



REGULAR MEETING OF THE • MINTURN TOWN COUNCIL
Wednesday, November 2, 2005

WORK SESSION CANCELED

REGULAR SESSION 5:45 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

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 SESSION – 5:45 P.M.

(Note: No Work Session was held in order to start the meeting at 5:45pm and proceed directly into the Executive Session with the water attorneys.)

1. Call to Order

a. Roll Call

Mayor Gordon "Hawkeye" Flaherty called the meeting to order at 5:50p.m. Those present included Mayor Flaherty, Bill Burnett, Tom Sullivan, Fred Haslee, George Brodin, and Jerry Bumgarner *(Note: Darell W. was excused late arrival.)*

Staff present were Ann Capela, Town Manager; Jay Brunvand, Town Clerk/Treasurer; Wiley Smith, Town Planner; Derrick Slocum, Town Planner 1; Allen Christensen, Town Attorney; and Lorenzo Martinez, Police Chief.

- b. Pledge of Allegiance

2. EXECUTIVE SESSION

- Colorado Revised Statute (C.R.S.) 24-6-402 (4) (a) for the purpose of consulting with the Town attorney's on pending water and legal matters.

Motion by Tom S., second by Bill B., to convene in Executive Session pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of consulting with the Town Attorneys on pending water and legal matters and pursuant to C.R.S. Section 24-6-402(4)(f) for the purpose of discussing personnel issues. Those to be included in the Executive Session are the Council present, Town Manager Ann Capela, and Allen Christensen, Town Attorney, Town Water Attorneys Anne Castle and Boots Ferguson. Mayor Hawkeye Flaherty is to be excluded from the pending water issue discussion due to a conflict of interest but would be called in upon discussion of the personnel issue discussion; all voted in favor. Due to the fact that Darell W. was absent and Hawkeye was excluded from the water discussion it was decided that Fred H. would run the Executive Session. At 6:25 Hawkeye was requested into the executive session in order to discuss the personnel section of the executive session. *(Note: Darell W. was excused late arrival.)*

The council convened back in to regular session at 7:05 no decisions were made and no direction was given.

3. 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 George B., second by Jerry B., to approve the agenda as presented; all voted in favor. *(Note: Darell W. was excused late arrival.)*

4. Approval of the Minutes:

- October 19, 2005
- Page 13 Jerry stated he was to contact the local chapter of the Rocky Mountain Elk Foundation. Jerry stated he had contact Jim Gonzolaze and was then given a letter dated

two days after the last meeting. Jerry asked if this was the direction. Add to the minutes of 10/19 that he was to contact RMEF.

- Page 10 Fred stated Hawkeye's house backs to Eagle Street; it is a Main Street address.

Motion by Bill B., second by Fred H., to approve the October 19, 2005 Minutes as presented as modified above; all voted in favor. *(Note: Darell W. was excused late arrival George abstained as he was not in attendance at the 10/19/05 meeting.)*

5. Special Presentations/Citizen Recognition/Project Update

- Mike Wheelersburg – Minturn Towne Homes Update

Mr. Mike Wheelersburg introduced himself and updated as follows.

B&B is on the site and grading. Tomorrow Taylor Ave will begin to be paved. As weather permits they will continue next week on Taylor Street. Mr. Wheelersburg has met with Chief Martinez as to where to place the requested no parking signs. The water tank monument will be painted next spring as the weather is turning. Build E rough inspections are completed; building D framing is being done. They are working on road base on site to mitigate the off site mud control.

Fred asked of the logo on the tank; they will be painting the logo on the tank not just the name "Minturn".

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

7. Discussion/action of Emergency Items, if necessary

STAFF REPORTS AND OTHER ITEMS

8. Reports/Correspondence/Announcements/New Business

- a. Economic Development Director
- b. Public Works
- c. Police

Hawkeye stated he had been contacted by citizens regarding the Fire Dept. and what they could do to assist in the Trick or Treat night at the street crossings; they were on a call and had to leave per Bill B.

- d. Treasurer/Clerk
- e. Town Planner
- f. Town Attorney
- g. Town Manager

Ann C. introduced Samantha Lee as the new Admin Tech/Court Clerk.

Ann C. stated that Karen's Economic Development report was in the packet. Monday evening, November 7th, Karen has an Economic Development workshop and encouraged everyone to attend. This meeting will also be held on November 8th in the morning. By having two days and times it will be easier for more people to benefit from the training.

Tom S. stated he had asked Rod C. if he felt he would have enough manpower to maintain the parks during the summer and asked Ann to follow up on this. Tom S. asked the cost of the newer dump truck; \$29,000 and \$7,500 to repair the existing International.

Ann C. presented a check from Lafarge in the amount of \$100,000 as part of their lease obligation for land on the lease lot.

Ann C. stated she had contacted an engineer and they would be inspecting the Old Town Hall and giving a report to the Town on its condition.

Ann C. stated she had contacted a company to review our Town records and copy them to disk. She would report more on this as information is learned.

h. Town Council

DISCUSSION, HEARINGS AND ACTION ITEMS

9. Discussion/Action – Parking Lease Renewal, Tim Simon (100 Block of Eagle Street) By: Town Manager

(Note: Bring information from your 10/19/05 packet on this item.)

Discussion ensued as to Hawkeye's conflict of interest as his home backs to the Eagle Street area in question. He has contacted his attorney (Mr. Rohn Robbins who was present and representing Mr. Tim Simon on this issue). Allen C. stated he had put the question to Hawkeye as to his conflict at the last meeting and it had been determined that Hawkeye did in fact have a conflict of interest. Allen C. stated that if Hawkeye had a conflict at the last meeting then he still had a conflict at this meeting because the discussion involved the same issues. Allen C. also stated he had a transcription of the discussion and decision from the 10/19/05 meeting and entered said transcription into the record (Attachment #1). Hawkeye stated that he would abide by the existing determination supporting the conflict of interest.

Note: Darell W. entered the meeting at 7:30

Hawkeye turned the meeting over to the direction of Mayor Pro Tem Darell W. and stepped from the. He stated for the record the packet that the material for the discussion had been handed out and was at their table. He stated he would be limiting the discussion by Mr. Tim Simon to

approximately 15 minutes. Mr. Rohn Robbins stated he was representing the Simon's and outlined the task put forth by the Council at the 10/19/05 meeting.

Mr. Robbins stated that he had contacted several of the organizations including the Dept. of Local Affairs (DoLA) and stated they did not have a concern that some parking would affect the river restoration and that Cathy Shipley, DoLA, would support the request to extend the grant if the request was made by the Town.

Mr. Robbins noted the definition in the MMC of development. He stated it is specific that parking is not a structure as defined by our Code and that therefore it would not affect the set back requirement to allow parking in the area.

Ms. Cathy Alto, of Land Design by Ellison, presented the alternative proposal. Ms. Alto explained the map she had as to the current trees and structures in the area so as to orient the Council to the map. Ms. Alto stated she had additionally met with Ms. Carol Molsen of the Fire District to get their concerns addressed as well. She stated the Fire District's concern centered around an existing phone pole that restricts the existing traffic flow. Ms. Alto addressed some of the existing hardscape and noted that no hardscape would be added as currently exists but that their proposal would allow for approximately 2000sqft of this material to be removed.

Ms. Alto stated the additional costs of the demolition of the existing hardscape, the required topsoil; road base etc would for the most part be included in the \$45,000 grant as it is currently proposed. However, not having this broken down the parking portion of the work could run as much as \$24,000 in direct costs that may or may not be included in the proposed plan for the park work.

Darell W. asked if any other comments form the council or the audience. Mr. Robbins stated that any additional costs above and beyond those covered in the cost of the grant proceeds would be covered by Mr. Simon.

Allen C. entered the packet supplied by Ann C. to the Council into the record as Attachment 2. Allen C. stated that Troy Thompson from ERC was in the audience for questions.

Tom S. asked why the information (Ann C.'s additional information and Mr. Simon's information and maps) were not in the packet and if Mr. Simon understood the packet deadline? Discussion ensued as to when items picked up at the Town by Mr. Simon and then when they were submitted back to the town. Ann C. stated much of her information is from previous packets other than the Carol Mulsen letter.

Fred H. asked Troy T. if they had seen the Simon proposal and if he had been able to meet with the Simons and party; yes they had met but he had not had an opportunity to review the submitted proposal in detail. Discussion ensued over the letters from Wendy Naugle, Colo Dept of Health and Environment. Allen C. stated he has had lots of comments that the Town has not been a good steward of the river and to allow the proposed parking would be reinforcing this citizen concern.

Darell W. opened the Public Hearing for interested citizens wishing to comment.

Ann C. stated staff had a few maps that would show what the park project would include as it is proposed. Darell W. asked if having the asphalt on Eagle Street would be a problem for the river and the river project; no because the road was never included in the existing project scope. Darell W. stated the street was in the 30ft set back and that we should repair or replace. Fred H. stated because the street was not included in the park project it was not an issue and that its cost to now include it would be cost prohibitive. To allow the proposed parking spaces to be added is to increase the scope of the project. Discussion ensued as to the road, parking, additional scope and the effects it would have on the project as approved and as proposed. Mr. Robbins stated that no change was being requested. Nothing is being changed from what currently exists but that the Simon Proposal retains some of the existing parking rather than removing it all. Mr. Robbins stated there is no 30ft in the MMC 16-17-19; Mr. Robbins stated that whether this was an oversight or not it does not exist.

Mr. Rob Davis, Minturn Planning Commission 1719 Main Street reviewed the maps. He stated he would like to study the live stream setback. He said this is something he has been talking about for 10 years. This park should have parking. This proposal from the Simons is a great option for the Market and for the community. He said he felt the Simon proposal was an improvement for the park and for the parking. He was in support of the Simon proposal. He said at least one space should be handicap and that the river should have handicap access.

Mr. Randy Milhoan, 146 Williams Ave, stated he was disappointed that the information was late as it did not allow for critical discussion on the options. He stated when you visit cities and towns most are in violation of streets and parking. It is this quiriness that makes Minturn unique and should be encouraged. Mr. Milhoan stated he had spoken to Marka Brenner of Minturn Realty and they are not in agreement with the cutting of parking. He represented that adequate parking on event days is a valuable commodity and should be considered as such.

Darell W. closed the public hearing. Allen C. stated that for the record there is a 30ft set back for the Old Town Character area in the MMC. Allen C. stated an almost identical restriction is in 17-234 of the MMC so it is also present in chapter 17. It exists in both chapters 16 and 17.

Bill B. asked what could be put in the setback; Wiley S. stated parking is not allowed. He read the paragraph in the Supplemental Rules and Regulations 16-17-19(b) set backs from rivers and creeks, a strip of land measured from the high-water mark with the exception of foot paths, bridges, and fences and items to protect the flood concerns of the area. Wiley S. stated that parking is not. Allen C. stated parking could be allowed with a conditional use permit. Bill B. stated that it is not clear. Mr. Rohn Robbins stated that is not on the web site.

Tom S. stated he did not feel this is a concern and parking is not the reason businesses fail. Putting a park in that area is a benefit to the visitors and the general community even though it might not be for Mr. Simon.

George B. stated he feels the Council is stewards of the land in Town and the park is a greater good over the parking. This is a pedestrian area and parking should not be allowed.

Jerry B. concurred and felt the town as a whole would rather have a park over parking.

Bill B. stated that we will have a park but not be able to get to the park because of the limited parking. It was pointed out that the parking at the Toledo area is not sufficient and that he as a citizen would not be able to enjoy the park because of his handicap limitations.

Discussion ensued as to the parking needs in town. Fred H. stated citizens in town do not have access to the park other than the streets that dead end at the river, La Playuela and Eagle Street Park.

Darell W. stated those on the 100 block of Main and Eagle Streets are going to be giving up a lot for the enjoyment of the Town. Darell W. discussed the need to incorporate a sprinkler system in the area to protect the vegetation of the park. He stated he feels maintenance on the road (Eagle St) is a concern but that with the reduction of parking in the area it may be less of a concern.

Ann C. stated that a motion had been made in June and voted on to proceed with the existing park plan (not the proposed Simon alternative). Ann C. stated the concern and issue tonight was to address the Simon parking lease. Tom S. said the parking concern has been addressed with the June motion but that Staff and Mr. Simon need to address his future parking and lease needs.

Jerry B. stated the concern of notice on the lease and if he had been given the required 30day noticed. The existing lease expires on 12/31/05.

Motion by Tom S., second by Fred H., to not renew the parking lease and that we direct the Town Staff and Mr. Simon to meet and construct a new parking lease not including the Eagle Street area all voted in favor, Darell W. voted no, Hawkeye did not vote due to his conflict of interest. Mr. Robbins stated that the Town would need to work quickly with Mr. Simon in that to proceed with the park would get in the way of his business.

Hawkeye resumed his seat at the Council table.

10. Discussion/Action – A Conditional Use Request on North Railroad Avenue in the Rail Yard for an employee parking lot for employees of Gore Creek Place through R.A. Nelson & Associates By: Planning Staff

Hawkeye stated we had a citizen that had been in an accident, Tony Aiello. Hawkeye gave a brief update of his condition and wished him well.

Hawkeye introduced the agenda item and turned the meeting over to Derrick S. who outlined the location and issues. Derrick S. stated the item was discussed at a special P&Z meeting last night. P&Z recommended approval with the following conditions:

Planning Commission Conditions:

- Additional permit fee to cover any additional town costs.

- Copy of the checklist that inspectors use to inspect the sediment fence, river runoff, and other possible pollutants.
- No storage and no trailers, only employee passenger vehicles.
- Limit work week to five (5) days.
- A list stating the hours and days the lot will be used.
- Address vehicle headlights shining towards the Taylor Avenue residences

Staff Conditions:

- Prevent the removal of any trees from the site
- Access site from the north bridge near Dowd Junction, limit and/or prevent access from downtown Minturn.
- Only employee vehicles will be permitted to use the site.

Derrick S. introduced Mr. Mike Cuthbertson, RA Neilson. Mr. Cuthbertson identified the project in Vail and stated they will have, at peak, approximately 200 employees. They have been working on the lease beginning in about March 2005. The parking proposed will handle approximately 100 cars. This frees up parking in Vail for the tourists by not using existing parking in the town of Vail. Mr. Cuthbertson stated the proposed lot is approximately 100feet from the river at its closest point.

Fred H. asked for clarification that the proposal is on Rail Road land not on Forest Service; Wiley S. confirmed it was RR land. Mr. Cuthbertson stated it was RR land and was confident of the location.

Darell W. asked how will the parking be monitored as to abandoned vehicles etc.; the property will be monitored and such will be towed as the parking is needed for active vehicles. Mr. Cuthbertson stated they will be potentially monitoring the site with cameras. Jurisdiction was discussed; Lorenzo stated the Town has jurisdiction as it is in Town.

Fred H. stated he thought this request was a M-F use. Mr. Cuthbertson stated the primary use is M-F but they would like to have access to the parking seven days a week. Mr. Cuthbertson stated they would be installing a chain link fence with green screening. Snow removal and snow storage was discussed as was the elk heard.

Hawkeye opened the public hearing.

Mr. Harry Gray, 291 Main St., felt parking is a commodity in Vail it would be approximately \$1600 day for those spots. He stated that to lease the parking for less than that amount would be to subsidize Vail Resorts etc. Allen C. stated Mr. Gray is allowed to discuss the benefits of the proposal not to cross examine the applicant.

Mr. Randy Milhoan, 146 Williams St., asked what benefit does Minturn get form this deal? Why would we want to condone the use of Minturn for the benefit of the Town of Vail?

Hearing no further comments, Hawkeye closed the public hearing.

Ann C. stated that this is private property and there is very little we can impose or extract from the applicant.

Jerry B. stated none of the folks leasing on the Rail Road land were required to give to the town. This is a deal between the RR and the applicant. They will pay the fees that currently exist and it is not right. Allen C., in response to questions, stated the Town would not be able to charge a fee.

Tom S. stated that he was in agreement with Mr. Milhoan in that this is our front door and we should protect it. He felt this was not a conditional use that we should approve. Bill B. stated his agreement with Tom S.

It was noted that the vehicle owners would be bussed to Vail so traffic would still be a concern within Minturn.

Darell W. stated his agreement with Tom S. He stated the Town of Vail is a good neighbor but Vail Resorts was not.

George B. stated he was not in favor. Discussion ensued as to the fees that would or could be assessed.

Fred H. asked Lorenzo of the extra work that would be levied on his department. Lorenzo stated car break-in's at the Forest Service parking lot is a big issue. He is also concerned with potential accidents and abandoned vehicles.

Darell W. asked if this was denied would it be an issue with the Taking Laws; no,

Motion by Tom S., second by Bill B., to deny the Conditional Use Request on North Railroad Avenue in the Rail Yard for an employee parking lot for employees of Gore Creek Place through R.A. Nelson & Associates as presented with the noted conditions; all voted in favor, Hawkeye and Jerry B. voted no. (The motion to deny passed 5-2; parking will not be allowed.)

11. Public Hearing – Fiscal Year 2006 Budget, By: Town Treasurer.

(Note: Bring Budget books)

Hawkeye introduced the agenda item and referred it to Jay B. for detail. Jay B. noted that tonight would be the second of two Public Hearings and an opportunity for Council direction and comment on the budget.

Hawkeye formally opened the Public Hearing stating this would be a public hearing on the Fiscal Year 2006 Annual Budget. Anyone wishing to comment on the budget should state their name and address for the record.

Discussion ensued as to if the sprinkler installation in the parks is funded; yes.

Hawkeye opened the Public Hearing to comments

A request for funding has been received from BRAVO! Vail Valley. Ms. Jeanne Reid addressed the council on the growth and the need for the request. She stated items they have been doing in Town to include the Market and the Library. Currently they are looking at a concert at the Church in Minturn. They are asking for \$2,000. She stated that the request form was in the packet and further information had been distributed to the Council. Ms. Reid outlined the contribution such an event would make to the Town.

Bill B. asked about the commitment with the Market; each year they purchase a booth space.

Ms. Reid stated they are asking for \$2,000 for this coming year, not for other future years. It was noted that future funding would have to be requested annually.

George B. stated he would like to fund but at a lesser value.

Jerry B. stated he felt \$2,000 could be found. He felt this enhances the quality of life for our citizens and it is important. Darell W. agreed with Jerry B.

Tom S. agreed with Fred H. that we should apply our funds to our current needs.

Motion by George B., second by Hawkeye to give \$1,000 to Bravo! Vail Valley; all voted aye, Fred H, Tom S, Bill B., motion to fund at \$1,000 passed.

Hearing no further citizen comments Hawkeye closed the Public Hearing and opened the discussion for Council comments.

Jay B. noted the items included in the packet. As directed by Council a list of items was compiled indicating the various budget requests, if the request was funded and where and who made the request.

12. Discussion/Action - Ordinance No.30 – Series 2005 – First Reading: An ordinance amending the 2005 Budget, recognizing additional general fund revenues in the amount of \$615,172.00, and appropriating general fund expenditures of \$405,672.00 and recognizing additional Conservation Trust fund revenues in the amount \$300,000.00, and appropriating Conservation Trust fund expenditures of \$300,000.00.

Hawkeye introduced the item and referred the issue to Jay B. for details.

Motion by Tom S., second by Fred H., to approve Ordinance No.30 – Series 2005 – First Reading: An ordinance amending the 2005 Budget, recognizing additional general fund revenues in the amount of \$615,172.00, and appropriating general fund expenditures of \$405,672.00 and recognizing additional Conservation Trust fund revenues in the amount \$300,000.00, and appropriating Conservation Trust fund expenditures of \$300,000.00 as presented; all voted in favor. *(Note: Darell W. was excused late arrival.)*

13. Ordinance No. 31 – Series 2005 – First Reading: An ordinance levying general property taxes for the year 2006, to help defray the costs of government for the town of Minturn, Colorado for the 2006 budget year.

Hawkeye introduced the item and referred the discussion to Jay B. for questions. Hawkeye

Motion by Fred H., second by Bill B., to approve Ordinance No. 31 – Series 2005 – First Reading: An ordinance levying general property taxes for the year 2006, to help defray the costs of government for the town of Minturn, Colorado for the 2006 budget year; all voted in favor.

14. Ordinance No.32 – Series 2005 – First Reading: An ordinance annually setting, amending and approving town fees as set forth in the following attachment to be included in appendix A of the Minturn Municipal Code for the town of Minturn, Colorado fees commencing January 1, 2006.

Hawkeye introduced the item and referred it to Jay B. for questions.

Motion by Fred H., second by Bill B. to approve Ordinance No.32 – Series 2005 – First Reading: An ordinance annually setting, amending and approving town fees as set forth in the following attachment to be included in appendix A of the Minturn Municipal Code for the town of Minturn, Colorado fees commencing January 1, 2006; all voted in favor.

15. Ordinance No.33 – Series 2005 – First Reading: An ordinance recognizing revenues, appropriating expenditures, approving transfers and adopting the town of Minturn budget for the period beginning on the first day of January, 2006 and ending on the last day of December, 2006.

Hawkeye introduced and referred to Jay B. for questions.

Motion by Fred H., second by Tom S., to approve Ordinance No.33 – Series 2005 – First Reading: An ordinance recognizing revenues, appropriating expenditures, approving transfers and adopting the town of Minturn budget for the period beginning on the first day of January, 2006 and ending on the last day of December, 2006; all voted in favor.

FUTURE AGENDA ITEMS / WORK SESSIONS

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

- Mike Wheelersburg – Minturn Towne Homes Update – 12/07/05
- Budget adoption (final reading), Mill Levy adoption (final reading), Town Fee Schedule (final reading), and FY 2005 Supplemental Appropriation. – 12/07/05
- Ordinance 26 – Series 2005 (First Reading): An Ordinance authorizing the Mayor to enter into a lease agreement with the Radio Tower Contract. – Tabled until completed
- Conflict of Interest for discussion

- Town Manager personnel issue to be potential executive session
- Ann C. requested to present accomplishments in the PW's area covered over the summer. Committee of Hawkeye and George to review this prior to Council.

Discussion ensued as to the Tax implication and payments of the Rail Road.

17. Set Future Meeting Dates

1) Council Meetings

- November 16, 2005
- December 7, 2005
- December 21, 2005

2) Planning & Zoning Meetings

- November 9, 2005
- November 23, 2005
- December 14, 2005

3) Other

18. Adjournment

In that there was no further business the meeting was adjourned at 9:35pm.

Mayor, Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand