



**REGULAR MEETING OF THE • MINTURN TOWN COUNCIL**  
**Wednesday, August 17, 2005**

**WORK SESSION 5:45 PM**

**REGULAR SESSION 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.

**WORK SESSION – 5:45 PM**

1. CDOT – survey discussion
2. Chapter 16 – Section 15 (PUD) and Section 21 (Administration and Procedures), Chapter 17 (Subdivisions)
3. Other

**REGULAR SESSION – 7:00 PM**

**1. a) Call to Order**

Mayor Gordon "Hawkeye" Flaherty called the meeting to order at 7:03 p.m. Those present included Mayor Flaherty, Mayor Pro Tem Darell Wegert, George Brodin, Jerry Bumgarner, Bill Burnett, and Tom Sullivan (*NOTE: Fred Haslee was excused absent*).

Staff present were Town Manager Ann Capela, Town Clerk / Treasurer Jay Brunvand, Town Planner Wiley Smith, Town Planner I Derrick Slocum, Town Economic Development Director Karen Earley, Town Attorney Allen Christensen, Town Chief of Police Lorenzo Martinez, and Court Clerk / Office Technician Alicia Lynch.

**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.

An Executive Session, Resolution 6 – Series 2005, and Ordinance 27 – Series 2005 were added to the agenda. Item #12 was moved after item #8.

- f. Approval of the agenda.

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

**3. Approval of the Minutes from August 3, 2005**

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

**4. Special Presentations/Citizen Recognition/Project Update**

- Ginn Development Update

Mr. Bill Weber, 627 Hermage Creek Drive of Eagle, Colorado, stated that they would like to submit their request for annexation no later than October 2005.

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

- Mr. Cliff Thompson introduced John Kenneth (JK) Perry, new Vail Daily Reporter, who recently moved here from Chicago. Mr. Thompson stated that JK Perry liked to hike, bike, and snowboard. He also wanted to make sure that everyone knew that Mr. Perry is single.
- Mr. Frank Sanders, 142 Main Street of Minturn, Colorado, asked the Council to state what they thought a petition was. George B. replied that a petition was a signed requested action submitted by citizens to the Town. Jerry B. agreed and clarified for Mr. Sanders that it was a written request for an action. Darell W. agreed, but said that it would not have to be from citizens. He stated that it could be from any group. Tom S. and Bill B. agreed with the other Councilmen (*NOTE: Fred H. was excused absent and therefore, did not reply to the question*).

Bill B. asked Mr. Sanders to share his definition. Mr. Sanders stated that he thought a petition was the voice of the people and that it represents the people (*NOTE: Mr. Sanders became emotional*). He further explained that a petition needed to be dealt with properly. Mr. Sanders stated that he was displeased with the result of a number of petitions that he claimed were ignored. He stated that he felt the Council needed to do something to stop petitions from being ignored or discarded. Mr. Sanders suggested that the Council put together a piece of legislation that prevents any action from taking place (during the sixty (60) day review period) while a petition was in

place. He would like to have a format of a petition that anyone could understand and take action without a lawyer (*NOTE: The Town is not responsible for or required to educate the public on how to file a petition. Furthermore, it is not the responsibility of the Town to incur any cost anyone may spend to file a petition*).

Mr. Sanders stated that the Council needed to look around because the Town was beautiful. He was unhappy that the Town would consider change. Overall, Mr. Sanders was pointing out that the citizens needed to be more involved, informed, and be given the opportunity to vote on more issues. Finally, he stated that the Town should vote on the annexation.

Council thanked Mr. Sanders for attending.

Mr. Pete Vance, 562 Main Street, stated that he felt Mr. Sanders meant that there should be guidelines for petitions.

Hawkeye F. stated that they would look into it. Hawkeye F. asked Allen C. what the Council could do. Allen C. stated that would require either a state law or amending the Town Charter. He added that amending the Town Charter required having an election. Allen C. stated that the Council must be reminded that what Mr. Sanders stated about previous petitions was his word and may not be what actually occurred. Council and staff discussed what Mr. Sanders stated and requested. Bill B. stated that during the time of the petition for the Town Hall the Manager said that the petition was incomplete due lack of petitioners information; therefore, it failed. Allen C. stated that he would have to check the records to verify. He said that the Charter was very specific regarding to what could and could not be done. Allen C. stated that by a majority vote of the Council the staff would review it and give a legal opinion.

Mr. Vance stated that through conversation with Mr. Sanders he gathered that the Town was unsure what happened. He stated that he would like to be sure and have the staff inquire further.

Mr. Harry Gray, 291 Main Street of Minturn, Colorado, stated that he did not feel that it was the Town's obligation to explain how to get a petition in place. He stated that the Council should focus on more important issues (e.g. parking issue).

- Mr. and Mrs. Campbell and their family, Main Street of Minturn, Colorado, stated that they were here to show their support for slowing down traffic throughout Town. (*NOTE: There were others showing their support, but did not state their names. Also, they supplied supportive t-shirts to the Council*). The Council agreed that the speed limit in Town needed to be slowed down. Mrs. Campbell stated that a zero-tolerance needed to be put into effect. She explained that the problem was most visible in the early hours of the morning (6:00 a.m.). Darell W. stated that more signage (school and crosswalk signs) needed to be posted. Mrs. Campbell made some suggestions: letters to businesses in Town, signage, etc.
- Matt Sheriff, 511 Main Street, stated that "Shaping the Future at Eagle Valley" will start classes biweekly beginning Sept 15, 2005 for a total of seven (7) classes. He stated that the class was targeted and developed to help leaders in the community.

## **6. Discussion/action of Emergency Items, if necessary**

There were no emergency items discussed.

## STAFF REPORTS AND OTHER ITEMS

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

- a. Economic Development Director  
Karen B. stated that there was a concert being held at the Turntable featuring Elvis on Saturday August 27, 2005.
- b. Public Works
- c. Police  
Lorenzo M. stated that he had nothing to add. Hawkeye F. asked what was being done to slow down the traffic. Lorenzo M. stated that they were doing what they could, but there needed to be an understanding that those speeding were not a specific group. He stated that it was the citizens, the tourists, etc. He added that there has always been a speeding issue, but there were more officers years ago compared to the three officers, including him, in the present. There was some discussion about resources and signage. Lorenzo stated that signage helps, but it does not solve the problem. Darell W. stated that in the Teen Activities Report (TAP) was provided in the packet and inquired if there was any use of that in Minturn. Lorenzo replied no.
- d. Treasurer/Clerk
- e. Town Planner  
There was some discussion about development on 424 Eagle Street. W. Smith informed the Council that Chuck Lanci, Building Inspector was the contact person for the project.
- f. Town Attorney
- g. Town Manager  
Council directed the Manager to look at the streetlights (check the bulbs) on Main Street.
- h. Town Council  
Darell W. stated there was an Open Space meeting on Monday August 15, 2005, which discussed the process for the county. Hawkeye F. stated that the first day of school was tomorrow and reminded everyone to slow down. He mentioned that three staff members were having a birthday this month: Wiley S., Derrick S., and Ann C.

## DISCUSSION, HEARINGS AND ACTION ITEMS

### 8. Discussion/Action – Minor Subdivision Request at Lot 10-12 Block G Booco’s Addition by Town Planner.

Tom S. excused himself because of a financial conflict interest.

Hawkeye F. reminded the Council and audience of the procedure for action/discussion items.

Wiley S. briefed the Council on the action item. He recommended approval.

Hawkeye F. opened the public hearing at 8:01 p.m.

Geri Meyers, property owner, stated that they chose to proceed with two lots. Ms. Meyers stated that one lot would be 10,650 square feet and the second lot would be 11,329 square feet. She stated that there was plenty of parking.

There was some discussion about the landscaping on the property. Darell W. was concerned about preserving the trees already on the property. Ms. Meyers stated that was one of the reasons they chose to make two lots.

No one from the audience chose to ask questions or make any comments.

Hawkeye F. closed the public hearing at 8:08 p.m.

Hawkeye F. inquired about a sidewalk requirement. W. Smith stated that he did not feel it was necessary at this time to require a sidewalk.

Darell W. asked if there was an encroachment onto Harrison Avenue. W. Smith stated that he did not believe so.

Condition: No encroachment allowed onto Harrison Avenue.

Motion by Bill B., second by Darell W., to approve the minor subdivision at lot 10-12 Block G Booco's Addition with the previously stated condition; all voted in favor (*NOTE: Fred H. did not cast a vote; Tom S. was abstain*).

**9. Discussion/Action – Ordinance 21 – Series 2005 (Second Reading): An Ordinance entering into a Contractual Agreement with CDOT for the maintenance of Hwy. 24 through Minturn.**

Ann C. stated that the Regional Director was here. Hawkeye F. read the Ordinance by title only.

Mr. Ed Fink, CDOT Regional Director (Region Three) based out of Grand Junction, Colorado, stated that they had been working with Ann C. on helping Minturn with installing sidewalks. He stated that they had originally hoped to get this project done in the fall of 2005, but they would not be able to work on the project until the spring of 2006.

Ann C. stated that she had not heard whether the Town would get payment up front. She said that CDOT had been most gracious.

Jerry B. inquired about the process to file an application to install traffic lights.

Mr. Fink stated that if there was a specific intersection that the Town would like them to look at they could do that. He said that they could get together with Ann C. to discuss what could be done regarding that issue. Mr. Fink stated that along with Ann C. they discussed what else the Town would like to have done. Ann C. mentioned a couple of the items they discussed: non-existing crosswalks in the South end of Town and signage.

Hawkeye F. stated that after CDOT painted two crosswalks in Town, they realized that there were more to be done. He stated that there were two bus stops that needed to have crosswalks put in.

Motion by Tom S., second by Bill B., to approve Ordinance 21 – Series 2005 (Second Reading) as presented; all voted in favor (*NOTE: Fred H. did not cast a vote*).

Council took a break at 8:23 p.m. Council reconvened at 8:36 p.m.

**10. Discussion/Action – A Conditional Use Request on 160 Railroad Avenue in the Rail Yard for Valley Fabricators by Town Planner I.**

Derrick S. briefed the Council on the Conditional Use Request. He explained that the staff asked the applicant to apply for the conditional use in order to comply with the Town Code. Derrick S. stated that the staff would be establishing and maintaining appropriate records for the Railroad Area. He stated that staff recommended approval.

Hawkeye F. opened the public hearing at 8:37 p.m.

Fred Holz, 111 Spring Circle in Gypsum, Colorado, thanked the staff for its help during this process. He stated that since this was something the Town informed him that he needed to do it was very important to him (*NOTE: Staff stated that Mr. Holz had been very cooperative*).

Mr. Michael Gallagher, 475 Pine Street in Minturn, Colorado, inquired if the building was ever a bunkhouse. Bill B. stated that it was never a bunkhouse.

There was some discussion of how the business was able to obtain a lease from the Railway.

Darell W. asked what the yellow-hatched area (on a map available in the packet) was. Derrick S. stated that it was the notification area.

Hawkeye F. closed the public hearing at 8:42 p.m.

Required Findings: 1) That the proposed location of the use is in accordance with the purposes of this Chapter (Chapter 16), the Community Plan and the purposes of the zone in which the site is located, 2) That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, and 3) That the proposed use will comply with each of the applicable provision of this Chapter.

Conditions: 1) A 2005 Business License of \$120.00 must be applied for, 2) The existing chain link fence installed along the east bank of the Eagle River must be repaired. Repairs mean reinstalled, straightened, and made usable, Section 7-20 of the Minturn Municipal Code (MMC), 3) The industrial materials currently being stored behind the chain link fence from the base to the top of the fence, and 4) Valley Fabricators Inc., will police the east bank of the Eagle River along the length of the leased property for trash. The trash will be stored in the proper receptacles and hauled away.

Motion by George B., second by Tom S., to approve a Conditional Use Request on 160 Railroad Avenue in the Rail Yard for Valley Fabricators Inc. as presented along with the required findings and the staff conditions stated above; all voted in favor (*NOTE: Fred H. did not cast a vote*).

**11. Discussion/Action – Ordinance 18 – Series 2005 (Second Reading): An Ordinance entering into an agreement with the Town of Avon – to service the Town of Minturn vehicles and equipment by: Town Manager.**

Hawkeye F. read the Ordinance by title only.

Hawkeye F. asked if there had been any changes. Ann C. stated no.

Motion by Tom S., second by Darell W., to approve Ordinance 18 – Series 2005 (Second Reading) as presented; all voted in favor (*NOTE: Fred H. did not cast a vote*).

**12. Discussion/Action – Ordinance 19 – Series 2005 (Second Reading): An Encroachment Agreement Lot 5 and Lot 6, Block B, Booco Addition – 146 North Main Street, The Saloon by: Town Planner.**

Hawkeye F. read the Ordinance by title only.

Tom S. asked if the change suggested by Jerry B. had been incorporated into the Ordinance. Allen C. affirmed.

Motion by Tom S., second by Bill B., to approve Ordinance 19 – Series 2005 (Second Reading) as presented; all voted in favor (*NOTE: Fred H. did not cast a vote*).

**13. Discussion/Action – Ordinance 22 – Series 2005 (Second Reading): An Ordinance to approve to the existing IGA between Eagle County E 911 Services and the Town of Minturn to accommodate a cost increase from Qwest for changes in technology and necessary improvements to the infrastructure since the original agreement.**

Hawkeye F. read the Ordinance by title only.

Allen C. stated that no changes had been made. He added that all of the towns in Eagle County would be approving this agreement.

Motion by Tom S., second by Bill B., to approve Ordinance 22 – Series 2005 (Second Reading) as presented; all voted in favor (*NOTE: Fred H. did not cast a vote*).

**14. Discussion/Action – Ordinance 24 – Series 2005 (First Reading): An Ordinance to Amend the Zoning Map of the Town of Minturn to a Parcel of Land, Lot 29 and 31 of the South Minturn Addition, to change the parcel zoning from Residential to Planned Unit Development by: Town Planner.**

Hawkeye F. introduced the ordinance to the Council. He then stepped down due to a conflict of interest. Darell W. sat as the Mayor. Darell W. read the Ordinance in its entirety.

Motion by George B., second by Jerry B., to approve Ordinance 24 – Series 2005 (First Reading) as presented; all voted in favor (*NOTE: Fred H. did not cast a vote; Hawkeye F. was abstain*).

**15. Discussion/Action – Ordinance 25 – Series 2005 (First Reading): An Ordinance re-plating Taylor Street by: Town Attorney.**

Darell W. read the Ordinance in its entirety. He pointed out that the first line in the Ordinance read as Red Cliff and should be Minturn.

Tom S. inquired if he was looking at the right exhibit. W. Smith stated that there were two shaded areas on the exhibit. He stated that the first one on the right was the present road. Wiley S. stated that they were vacating that and rededicating it to the present road, as it runs by the Minturn Towne Homes. He stated that it was platted to go straight and it will be turned along the alignment of the current road. Tom S. asked if there was a survey done on this action item. W. Smith stated that the survey description was on page 72 in Exhibit A and the survey itself was on page 73.

Allen C. stated that the Town would be vacating the straight road and platting the curved section (Parcel B). There was some confusion as to where the road ended. Allen C. stated that it connected with the road established by Ordinance 147 – Series 1967. He stated that all the Town would be doing was joining the existing platted road.

Tom S. asked for a clearer, much larger plat for the next meeting on September 7, 2005. He also requested to see the final plat and the ordinance at that meeting. Direction was given to staff and Wiley S. agreed.

Motion by Bill B., second by George B., to approve Ordinance 25 –Series 2005 (First Reading) as presented; five voted aye, Tom S. nay (*NOTE: Fred H. did not cast a vote*).

**16. Discussion/Action – Ordinance 26 – Series 2005 (First Reading): An Ordinance authorizing the Mayor to enter into a lease agreement with the Radio Tower Contract.**

Staff requested this item to be tabled indefinitely as the details are worked out.

Motion by Darell W., second by George B., to table Ordinance 26 – Series 2005 (First Reading) indefinitely; all voted in favor (*NOTE: Fred H. did not cast a vote*).

**17. Discussion/Action – Options for 100 Block of Eagle Street by Town Manager.**

Ann C. stated that she handed out (handout labeled #17) options that the staff had developed. She stated that under the direction of Council to “fine tune” alternative number three, staff has prepared a drawing of a survey of the 100 block of Eagle Street. Ann C. recommended that the Town continue as planned with grass shrub and drainage. She stated that the staff might bring encroachment agreements to the Council.

Tom S. stated that staff needed to move forward before the Town lost the opportunity to utilize the DOLA grant.

There was some discussion about the current encroachments. Some of the Councilmen claimed to have no previous knowledge of existing encroachments and expressed their concern. Allen C. stated that they, not the Town, were encroaching on the Town's right of way.

Darell W. stated that he would like to have additional information on the matter. He said that he had been having reservations about the item after studying it. Darell W. stated that his concerns were for the businesses in Town. Ann C. reminded Council that the item was not on the agenda for direction (as direction had already been given). She stated that it was put on the agenda simply to keep the Council updated, as directed.

George B. asked if the plan for the park could be modified to include parking. Allen C. stated that the item could not be brought up again because it was brought up for a second time already.

Hawkeye F. stepped down as Mayor, as he had a conflict of interest and the Council was now discussing more than he should participate in. Darell W. sat as the Mayor.

Darell W. inquired about some citizens in the audience. Ann C. stated that they wished to speak to the Council about the agenda item. However, it was up to the Council to hear any comments on the item. She reminded Council again that no action would be taken and direction had already been given.

Council decided that it hear the comments. Darell W. opened a public hearing at 9:24 p.m.

Mr. Rohn Robbins, Attorney for Mr. Tim Simon, stated that they were not asking the Council to reconsider what they have done. He stated that they thought Ann C.'s definition of "fine tuning" was too narrow. He added that there was no direction from Council saying what "fine tuning" was comprised of. Mr. Robbins stated that they were simply proposing some alternatives. He reminded the Council of the three alternatives. He stated that there was no language provided stating that there was no parking. Mr. Robbins stated that Allen C. had met him at the site to examine it from a legal point of view and they also met with Wiley S. to examine the site from a planning point of view. He stated that they want the Council to be cognoscente of what it's doing compared to what they propose. Mr. Robbins said that the parking that he saw was merely schematic. They presented a couple of schematics. Mr. Robbins said that the parking provided at the park was the only parking available to his tenants and removing those spaces would create vacancies. He stated that Mr. Simon's livelihood depended on the parking. Mr. Robbins stated that if they could come to some "fine tuning" by providing some parking the Town would maintain the vitality of Minturn, maintain the storefronts, maintain the tax income, and won't exacerbate the already existing parking problem.

Tim Simon, 840 Deer Blvd. in Eagle-Vail, Colorado, said that upon his return from a vacation with his children (in June 2005) he received a message saying that the Town of Minturn would be removing the parking from the park. He added that he would need to plan on vacating all parking. Mr. Simon stated that he had a parking agreement with the Town of Minturn since 1991. He said that since then they have undergone numerous revisions. Mr. Simon stated that the last revision was when there was talk of a river walk. He added that he was never concerned about losing the parking because he was assured that there would be an alternative for him if need be. Mr. Simon stated that he hired a Landscape Architect, Jeff

Houston, who developed some ideas for the park. Bill Weber volunteered his time to draw a map because they are also concerned about parking (*NOTE: Mr. Simon showed the map*). Mr. Simon stated that they modified that map. He said that they utilized the exact measurements to create their version. He explained all of the following changes: 1) exact measurements, 2) a couple spots by Two Elk Gallery, and 3) move the road over, while eliminating encroachments all together, allowing parallel parking on the left side of the road.

Tom S. inquired about cost projections. Mr. Simon stated that they did not have those at this time. Tom S. asked if Mr. Simon was willing to put up any cost the Town might lose, if the plan was not complete in time or was more expensive. Tom S. explained that this was preliminary and did not want to risk losing money.

Ann C. stated that it would be costly to eliminate the encroachment agreements and to vacate and replat the road. She further stated that it would not only cost more money, but it would take more time.

Mr. Robbins stated that the first alternative was preferred because it does not require replatting of the road. It would take the existing road and allow for some parking. He stated that he saw no reason why the DOLA grant money could not be used as it was intended for landscaping.

Ann C. stated that there was another component missing which stipulates that the Town would not construct anything within the thirty-foot high watermark. She added that what Mr. Simon was proposing needed a lot more refinement.

Randy Milhoan, 141 Williams Street in Minturn, Colorado, stated that he was in favor of the parking. He said that they could have temporary curb installed and looking at alternatives like that was a very good idea. He felt that there would be plenty of room for the park and parking.

Ann C. stated that the Town had until December 31, 2005 to use the funds from DOLA. She stated that they have carried the funds over for three years and that they cannot do it again.

Tom S. expressed his concern for potential loss of funds again. He also expressed his concern for how much time was left to complete the project.

Darell W. asked Tom S. how he would feel if Mr. Simon was able to get a cost projection done. Tom S. replied what if the cost projections were wrong.

Mr. Gallagher asked if the issue was money or if the Town had the money would change still not be an option. Tom S. stated that if the Town had unlimited funds they would definitely look into other alternatives. The other councilmen agreed.

Jerry B. stated that the Town would like to clean the area up and has wanted to for a long time. He stated that there were old trailers, sofas, unlicensed vehicles hanging over the river, etc. Tom S. stated that Mr. Simon's tenants had the sofas out by the river. He said that they were not there now, but they were there for a long time. Mr. Simon stated that they had done a lot of work over there. He stated that they renovated, kept up the park, cleaned the parking lot, and remodeled his buildings. Mr. Simon stated that every now and then something ends up in the back and if he were informed it would be taken care of.

Ann C. suggested that the Town go ahead with its plans and look for a long-term solution or proposal. She stated that the Town should spend the funds as it can. Ann C. read the contract between the Town and Mr. Simon stating the following: "As well as significant improvements, which may preclude parking in Eagle Street. In this case available parking is located in the Municipal lot and the 200<sup>th</sup> block of Boulder Street." She stated that the long-term solutions needed to be looked at. She added that it might be possible to fix the encroachments and relocate the parking to the other side of the street. Ann C. stated that for now, it would be in the best interest for Minturn to move forward with the DOLA funds.

Tom S. stated that they might be able to change the parking by the basketball court. It currently does not allow overnight parking, but if they agreed to allow parking overnight that space might be able to provide a temporary solution. Tom S. stated that there were eight or nine spots there. Ann C. stated that the Town uses the basketball court for temporary snow storage. She added that changing the parking there might now be within the stipulations of the DOLA grant.

Mr. Robbins stated that they would like to be given the opportunity to work with the Planning Department and come up with a solution. He said that if the Council does not like the solution it could tell them. He stated that they were willing to meet deadlines.

Bernadette Simon, 840 Deer Blvd. of Eagle-Vail, Colorado, stated that she did not understand why everyone was waiting until now to decide what to do if the funds were available for three years. Mr. Simon stated that it was also unfair that they just learned of the plan to eliminate the parking. Ann C. mentioned again that the contract provided them with the knowledge that the Town could make them vacate the parking on Eagle Street at anytime.

Darell W. closed the public hearing at 10:20 p.m.

Direction was given to staff to continue with its projections and contact Troy to determine what his time frame for construction would be. Council also directed Mr. Simon to gather projections and present them to the Council on September 7, 2005.

Hawkeye F. sat as Mayor upon closure of the discussion/action item.

**18. Discussion/Action – Resolution 6 - Series 2005: A Resolution calling a Special Election in the Town of Minturn, Colorado; and providing other details relating thereto.**

Hawkeye F. read the Resolution in its entirety. Tom S. inquired about the tax and suggested that the tax be increased to 1% or 1.5 %.

The Council discussed possible changes to the resolution.

The Council decided to increase the lodging tax to 1.5%, change District to Town, and remove the automotive portion out of the use tax.

Motion by Tom S., second by Hawkeye F., to approve the resolution as amended; all voted in favor (*NOTE: Fred H. did not cast a vote*).

**19. Discussion/Action – Ordinance 27 – Series 2005 (First Reading); An Ordinance authorizing the Mayor of the Town of Minturn to sign an Intergovernmental Agreement between the Eagle County Clerk and Records Office and the Town of Minturn contracting for Coordinated Election Services for November 1, 2005 General Election and Declaring an Emergency.**

Hawkeye F. read the Ordinance in its entirety.

Jay B. informed the Council that it must pass the Ordinance by everyone present.

Motion by Tom S., second by Bill B., to approve the Ordinance as presented; all voted in favor (*NOTE: Fred H. did not cast a vote*).

EXECUTIVE SESSION

**20. Executive Session**

- Pursuant to C.R.S. Section 24-6-402 (4)(b) for the purpose of consulting with the Town Attorney on pending legal matters.

Mayor Hawkeye F. stated that there was an ongoing nuisance abatement issue with the Minturn Municipal Court. He stated that this case had been going on for years and he happened to know person involved, Jim Hoza. Hawkeye F. stated that in an effort to bring this to fruition he attended court on August 11, 2005. He claimed that he was not aware that he was not allowed to appear in Court on behalf of anyone other than his immediate family. Hawkeye F. asked if he was correct. Allen C. stated that he would comment when it was his turn to speak. Hawkeye F. continued by stating that he asked the Judge if he could advise Mr. Hoza and he said that would be proper. However, he noted, that he might have advised Mr. Hoza out loud more than he should have.

Allen C. recommended the Council remain in open session because the Mayor filled everyone in on the content of the executive session. Allen C. stated that he would describe what the Chief of Police, the Town Manager, and he have conferred and agreed was a violation of law under the Ethics Code. He read Section 2-83 of the Code of Ethics, “The Town Council shall have the primary responsibility for the enforcement of this Article. It shall have the power to investigate any complaint, to initiate any suit and to prosecute any criminal or civil action on behalf of the Town wherein it believes such action is appropriate.” Allen C. stated that he would provide the facts and the Council would decide what was appropriate. He stated that the Mayor clearly had a conflict of interest and cannot participate. Allen C. recommended that the Mayor Pro Tem chair the discussion (*NOTE: Council chose to take a five-minute break*).

Hawkeye F. stepped down as Mayor and excused himself from the Council. The Council chose to remain in open session while listening to the court tape from August 11, 2005. Allen C. stated that the Council could take no action, direct an investigation or direct filing of civil or criminal charges. He stated that he felt there was a bigger issue at stake which was the purpose and why the Town adopted an Ethical Code and why the State adopted an Ethical Code. He said that it was adopted to establish guidelines for standards of conduct for all officers and employees. Allen C. said that he felt when the Council heard the tape of what happened in court it would find that the situation was not quite as simple as the Mayor said.

Allen C. said that the Judge stopped the Mayor during the hearing, read the section of the Minturn Municipal Code, explained that he could not participate, and Hawkeye F. continued. He added that Hawkeye F. continued over his continuous objection and the Judge's continuous admonishment. Allen C. stated that the code was very clear and that he felt there was an issue of credibility of government when the Town has officials appearing before government bodies trying to influence the outcome. He stated that the tape clearly exemplified that that was what happened. Allen C. stated that both he and the Town Manager received a memo from the Chief of Police describing the incident (*NOTE: Allen C. handed out a copy of the Code of Ethics and a report from the Chief of Police*). He stated that the tape was self-explanatory and recommended that the Council listen to the tape prior to any questions they might have. One further comment, in an attempt to avoid this, the Chief of Police and Allen C. got together that day and called Darell W. to ask him to come to court to intercede. Unfortunately, Darell W. could not make it due to a prior commitment. Allen C. stated that it was very obvious that this was going to occur and the staff did what they could to try and prevent it.

The tape was played (*NOTE: Please note that a copy of the tape can be heard at the Town Offices*).

The staff chose to stop the tape, as it was almost finished and all of the important information was heard. Hawkeye F. interrupted and stated that he felt the Council needed to hear the remainder of the tape. Allen C. stated that Hawkeye F. was not allowed to participate due to a conflict of interest and once again he was interfering when and where he was not permitted, as the Mayor of Minturn, to do so.

Allen C. stated that at the beginning of the hearing the Mayor was advised and the Judge read him the code. The portion of the code that the Judge read was Section 2-77 Conflict of Interest subsection nine (9) which reads as follows: "A Town officer or Town employee shall not appear on behalf of any private person, business or entity, other than himself, his spouse or minor children, before the Town Council, any Town board or the Municipal Code." Allen C. stated that there should be no doubt in what that states. However, if there was, Allen C. read Section 2-76 subsection seven (7) as follows: "*Officer* means any person holding a position by election in the service of the municipality, whether paid or unpaid, including the members of the Town Council." Allen C. stated that there was no reasonable doubt that the Mayor was a Town Officer or Official. He said that the Mayor advised the Defendant from the start of the hearing all the way through the end. The point of this was the confidence of government and what we were showing both to outsiders and ourselves. He stated that we were trying to set guidelines for ethical standards and conduct. Allen C. said that this was not the first time this happened either. He added that it repeatedly comes up. Allen C. cited the following incidences not in any particular order: 1) Mayor met with members of the Eagle River Water and Sanitation District (ERWSD), 2) Mayor met with members of Ginn Clubs and Resorts, 3) Mayor met with members of the County Commissioners, and 4) This discussion. Allen C. stated that it was brought to the Councils attention and now the ball was in its court. He stated according to the Code of Ethics, "The Town Council had the primary responsibility for enforcement of this Article. It shall have the power to investigate any complaint, to initiate any suit and prosecute any criminal or civil action on behalf of the Town wherein it believes such action is appropriate. The Town Council may direct the Town Attorney to investigate or prosecute any apparent violation of this Article or the Town Council may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations by one (1) or more persons of this Article." Allen C. stated

that he did not think there was a lot of doubt, from start to finish, the Mayor was advised by both the Town Attorney and the Judge that he could not participate. However, he continued to participate. Allen C. stated that staff needed direction and the Council could convene into executive session to discuss the item further. He stated that it was an uncomfortable position for everyone to be in, but since he had been an employee for Minturn a Town Official had never attempt to influence a court proceeding.

Jerry B. inquired if Allen C. ever had to intervene before. Allen C. stated that he thought the Chief was. He stated that there was a prior DUI case that involved Mr. Hoza. Allen C. asked Chief Martinez to explain what happened. L. Martinez said that this was not his direct knowledge and that it was told to him by the Town Manager. Allen C. stated that the Town Manager had also told him. L. Martinez stated that it was referenced that Mr. Hoza, who was arrested for DUI, asked staff to move that case from a County Court case to a Municipal Court case. The Town Manager at that time mentioned that to L. Martinez, who found that to be inappropriate, and asked the Town Manager to pass his comment along to the Mayor. L. Martinez said that Minturn does not have a DUI Ordinance; therefore, it goes to the County. There was no reason to move it to Municipal Court. Allen C. stated that he thought there was a follow-up request made for the police report by the Mayor, which he had to deny under the open records law because it was a pending criminal case.

Jerry B. asked if the Judge involved in the situation discussed tonight was an employee of the Town of Minturn. Allen C. affirmed and stated that Terry Quinn was the Minturn Municipal Judge. Jerry B. asked Allen C. if it was his interpretation that this would be a situation where a judge or anyone else might feel intimidated. Allen C. stated that he could not answer that for the Judge; however, it was his perception of the hearing, particularly after having been through court since the case was filed on November 25, 2003, that the court had a swift turnaround on August 11, 2005. Prior to that night, the defendant, Mr. Hoza, had been fined and asked to clean the property. Allen C. stated that after court the Clerk, Alicia Lynch, the Chief of Police, Lorenzo Martinez, and he all said that they felt intimidated to some degree by the Mayor.

Motion by Darell W., second by Jerry B., to convene into Executive Session pursuant to C.R.S. Section 24-6-402 (4)(b) for the purpose of consulting with the Town Attorney on pending legal matters; all voted in favor. Those to be present included in the Executive Session are the Council present.

Council convened into Executive Session at 12:00 a.m.

Council reconvened into regular session at 12:06 a.m.

Darell W. asked for clarification on the Town Code Section 2-84C by the Town Attorney. Allen C. stated that the Council had three options: 1) Direct no action, 2) Direct civil action, or 3) Direct criminal action. He stated that he would be able to determine what court it would be filed in after the Council decided what action to take.

Darell W. stated that the concern of the Council was that it might be bordering on criminal allegations. He stated that was where the Council needed a little more guidance from the Town Attorney. Allen C. asked the Council to review Section 2-85A, "Any person convicted of willfully and knowingly violating any provision of Article shall be punished as provided in Section 1-72 of this Code. Additionally, upon conviction such person shall be liable to the

Town for such damages as may have been suffered or incurred as a result of such violation.” Allen C. stated that, in his opinion, this was intentional knowing willful violation. He reminded the Council of the court tape and said that he and the Judge both tried to stop the Mayor from interfering several times and he showed disregard by continuing.

Darell W. stated that the Council was bordering on the criminal and that the Council had a duty to follow by. He asked to be corrected if he was wrong.

Motion by Jerry B., second by Tom S., to remand the incident involving Hawkeye Flaherty, Minturn Mayor, to court as a criminal act; four voted in favor; Darell W. voted no (*NOTE: Fred H. did not cast a vote*).

Allen C. stated that this would go to municipal court. However, the case would preside under a different judge.

Darell W. noted that this would allow the Mayor to give his side as well as all those involved.

## FUTURE AGENDA ITEMS / WORK SESSIONS

### 21. Items to be added to future agendas / work session

- Mike Wheelersburg – Minturn Towne Homes Update – 9/07/05
- Ginn Clubs & Resorts – Development Update – 9/21/05
- Ordinance 17 – Series 2005 (First Reading): An Ordinance entering into an agreement with Lafarge of North American to lease space from the Town of Minturn by: Town Manager. (Tabled 8/3/05)
- Discussion/Action – Ordinance 23 – Series 2005 (First Reading): An Ordinance authorizing an IGA between CDOT and Town of Minturn for the acceptance of \$60,000 from CDOT for construction of a sidewalk between Cemetery Bridge and the Forest Service Bone Yard by: Town Manager. (Tabled 8/3/05)
- Chapter 16 - Subdivision – Work Session Sept 7, 2005
- Streetlights (100 – 200 block) on Main Street – coming on wrong time, etc.
- Park - DOLA

### 22. Set Future Meeting Dates

- 1) Council Meetings
  - September 7, 2005
  - September 21, 2005
  - October 5, 2005
- 2) Planning & Zoning Meetings
  - August 24, 2005
  - September 14, 2005
  - September 28, 2005
- 3) Other

### 23. Adjournment

As there was no further discussion the meeting was adjourned at 12:15 a.m.