



REGULAR MEETING OF THE • MINTURN TOWN COUNCIL
Wednesday, February 15, 2006

REGULAR SESSION 5:45

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.

1. Call to Order

a. Roll Call

Mayor Gordon “Hawkeye” Flaherty called the meeting to order at 5:45pm. Those present included Darrel Wegert, Bill Burnett, Tom Sullivan, Fred Haslee, George Brodin, and Jerry Bumgarner.

Staff present was Ann Capela, Town Manager; Wiley Smith, Town Planner; Derrick Slocum, Town Planner 1; Allen Christensen, Town Attorney; Jay Brunvand, Town Clerk/Treasurer; Karen Earley, Economic Development Director; Boots Ferguson, Town Land Attorney; and Torrey Maxwell, Court Clerk/Admin Tech.

b. Pledge of Allegiance

2. Executive Session (5:45pm – 6:55pm)

- Colorado Revised Statute (C.R.S.) 21-6-402(4)(b) for the purposes of consulting with the Town Attorney on water and contract issues and pursuant to Statute ((C.R.S.) 21-6-402(4)(f) for the purpose of completing the Town Manager’s employee evaluation.

Motion by Darell W., second by Jerry B., to convene in Executive Session pursuant to C.R.S. Section 24-6-402(4)(f) for the purpose of discussing the Town Manager’s annual review and C.R.S. Section 24-6-402(4)(b) for the purpose of consulting with the Town Attorney on Water Rights Issues and the M. Boyd lawsuit. Those to be included in the Executive Session are the Council present, Town Manager Ann Capela, Allen Christensen, Town Attorney and other town attorneys as necessary by phone; all voted in favor. *(Note: Hawkeye abstained from the water discussion portion due to a conflict of interest.)*

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 Bill B., to approve the agenda as presented; all voted in favor.

4. Approval of the Minutes:

- February 1, 2006
-

Motion by Darrel W., second by Fred H., to approve the minutes of February 1, 2006 as read; all voted in favor.

5. Special Presentations/Citizen Recognition/Project Update

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

7. Discussion/action of Emergency Items, if necessary

8. Reports/Correspondence/Announcements/New Business

STAFF REPORTS AND OTHER ITEMS

- a. **Economic Development Director**

b. Karen reported on the upcoming “Influencing Positive Economic Change for Minturn” which is Tuesday evening on 2-21-06 from 6-9pm. Three committees will be formed; Historic Preservation, Events & Activities, and Business to Business.

c. Public Works

Rod C. updated council on the water main line that broke on Super Bowl Sunday. It was approximately 100-200’ south of the Maloit Park entrance. This line has been problematic in the past, four line breaks in the last three years all in different locations. With the help of the Excavation team, the public works team, Floyd Duran, LaFarge and others the repairs were completed in two days.

d. Police

Fred H. questioned Lorenzo about Toledo and 24, in front of Bravo, he inquired what statue calls for distance clearance. Lorenzo stated that he has spoke with the Town Manager and DOT has been contacted.

Emergency Training would be held here on a Saturday morning and there is no cost. Would be scheduled at council’s convenience.

e. Treasurer/Clerk

Election update: petitions available now, due back by end of day March 3rd. April 4th is Election Day. Three seats and one for Mayor. If public signs more than one petition then it is the first petition that is returned that the signature counts towards. Hawkeye suggested that people get more than the required signatures in case some of the signatures are voided.

f. Town Planner

Beginning of the month council was Five items to put into the Chapter 16; definitions, signage, legal non-compliance, Old Town Character and South Town Character. We have gone through with the P&Z, changed, revised and updated and would like Council to review prior to March 1st.

g. Town Attorney

h. Town Manager

i. Town Council

Hawkeye F. noted Minturn was in the Denver Post on February 6th. Minturn was shoveling out from underneath the snow.

Jerry B. commented on the Game Fence on I-70. Ann C. stated that she received an email from District III Director, Ed Fink that they are looking at it, a meeting has been scheduled and it is a concern of theirs also. High snow is keeping that from occurring right away. Jerry B. wanted to thank Jim Gonzalez, a local resident who brought this to our attention.

Darell W. Monday night was Open Space Committee meeting. There were several items on the agenda that Darrel gave a brief summary on 1) Open Space in Inner Mountain, 2) Old Edwards Estate Parcel, 3) Millers Ranch, 4) term limits for Open Space Committee, 5) tabled the election until it was know about term limits, and finally 6) update on Eaton Ranch

DISCUSSION, HEARINGS AND ACTION ITEMS

9. Discussion/Action – Final Subdivision Plat – Minturn Towne Homes, Buildings D and E - Smith.

Hawkeye F declared the public meeting to order and introduced Wiley S.

Wiley S. apologized for the packet and stated that pages 32 – 37 should be moved to 79 and 58A/B should be moved to the end of that.

Wiley S. introduced Minturn Town Homes who is requesting approval of a Final Subdivision Plat for a 9 unit Town Buildings D and E located on lots 1 – 10 of Block A, Taylor Addition in the 100 block along Taylor Avenue. Staff has reviewed this application and included a comparison with the comprehensive plan, pertinent zoning regulations and background activity and analysis of the referral comments including a comparison of the project to policies and goals in the Minturn Development Code. The applicant has demonstrated meeting the Final Plat requirements as stated in Section Sec. 17.7 Final plat application of the Minturn Zoning Code. The staff recommends approval of this final Plat subject to the following: that any future change to the plat will have to come in front of the town council and any future changes in Section 17.7.6 with additional requirements that will be supplied by the planning staff or any outside agencies.

Steve Isom, 241 Broadway, Eagle, Phase II Final Plat is in conformance with the preliminary plans, Phase I final plat we redefined Taylor Avenue, vacated the extension and redefined an easement on that property and also vacated lot lines (12) through the property, so what we are doing is Building E 1-4 and D 1-5 all accessing off of Lyons Lane. In conformance with the Master Plan and we are in agreement with recommendations of the staff. We ask for approval. Hawkeye F. inquired if we are at TCO or complete CO. Steve I. replied that they are in the process right now, all the parting walls are up and so we can go for platting run, we still have some finishing to do for TCO.

Lin Figer, 484 Eagle Street, Minturn. Is there an easement for the bicycle trail through the middle of the project; yes. Proponents to speak; no. Opponents; no.

Public hearing closed by Hawkeye F. Darrel W. inquired of Tom S. how he feels about the project. Tom S. replied that he feels it was a mistake that we gave up our streets. On Taylor and the extension, narrowing to 24 to 25'. Darrel W. did we put restrictions, didn't we say they have to use garages for parking; yes. Wiley S. the plat is different from the PUD and what we are discussing this evening are the requirements of the Plat.

Those conditions that you asked for are part of the PUD and the project has adhered to. I could give you the conditions but that will be pulled from a different file. Steve I. No parking on Lyons Lane and we had to sign it that way. You are allowed to park in front of the garages, it is 20' from the garage door to the edge of street. Hawkeye F are those appropriate to include in the HOA; yes, that was part of the conditions. Hawkeye F. please double checks that and then email council. Tom S. is it the Lyons Lane or is it the easement? The paved Lyons Lane is a lot smaller than the easement. I disagree with what Steve said. Hawkeye F. do you think the parking applies to the easement not just the paved street? Hawkeye F. asked Wiley to check that; yes. Fred H. stated he just wants to make sure we are talking about a plat versus the conditions on the PUD, because we are confusing the issues. Wiley S. we need the declaration of finding or do they apply. Wiley S. responded to look on page 24, 17.7.4 They have not brought a signed plat. How the council has done this in the past is that they have taken a final plat application to the town council and then they bring a signed Mylar to the office the next day, the Mayor would sign it and then it would be recorded. Hawkeye F. so we need a final plat with designation allowing me to sign it; yes. Hawkeye F. whoever makes the motion please include that. We could include the finding of facts by reference to 17.7.4 instead of reading them all; yes.

Motion by Jerry B., second by Bill B, to approve the Final Subdivision Plat of the Minturn Towne Homes, Buildings D and E to include Section 17.7.4 and authorize the Mayor to sign such plat; all voted in favor. Hawkeye F. asked Steve I. to pass onto the developer, Jim Cumerford, that Mike Wheelersberg has done an outstanding job in working with the staff and the town.

9. Discussion/Action – Final Subdivision Plat – Minturn Racquet and Trout Club – Smith

Introduced by Hawkeye F. the Wind River Land Company, also known as Minturn Racquet and Trout Club is requesting approval of a Final Plat Subdivision for 14 log homes, a four-plex and a club facility located on lots 1 through 5.

Public hearing was opened at 7:35pm. Wiley S. made correction noting that it is lots 1-15. Original tract was known as the Mise Tract and was approved by the Town of Minturn in June of 2003. Staff has reviewed the application and included a comparison with the comprehensive plan, pertinent zoning regulations and background activity and analysis of the referral comments including a comparison of the project to policies and goals in the Minturn Development Code. The applicant has demonstrated meeting the Final Plat requirements as stated in Section 17.7.1 Final plat application of the Minturn Zoning Code.

The staff recommends approval of this application subject to the following:

- The proposed project requires final approval from the Planning Commission and the Town Council and any changes or additional revisions to the final plat will come before the town council.

Jim Brinkeroff, 1888 Crosscreek Lane, Minturn, we received preliminary plan in summer of 2003 and we developed 14 Log homes, four-plex, a Club house, PUD improvements over the course of about two years. PUD improvements are in and are as required. Any questions? Pete Vance, 560 Main Street, hoped that Mr. Brinkeroff may have some sand bags out there for runoff this spring. Margary Westman, Tennessee Pass asked if this project is done. She was also concerned about the amount of lights on the last house that was built. Hawkeye F. asked for Proponents? Jim B stated the project is done; they built in a safety factor, well above the engineered flood plan. We are two and a half feet above the 100 year. Jerry B. stated that after this was approved it was discovered that the survey that was done in '99 by Mr. Russell. Was it an ordinary high water mark used as defined by the Corp of Engineers in establishing the 30' setback? Jim B. we hired an engineer that does a lot of work for Minturn and we asked them to create a plan that complied with the Town of Minturn Code and they used the Russell survey of '99. From what I understand the high water mark is a subjective survey. A surveyor goes out into the field and interprets where the high water mark is. That survey was accepted by our engineer and then approved by the Town council. Jerry B. you do remember us questioning that mark that was established by the Russell Survey that it did not go along with the established definition of ordinary high water mark. Jim B. responded that there was never any question to my knowledge. Hawkeye F. asked if they are at TCO or CO? Jim B. stated everything is finalized except our clubhouse. Public Hearing closed 7:44pm.

Motion by George B., second by Darrel W, to approve the Final Subdivision Plat for 14 log homes, a four-plex and a club facility located on lots 1 through 15 to include the findings of 17.7.4. with the conditions that the Mayor will review and then sign the completed Mylar when presented.

Five minute recess to allow Ginn Staff to set up.

10. Public Hearing on Petitions for Annexation for Battle Mountain Annexation Parcels No. 1-9 for the annexation of territory to the Town of Minturn, Colorado for the purposes of determining and finding whether the areas proposed to be annexed as the Battle Mountain Annexation Parcels No. 1-9 comply with the applicable requirements of the Municipal Annexation Act of 1965, as amended, and is considered eligible for annexation.

Please refer to the procedures for the conduct of this hearing – Exhibit “A”.

Public hearing was opened by Hawkeye F. at 8pm.

Boots Ferguson, Holland & Hart, 600 East Main Street, Aspen, retained by the Town as Special Council for annexation matters. Reviewed the petitions, how we comply with the statues, and the timing as specifically set forth in the statues. No formal PUD, subdivision or zoning applications have been filled for this property. However, under the statue the Town is required to have this Public Hearing on the petition specifically. Because of the extensive evidence to be submitted by the petitioners and the anticipated significant level of public comment we anticipate this hearing will be continued in the future. There are no statutory requirements that pertain to the setting of the time for a continued hearing. This is important because one of the things the

town wants to do and is obligated to do by its 3-mile plan for annexation is to try to couple the annexation petition review process with the process for reviewing both PUD, subdivision and zoning applications. The Town will absolutely provide ample opportunity for Public input and comments on the annexation petitions, PUD, subdivision and zoning applications. When they are received the town will consider the petitions and whether or not they comply with the statutory requirements, the obligation of three mile plan, and whether they are consistent with the procedures and policies of the town. At such time an annexation agreement will also be negotiated with the petitioners before a final decision is made by the town council

Comments should not be provided to individual council members. Any comments that are made to them will be provided directly to the Town Clerk. Such comments must be disclosed by Council members at each of the hearings. But in this process the council members sit as judges and they have to take the information through the public process, this applies to both the petitioners, owners of property, and the Town. If you so desire to submit any written comments, please provide them directly to the town clerk. They will be incorporated into the record and will be reviewed by the council. If you would like to make them orally, please come to the town meetings and provide them at that time.

Since this is a Evidentiary Hearing in which the petitioners are required to submit evidence to support the allegations in the petitions, public comment will take place after the completion of the presentation of the evidence by the petitioners.

Boots F. then listed the items that are to be incorporated into the official record::

- Nine petitions for annexation for Battle Mountain Annexation Parcels 1-9 were filed with the Town Clerk November 17th, 2005 pursuant to CRS 31.12.107(1)(b), and for the petitions for the annexation for Battle Mountain Annexation Parcels 1-9
- Nine copies of the Battle Mountain annexation map
- Two letters received from the council for the petitioners which were dated 12-16-05 one requested and consented that one public hearing be conducted for all nine petitions since there are different petitioners for the different petitions and therefore they have all consented that they can be consolidated and considered simultaneously for the public hearings. Second letter is in compliance with the requirements of the three mile plan and disclosures from Sarah Baker.
- The Town Clerk referred the petitions to the Town Council as a communication pursuant to CRS Section 31.12.107(1)(F) on 12-7-05 the Town Council pursuant to CRS 31.12.107(1)(f) directed the town staff to review and make recommendations whether or not the petitions were in substantial compliance with the requirements of CRS 31.12.107(1). This public hearing was set at the 12-21-05 town meeting in the Town of Minturn resolutions 11 Series 2005 through Resolution 19 Series 2005 in which the town council made findings that the 9 petitions for annexation filled by Ginn Battle North LLC, Ginn Battle South LLC and Ginn LA Battle LLP were in substantial compliance with CRS 31.12.107 and Annexation proceedings were initiated
- Notice of this public hearing was given by the Town Clerk pursuant to the Town Resolution 11-19 Series 2005 and CRS Section 31.12.108.

- In addition the proof of publication of legal notices from the publisher, GM or Editor of Vail Daily and the Eagle Vail Enterprise that the notices were published in the Vail Daily and the Eagle Vail Enterprise.
- Copies of each of the publications of the Vail Daily in which the legal notices were
- Copies of the certified mail receipts that the notices were mailed to the Board of County Commissioners of Eagle County, the Attorney for Eagle County, the special districts and school districts having territory within the area to be annexed, indicating they were mailed on January 19th, 2006, at least 25 days before the hearing.
- An Annexation Impact report was prepared by the Town of Minturn pursuant to CRS 31.12.108.5 and was filed January 20th, 2006 more than 25 days before the public hearing. Also requested was the affidavit of Ann Capela certifying that the copy of the annexation impact report was filed with the Eagle County Board of Commissioners pursuant to CRS 31.12.108.5 on 1-20-06.
- All written comments that have been submitted by the public on these

Pursuant 31.12.109(2) the proceedings of this hearing are being recorded by a court reporter.

Hawkeye F. asked if anyone had spoken to council members regarding annexation. Each council member responded no except Darrel W. noted that Andy Weissner had approached him at an Open Space Committee meeting. Andy spoke with Darrel on some facts and figures that he had and Darrel advised him that he could not really speak with him on the matter. The conversation lasted approximately 5 minutes. Allen C. obtained an email that Darrel W. forwarded to him and he forwarded to Jay unread, which was also from Andy. They are now part of the public record. Allen C. asked Hawkeye F. to declare if anyone had spoken to him regarding annexation matters. Hawkeye F. stated no he had not spoken with anyone. Also, Mr. Ferguson made reference to at least six dozen documents, but all documents referred to should be made part of the public record by council. Hawkeye F. asked for a motion. Motion by Bill B. to make all documents referred to by Mr. Ferguson, a part of the official record, second by Fred; all in favor.

Sarah Baker, Wear, Travers, & Perkins, 1000 S Frontage Road, Suite 200, Vail representing the Ginn Companies. Introduced Bill Weber and Bobby Ginn. She explained she would be going through the statutory procedures, basically the bulk will be demonstrating how the Ginn annexation request satisfies the requirements of Colorado law along with a brief introduction of our project.

Bobbie Ginn, 42 Eisle Estates, Palm Coast, Florida recapped what has been going on over the last 14 months. Ginn has been looking for a property like this and saw this property over 10-12 years, we knew the background so when we offered on it we closed in a month or six weeks. We are very hands on, we not only develop, we manage, when we make a long term commitment so planning takes us a little longer than the normal developer who wants to get in, get it approved, get it built, get it sold, and then go onto the next project. Ours has a life afterwards, and actually that life in some respects is more important to us than the just the development of it. Battle Mt is no exception, it is the opposite. It is a golden opportunity to do something that is different and unique. The communities we affect, environmental, wildlife. how we clean it up, Battle Mountain has this reputation of being a huge environmental clean up project which it really isn't. The part of it that needs a lot of attention. We have taken our time, getting the best

consultants, we are using cutting edge technology to improve the property not just leave it alone. We have about completed the development plan. One of the things I said is that I come to these meetings, not because I can contribute, but sometimes I am just a rumor spoiler. Our plan started out with a discussion on what is density and we laid out a density of 1700 units. What does 1700 mean? 1700 hotel rooms and the zoning permits it, it is 1700 hotel rooms and no allots for houses. If it is 1700 houses then it is 1700 houses. Our zoning has changed, our areas have changed, our planning has gotten further along, but what we committed that first night hasn't changed. 1700 is what we are asking the town council to put into our annexation.

- Bolt Lake is a very sensitive area. We are in the process of finalizing our plan; most of our time has been spent on this. We are now working back up the mountain, we have designed an 18-hole golf course, a championship course, and it can host any tournament that is hosted in America. This has the chance of being one of the great ones of all time. The rest of Bolts Lake are condos, not houses, we are negotiating with EPA, building a parking deck, that will help in the environmental clean up. It is an entombing of the property in addition to what is there already. That is getting a lot of good response from all of the regulatory agencies. Golf Course planning is done, architectural side of it is underway, and we are now into the engineering.
- On the mountain itself, there are two areas, there is an area that is down at the bottom Willow Creek, we have concentrated our second multi-family or resort core area, and we took it off of the top of the mountain after listening to the people here.
- The ridge top is now basically all single family homes and from what he can tell they are all pretty much down off the ridge top so there are no ten stories buildings. There is only single family on Battle Mountain ridge. The second resort core is down in Willow Creek, it is at a lower altitude and is the first part of the development that you get to coming up, and so our traffic going in and out has been minimized. So we have Bolts Lake, the ridge top area, the base of Willow Creek and then
- Gilman. Gilman is the biggest clean up; we have a lot of information on that, we are the most behind because it is going to take us so long to get the information together and complied, but we plan to use a method similar to Bolts Lake, entombing the area, put enough development up there to help clean up the balance of the Gilman area. I don't believe there is anything inconsistent with what I said the first time. The process is on over the next five or six months we are going to be submitting the plan. Any one of these communities is a submission in itself. Hopefully we can submit one at a time and get input from the public on what is good, what is bad. We said we are going to be a private community, not public, we are not running a retail operation. By being private it greatly reduces traffic. We have studied traffic, we have a gentleman that I have great respect for helping us on our end and we have had numerous changes on plan based on what we are going to recommend for mitigation of what traffic is.

I don't mind the critics, but if anybody knows me, or has ever been around me, they know that I hate to sell anything. I am a developer, it is not for sale, We have come so far with staff; we are so close to having all of the information for Water and Sewer agreement. It is not for sale.

Sarah B. explained that she would be going over the elements of CO law, element by element, how we drew the line, and the series of annexations.

Referring to the Annexation Map Sarah pointed out (aerial view) the 5300 acres of the Ginn properties and distinguished the nine parcels of 4300 acres to be annexed. She reiterated the restriction of not extending the town any more than 3 miles in one year. Annexation map is now part of the record. It is one annexation map showing all nine parcels.

Sarah B. introduced Brent Biggs of Peak Land Surveying Inc,

Brent Biggs, Peak Land Surveying Inc, 1000 Lyons Ridge Loop, Vail Colorado. After presenting his professional qualifications he noted that he had prepared the Annexation Map.

Sarah B. and Brent B. then went over, in detail, each of the parcels contiguity.

Sarah B. noted that she would not be able to conclude her testimony within the time allotted and requested continuance to September 6th, 2006 along with our land use application.

Hawkeye F. asked for a motion to continue the hearing at the first council meeting in September.

Motion by Tom S., second by Bill B., to extend the Ginn Annexation Petition Hearing until September 6, 2006. Hearing will begin at 7:00pm and be held at the Minturn Town Center, 302 Pine Street; all voted in favor.

FUTURE AGENDA ITEMS / WORK SESSIONS

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

1. Mike Wheelersburg – Minturn Towne Homes Update – 3/1/06
2. 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

14. Set Future Meeting Dates

- 1) Council Meetings
 - March 1, 2006
 - March 15, 2006
 - April 5, 2006
- 2) Planning & Zoning Meetings
 - February 22, 2006
 - March 8, 2006
 - March 22, 2006
- 3) Other

15. Adjournment

