



OFFICIAL MINUTES

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 – 4:30pm, Monday through Friday, by contacting the Town Staff at 970/824-5645 302 Pine St. Minturn, CO 81645

REGULAR MEETING OF THE • MINTURN TOWN COUNCIL Wednesday, September 15, 2004

Regular Session: Council Chambers – 7:00 PM

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.

OPEN SESSION – 7:00 PM

1. Call to Order
 - a. Roll Call

Mayor Hawkeye Flaherty called the meeting to order at 7:00 p.m. Present were Hawkeye Flaherty, Darell Wegert, Tom Sullivan, Jerry Bumgarner, George Brodin, Bill Burnett and Fred Haslee.

Staff present were Nicole Magistro, Administrative Assistant; 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 Calendar
 - b. Items to be pulled from the Discussion Calendar.Add "New Business" item at the end of 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 Darell W., second by Tom S., to approve the agenda as amended; all voted in favor.

- 3. Approval of the Minutes
 - September 1, 2004

Motion by Bill B., second by Fred H., to approve the minutes of September 1, 2004 as presented; six voted in favor, Hawkeye F. abstained.

- 4. Council Member Reports/Announcements.
- 5. Special Presentations/Citizen Recognition

- a) Minturn Towne Homes Construction Activity Update- **Mike Wheelersburg**,
C & B Development Company, LLC

Mr. Wheelersburg, project manager for C&B Development, addressed the council on the progress of the Minturn Towne Homes. He stated that building permits for the first duplex have been secured. The first project was to unblock the storm sewer drain. He also stated that a license to encroach is being pursued with the Union Pacific Railroad. Work with Xcel Energy has begun to locate the lines. Dust control has been implemented today. The town will receive approximately 500 yards of topsoil from the project, which will be stored near the cemetery. The public works director has been in close contact with Mr. Wheelersburg on this project.

Tom S. asked when the council will see a final plat. Mr. Commerford stated that a final plat would be presented when the projects' foundations are laid. Mr. Sullivan expressed concern that building permits were issued before the final plats were presented.

Hawkeye F. stated he received complaints about dust control. He also stated that he is concerned about dirt and mud on Taylor Street. Mr. Wheelersburg stated that the excavator has been directed to clean the street each day. Hawkeye F. also stated that all subcontractors must have business licenses in the town of Minturn before their work begins. Mr. Wheelersburg agreed. He also stated that construction traffic has been directed not to use upper Taylor Avenue.

Mr. Sullivan asked what the time frame is for deeding back Taylor Avenue. Mr. Commerford stated that his attorney will be in touch with the town attorney to make that happen as soon as possible. Allen C. stated that there is not a huge rush, but the town

needs to be moving forward on this. Mr. Commerford stated that a final plat can not be done until the final survey is completed. Hawkeye F. directed staff to research this issue and report back to staff.

b) Recognitions of Volunteers for the Minturn Market and presentations of Certificates - **Nicole Magistro**

Nicole M. read the names of more than 30 businesses and individuals who have contributed to the Minturn Market this year.

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

Michael Boyd of 502.5 Eagle Street presented the council with a written complaint and request that a violation has occurred in regards to Article 4 “Code of Ethics” as stated in the town charter section 2-84 subsection C and asked that an investigation be done.

He outlined his concerns, and submitted a packet to the council, from which he read.

Hawkeye F. stated that the emails referred to address past mayor and town manager. He stated that because this is now a pending legal matter, it will be addressed by the town attorney. He stated that the town will get back to Mr. Boyd, but suggested that it will be addressed in 30 days.

Jerry B. read from the minutes from July 7 regarding the PUD process. He stated this was copied from Chapter 16.15.11

Ty Gillespie of 811 Main Street stated that he has been involved in keeping the Turntable Restaurant open. In dealing with the railroad lately, he believes that the town should put together a committee of two or three people to sit down with representatives of the railroad. This way the town can be proactive in creating a development that will eventually happen and be beneficial to the town. He stated that he thinks that the railroad will sell the property soon, given the fact that the operations department believes they no longer need a restaurant and motel. He stated that the railroad was very reasonable to deal with regarding the Turntable restaurant, but that it is still a month-to-month lease, per railroad policy. Given the timetables of selling and developing such a large piece of land, he believes that the town could have some time to make such a deal worthwhile.

Hawkeye F. asked for the formation of such a committee to be developed at the next council meeting.

Allen C. stated that if the railroad abandoned the line, he was unsure as to who the land would revert back to. He stated he would have to look into how the property was acquired. He did state that the Union Pacific is the largest land-owner in Eagle County. Some discussion ensued as to who might acquire some of the land and how it could be acquired.

Troup #234 stated they were present at the council meeting to fulfill their community service badge.

7. Discussion/action of Emergency Items, if necessary.

SCHEDULED HEARINGS AND ACTION ITEMS

8. Discussion/Action – Ordinance 8: Series 2004 (First Reading): An Ordinance to amend the Minturn Zoning Map at 77 Meek Avenue (Old Bakery Building)
by : **Town Planner**

Hawkeye F. read the ordinance.

Wiley S. summarized the historical problem with the current zoning map, which was accidentally zoned residential during the last major map changes. Therefore, this ordinance makes certain that the zoning map commits this lot to commercial use.

Darell W. asked whether any ordinance was passed to rezone this property. Wiley S. stated that it is not clear as to whether it was a clerical error or an oversight. Allen C. concurred. Darell W. summarized the historical context of the issue.

Hawkeye F. stated that he felt there was an ordinance that changed this property's zoning. Tom S. concurred. Hawkeye F. then stated that many properties in town were rezoned in a map by ordinance without noticing the owners and wondered whether this was invalid. Allen C. stated that the town did pass an ordinance passing the official zoning district map, and was looking at this issue in the context of one lot. He felt that this property was down zoned and use rights were expanded, while most other properties were up zoned and the rights were expanded. Allen C. stated that zoning changes did not require extensive noticing practices at the time the ordinance in question was passed. Since then, the noticing procedure has been improved.

Hawkeye F. felt that this use is not consistent with the current Zoning Code, which eliminates spot zoning. Fred H. stated that guaranteeing a down zone on the property now for a future time would discourage the current buyer. Allen C. stated that this is the only down zoning that occurred. Tom S. stated he thought that a parking lot on Main Street was also down zoned from commercial to mixed use.

Motion by Bill B., second by Jerry B., to approve Ordinance 8: Series 2004 on first reading: An Ordinance to amend the Minturn Zoning Map at 77 Meek Avenue (Old Bakery Building);

The following discussion ensued:

- Hawkeye F. stated that he feels the council is doing the right thing, even though it goes against the intent of Chapter 16.
- Darell W. stated that it is possible that the direction of the town could change with leadership
- Allen C. stated that the new owner has promised to operate a low impact business and cooperate with the neighbors

All voted in favor.

9. Conditional Use for commercial space larger than 2,500 square feet at 77 Meek Avenue (Old Bakery Building) *Note: a color copy of the relative maps has been included as a separate attachment.*
by: **Town Planner**

Wiley S. summarized the application, noting that the only condition that the conditional use could be revoked at the sale of the meeting.

Hawkeye F. opened the meeting to the public.

Charles Overy, owner of Laser Graphic Manufacturing and potential buyer of the property at 77 Meek Avenue. He summarized his business, stating that he is under contract to buy the property in question. He stated that he has done significant research on the old uses on the property and issues with the neighbors. He feels that what he is proposing a use that fits into the neighborhood and is a responsible use. He addressed how his business will improve the past complaints on noise, traffic, delivery, and character. Mr. Overy also outlined an extensive landscaping plan that tries to fit the property back into the neighborhood while improving grading and drainage issues. He stated that the nearby church would be able to use the parking provided on Sundays. He stated that he hopes to improve the exterior of the building should the conditional use be approved tonight.

Tom S. asked what use the conditional use would allow. Mr. Overy stated that he is applying for office, studio and the model building uses.

Father Hugh of St. Patrick's Catholic Church stated he supported the application, as does his deacon Michael Gallagher.

Wiley S. stated the P&Z Commission approved the conditional use with a condition that the use could be readdressed after the property was sold due to its current square footage. Mr. Overy felt the condition was appropriate.

Hawkeye F. stated he would be concerned if the lot was divided. There was some discussion that lot coverage and parking would limit this type of development.

The public hearing was closed.

The council concurred that the use is appropriate.

Motion by Tom S., second by Bill B., to approve the Conditional Use for commercial space larger than 2,500 square feet at 77 Meek Avenue and 500 Pine Street for studio/office space given that the condition is revocable upon sale of the property;

The following discussion ensued:

- Fred H. asked whether the business collects sales tax. Mr. Overy stated that after many discussions with the state, it has been determined that he provides a service,

not a product, and so collects minimal sales tax. However, he will pay property tax.

All voted in favor.

10. Discussion/Action – Ordinance 10: Series 2004 (First Reading): An Ordinance to regarding bear activity and trash service by: **Police Chief.**

Hawkeye F. read the ordinance.

Allen C. stated that after council direction, the staff looked at other local ordinances and recommends the following ordinance. He stated that the key lies in the definitions of the ordinance. He stated that the costs with the Waste Management are approximately \$10.00 for animal-resistant trash bins. Animal proof trash bins are approximately \$150.00. Vail Honeywagon cost will be approximately \$100.00. The town has arranged to swap out all residential trash bins in 1.5 months. The resident has the choice of which type of bin they would like to select.

Lorenzo M. stated that Waste Management plans to swap out all trash bins over the next year regardless, and that the costs could actually be none.

Lorenzo M. stated that approximately 12 residents in town haul their own trash.

The ordinance will be posted on the town's web site.

Fred H. stated that once the new trash cans are at their home, they may still be cited if a bear gets into the trash container. If they do not have the capability of putting the trash away in a container or garage, they will have to find a way to secure their garbage.

Motion by Tom S., second by Fred H., to approve Ordinance 10: Series 2004 on first reading: An Ordinance to regarding bear activity and trash service; all voted in favor.

11. Discussion/Action – Ordinance 11: Series 2004 (Second Reading): An Ordinance regarding compliance to state liquor law by: **Town Attorney.**

Hawkeye F. read the ordinance by title. Allen C. summarized the need for such an ordinance.

Motion by Fred H., second by Darell W., to approve Ordinance 11: Series 2004 on Second Reading: An Ordinance regarding compliance to state liquor law; all voted in favor.

12. Discussion/Action – Ordinance 12: Series 2004 (Second Reading): An Ordinance regarding the Minturn Fire Station Intergovernmental Lease Agreement by: **Fire District Chief Charles A. Moore.**

The ordinance was read by title.

Motion by Jerry B., second by George B., to approve Ordinance 12: Series 2004 on Second Reading: An Ordinance regarding the Minturn Fire Station Intergovernmental Lease Agreement;

The following discussion ensued:

- Hawkeye F. asked whether 100 years was appropriate. Allen C. stated that when the fire district unified, this time period was outlined and is required.
- Hawkeye F. asked whether insurance money should go to the fire district since the building was built by the town. Allen C. asked who was paying the insurance premiums.
- Hawkeye F. would like to see a clause that reverts the property back to the town should anything happen to the building
- Hawkeye F. asked whether improvements should be paid in part by the town. Fred H. stated that it was reasonable in a tenant landlord relationship.
- There was some discussion about payment for the services that the fire station receives and lack of payment for the lease.
- Darell W. stated that the existing government lease should not be compared to what lease rates could be gotten on a private lease.
- Allen C. stated that the improvements must serve the citizens of the town and should not be unreasonable.
- Hawkeye F. suggested that the town negotiate in good faith with the district on the issues mentioned above.

All voted in favor.

Bill B. asked if the fire department could report on their services on a regular basis. The mayor directed staff to ask for this.

13. Discussion/Action – Ordinance 13: Series 2004 (Second Reading) And Ordinance renewing a contract with Eagle County Animal Control by: **Police Chief**

The ordinance was read by title.

Allen C. summarized the need for renewing the ordinance, noting that the agency has started to submit reports again following a new reporting system installation.

Motion by Tom S., second by George B., to approve Ordinance 13: Series 2004 on Second Reading: An Ordinance renewing a contract with Eagle County Animal Control; all voted in favor.

14. Extension of Eagle River Park along the 100 block of Eagle Street on the Eagle River side by: **Councilman Sullivan**.

Tom S. stated that he brought this issue up to clarify property lines and limit parking along the river. He feels that increased vegetation along the river will be good for the town and for the river. He hopes that this will also prevent confrontation with property owners and future development.

Hawkeye F. stated he felt that this would effect where he lives. Fred H. asked him to recuse himself due to a conflict of interest. Hawkeye F. stated that he is not the property owner and will not benefit financially from an alteration to the property.

Tom S. stated that he feels that with upcoming development along the river, now is a time to address the issue of increasing green space along the river. He feels that the current parking along the river is not a good use for the property along the river.

Some discussion ensued as to the actual available parking in the area.

Fred H. agreed, but stated that he feels that the concept should be applied along the entire 100 block, not just in select areas.

Hawkeye F. stated he understood the argument, but feels that parking on Main Street cannot be relied upon.

Fred H. stated that when new property develops, they will be required to create on-property parking.

Fred H. reminded the mayor that he was opposed to developing parking along the river while it was proposed last year.

Tom S. outlined the parking currently available at each property along the 100 block. Hawkeye F. disagreed.

Some discussion ensued about Main Street parking. Lorenzo M. clarified that the town allows overnight parking in all blocks of Main Street.

Hawkeye F. insisted that having residents park on Main Street will take away parking from the businesses.

Tom S. reiterated that increased green space would improve the town and the residents' way of life for an affordable price.

Darell W. stated that special consideration should be given to the Sanders property, which does not have the ability for on-site parking.

Allen C. stated that the council members need to understand the conflict of interest clause before this topic is addressed at the next meeting.

Motion by ., second by ., to extend Eagle River Park along the 100 block of Eagle Street on the Eagle River side; all voted in favor.

DISCUSSION ITEMS

15. Water Dedication Policy/Ordinance for Minturn by: **Mayor Flaherty**

Hawkeye F. summarized the policy, which would require anyone who wants to use the town's water supply to annex into the town limits. Bill B. asked whether the current

Forest Service complex that is using the town water supply would need to annex into the town. Hawkeye F. stated that this only would apply to new development or redevelopment.

Hawkeye F. stated that the ordinance would also require that a change of use would mean additional water rights dedication fees as well as water tap fees for the town.

Discussion ensued as to whether the ordinance would require the town to service an annexation.

Tom S. stated that the town should develop a policy regarding the number of units and the fees that would be assessed.

The council directed the town attorney to begin drafting an ordinance. Allen C. added that the fees should be reviewed so that developments pay for themselves.

OTHER ITEMS/STAFF REPORTS

16. Reports/Correspondence/Announcements

a. Events/Admin.

Nicole M. summarized the Centennial events, web site and publicity efforts for the town.

b. Public Works

c. Police

d. Treasurer/Clerk

e. Town Planner

Wiley S. stated that he hopes to address Chapter 16 the established subcommittee in October. He asked the town council to narrow down certain aspects of the chapter that need the most urgent attention. Councilmen Haslee and Sullivan will serve on this committee.

Wiley S. stated that he and Darell W. will notify the other members of the selection committee of a date for interviewing P&Z candidates.

f. Town Attorney

Allen C. stated that he would like to see the council address rotating chairmanship and term limitations among issues that they might like to make to the Planning Commission ordinance.

Allen C. also announced that the EPA and Colorado Department of Health will host a tour of the Eagle Mine on Wednesday, September 29 from 3:00-5:00 p.m.

Bill B. asked the town attorney if he has gotten the deed for the school district property. Allen C. stated that the town manager has not given him the information needed to write the deed. Restrictions on the property will be numerous.

Tom S. stated that he is really concerned about getting Taylor Street deed back to the town soon and at the proper width. He stated that he is uncomfortable not seeing the final PUD plan yet because he wants to see Taylor Street at the proper width with a sidewalk and proper driveway length. He feels that the town needs to protect itself from being taken advantage of by the developer.

- g. Town Manager
- h. Town Council

EXECUTIVE SESSION

17. Executive Session – Conferring with legal counsel – Colorado Revised Statute 24-6-402(4) (b).

Motion by Tom S., second by George B., to convene in executive session for the purpose of consulting with the town attorney pursuant to the CRS 24-6-402(4)(b). Those to be present included the Town Council members present and Town Attorney; all voted in favor.

Set next meeting date – October 6, 2004.

18. Adjournment

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

Hawkeye Flaherty, Mayor

ATTEST:

Jay Brunvand, Town Clerk