th of the year subsequent to the year in which the gross revenues are received by the Company.

TOWN OF MINTURN (~~02-04-2011~~5-26-11)

- 11.3 The Fund. The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.
- 11.4 Payments from the Fund. All payments from the fund shall be for projects described in Section 11.1 hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution or ordinance duly enacted by the Council, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.
- 11.5 Audits. The Town may audit the Company's books for the limited purpose of determining the Revenues being collected within the Town at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.
- 11.6 Forfeiture of Enhancement Funds. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.
- 11.7 Advancement of Fund. The Company shall consider advances of funds, subject to the provisions of this section, for all projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing Facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future Funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate Fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced Funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated.
- 11.8 TABOR Compliance Issue. The Community Enhancement Fund described in this Article is a program that has been initiated solely by the Company. This Town has not made the program a requirement for granting of a franchise to the Company. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company and is intended to be and shall be considered to be a gift or grant within the meaning of Article X, Section 20, of the Constitution of the State of Colorado for purposes of determining compliance by the Town with such constitutional provisions.

ARTICLE 12 UNDERGROUNDING

- 12.1 At Consumer's Request. If a customer(s) within the Town should request that new Facilities be installed underground or for the conversion of existing overhead electrical facilities of the Company to underground facilities or if Town ordinances or resolutions require a customer(s) to install Company facilities

TOWN OF MINTURN (~~02-04-2011~~5-26-11)

- underground, the Company shall proceed in accordance with its Electric Service Tariffs, Rules and Regulations or other customary practices, as each may from time to time be amended.
- 12.2 Town Requested Undergrounding. Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's overhead electric facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking, or requiring the Company to underground its new electrical facilities or its existing overhead electric facilities, or move, remove, or replace its existing underground electrical facilities, shall be responded to in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 12.3 Relocation of Underground Facilities. No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its underground electric facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practice in use by the Company, as such may be from time to time amended.
- 12.4 Governmental Mandates. This Franchise or the Town's Municipal Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of any cost increase caused by governmental mandate in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices of the Company, as such may be from time to time amended.

ARTICLE 13 MISCELLANEOUS

- 13.1 Changes in Utility Regulation. In the event new legislation materially affects the terms and conditions of this Franchise Ordinance, the parties agree to renegotiate the affected terms and conditions in good faith as an amendment hereto. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the Service Area if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the Residents of the Service Area and provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the Service Area.
- 13.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Ordinance shall inure to the benefit of and be binding upon the Company, its successors and assigns.

TOWN OF MINTURN (~~02-04-20115-26-11~~)

- 13.3 Representatives. Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company's Chief Executive Officer. Currently the addresses for each are as follows:

Town:

Town Manager
Town of Minturn
P.O. Box 309
302 Pine Street
Minturn, CO 81645-0309

Company:

Chief Executive Officer
Holy Cross Energy
P.O. Box 2150
Glenwood Springs, CO 81602-2150

- 13.4 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions.
- 13.5 Entire Agreement. This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

ARTICLE 14

APPROVAL

- 14.1 Town Approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State of Colorado.
- 14.2 Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within 15 business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void.

TOWN OF MINTURN (~~02-04-2011~~5-26-11)

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF TRUSTEES OF THE TOWN OF MINTURN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF MINTURN, ON THE _____ DAY OF _____, 2010, BY A VOTE OF _____ IN FAVOR AND _____ AGAINST.

Comment [dg6]: MINTURN – provide required wording for this sheet.

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Publication Dates:

FINALLY, adopted, passed and approved on second reading after Public Hearing on _____, 2010.

ATTEST:

TOWN OF MINTURN

Town Clerk

Mayor

HOLY CROSS ENERGY

Del Worley, Chief Executive Officer

Date



Official Minutes

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday June 15, 2011

Work Session – 4:45pm
Regular Session – 7:00pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/824-5645 302 Pine St. Minturn, CO 81645

Work Session – 4:45pm

- Work Session – New Town entryway sign viewing and photos (**Meet at Grouse Creek Trailhead**) – White (15min)
- Discussion – 2010 Audit presentation and acceptance – Brunvand (45min)
- Ordinance 8 – 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana. (45 min)

Regular Session – 7:00pm

1. Call to Order

- a. Roll Call
- b. Pledge of Allegiance

The meeting was called to order by Mayor Flaherty at 7:07 pm.

