



OFFICIAL MINUTES

REGULAR MEETING OF THE • MINTURN TOWN COUNCIL
Wednesday, July 7, 2004

REGULAR MEETING, Council Chambers – 7:00PM

Minturn Town Center
302 Pine Street • Minturn, CO 81645 • (970) 827-5645

MAYOR - Gordon “Hawkeye” Flaherty, **TOWN MANAGER** - Ann K. Capela
MAYOR PRO TEM - Darell Wegert **TOWN CLERK/TREAS** - Jay Brunvand

COUNCIL MEMBERS:

George Brodin
Jerry Bumgarner
Bill Burnett
Fred Haslee
Tom Sullivan

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 5:00 p.m., Monday through Friday, excluding holidays.

WORK SESSION

- None scheduled

REGULAR MEETING

1. Call to Order
 - a. Roll Call

Mayor Flaherty called the meeting to order at 7:17 p.m. Present were Mayor Hawkeye Flaherty, Tom Sullivan, Jerry Bumgarner, George Brodin. Fred Haslee and Darell Wegert. Bill Burnett was absent with excused absence.

Staff present were Ann Capela, Town Manger; Nicole Magistro, Administrative Assistant; Jay Brunvand, Town Treasurer/Clerk; Allen Christensen, Town Attorney; Wiley Smith, Town Planner; and Lorenzo Martinez, Chief of Police.

- b. Pledge of Allegiance
2. Discussion of the Agenda

- a. Items to be pulled from Action Calenda

Item #13 should be moved to the end of the action calendar.

- b. Items to be pulled from the Discussion Calendar.
- c. Items to be pulled from the Consent Calendar.
- d. Emergency Items to be added.
- e. Order of the Agenda Items.
- f. Approval of the agenda.

Motion by George B., second by Darell W., to approve the agenda as amended; all voted in favor. *Note: Bill B. was absent.*

3. Approval of the Consent Calendar

There were no items on the consent calendar.

4. Approval of the Minutes

- June 16, 2004

Motion by Fred H., second by Jerry B., to approve the minutes of June 16, 2004; all voted in favor. *Note: Bill B. was absent.*

5. Council Member Reports/Announcements.

George B. reported that a Minturn bus schedule has been provided to all council and staff as requested.

Hawkeye F. thanked all the citizens and staff that participated in the Independence Day Celebration on July 2, 2004.

Hawkeye F. also announced that the Red Cliff Bridge is now open both ways to traffic.

6. Special Presentations/Citizen Recognition:

- ◆ Special recognition is being prepared for Mr. Chuck Wiester, Member of P & Z. Mr. Wiester was unable to attend Council meeting this week. However, Council will present him with special recognition at a later date.

Nicole M. thanked all volunteers and community organizations who participated in the Independence Day Celebration with with Certificates of Appreciation.

7. Public comments on items, which are **NOT** on the agenda.

Jim McNeil of Alpine Engineering announced the town has received a bid for the Minturn Fire House Retaining Wall. He has issued more than a dozen sets of plans for the project and has received only one bid to date. He hopes more will come in soon.

Tom Banner, a representative of Minturn Realty, addressed the council concerning the sale of Zero Taylor Avenue and payment for this property. He presented a check for \$375,000.00 for the sale of the property. Hawkeye F. thanked Mr. Banner.

9. Discussion/action of items pulled from Consent Calendar for discussion.

10. Discussion/Action Sibley Plumbing - A payment request by Sibley Plumbing:
Minturn Public Works Building by Town Manager

Christine Wyatt, who lives at 1038 Main Street and is the operating manager of Sibley Plumbing, stated that Sibley Plumbing did work at the Town's Maintenance Center under a contract, as well as some additional work that exceeded the contract amount. When White River Development Company went bankrupt, the company reported to the bond company for the contract amount, but not for the additional work at the suggestion of the previous town manager. The previous town manager thought the extra work could be paid out of the 10 percent retainer fund. This suggestion was not in writing and it was not a written agreement.

Jerry Sibley, owner of the company, suggested that the town get lien releases for the subcontractors on future projects; doing so would help the the town to avoid the problem of subcontractors not getting paid from the general contractor.

Allen C. stated that the town cannot disperse any of the 10 percent that was held by state law. The bond company will have the first claim on that money. Approximately \$53,000 is in the retainer account for two White River contracts.

Jerry Sibley stated that these jobs were change orders. Ann C. stated that these change orders were signed by White River Development. She also stated that after discussing the issue with the previous town manager, she suggested that the company come to the council for a decision.

After some clarification between the council members and town manager; Ann C. noted that she does not have a paper trail for these particular change orders but that she can verify that the work was done. Only the council has the authority to allocate these funds.

Hawkeye F. suggested that the council review the matter in executive session tonight and that action will be taken by July 21, 2004.

11. Discussion/Action of Minturn Town Homes PUD Preliminary Plan Approval by
Town Planner

Wiley S. summarized the application to change the zoning map and approve the preliminary plan for a planned unit development of lots 1-10 of Block A of the Taylor Addition. Twenty-seven units are planned, ranging from 2-5 attached units per building. The use is consistent with the community plan. Staff recommends that the council should approve both requests with the conditions outlined in the staff report.

Steve Isom from Isom and Associates was present and was joined by realtor Tom Banner, owners Craig Denton, Roy Bufman, and Jim Commerford, Construction Manager Mike Fueslberg, and Jim McNeil of Alpine Engineering.

Mr. Isom addressed the concerns of the planning and zoning commission that were outlined during conceptual plan approval. The changes included:

- Adjustment of easement for the real location of the existing gas lines
- Adjustment of length and location of Lion's Lane
- Adjustment of location of the buildings
- Perspective drawing of the project
- Re-evaluating the grade of the road to less than 10%
- Discussion with Vail Resorts about access to their property
- Variety of garage door styles to avoid row-house effect
- Adjustment of foundations to accommodate steepness of the hillside

The project has been carefully approved by engineer Jim McNeil, who is available for questions, according to Mr. Isom.

Mr. Isom discussed the concerns of the planning and zoning commission at the preliminary plan approval meeting on June 23, including:

- Perceived height and massing of Building D, which will be re-evaluated and re-submitted to the planning commission
- Palette of Colors for siding, windows, trim and roofing

Mr. Isom also addressed a letter that was written to the Town Council by architect and critic of the project, Karl Krueger. Mr. Isom gave each councilman a copy of his team's rebuttal to Mr. Krueger's letter.

The company's legal representative, George Gregor, stated that the team has been doing work in many states throughout the country. He addressed a letter that was written to the town council by Karl Krueger. He stated that Mr. Krueger was retained by Marka Brenner to do work on the project initially. When CMB took over the project, Mr. Krueger stated to Mr. Commerford that he wanted to be involved in the development, and that if he was not, he would vigorously oppose the project. He then stated that he feels this project is a good one, and that Mr. Krueger's points are his opinion. He also stated that if this project does not get underway this summer, it will delay construction for one year. That type of delay will make an impact on the town's economic health as well as the reservations that already have been made for the project.

Hawkeye F. stated that he believes that the PUD is not ready to come to council, due to incomplete buildings and plans, access for fire and other concerns. He believes it is too serious to address "on the run" without being complete.

The public hearing was opened at 8:07 p.m. The mayor stated the rules of the public hearing.

Mr. Isom stated that the plan has been discussed with the Eagle River Fire Protection District Fire Chief, Carol Mulson, as well as with the Town of Minturn Public Works director Floyd Duran. Both approved the access for emergency vehicles on Lion's Lane that is currently proposed for the PUD. Fire trucks will not be able to make the hairpin turn up Lion's Lane and will have to access the property through 4th Street and Taylor

Aveune. The fire truck will then back out from the site, according to Mr. Isom. He then noted that Ms. Mulson is undergoing elective surgery and so had not submitted approval in writing at this time.

Mr. Isom stated that Taylor Avenue was vacated when the property was sold by the town to Minturn Realty in order to accommodate the fire and water access plans. He believes that the developers have answered all concerns that have been brought up through the P&Z, as well as the staff.

Jim McNeil concurred that discussions with Carol Mulson have occurred and that she approved of the current plan. He stated that she is comfortable having a fire truck back down the hill instead of turning around on site.

Joyce McSpadden, 531 N. Taylor Avenue, stated that she has lived in the neighborhood for 20 years. She believes the project will be a great addition to the Taylor neighborhood. She believes that this area has been manipulated by the railroad for commercial uses and that the clean up of this area needs to happen. She added that she is willing to have a hiking trail access blocked in order to clean up the neighborhood.

Alan Holub, of 650 Main Street and a member of the Planning and Zoning Commission, stated that he may not represent the other members of the commission. His concerns are not with the project per se. His concern is that the process does not help projects see their full potential. However, he does not want that fact to penalize the developers of this project. He stated that he is neither for nor against the project, but wanted to express his ignorance of the details, excitement for a new project and reluctance to penalize the group.

Ty Gillespie, 801 Main Street, apologized to the council and stated that he believes that the commission made a mistake in approving the project. He believes that this project is Eagle-Vail architecture, and does not belong in Minturn. He is very concerned that this project's approval happened too fast, and that he would not have approved it if given another chance. Mr. Gillespie proposed a new plan that requires a \$500 fee be assessed under Section 16.15.6 to hire two independent consultants, one architect and one engineer, for all PUD projects. He expressed his ignorance on engineering and architectural details that will help the project do a better job with design and details.

Karl Krueger, architect and property owner on Taylor Avenue, asked for a few more than 2 minutes. The mayor granted five minutes.

Mr. Krueger stated that he hand-delivered a letter to council members and attempted to deliver it also to Marka Brenner yesterday concerning this project. He does not doubt the developer's ability to do a profitable project that will contribute to the Town of Minturn. He noted that significant change in council members, staff and even investors require a bit of catch-up regarding this project. He feels that it is his responsibility to look out for the effectiveness and impact of such a large development. He objected to the way that several conditions set forth by the P&Z have been met by the developer, including those stated in a council document and meeting minutes, which include:

- Complexes are reconfigured to avoid row-house effect

- Height of buildings from existing grade not to exceed 35 feet
- Mix of housing style and or architectural features
- Scaled perspective drawing

Ann C. noted that five minutes have been spent. Hawkeye F. granted two more minutes of time.

Mr. Krueger continued that this project does not sufficiently address:

- Access to Vail Resorts land
- Retaining walls due to steepness of the site
- Turning radius on Lion's Lane

He concluded that the town should think ahead to its future and be open to the development and building technology that might be available, which could make neighboring property easier to develop.

Mr. Isom restated that the site this is a very difficult site to build on. However, the PUD provides services that the town would otherwise have to provide if this was an individual development project. He then explained how Taylor Avenue was deeded over to the PUD when the developer and the town both realized the problems with access to and from the street as it exists. With development on the railroad, the current Taylor Avenue would become obsolete, according to Mr. Isom.

Mr. Isom then addressed Mr. Gillespie's concerns with design and architecture on the project. He noted that the design and elevations were modified several times from conceptual to preliminary plans. These modifications were approved by the planning and zoning commission.

Mr. Isom stated that height requirements were agreed on from *finished* grade due to the steepness of the site.

Finally, he addressed options for altering Building D, which the planning commission requested. He noted that buildings A, B, and C would start construction while building D was being finalized through the P&Z.

Fred H. asked whether Taylor Avenue would be relocated to railroad property. Mr. Isom stated no. Fred H. then stated that the current plans available to the council show Taylor Avenue on railroad property. Mr. Isom explained that the plans have been changed since that set of drawings were approved. **Fred H. asked for an absolutely current set of plans.**

Fred H. asked whether re-grading the road would effect Taylor Avenue. Mr. Isom stated that yes, the road would be re-graded within the existing right of way. The width of the road is currently set at 20 feet, with the total right of way at 40 feet.

Finally, Fred H. clarified Mr. Isom's earlier statement that the town would have the responsibility to put in roads or utilities to a smaller development. This is absolutely not

true, that the responsibility would fall on the shoulders of the developer, according to Fred H.

Tom S. asked for letters of approval from the Fire District, Vail Associates, and Excel Energy for confirmation on the issues of fire protection, gas and property access before the council can move forward. Jim McNeil noted that those agreements are underway but not completed.

Tom S. also stated the council needed clarification on whether the project is from existing grade versus finished grade. This needs to be sorted out, as it is a huge issue that the town has contended with in other PUD projects. Darell W. responded that because of the Enclave, the town does not go with finished grade. Existing grade is required.

Tom S. also asked for all elevation drawings from all directions; this is normal in the approval process. He asked for all buildings in Phase I from all sides.

Tom S. asked the town attorney what happened to the 40 foot right of way that existed before Taylor Ave. was deeded over. A 20-foot right of way is now proposed. Mr. Isom stated that there is a 40-foot right of way within the plans. **Tom S. asked to see the right of way for the road on the plans.**

Tom S. asked about set backs, particularly about the 10-foot setbacks where clear vision can be impaired for drivers. He would like to see at least 18 feet.

Finally, Tom S. asked who owns Lion's Lane and responsibility of services.

Mr. Isom stated that Lion's Lane is owned by the Home Owner's Association and that is responsibility for snow removal, trash, etc. He stated that the easement for Lion's Lane is still 40-feet wide and is shown in the engineering drawings.

Tom S. stated that incomplete plans are not sufficient for approval at this time.

Mr. Isom stated that the 10-foot setback was especially important during the conceptual plan approval. Fred H. concurred that the discussion about setbacks happened at the council level and it was approved. Fred H. stated that in the conceptual plan approval, the council discussed the 10-foot setbacks and allowed for them given the steepness of the site.

Darell W. stated that the road was deeded over for the sale and development of the property with the agreement that eventually Taylor Avenue and Lion's Lane would be rededicated to the town.

Darell W. stated that parking is broken down in the preliminary plan. He found it helpful. However, he felt that the car count was low, and that each unit should be granted three units instead of two. Mr. Isom stated that the road was widened to accommodate parking. Darell W. feels that garages cannot be counted for accurate parking.

Darell W. also asked that the radius be lengthened due to the reality of truck turnaround. Mr. Isom stated that the road cannot be widened due to neighboring property owners.

Darell W. stated that 4th Street is not owned by the town and that this problem cannot be solved with access to 4th Street because someday it might not be there. **The town attorney stated that he would look into ownership and access of 4th Street.**

Darell W. asked for a realistic landscaping plan, suggesting more vegetation to break up the plan. Mr. Isom stated that the numbers are a minimum and that they will probably be upgraded.

Jerry B. stated that the plan cannot be related to past projects in town. He feels that the plan provides sufficient parking. He stated that access to the current hiking trail will continue. Access to Vail Resorts property will also be sufficient. He addressed design requirements, and he believes they have been met. However, he feels that the height requirements on Building D still need to be addressed. He thanked the developers for the information, and Mr. Krueger for the rebuttals. He looks forward to the project once the details are worked out.

George B. asked whether a 20-foot road is wide enough for future development. Mr. Isom does not see a problem widening this roadway, as there is a 40-foot easement. However, Highway 24 is only 22 feet wide at this time.

George B. asked whether the water and sewer is adequate for future development. Mr. Isom stated that 8-inch pipes are more than sufficient.

George B. asked whether the road width is adequate enough for plows to run and traffic to flow. Mr. Isom said that the plowing will be privately maintained and will be sufficient.

George B. also asked whether soils reports have been done for all foundations. Mr. Isom stated yes.

A correct set of plans showing the roads with a 40-foot easement is required.

Hawkeye F. stated that PUD proposals do not have to meet existing code requirements. He asked Planning and Zoning Chairman Rob Davis whether documentation has taken place regarding all details of this plan.

Ann C. asked that the council stay on the topic of conferring with the applicant during the public hearing.

Hawkeye F. asked about approval of height and setback requirements. Nicole M. stated that minutes from the P&Z and Council meetings state that existing grade is where height is measured from, not finished. This needs to be clarified, according to Hawkeye F.

Hawkeye F. asked about catch basins and water quality vaults that will be draining into the river. Jim McNeil stated that silt will be collected in such a vault. These will require maintenance in the future.

Karl Krueger again addressed the council. He stated that 62 parking spaces are available, but that many are not long enough to be considered parking spaces. He also wanted the council to clarify ownership of Taylor Avenue.

Jim Commerford, 1310 Deer Creek Blvd in Edwards and manager partner of CMB Development, addressed the council. He noted that many homes in Eagle Vail, Cordillera, Arrowhead and Bachelor Gulch have been developed by his company. He approaches the project with a great team of professionals with the intent of doing a good project in Minturn. Thousands of dollars have been spent on engineering and architectural legwork. Above all, he wants to do this project with due diligence and care. He appreciates the council's comments and concerns. He asked that, due to concerns with rising interest rates and weather, the council help to expedite this approval process. Mr. Commerford also highlighted team members that will make the project successful, including landscape architects, structural engineers, and more. He asked the council to consider expediting the process for the developer while they work on concerns along the way. He has no problem putting up a compliance deposit in order to assure that this project is done well.

The public hearing was closed at 8:35 p.m.

Tom S. stated that he is uncomfortable with the project moving forward without going back to Planning and Zoning for review.

George B. asked whether approval is allowed to be granted with conditions.

Tom S. stated that there are too many conditions to approve. The town will give vested rights to the developer if it is approved now.

Hawkeye F. stated that so far, the following conditions have been required:

- **Easement for gas line**
- **Letter from fire department – including radius and backing**
- **Letter from ambulance district**
- **Finished landscape plans**
- **Correct placement of Taylor Avenue, including 40-foot easement**
- **Setback details**

Motion by Tom S, second by Hawkeye F, to return the application for the Minturn Town Homes PUD Preliminary Plan to the Planning and Zoning Commission for additional study with specific direction; the following discussion ensued:

The council asked Mr. Gregory to review his list of issues that need to be addressed. **Mr. Gregory reported the following issues:**

- **Easement for gas line**

- **Easement for access to Vail Resorts – delineated on platte**
- **Overhead easement for electric**
- **Setbacks – 10 foot – to be revisited or not? Need to review minutes**
- **Additional landscaping**
- **Map to show 40 foot easement**
- **35 foot height on building D – to be addressed from existing grade**
- **Sewer line can be expanded if the town wants to pay to enlarge it – Fred H. stated that the town does not have a sewer system, just water – Mr. Gregory stated that whoever wants to upgrade can do so**
- **Soils reports and open pit tests for every foundation – adjustment accordingly**

Nicole M. read back the above lists and noted that any additional comments or requirements in the minutes will also be included in the direction for the planning and zoning commission.

Ann C. stated that rules for referring this back to P&Z; all interested parties will be involved in the process.

Darell W. restated that the radius for emergency vehicles in not enough and that needs to be redesigned.

Tom S. restated that accurate elevation drawings from all sides should also be addressed.

Tom S. asked that Sheet one of two Alpine Engineer on vacation – need buildings on the drawing.

Mr. Isom stated that the turning radius cannot be lengthened.

The town attorney stated that he would look into access and ownership on 4th Street.

Wiley S. asked that the commission to schedule the meeting. Mr. Isom stated that he would meet all requirements to make the meeting for July 14, 2004. Ann C. asked that the developer assist in the office work to make that deadline a reality.

All voted in favor. *Note: Bill B. was absent.*

12. Discussion/action on Ordinance 4, Series 2004 An Ordinance to Renew the Electric and Gaseous Fuel Franchise Granted By the Town of Minturn , Colorado to Xcel Energy of Colorado, its successors and assigns for a period of twenty years on (Second Reading). by Treasurer/Town Clerk

Hawkeye F. read the ordinance by title.

Jay B. summarized the concerns of the council through a staff memo. Wade Haerle of Xcel Energy summarized the franchise agreement. He also asked that the council and staff contact him to help with any service issues that need addressing. He also stated that he would ask about improvements to the high pressure gas house in town. Mr. Haerle explained that the load on the system has drastically increased and so improvements are constantly being made.

Motion by Fred H., second by Darell W., to approve Ordinance 4, Series 2004, An Ordinance to Renew the Electrical and Gaseous Fuel Franchise Granted By the Town of Minturn , Colorado to Xcel Energy of Colorado, its successors and assigns for a period of twenty years on second reading; all voted in favor. *Note: Tom S. and Bill B., was absent.*

13. Action Accepting the Resignation of Chuck Wiester from Town of Minturn P & Z by Town Planner

Motion by Fred H., second by Darell W., to accept the Resignation of Chuck Wiester from Town of Minturn P & Z; all voted in favor. *Note: Bill B. was absent.*

14. Directing Town Manager to place an advertisement to fill the vacant P & Z position for full-time and an alternate by Town Manager

The council recommended making an advertisement and appointed Tom S. to review the applicants with staff for the council approval.

15. Discussion/action on HR 4700: A Special Tax for White River National Forest Improvements by Town Manager

Motion by Darell W., second by Jerry B., to table this issue for the next council meeting on July 21, 2004; all voted in favor.

16. Discussion/action on SB 276: A Bill that increases fees for water service by Town Manager

Ann C. asked that a representative be appointed to attend the upcoming hearings.

Jay B. summarized the state's need to fund their water system and the implications for the town.

Council recommended appointed staff to attend the meeting on August 18, 2004 in Frisco.

17. Reading/action on Ordinance 6 – Series 2004 (First Reading): An Ordinance Amending Chapter 2 of the Minturn Municipal Code by the Creation of a New Section as it Pertains to Court Costs by Court Clerk

Nicole M. summarized the Ordinance, noting that the judge brought the issue to the clerk's attention.

Allen C. stated that this raise will pass on the costs that are rising within the court to those that are requiring those cost increases, including translators and witnesses.

Hawkeye F. stated his concerns for passing on the burden to all people who attend the court, whether they are guilty or not.

Motion by Fred H., second by Jerry B, to approve Ordinance 6 – Series 2004 (First Reading): An Ordinance Amending Chapter 2 of the Minturn Municipal Code by the Creation of a New Section as it Pertains to Court Costs; five voted in favor, Hawkeye F. nay. *Note: Bill B. was absent.*

DISCUSSION CALENDAR

18. There are no items on the discussion calendar at this time

OTHER ITEMS/STAFF REPORTS

19. Reports/Correspondence/Announcements of Staff

- a. Events/Admin.
- b. Public Works
- c. Police

Lorenzo thanked the citizens and residents for their patience this holiday weekend. He also announced that the police department will offer a position to a candidate for peace officer.

- d. Treasurer/Clerk

Jay B. stated that the money received today is already spent.

- e. Town Planner
- f. Town Attorney
- g. Town Manager

Ann C. announced that she has discussed the Old Town Hall with commissioner Gallagher and is planning to discuss the issue with county administrator, Jack Instad.

EXECUTIVE SESSION

20. Executive Session – Pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of discussion/consultation for possible and pending litigation issues with Council – Town Attorney & Town Manager.

Motion by Jerry B, second by Tom S., to convene in Executive Session pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of consulting with the Town's Attorney. Those to be included in the Executive Session are the Council present, Town Manager Ann Capela, and Town Attorney Allen Christensen.”

No action was taken.

21. Set next meeting date – July 21, 2004

22. Adjournment

As there was no further discussion, the meeting was adjourned.

Mayor, Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand