



**OFFICIAL MINUTES  
OCTOBER 6, 2004**

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

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

**WORK SESSION - 6:00 PM**

1. HR 4700 Conference Call with Rep. McGinnis’ Office in Washington
2. Extension of Eagle River Park along the 100 block of Eagle Street

**OPEN SESSION – 7:00 PM**

1. Call to Order
  - a. Roll Call

Mayor Hawkeye Flaherty called the meeting to order at 7:08 p.m. Those present included Mayor Flaherty, George Brodin, Jerry Bumgarner, Tom Sullivan, Fred Haslee, Bill Burnett and Mayor Pro Tem Darell Wegert.

Staff present were Town Manager Ann Capela, Town Treasurer Jay Brunvand, Town Planner Wiley Smith, Admin. Asst. Nicole Magistro, Police Chief Lorenzo Martinez and Town Attorney Allen Christensen.

- 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.
  - 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 Tom S., second by Bill B., to approve the agenda as presented; all voted in favor.

### 3. Approval of the Minutes

- September 15, 2004

Motion by Darell W., second by George B., to approve the minutes as presented; all voted in favor.

### 4. Council Member Reports/Announcements.

- Tom S. stated that he had been interviewed by the RV Resort developers regarding their proposal. The sales tax dollars are up 20% to date, and he feels that the town is making extra money this year. Darell W. stated that the figures were misleading because while the cash balance is growing, it was due to the cash increase from the sale of the Railroad property. He pointed out that the growth happened in May, June and July and that was due to the Minturn Market collections. The report that sales tax dollars are increasing is true, but that it is not enough to bring the town out of darker times. The two councilmen continued to discuss the issue as it pertains to expenses and revenues. Hawkeye F. stated that the two could discuss the issue during the budget item.
- Hawkeye F. stated that the BMHS Huskies will play football in Steamboat this Friday.
- Fred H. stated that the volleyball and cross country teams will also be playing this week.
- Hawkeye F. stated that the council had a telephone conference with Congressman McGinnis tonight regarding the Forest Service property, which could be released for sale. He stated that the town council is taking an active approach in this issue.
- George B. stated that ECO Transit has increased bus pass from \$2 to \$3 for most one-way rides. The Leadville ride went from \$3 to \$5. Senior passes have remained the same. The new rates go into effect Nov. 1

### 5. Special Presentations/Citizen Recognition

- Troy Thompson of Ecological Resource Consultants discusses Eagle River setback survey proposal

Mr. Thompson presented a proposal for the high water mark survey that his company put together. He defined the High Water Mark, and he distinguished that from the 100-year flood mark. He explained how he would discover this high water mark. He felt that the technology of the day will help his crew define the marks for about  $\frac{1}{4}$  of the price of hiring a professional survey team. He stated that the whole length of the river is 17,000 feet (including both sides of the river from city limit to city limit), and that both sides could be done for \$12,000.

Bill B. thought the town should only do the west banks for the river. Tom S. concurred. Mr. Thompson indicated that the cost would be reduced by \$4,200 if the town only did one side.

Jerry B. asked how difficult it will be to establish the high water mark given the recent restoration. Mr. Thompson indicated it would be quite easy because there has only been one average runoff to mark against.

Jerry B. asked why the town should do this, but rather each property owner along the river should conduct the survey themselves. He indicated that the town could require a survey of residents wishing to do work along the river.

Fred H. suggested adopting a resolution that would adopt the criteria and then amend the land use ordinance, thereby putting the cost on the property owner for conducting a survey.

Ann C. stated that due to a recent discrepancy in surveys, the town should reserve the right to do a secondary survey to make sure the first was done correctly.

Tom S. stated that he thinks there will be a lot of re-development along the river; he feels this will be a growing issue and if we leave the issue up to the developers, the town will continue to have problems.

Bill B. felt that the town should develop an ordinance to the effect of requiring surveys at the property owner's expense.

Tom S. felt that in order to avoid conflict, the town should do a survey on its own.

Floyd D. suggested requiring the property owners to use a single contractor. Allen C. stated that the town cannot single out a single contractor, but can put a suggested list together to guide people. Allen C. suggested that the town conduct its own survey and live by it to avoid the conflict.

Mr. Thompson indicated that he would have maps drawn to overlay with the town's aerial map to clarify the line that the town could enforce.

The council discussed areas that could be included or not included in the survey to lessen the cost. Ann C. stated that the establishment of the high water mark from Bellm Bridge to the south end of town on the west side of the river. The council asked for the proposal to show that length; the council will then adopt the cost into the budget.

- River Restoration Update

Troy Thompson summarized that the town is working on the signs for the River Restoration. Some money remains for irrigation and maintenance which will be carried out next spring. Phase Two NRDS funding has been delayed until May or June, with applications due in late summer 2005 and funding to be issued in 2006. He also is working on water quantity stream flow reports for the town.

- George Gregory of C&B Development

Mr. Gregory stated that the development company has asked for building permits on the second building in the project, but that request has been denied by the Town Manager. He stated that the Preliminary Plan Approval required a sidewalk, maintenance of the

existing hiking trail, final encroachment agreements, posting of compliance bond, monthly meetings and other necessary improvements. All of these conditions he agreed to meet. He feels that the denial by the Town Manager is arbitrary and unilateral and will cost the developer about \$100,000.

Hawkeye F. read from the Zoning Code and stated that the town is concerned that the easements have not been granted. Mr. Gregory asked whether the mayor had been communicating with either the energy company or the railroad. Hawkeye F. stated that he was acting on hearsay, and so asked Mr. Gregory directly whether easements from the energy company or the railroad have been granted. Mr. Gregory stated that no, they haven't been granted. Mr. Gregory suggested that the building permits be issued for foundation work so that the company does not incur more winter weather construction costs; the company would hold up framing until the town could be ensured that the building would be out of the way of the easement. He stated that the developer would be responsible for tearing out the foundations if they do not match the easement requirements.

Steve Isom indicated that the easements have been agreed upon with the gas company and that the development is granting easements at no cost. He indicated that the energy companies can be difficult to deal with as they are large organizations with many legal issues.

Tom S. told the developer that they had promised these easements were coming, yet they still have not been produced. He explained that the town has reluctance because the developer has not followed through and therefore the town has little confidence in the developer's ability to actually get the easements the way they say they will.

Mr. Gregory insisted that there has been no interference in obtaining the easements and that their portrayal of confidence in obtaining easements is justified.

Ann C. stated she was in touch with Jim McNeil, the development's engineering consultant, and the Union Pacific. Union Pacific indicated that the agreement will be done by early next week. She stated that she feels she has made herself available to the developers and have in fact met with them on many occasions. The developer was to meet all of the concerns of the council and P&Z commission. She felt that the easements were a major concern. She indicated that Mr. McNeil stated that obtaining easements with Xcel could take 6 months to a year. She felt that she needed time to research what the town's custom and practice was for issuing building permits. She felt that these forthcoming easements have been forthcoming for months but that the town does not want to stand in the way of progress. She hopes to work with the developer to make this project progress while keeping the best interest of the town in mind.

Mr. Isom stated that one of the buildings along the easement has already been issued a building permit; the one that has been denied is not along the easement at all, and is the four-plex.

Fred H. stated that he finds it troublesome that the town of Minturn is holding the process up. He indicated that everything the developer is doing, they are assuming the financial responsibility for. He stated that the town will not be responsible.

Mr. Isom stated that the developer is in fact the one who is at risk, and the easements have been verbally agreed upon.

Hawkeye F. suggested that the council give the permit for the four-plex because it is outside of the 30-foot easement. This will give the developer three more weeks to establish the exact location of the third building, which is along the easement line.

Tom S. asked whether the council could prohibit the buildings along the easement until they have a signed easement agreement.

Allen C. stated that the council should come to an agreement with the developer and that the town is not responsible for any sort of encroachment with the energy company.

Ann C. suggested that the town and developer get a solid timeline from Xcel Energy. She stated that she wants to work with the developer to make this project work.

Fred H. stated that he does not have the opinion that the project should be held up for a final easement.

There was some discussion by the council and the developer as to whether or not the gas line is where the developer says it is.

Mr. Gregory suggested that the developer meet with Xcel Energy tomorrow to locate the line, and then have the engineer stake the building. The town could then send its building inspector to look at the stakes to make sure the building is 10 feet out of the easement. Mr. Gregory stated that he will compose and sign a letter verifying that the developer will assume the responsibility and costs associated with removing foundations and buildings if they end up in the easement.

Tom S. stated that he would like to see how far buildings would be away from each other, and what the width of Taylor Street would be. Mr. Isom stated that the road would be 34.7 feet to 35 feet wide when it is rededicated. Allen C. stated that Mr. Gregory is well aware of every issue that the council would like to see address. Mr. Sullivan asked why the street hasn't been deeded back. Mr. Isom stated that it was agreed upon by the council to deed back the road during the final plat stage, which will completed when the first unit is sold.

Mr. Gregory restated the developer's plan of action for tomorrow morning.

The council concurred to issue the building permit for Building C.

6. Public comments on items, which are **NOT** on the agenda.
7. Discussion/action of Emergency Items, if necessary.

## SCHEDULED HEARINGS AND ACTION ITEMS

8. Liquor License Renewal Application – Minturn Mile Liquor Store; 341 Main St., Retail Liquor Store License by: **Town Clerk**

Jay B. summarized the application. Lorenzo M. thanked the owner and staff for their cooperation this year. George Crowder was present for the meeting.

Motion by Bill B., second by Fred H., to approve the liquor license renewal application for Minturn Mile Liquor Store at 341 Main Street; all voted in favor.

9. Liquor License Renewal Application – Highway 24, Inc.; 996 Main St., Retail Liquor Store License by: **Town Clerk**

Jay B. summarized the application. Allen C. noted that the application needs two minor corrections that will not impede approval. Lorenzo M. thanked the owners for the ongoing cooperation. Loretta Lucero was present for the meeting.

Motion by Fred H., second by Darell W., to approve the liquor license renewal application for the Highway 24 store at 996 Main Street; all voted in favor.

10. Discussion/Action on Town Budget for FY2005 by **Treasurer/Town Clerk**

Jay B. explained the highlights of the FY2005 Budget:

- Timeline for acceptance and approval
- Service and Staff Levels
- Assessed Valuation and Gallagher Amendment Factors
- Mill Levy Calculation
- Sales Tax
- Real Estate Transfer Tax
- Carry Forward Transfer
- New Employee Salary
- Municipal Parking Leases
- Net Gains and Debt Transfers
- Water and Trash Base Fee Increase
- Five Year Plan
- Capital Outlay for vehicle rotation, equipment
- Debt Schedule
- Raise Pool
- Water Cost vs. Water Expense Analysis
- Sales Tax Comparison
- General Fund Revenues
- State and Local Tax Breakdown
- General Fund Expenses
- Expense Comparison for Major Categories

- Estimated Effect of Mill Levy Calculations
- Fee Schedule Increases

The council discussed various aspects of the budget for closer review.

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

The Ordinance was read by title. There have been no changes since the first reading.

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

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

The Ordinance was read by title. There have been no changes since the first reading.

Darell W. asked for the council to make this Ordinance take effect.

Jay B. stated that the companies will come in to modify each trash cans.

Lorenzo M. discussed the pros and cons of an effective date vs. an enforcement date. He felt that it would take about 1 month for the residential containers and 1 year for the dumpsters to be switched out. He feels the community needs an educational period before compliance is enforced. He suggested an effective date of January 1, 2005.

Fred H. suggested an effective date of March 15, 2005 so that the containers would be in use on that. Lorenzo M. stated bear activity traditionally does not begin before April 1.

Motion by Fred H., second by Tom S., to approve Ordinance 10: Series 2004 (Second Reading): An Ordinance to regarding bear activity and trash service on second reading, with an effective date of April 1, 2005; all voted in favor.

13. Discussion/Action – Ordinance 14: Series 2004 (First Reading): An Ordinance regarding Water Dedication or Town of Minturn by: **Town Attorney**

The Ordinance was read in full. The mayor summarized the ordinance, and asked when the ordinance would take effect. He suggested that this be applied all new building permit applications effective immediately.

Allen C. summarized the intent of the Ordinance, which requires any development or redevelopment project to guarantee water rights to the town, or pay cash in lieu.

Change of use and an increase in density would both require the policy to take effect.

The council debated the issue and who it would apply to. Fred H. stated that the Ordinance is based on current zoning.

Allen C. stated that the council should clarify the language for second reading to make the council's interpretation more clear.

George B. stated that he would like to see what effect the dollars will have on the budget.

Fred H. and Tom S. agreed that this ordinance should be passed as soon as possible in order to pass along costs of infrastructure to those who will be demanding it in the future.

Motion by Jerry B., second by Bill B., to approve Ordinance 14: Series 2004 (First Reading): An Ordinance regarding Water Dedication or Town of Minturn on first reading with direction to staff to clarify the language to reflect the ordinance based on current zoning standards; all voted in favor.

## DISCUSSION ITEMS

14. Discussion/Action on Staff Response to Council To Do List from 9/15/04 Meeting

**a. PUD process leading up to final plat by Town Planner**

Tom S. felt the town should make sure that Preliminary Approval is NOT a final approval, and should be reflected in the PUD process.

Wiley S. stated that the council and planning commission still have not met regarding this section of the Zoning Code. He would like to meet once or twice a month with the committee members to that the PUD process would be overhauled by early next spring.

George B. suggested that there is a missing step between Preliminary Approval and Final Plat. Tom S. suggested changing the Preliminary Approval to Final Approval.

The date is set for Thursday, October 14, 2004 at 6:00 p.m. Tom S. and Fred H. will represent the Town Council.

**b. Formation of town-railroad committee by Town Manager**

Council directed staff to move this item to the October 20 council meeting under Action Items.

**c. Fire department incident reports by Town Manager**

**d. Remaining items of To Do List by Town Manager**

Floyd D. noted that Minturn Realty has to pick out the light poles so they can be put up. The business community has been informed of the timeline.

15. Discussion/Action on Overview of Town Governance

Hawkeye F. commented that the Town Council needs to be unified in its direction to the town council and that the town council should direct through the Mayor.

Hawkeye F. also urged the council to be prepared for the council meetings. He also reminded the council members that they cannot correspond about town issues over the Internet or email.

#### OTHER ITEMS/STAFF REPORTS

##### 16. Reports/Correspondence/Announcements/New Business

###### a. Events/Admin.

Nicole M. announced an addition to the Centennial Speaker Series. It will feature Steven Veatch talking about the Eagle Mine at Gilman on October 26 at 6:00 p.m.

###### b. Public Works

###### c. Police

Lorenzo M. explained that the Minturn Police Department has issued emergency contact cards for the Minturn Police Department to all town residents.

###### d. Treasurer/Clerk

###### e. Town Planner

###### f. Town Attorney

###### g. Town Manager

Ann C. summarized a recent meeting with CDOT and the town's sidewalk needs.

She stated that the Planning Commission appointments are forthcoming. Additional interviews will be conducted on Wednesday, October 13 at 6:00 p.m.

Ann C. noted that public comment on the U.S. Forest Service regarding a sledding permit should be given by October 11, 2004. Bill B. felt the town should support the permit. The council discussed the controversial nature of the sledding activities. Ann C. stated she would draft a letter if it were the wish of the council. The council concurred that they would support the special use permit.

She stated she would volunteer on Election Day for the county to get acquainted with other people in the county.

###### h. Town Council

Fred H., Darell W. and Tom S. will be absent at the first meeting in November.

Hawkeye asked the council to give some thought to paying back debt to the fire station early. Tom S. stated he would rather have the money in the bank for a rainy day.

Bill B. asked if Public Works could patch the hole on Boulder Street. Council concurred.

Tom S. asked for an update on the deed to the water plant. Ann C. stated that the town council needs to authorize payment for the survey of the land. The town has found the money from engineering, legal and professional services fees to the tune of \$16,000. Council concurred.

#### FUTURE AGENDA ITEMS

17. Items to be added to future agendas
  - a. Formation of railroad-town issue committee
  - b. Minturn Town Bridge Improvement Report

EXECUTIVE SESSION

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

Motion by Fred H., second by Tom S., to adjourn to executive session pursuant to Colorado Revised Statute 24-6-402(4)(b) for the purpose of conferring with legal counsel. Those present should include the Town Manager, Town Attorney and Chief of Police; all voted in favor.

No action was taken.

19. Set next meeting date – October 20, 2004.

20. Adjournment

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

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Hawkeye Flaherty, Mayor

ATTEST:

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Jay Brunvand, Town Clerk