Those present included: Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Council Members Shelley Bellm, Aggie Martinez, John Rosenfeld, Council Members Jerry Bumgarner and Earle Bidez.

Staff present: Town Manager Jim White, Town Treasurer/Clerk Jay Brunvand, Town Planner Chris Cerimele, Police Chief Lorenzo Martinez, and Attorney Allen Christensen.

2. Approval of Agenda

a. Items to be Pulled or Added

- Add an Executive Session to the end of the meeting as item 9a.

Motion by Shelley B., second by George B., to approve the agenda as amended; all voted in favor.

3. Approval of Minutes and Action Report

- June 1, 2011

Motion by George B., second by Aggie M., to approve the Minutes of June 1, 2011 as presented; all voted in favor (*Note: Jerry B. abstained as he was absent for that meeting*)

- Action Item Report

Add to next agenda a discussion to report the status of the Town's ability to complete the South Entrance sign this summer.

Shelley B. requested an update on the status of repairs on the sidewalks; Jim W. stated we have a list of sidewalks that are in need of repair in the 100 and 200 block area. We are currently working with Lafarge on cost of concrete and we will be moving forward in the next few weeks and ongoing throughout the summer. Additionally, we have submitted a grant for sidewalk funds and are hoping to supplement our money.

Hawkeye requested we change the Town Sign item to represent the Town Sign – South End and to include a discussion and feasibility report on the next agenda (July 6, 2011)

4. Public comments on items, which are NOT on the agenda (5 minute time limit per person)

Ms. Laura Wolf, 1688 Main St, discussed her past involvement and present concerns with the Little Beach Park. Ms. Wolf noted that it is already the second week of June and our parks are in terrible shape. Jim W. addressed the pictures supplied by Ms. Wolf as follows:

- Picture of the sign – dead foliage and weeds: Jim W. reminded the Council that our parks are maintained by the Public Works Department and an outside vendor contract. However; these will be addressed.
- The broken fence was a result of the winter snowplowing operations and is scheduled to be repaired in the next week or so.
- The toilet facilities – this facility is heavily utilized and there is an ongoing concern of vandalism. We are considering locking the facilities at night to help in mitigation and

vandalism. Ms. Wolf reported the bathroom is filthy and this has been an issue for over a month and a half. This park is our premier asset. Ms. Wolf stated this is the 2nd week of June and she is only hearing excuses.

- Playground woodchips: the subfloor material under the woodchips in the playground area is showing through. Jim W. reported this is on the annual maintenance schedule and will be addressed and new material added as needed.
- The pet-pickups should be addressed daily and it will be.
- Path lighting: this will be replaced with solar lights and cleaned up.
- Grass and flowering plants: Ms. Wolf stated the park is not being watered, the grass is not green and it is June. Jim W. reported that due to high water in the river the water line has not been turned on. If debris in the river were to snag and break the water line that runs above the river it could drain our entire water system in little time. During the past two years the water has not been turned on before this time in June to allow the high water to subside. Upon request from Chief Martinez , the Fire Dept watered the park today. Ms. Wolf asked if this was an acceptable level of service for our park; Jim W. stated the PW's Dept is trying to get things done more timely. Ms. Wolf asked when this would be taken care of; Jim W. stated much of the issues should be done possibly today but by the end of the week we should have the majority of the concerns addressed and then remain on task for the balance of the summer. Ms. Wolf stated that we had utilized a \$250,000 GOCO Grant to build this park and asked if we would be happy to show a GOCO representative our park?

Earle B. stated we have a lot of events scheduled in the next few weeks and we need to get on this even if there are costs involved. All Council Members agreed and felt time was of the essence.

John R. stated the irrigation is an annual issue but it should be addressed now that the water line has been turned on. John R. stated the damage to the park by vandals is a constant and near daily event and the repairs and clean up is continual.

Aggie M. recommended a stepped up police presence and more patrols in the park areas by both the police and PW's.

