



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, May 18, 2005

Work Session: Council Chambers – 5:00 PM
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

WORK SESSION – 5:00 PM
Joint Work Session with Eagle River Water & Sanitation District

1. Joint meeting Town of Minturn and Eagle River Water and Sanitation
 - a. Sewer plant
 - b. Possible site considerations
 - c. Possible funding options
2. Other

REGULAR SESSION – 7:00 PM

1. Call to Order

a. Roll Call

Mayor Hawkeye Flaherty called the meeting to order at 7:10 p.m. Those present included Mayor Flaherty, Mayor Pro Tem Darell Wegert, George Brodin, Jerry Bumgarner, Bill Burnett, Fred Haslee, and Tom Sullivan.

Staff present was Town Manager Ann Capela, Town Clerk / Treasurer Jay Brunvand, Town Planner Wiley Smith, Town Economic Development Director Karen Earley, Town Attorney Allen Christensen, and Chief of Police Lorenzo Martinez (*NOTE: Court Court / Office Technician Alicia Lynch was excused absent*).

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.

- Add an Executive Session at the end of the meeting for the purpose of consulting with Allen Christensen on water right issues and the Ginn Development annexation.

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

3. Approval of the Minutes for May 4, 2005

Jerry B. noted a correction needed on page 4 to indicate that Mr. Ginn had stated they would do archeological studies, not that Jerry B. had requested they perform the studies.

Motion by Bill B., second by Darell W., to approve the minutes from May 4, 2005 as amended; all voted in favor.

4. Special Presentations/Citizen Recognition/Project Update

There were no special presentations/citizen recognitions.

5. Public comments on items, which are NOT on the agenda

Mr. Lou Meskimen, owner of a Main Street business. Would like to have the flags up for Memorial day and requested that we ask Xcel Energy if we could leave the flags up all summer until Labor Day.

6. Discussion/action of Emergency Items, if necessary

There were no emergency items.

STAFF REPORTS AND OTHER ITEMS

7. Reports/Correspondence/Announcements/New Business

- a. Court Clerk / Office Technician
- b. Economic Development Director
 - Community survey, 10% response. Looking for about a 70% response rate. Karen E. outlined some of the ways she has undertaken to reach 16% as of today and 70% over all. Those techniques include: Council has gone door to door handing out flyers, a reminder card was mailed to the citizens, and it has been noticed in other areas around town. Because of this late push, the dead line has been extended.
 - Web Site update, a Ginn Clubs and Resorts button will be added to link our site to the Ginn Clubs and Resorts site. Ginn Clubs and Resorts had stated that they would provide information, maps, and updates to their site as things progress.
 - Ms. Darla Goodel of the Turntable Restaurant and Ginn Clubs and Resorts would provide a picnic lunch for the cleanup volunteers after the Saturday cleanup.
 - Market update was given. Karen E. noted the people that have already worked on the organizing aspects of the Market. She noted a meeting on logistics would be held at the Town Center on 5/19/05.
 - Karen E. noted that Channel 5 was filming our meetings again. A new agreement has been reached and we should have reliable filming service as in the past.
 - Bill B. asked if the construction in the area of the market would be a concern this summer. Karen E. stated she had considered that as well as alternatives to allow us to work around it.
- c. Public Works
 - Jay B. updated the council on the clean up of the various Town lots and the Water Plant area, the patchwork that has been done on some of the major potholes, and the repairs to the Maloit Park road damage and Fire Hydrant leak. Jay B. also stated

that he had overseen the deep cleaning of the Town Center and the Public Works office.