Jerry B. asked if the Town had a pressure washer; yes, Jerry and George will volunteer to clean up the toilets and John R. stated he would donate the use of his water truck. Ms. Wolf stated that Honeywagon holds the contract and they will clean the toilets as they service it. *(Note: this is a vault sanitation system and is designed to be pumped seasonally.)*

Shelley B. stated we are challenged by not having a full Park's Department, our maintenance contract should cover this service too. She added that without a Parks Department we do not have that presence that would discourage the vandalism. George B. suggested a "call if bathroom service is needed" and a phone number would be useful and should be posted. Jim W. stated he will continue to address these concerns. Hawkeye stated that we have staff drive by the park many times a day and they don't stop. This needs to be a priority.

Mr. Zach Mahon, 246 Boulder St., addressed his concerns of the open space at Not-a-Park at 243 Boulder St. He has personally raked the grass and was watering it for the Town as a volunteer. However, the sprinklers are now gone. There are hoses still attached but they do not reach the entire grass area. This property is used by the Town as a snow storage site in the winter and lots of work needs to be done on the property to bring it back to life in the spring time. Mr. Mahon will continue to volunteer his time to keep it up but the Town needs to step up at this park too.

Shelley B. stated it was also an issue throughout Town that citizens are not cleaning up after their dogs. Mr. Mahon stated that everyone needs to do their part; the Pet-Pickups are replaced often but are used up.

5. Special Presentations/Citizen Recognition

6. Planning Commission Update

Chris C. stated they did not have a Planning Commission meeting last week but will be having a meeting next Wednesday (6/22/11) and will be addressing open space to include grants and sidewalk requirements on new construction and major remodels. Chris C. stated they are also working on standardization of the application process. Rear setbacks are being reviewed for the smaller lots to allow a 5ft setback for a garage.

7. Town Manager's Report

North Main Waterline Project Formal Completion

Town staff met with Peak Land Consultants and Western Pipe Way representatives on Thursday, May 12, 2011 to complete the final walk through on the North Main Waterline Project. Subsequently, the Town has received all as-built plans and drawings and will now release final payment.

XCEL Natural Gas Pipeline Project Continues!

The XCEL Pipeline Project from Edwards to Minturn is underway. XCEL is replacing 6" and 12" existing lines with a new 16" line. Project completion is set for September 15, 2011. For questions, please call XCEL at 1-877-481-6380.

Battle Mountain Update

Most of the issues discussed currently involve pending lawsuits related to quiet title action and challenges to the annexation agreement. Elizabeth Mitchell, Holland & Hart attorney, continues her discussions with Battle Mountain representatives to prepare responses to the EPA. No new information is available at this time. A revised remedial investigation report has been completed.

Signage

We have received the Special Use Permit from the US Forest Service which allows the Town of Minturn to construct its entryway sign on USFS land. Installation is planned for June 13th and June 14th, 2011.

Maloit Park Water Tank

Inspection of the Maloit Park water tank finds the need to make repairs. Public Works is securing bids for the job. The plan would be to complete restoration of both the inside and outside of the tank.

“The Show”

A county-wide baseball tournament will be held later this summer at fields throughout Eagle County. Dubbed “The Show” by its sponsors, it plans to bring players from 8 years to 18 years old to compete. More details will be presented as they become available.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. Due to scheduling issues, the work session to review the agreement will take place on July 6, 2011 followed by 1st and 2nd reading of the ordinance on July 20th and August 3, 2011.

Prosecuting Attorney

Inga Causey began her duties as prosecuting Attorney on Thursday, June 9, 2011 in Minturn’s Municipal Court.

Bone Yard Parcel

We have secured both the agreement for the appraisal and the cooperation of the Forest Service to resume negotiations on this property. The new appraisal is expected soon.

2010 Audit Report

The Town Council will review the 2010 audit and vote on approval at tonight’s meeting to coincide with State of Colorado statutory financial reporting requirements and deadlines.

Colorado Municipal League Annual Conference

Please consider attending the CML Annual Conference this year in Vail, CO. The conference is from June 22-June 24, 2011. The information and registration is available on the CML website.

Eagle River Watch

We continue to monitor the daily levels along the Eagle River. Materials for making sandbags are stored in the Municipal Parking Lot. Public Works has already made three deliveries of sand and materials to the site.

Additionally, Jim W. reported that he had met with Dave Kleinkopf of Battle Mountain Resorts on 6/14/11. Mr. Kleinkopf mentioned reconvening the small committee of Earle B., Shelley B. and some staff to address issues that are potentially forthcoming. This meeting would be structured to receive updates and discuss generate options.

Ms. Inga Causey, introduced herself as the new Prosecuting Attorney for the Town. Ms. Causey began her duties this month and is very excited.

8. Town Council Comments

John R. stated he was impressed with the new Town sign and commended Jim W. for his work. Aggie M. also noted the sign and inquired about the truck route through Town; Chris C. will address this. Shelley B. congratulated the Staff on the sign and George B. specifically for his work.

George B. attended the Eagle County Open Space Committee meeting and stated they received approval to purchase the 160 acre parcel in the Homestead area and connects to forest service land. They are looking at other land in the Dotsero area with river access. He is attending a conference on grants and nonprofit funding; he outlined some of the sessions he will be attending.

Jerry B. attended the State of the River forum held the previous week. He spoke with Ms. Wendy Naugle and she agreed to schedule time to visit with the Town on the Eagle River; Jim W. will follow up. Jerry B. noted the car cruise and felt it was well worth the time.

Earle B. attended the Minturn Community Fund meeting and outlined some of the upcoming events to include the concert series, the Missoula Children's Theater workshop and production, and the outdoor movie nights. Jim W. noted the river kayak course that is being supported by the Town and it is moving forward.

Aggie M. asked if we could pursue grants for the Maloit Park water tank; Jim W. will follow up.

Hawkeye reported they are still looking for sponsors of flower pots on Main, contact the Minturn Community Fund for details and opportunities. This is the first weekend of the Minturn Market and it should be a lot of fun. On behalf of the Council he wished everyone a happy 4th of July, our events will be on Saturday July 2nd and the County has lots of events planned for the entire weekend.

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

9. Discussion/Action – Motion to accept the 2010 Minturn Financial Audit – Brunvand (25min)

Hawkeye introduced the agenda item and referred the issue to Jay B who introduced Wendy Swanhorst of Swanhorst and Associates. Jay B. noted we had had an in depth presentation session during the Worksession but asked if there were further question or comments from the Council and stated that he was requesting the Council accept the audit with a formal motion.

George B. asked Ms. Swanhorst for a brief update. Ms. Swanhorst stated the audit was given a clean bill of health. She explained that, as a small Town, we will always have some oversight issues but as a whole the Town has and continues to address these issues and reported the Town is in very strong financial condition. Hawkeye pointed out the Town has very reasonable cash reserves due to being frugal and fiscally responsible.

Motion by John R., second by Aggie M., to accept the Fiscal Year 2010 Minturn Financial Audit as presented; all voted in favor.

EXECUTIVE SESSION

10. Executive Session – Pursuant to CRS 24-6-402(4)(a) for the purpose of discussing the possible purchase from the USFS Land the property commonly known as the Boneyard – White/Christensen

Motion by John B., second by Shelley B., to convene in Executive Session pursuant to CRS 24-6-402(4)(a) for the purpose of discussing the possible purchase from the USFS Land the property commonly known as the Boneyard; all voted in favor.

The Council reconvened in general session at 8:52. Council did not make any formal decision as a result of the Executive Session but directed Staff to continue to pursue open space funding.

FUTURE AGENDA ITEMS

11. Next Meeting – July 6, 2011 (Official Meeting start time 6:30pm) Make postings of this around town.

- Discussion/Action – Ordinance 8 – 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana – Move to July 20 Worksession
- Work Session - Discussion re: Holy Cross Franchise Agreement – White (45min)
- Work Session - Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci
- Discussion/Action– Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci This is at the 2nd meeting.

12. Future Meeting

- Executive Session - Pursuant to CRS 24-6-402(4)(b) to consult with the Town's Attorney(s) and receive legal advice regarding Environmental Protection Agency (EPA) and Colorado Department of Public Health comments on the Battle Mountain Resort project Remediation Feasibility Study Amendment– White/Christensen (60min)
- Discussion/Action – Ordinance 8 – 2011 (Second Reading) an Ordinance allowing the sale of Medical Marijuana

13. Set Future Meeting Dates

a) Council Meetings:

- July 6, 2011
- July 20, 2011

b) Planning & Zoning Commission Meetings:

- June 22, 2011
- July 13, 2011

c) Other Dates:

- June 18, 2011 1st Day of Minturn Market
- June 22-24 CML Annual Conference/Vail
- Minturn Independence Day Celebration – July 2, 2011

14. Adjournment

Motion by Jerry B., second by Aggie M., to adjourn the meeting at 8:53pm. All voted in favor.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

**Town of Minturn
Council Action Item Memo**

TO: Staff Members/Council Members
FROM: Jim White/ Town Manager
DATE: July 6, 2011
SUBJECT: Status of Action Items from Town Council Meetings

Action Item	Responsible Party	Progress Report
Town entry sign – South	White	Feasibility report and discussion of a entry sign at the south end of Town to be held at 7/6/11 Council Meeting.
Draft Medical Marijuana Ordinance-Staff level	White	Draft being reviewed at work session level. Next review to be at 7/20/11 Council meeting.
Battle Mountain Scholarship Fund	White	Pursue interest money from Battle Mountain scholarship fund contributions.
Minturn Scholarship Funding	White	Council is interested in providing seed money and soliciting donations for scholarship funding
Town Sidewalks	A. Martinez/White	Clarify installation plans (add language to code to require sidewalks for new construction). Working with Lafarge to establish supply costs.
OSAC Funding for Boneyard purchase	White	Seek fundraising partners. Town staff to meet with Eagle County Staff. Staff plans to meet with OSAC on 7/11/11 with preliminary proposal.

Post Office Box 309
302 Pine Street
Minturn, CO 81645
Phone: 970-827-4272
Fax: 970-827-7420



Town Council
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilwoman – Shelley Bellm
Councilman – Jerry Bumgarner
Councilman – Aggie Martinez
Councilman – Earle Bidez
Councilman – John Rosenfeld

To: Minturn Town Council
Cc: Jim White, Town Manager
From: Chris Cerimele, Town Planner
Re: Planning Department Update
Date: July 6, 2011

06.22.11 Planning Commission Meeting Update

The Planning Commission met on 6.22.11 to discuss the following topics:

- Design Review Board procedures
- Open space requirements
- Sidewalk installation requirements
- Rear setback amendment for garages

We will continue to refine these code amendments and present them to the Town Council at an upcoming work session.

251 Main Street

The property owner has commenced demolition of the mobile home in advance of the construction of the approved single family residence. The building official and I recently met with the owner and we anticipate that the construction plans will be submitted soon. After a review of the plans by the building official, a building permit will be issued. We will notify the Council and neighbors once the building permit has been issued.

Downtown Colorado Inc.

Downtown Colorado Inc. (DCI) is hosting a two-day meeting for the Colorado Main Street managers in Minturn on July 14-15. DCI is offering the Town 10 free meeting invites to be used by Town staff, elected officials and business owners. Please let me know if you are interested.

Hotel Minturn

The Hotel Minturn project is nearing completion and the building owner anticipates opening in early July. A sidewalk was recently installed along Williams Street and the portion of the roadway that was disturbed by the construction activity has been repaved. Additionally, the owner received a sign permit the neon sign on the building. Per the sign guidelines, the sign must be turned-off no later than 11:00 pm each night.

Jim White
Town Manager
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Minturn, CO 81645
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Email: manager@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilmember – Shelley Bellm
Councilmember – Earle Bidez
Councilmember – Jerry Bumgarner
Councilmember – Aggie Martinez
Councilmember – John Rosenfeld

To: Mayor Flaherty and Minturn Town Council
From: Jim White, Town Manager
Date: June 30, 2011
Re: **Manager’s Report for the July 6, 2011 Town Council Meeting**

XCEL Natural Gas Pipeline Project Continues!

The XCEL Pipeline Project from Edwards to Minturn has moved out of Dowd Junction on the Minturn side. XCEL is replacing 6” and 12” existing lines with a new 16” line. Project completion is set for September 15, 2011. With any questions, please call XCEL at 1-877-481-6380.

Battle Mountain Update

Most of the issues discussed currently involve pending lawsuits related to quiet title action and challenges to the annexation agreement. Dave Kleinkopf has requested that we restart our committee meetings. Councilmembers Earle Bidez, and Shelley Bellm would represent Town Council. The Town Manager, Town Attorney, and Water Attorney would also be invited to participate.

Signage

Plans for signage at the south end of Minturn are in progress. In addition, we are looking at signage for the entrance to Little Beach Park. We will be working on access agreements or easements needed for both signs.

Maloit Park Water Tank

Inspection of the Maloit Park water tank finds the need to make repairs. Public Works is securing bids for the job. The plan would be to complete restoration of both the inside and outside of the tank. One bid is in thus far.

“The Show”

A county-wide baseball tournament will be held later this summer at fields throughout Eagle County. Dubbed “The Show” by its sponsors, it plans to bring players from 8 years to 18 years old to compete. More details will be presented as they become available.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. Due to scheduling issues, the work session to review the agreement will take place on July 6, 2011 followed by 1st and 2nd reading of the ordinance currently planned on July 20th and August 3, 2011.

6/30/2011

Park Update

Little Beach Park has had repairs made to the fence at the park's upper entrance. Dead shrubs have been removed and new mulch placed around the base of the entry sign. All defunct electrical light have been removed and plans are in place to install solar lights along walking paths in the park. The latrine has been scrubbed several times and the walls and floor will be repainted; lime has been used to mitigate odors in the bowl. An additional porta-potty has been brought to the park.

Bone Yard Parcel

We have secured both the agreement for the appraisal and the cooperation of the Forest Service to resume negotiations on this property. The new appraisal is in. On Tuesday last week, I toured the Bone Yard parcel with Toby Sprunk, new director for Eagle County's Open Lands Program. Chris Cerimele, Town Planner and I are working on an application to be presented at the July 11, 2011 Open Space Advisory Committee (OSAC) meeting in Eagle, CO.

CDOT I-70 Record of Decision Signed

On June 16, 2011 the Federal Highway Administration signed the Record of Decision approving the Preferred Alternative for the I-70 Mountain Corridor Programmatic Environmental Impact Statement (PEIS). This approval marks the end of nearly twenty years of study and discussions about improvements to the I-70 corridor.

Minturn Community Garden

I will be meeting with representatives of the Minturn Community Fund to discuss possible locations and plans to begin a Minturn Community Garden. Though the growing season is relatively short here in the mountains, we will consider what types of plants to begin this endeavor. A location has not yet been selected.

Colorado Municipal League Annual Conference

The CML Annual Conference was held this year in Vail, CO. The conference was June 22-June 24, 2011. I completed my year as Executive Board President on Thursday afternoon. I received an Honorary Lifetime Membership plaque for my year of service as president..

Kayak Course

We walked the stretch of the river to consider the prospect of installing a kayak course along the Eagle River. Installation options were presented.

Movies in the Park

The 2nd Annual Movies in the Park started on Saturday, June 25, 2011 at Little Beach Park. The Town of Minturn sponsored the first feature movie in the park in 2011..."Back to the Future." The next movie will be July 9th... "School of Rock." Primary sponsorship was provided by Mobloggy, Kirby Cosmos, and by Earle and Patty Bidez of xxxxxx. Special thanks to Jodi Born; and to Lisa and Tim Osborne.

6/30/2011

Concert Series at Little Beach Park

The 2nd Annual Concert Series at Little Beach Park begins tomorrow night, July 7, 2011 at Little Beach Park from 6pm-8pm. Billy Franklin's NOLA Live will be the featured band. Many thanks to all the volunteers who have collaborated to raise funds, secure quality music, and cover all the planning and logistics required for such events to be successful. Special thanks are extended to Terry and Jeff Armistead, Chris Alexander, Chris Cerimele, Michelle Metteer, Lisa Osborne, Chief Martinez, and to several others.

Respectfully submitted,

Jim White
Town Manager

I-70 Mountain Corridor Record of Decision Signed

On June 16, 2011, the Federal Highway Administration (FHWA) signed the Record of Decision approving the Preferred Alternative for the I-70 Mountain Corridor Programmatic Environmental Impact Statement (PEIS). The FHWA approval marks the end of nearly 20 years of study and discussions about improvements for the I-70 Mountain Corridor. Both FHWA and the Colorado Department of Transportation (CDOT) (the lead agencies) are indebted to thousands of individuals and organizations that helped us craft a Preferred Alternative that best meets transportation needs while balancing impacts to Corridor communities and natural resources. "Together the agencies and stakeholders have come a long way from where we started," said Clear Creek County Commissioners. "[We] look forward to... moving forward on projects as a cooperative partner."

The recent decision approves a broad (Tier 1) program of transit, highway, safety, and other improvements on the 144-mile route between Glenwood Springs and the western edge of the Denver metropolitan area. Implementing the approved improvements will increase capacity, improve accessibility and mobility, and decrease congestion along the Corridor. The decision provides a framework for implementation of specific projects in the Corridor as funding allows.



CDOT and Stakeholders celebrated the I-70 Corridor decision

“ [T]he true test of this document will be how successfully it stands the test of time in guiding projects that are yet to be developed or even conceived. We believe that the PEIS’s visionary nature will help to make this possible and again congratulate CDOT on its new approach to planning for major highway projects in our state. ”

NATIONAL TRUST FOR HISTORIC PRESERVATION

What Happens Next?

The signing of the Tier 1 decision means that CDOT can move into Tier 2 processes and begin to implement specific projects in the Corridor. Tier 2 processes implement portions of the PEIS Preferred Alternative and reflect the PEIS decision regarding mode, general location, and capacity. They will be required for all projects in the Corridor and may be preceded by feasibility or technical studies when potential solutions or funding scenarios are complex.

The Colorado Department of Transportation will use 4P (Project Priority Programming Process) to program specific Tier 2 processes into the Statewide Transportation Improvement Program (STIP). Stakeholders have a role in the process by providing input on project priorities. For the I-70 Mountain Corridor, CDOT has committed to specifically include the Collaborative Effort stakeholder members in discussions of project priorities. As projects are implemented, CDOT has committed to follow the I-70 Mountain Corridor Context Sensitive Solutions process to make Tier 2 decisions in a collaborative manner with stakeholders. The agencies have signed and will follow conditions of other formal agreements developed during the PEIS to protect streams, wildlife, and historic properties in implementing Tier 2 processes.

What comments were received on the Final PEIS, and how were they addressed?

Only a handful of comments were received on the Final PEIS. The Final PEIS included detailed responses to more than 1,100 comments received on the Revised Draft PEIS, which was released in September 2010. Several individuals and organizations that provided comments on the Revised Draft PEIS provided follow-up comments on the Final PEIS, mostly indicating agreement with the way that their comments were addressed. Other comments were similar to comments received on the Revised Draft PEIS and centered on suggestions to develop alternate routes to the I-70 highway, air quality and noise impacts of highway improvements, and impacts to natural, historic, community, and recreation resources. The Record of Decision provides an accounting of all comments received and the agencies’ responses to those comments.

Where can I get more information about the project and the decision?

The project website www.i70mtncorridor.com includes the Record of Decision and other related documents from the PEIS. These documents provide a detailed description of the Preferred Alternative, its benefits and impacts, mitigation strategies, and how future for Tier 2 processes and decisions will occur.

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AGENDA ITEM COVER SHEET

AGENDA TITLE: RESOLUTION NO. 4 – SERIES 2011. A RESOLUTION APPROVING A SUBDIVISION EXEMPTION PLAT FOR THE MALOIT PARK AREA
MEETING DATE: July 6, 2011
PRESENTER: Chris Cerimele
BACKGROUND: see attached report
CORE ISSUES: none
BUDGET/FINANCE IMPLICATIONS: none
RECOMMENDED MOTION: I move to approve Resolution 4 – 2011.

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Fax: 970-827-7420



Town Council
Mayor – Gordon “Hawkeye” Flaherty
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Councilwoman – Shelley Bellm
Councilman – Jerry Bumgarner
Councilman – Aggie Martinez
Councilman – Earle Bidez
Councilman – John Rosenfeld

To: Minturn Town Council
Cc: Jim White, Town Manager
From: Chris Cerimele, Town Planner
Re: Resolution 4 - 2011
Date: July 6, 2011

Background

This item is a request for a subdivision exemption to create the 18.156 acre parcel that contains the Town’s water treatment and distribution facilities. Per section 4.2 of the approved annexation agreement with the Eagle County School District, the Town of Minturn shall approve a subdivision exemption to create the 18 acre parcel. Once this Resolution is passed, the School District will convey the parcel to the Town via a general warranty deed. A general warranty deed is a type of deed where the seller guarantees that they hold clear title to the land and has the right to sell it to the buyer.

The subdivision exemption process is outlined in Section 17-3-30 of the Minturn Municipal Code. It is a tool that is available to the Town to simplify the subdivision process. Section 17-3-30 states:

The Town Council may, pursuant to a resolution duly adopted at a public meeting, exempt from the provisions of this Chapter any division of land if the Town determines that such division is not within the purposes of this Chapter and, in addition, the method of disposition adopted is not for the purpose of evading the provisions of this Chapter.

Staff has determined that the Maloit Park property is eligible for a subdivision exemption. Any future division of the land will be required to adhere to the regular subdivisions procedures that are outlined in Chapter 17 – Subdivisions - of the Minturn Municipal Code. This will allow the Town to have review authority over the development of the land and to ensure that adequate utilities and access are provided.

Recommendation

Staff recommends approval of Resolution 4- 2011

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 4 – SERIES 2011**

**A RESOLUTION APPROVING A SUBDIVISION EXEMPTION PLAT FOR THE
MALOIT PARK AREA**

WHEREAS, the Town of Minturn, Colorado is a Home Rule Municipality under the Colorado Constitution; and

WHEREAS, section 17-3-30 of the Minturn Municipal Code grants the Town Council the power to exempt from the provisions of the subdivision regulations any division of land if the Town determines that such division is not within the purposes of the subdivision regulations and, in addition, the method of disposition adopted is not for the purposes of evading the provisions of the subdivision regulations; and

WHEREAS, the Minturn Town Council passed Ordinance No. 1 and 2 Series 2011 on May 18, 2011 that annexed into the Town a 104.5 acre parcel of land commonly referred to as Maloit Park; and

WHEREAS, in accordance with the Maloit Park Annexation, the Town of Minturn and the Eagle County School District RE 50J entered into an Annexation Agreement that stipulates that the Eagle County School District RE 50J will convey an 18.156 acre parcel of land to the Town of Minturn by general warranty deed, title to the parcel upon which the Town currently has located and operates its municipal potable water treatment plant and related facilities; and

WHEREAS, the exemption plat creates the 18.156 acre parcel of land that the Eagle County School District RE 50J will convey to the Town of Minturn pursuant to section 4.5 of the Annexation Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO THAT:

The Town Council hereby approves the Maloit Park Exemption Plat.

INTRODUCED, READ, APPROVED AND ADOPTED AND RESOLVED this 6th day of July, 2011.

TOWN OF MINTURN

By: _____
Hawkeye Flaherty - Mayor

ATTEST:

Jay Brunvand - Town Clerk



TOWN OF MINTURN
P.O. Box 309 (302 Pine Street)
Minturn, Colorado 81645-0309
970-827-5645 Fax: 970-827-5545
treasurer@minturn.org

**FROM THE DESK OF
JAY BRUNVAND, TREASURER/FINANCE**

MEMORANDUM

TO: Minturn Town Council
FROM: Jay Brunvand, Treasurer/Clerk
CC:
DATE: Friday, July 01, 2011
RE: Executive Session

At tonight's meeting the Council will need to convene in Executive Session with the Town Attorney to discuss the Summer Market contract and the USFS Boneyard. The following motion is recommended:

"Recommended motion: "I move to convene in Executive Session pursuant to CRS 24-6-402(4)(e) for the purpose of discussing and updating the Council on the status of the Summer Market contract and pursuant to CRS 24-6-402(4)(a) for the purpose of discussing the possible purchase from the USFS Land the property commonly known as the Boneyard."

The Mayor will announce for the record if any decision is to be made as a result of the Executive Session once the Regular Session meeting reconvenes.

Please contact me in the event you have any questions.

Thank You, Jay