- Hawkeye F. asked about the dump truck; currently the truck is not street worthy. In review of the budget, Jay B. stated we have \$20,000 budgeted to replace the truck in addition to any trade in value. Currently we are forming a process to search for a tandem dump truck to fit both our needs and our budget.
- Hawkeye F. reminded all of those in attendance that the Town cleanup would be on Saturday, May 21, 2005. Volunteers were solicited for cleanup help on Saturday.

d. Police

- Discussed the abandoned vehicles and the emphasis that appears to be in effect on the removal of the vehicles. This was not new; it remains an ongoing concern. The Town cleanup has made this a priority; however, Lorenzo M. stated that no real step up in enforcement was being undertaken.
- Thursday, May 19, 2005 Officer Brown will be in Denver defending a grant request for mobile computer data equipment that will bring the Town current with the rest of the county. This grant is approximately \$13,000 and does not require any matching funds.

e. Treasurer/Clerk

f. Town Planner

- Wiley S. updated the Council with the efforts of the Chapter 16 Committee work. At this time they have set up meetings and it is progressing with the most important sections first. He does not have dates or a full time line at this point, but felt the Staff portion will be completed in approximately 2 months. He felt that much of the problem was the duplicate and redundant information, which needed to be weeded out.

g. Town Attorney

h. Town Manager

- Highlighted the Town cleanup. She noted the pictures that were passed around indicate the work that has been done with our own property. Ann C. noted that the Landfill has extended our free time from Saturday to Friday, Saturday, and Monday. Ginn Clubs and Resorts agreed to provide a street sweeper and operator for the day. Darell W. asked about the cleanup that citizens do and place in bags along the roads and that it not be left on the side of the road for a long duration such as was the case last year on Minturn Road. Ann C. stated A-Peak Asphalt has agreed to provide a dump truck and an operator, Lafarge has agreed to provide dump trucks and end dumps along with operators on Friday, Saturday and Monday. It was noted the citizens may drop their trash off at the Minturn Municipal lot. The Town will be taking refrigerators as in the past for a cost

this year of \$35 per unit. We will not be taking batteries, paint or other haz-mat's.

- Mr. Mike Gallagher asked if any coordinated effort had been done with Vail Resorts. This would be a fine time for them to clean their storage yard on the north end of the Town; Ann C. replied no, but stated that she would contact them.
- Ann C. noted a burn permit has been issued for the King Ranch for 5 days beginning on May 19. The burn could take as little as one day with decent weather. Although this site is outside of the Town limits we have been informed as a courtesy because the land is adjacent to the western Town boundary.
- Ann C. noted that we are considering the possibility of retiring a small loan that is collateralized by the Diamititious Earth Water plant. It is doubtful that this plant will be constructed or used in conjunction with the Ginn Development.
- Bill B. asked if the Water plant site was going to be annexed into town. Darell W. noted that we could own land outside of town. The idea has been to annex the land when we can; it was noted that the land is not contiguous with the town boundaries so an annexation at this time would not be possible.

i. Town Council

- Tom S. updated his transaction with the Ginn Clubs and Resorts. He read a prepared statement of when his property was sold to the Ginn Clubs and Resorts as well as the agreement to continue as the manager until May 31, 2005. He stated that he would remain on the Council, but that the sale has constituted a Conflict of Interest for him. As such, he has and will continue to remove himself from the discussions of the development as required until May 31, 2005 when he will no longer have a conflict because the deals and employment will be completed. Hawkeye F. noted that Tom S. has been upstanding in his "arms length" treatment of the issues.
- Hawkeye F. stated that he initiated a possible Conflict of Interest or ex parte communication. On Thursday May 5, 2005 for two hours Hawkeye F. spoke with Mr. Ginn and discussed several items regarding the potential development that had already been discussed in open discussion of the Town Council. Hawkeye F. stated that he also toured parts of the property with Mr. Ginn and that he also visited the Ginn Clubs and Resorts offices in the International Trade Center. The tour lasted about 30min.

DISCUSSION, HEARINGS AND ACTION ITEMS

8. Discussion/Action – Ordinance 9 – Series 2005 (Second Reading): An Ordinance Creating The Minturn Watershed As Authorized In Section 31-15-707(1)(b) C.R.S., 1973 Amended, And Other Colorado Statutes For The Protection Of Minturn’s Drinking Water. Presented by Town Attorney.

Hawkeye F. introduced the ordinance and turned discussion over to Allen C. Allen C. stated there were no real changes between the first and second readings. He went on to explain the intent was to protect the Town’s water supply as it exists out side of Town. Hawkeye F. stated the watershed includes all land within the Town. He then asked if they would need to get a permit for all of the construction; Allen C. stated yes, if the activity would affect the watershed, but if it did affect the water supply as it is defined then they would not. Fred H. stated that the watershed is not located in Town, but rather it is specifically out side of Town. The Ordinance was designed to address development in our watershed area that may not be considered at this point in order to protect the watershed and rights for the future. Allen C. noted that both he and Ann Castle, our Water Attorney, have reviewed this ordinance and they are recommending approval.

Motion by Fred H., second by Bill B., to approve Ordinance 9: Series 2005 (Second Reading) as presented; all voted in favor.

9. Discussion/Action – Ordinance 12 – Series 2005 (Second Reading): An Ordinance to Amend the 2000 Fire Code by Town Treasurer.

Hawkeye F. introduced the ordinance. It was noted that no changes were made between first and second readings and that this was due to a request by our Fire District.

Motion by George B., second by Darell W., to approve Ordinance 12 – series 2005 (Second Reading) as presented; all voted in favor.

10. Discussion/Action – Ordinance 13 – Series 2005 (Second Reading): An Ordinance Of The Town Council Of The Town Of Minturn Adopting By Reference The Model Municipal Records Retention Schedule by Town Treasurer.

Hawkeye F. introduced the ordinance. Jay B. stated this ordinance has not changed between first and second readings and that Staff recommends approval.

Motion by Tom S., second by George B., to approve Ordinance 13 – series 2005 (Second Reading) as presented; all voted in favor.

11. Discussion/Action – Ordinance 15 – Series 2005 (Second Reading): An Ordinance amending Chapter 2 of the Town of Minturn Municipal Code by repealing section 2-27 by Town Attorney.

Hawkeye F. introduced the ordinance and Allen C. stated no changes have been made between readings. Hawkeye F. asked how this affects our current practice. Allen C. stated that the Attorney, the Judge, and the Manager are appointed by and work at the pleasure of the Council. Allen C. stated that in Colorado we have the right to work laws, by appointing other members of staff causes the Town to be in potential conflict of these laws. Hawkeye F. asked if the Treasurer is still appointed; no it would need to go through our employee hiring and termination policy; all employees but the three are hired and fired by the Manager not the Council. Mr. Mike Gallagher noted that the history of this concern was when the Town did not have a Manager or any real management organization; it was a hold over from that time.

Motion by Fred H., second by Tom S., to approve Ordinance 15 – series 2005 (Second Reading) as presented; all voted in favor.

12. Discussion/Direction – HR4700: Forest Service Bill by Town Manager

Ann C. outlined the issue. Ann C. is requesting direction to send a letter in support or not. Ann C. stated she would like to have the Forest Service Office removed from the proposal because it could and would be used for other uses as it currently is even prior to the bill passing. Currently it is used as an office, sledding hill, bus stop, a residential house is at the site, and it is used extensively as a public parking lot to access recreational outlets such as the river and the hiking. Discussion ensued as to the direction the County is moving and what the issues are at this time that the proposal will influence. Hawkeye F. stated he felt it was important to have the land at Dowd in the bill. Fred H. noted that he felt it was important to have the County discuss their concerns with our town entrance with us. Allen C. stated that if we oppose the bill or simply pull our support would effectively remove ourselves from the table and any future say. Ann C. noted that the Forest Service would like to get the support and direction done as soon as possible. She is willing to attempt to set up various meetings if necessary.

Mr. Gallagher stated that what is in writing is more important than what the Commissioners say; a position statement should be forwarded to the Town in writing from the County Commissioners.

Ann C. was directed to obtain a position statement from the County. Hawkeye F. stated Council should review the bill and their concerns in order to resolve the issue in the near future.

13. Discussion/Direction – Upper Eagle Regional Water Authority In Stream Flows by Town Manager

Hawkeye F. noted the letter in the packet; he asked if attorney Anne Castle had any comments? Ann C. stated that the Town of Gypsum was in support of us and it was clear that this was important to the Town. It was apparent from the letter that the Authority will not support us and with such, it can be inferred the local districts will not support us either. Ann C. was directed to get the support or lack of from the towns of Eagle, Vail, and Avon.

14. Discussion/Direction – Ecological Resource Consultants: Ginn Co's Sample Review by Town Manager

Tom S. noted his conflict of interest and removed himself from discussion and the Council.

Ann C. updated the report done by Ginn Clubs and Resorts. Ann C. noted that she had placed in the Council member's mailboxes all the comments that were submitted. The Ginn Clubs and Resorts can take the suggestions and adapt their monitoring process if they feel it is merited.

Tom S. rejoined the Council.

15. Discussion / Action – CIP update by Town Manager.

It was determined that this is more of an impact list not a CIP. Ann C. stated that staff had compiled the list from all of the items that were turned in from both staff and Council. This was a working document and the Council should review the items again. Hawkeye F. noted that parts of the items were very similar and others were duplicates between the sections. Jay B. stated that he had done some more modifications, but that he did not delete anything from the original. He noted that he did compile a little more, but deletions would be handled after more review.

Mr. Lou Meskimen, Main Street business owner, stated that we need to be able to address a guideline of topics that we think as a Town, are important features such as view corridors and the river corridor for future uses. This way Ginn Clubs and Resorts would have a list of good ideas that the town thinks are important prior to development. This should save time later and preserve these corridors and assets for the future. Discussion ensued about the use of the title CIP, Ann C. stated that this title was sufficient.

Mr. Gallagher stated that it was a good idea to have the items such as view corridors and building requirements and what not on the list but that they should be in the Municipal code first (Building Code) where we will turn to enforce the proposals.

16. Discussion – Council Meeting Issues

Hawkeye F. asked Allen C. to update the Council on the concerns of talking out of meetings and the potential of causing a Conflict of Interest. Allen C. stated that the matter pending or impending and its impact on the eventual Council decision should be the driving force. Discussion ensued on what was improper. The point of the rules regulating the discussion is not to preclude discussion but to make the discussion part of a meeting where the evidence can be heard by all those that will be hearing the case and deciding the case. To have ex parte communications gives one or a small group more information than the rest have making it unfair and improper. Darell W. asked the difference between ex parte communication and lobbying; you have to be able to listen without stepping over the line and to excuse yourself from the discussion. Under certain circumstances there is no difference between the two.

George B. stated his concern he is elected by the citizens and now cannot talk to them; this is not the fact. The fact is if the decision is on the table of consideration or pending, it is only to be discussed at the decision table.

Hawkeye F. asked about daily business vs. Council business between Council Members; whenever three or more council members get together it is a meeting. It is important to note that even though something is not a meeting it may be improper or have the appearance of impropriety.

Discussions between government bodies about issues facing one of them; again it is a decision based on the issue.

Jerry B. reminded the Council of the discussion at the last meeting of the golf course being built on the Superfund site in Anaconda MT. (this was a huge copper mine). Discussion ensued as to how the Superfund had been cleaned up and, in fact, a golf course had been successfully constructed on the site. It was note that the use of the site as a golf course actually has improved the site by addressing site management, storm water and water run off, etc.

17. Executive Session

Motion by George B., second by Fred H. to convene in an executive session pursuant to C.R.S. 24-6-402(4)(b) for the purpose of consulting with the Town Attorney on water issues and C.R.S. 24-6-402(4)(e) for the purpose of discussing the potential annexation agreement between the Ginn Co. and the Town of Minturn, All voted in favor.

FUTURE AGENDA ITEMS / WORK SESSIONS

18. Items to be added to future agendas / work session

- Mike Wheelersburg - Minturn Towne Homes update – 06/01/05
- Ordinance 14: Series 2005
- Ordinance 11: Series 2005 – 06/01/05
- Audit Presentation by Town Treasurer – 06/01/05
- Special Event Liquor License – Town of Minturn 06/1/05
- Preliminary PUD and Preliminary Plat by Town Planner.

19. Set Future Meeting Dates

- 1) Council Meetings
 - June 1, 2005
 - June 15, 2005
 - July 6, 2005
- 2) Planning & Zoning Meetings
 - May 25, 2005
 - June 8, 2005
 - June 22, 2005
- 3) Other

20. Adjournment

As there was no further discussion the meeting was adjourned at 10:08 p.m.

Mayor, Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand