

REGULAR MEETING OF THE • MINTURN TOWN COUNCIL

Wednesday, September 6th, 2006

REGULAR SESSION – 5:30PM

Minturn Town Center, 302 Pine Street • Minturn, CO 81645 • (970) 827-5645

MAYOR - Gordon “Hawkeye” Flaherty **TOWN MANAGER** - Ann K. Capela
MAYOR PRO TEM – George Brodin **TOWN CLERK/TREAS** - Jay Brunvand

COUNCIL MEMBERS:

Jerry Bumgarner
Bill Burnett
Tom Sullivan
Kelly Brinkerhoff
Shelley Bellm

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 – 5:30 PM

1. Call to Order

a. Roll Call

Mayor Gordon “Hawkeye” Flaherty called the meeting to order at 5:35pm. Those present included Bill Burnett, Tom Sullivan, Shelley Bellm, Kelly Brinkerhoff, Jerry Bumgarner, and George Brodin.

Staff present was Ann Capela, Town Manager; Jay Brunvand, Town Treasurer/Clerk, Wiley Smith, Town Planner; Allen Christensen, Town Attorney; Jay Brunvand, Town Clerk/Treasurer; and Boots Ferguson, Town Land Attorney.

b. Pledge of Allegiance

2. Executive Session (5:30pm – 6:15pm)

- CRS Colorado Revised Statute (C.R.S.) 24-6-402(4)(b) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson for discussion pertaining to the Ginn annexation hearing.

- CRS Colorado Revised Statute (C.R.S.) 24-6-402(4)(e) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson for determination of positions related to matters that may be subject to negotiation and development strategy for negotiations and instructions on negotiations on all pending Ginn Co. applications and Water Court actions
- CRS Colorado Revised Statute (C.R.S.) 24-6-402(4)(a) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson to discuss the purchase, acquisition, and/or lease of real property.

Motion by Tom S., second by Bill B., to convene in Executive Session

- pursuant to Colorado Revised Statute (C.R.S.) 24-6-402(4)(b) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson for discussion pertaining to the Ginn annexation hearing
- pursuant to C.R.S. 24-6-402(4)(e) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson for determination of positions related to matters that may be subject to negotiation and development strategy for negotiations and instructions on negotiations on all pending Ginn Co. applications and Water Court actions
- pursuant to C.R.S. 24-6-402(4)(a) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson to discuss the purchase, acquisition, and/or lease of real property; all voted in favor.

3. Executive Session (6:15pm – 6:55pm)

Council will recess as Town Council and convene as the Town of Minturn, Water, Sanitation and Recreation Activities Enterprise ("Enterprise").

Motion by Tom S., second by Bill B. to convene as the "Enterprise"; all voted in favor.

"Enterprise" Chairman, George Brodin, will take the chair and request a motion to proceed into executive session.

- CRS Colorado Revised Statute (C.R.S.) 24-6-402(4)(e) for the purposes of consulting with the Town Attorney and Special Counsel, Boots Ferguson to formulate strategy for negotiations with ERWSD concerning construction of wastewater treatment plant and pending water court actions.

Motion by Tom S., second by Bill B., to convene in Executive Session pursuant to C.R.S. 24-6-402(4)(e) for the purpose of consulting with the Town Attorney and Special Counsel, Boots Ferguson to formulate strategy for negotiations with ERWSD concerning construction of wastewater treatment plant and pending water court actions; all voted in favor.

Town Council will close the meeting as Minturn Water, Sanitation and Recreation Activities Enterprise and convene as the Town Council.

Hawkeye reconvened the Regular Meeting as the Council and turned the meeting over to George Brodin, Enterprise Chair.

George B. directed Staff to proceed with preparations and site applications for several sites to include above Dowd Junction.

Motion by Kelly B., second by Shelley Bellm, to direct Staff to proceed with preparations and site applications for a wastewater treatment plant on one of several sites in the Dowd Junction area; all voted in favor.

George B. turned the meeting over to Hawkeye as the Mayor and the meeting convened as the Town Council.

Hawkeye made note on the record of the reasons for the Executive Sessions for both the Council and the Enterprise. No further action was taken.

4. Approval 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 Bill B., second by George B., to approve the agenda as presented; all voted in favor.

5. Approval of the Minutes

- August 16, 2006

Kelly B. asked for clarification on Roberts Rules for the exclusion of the Manager in the personnel motion on page 12 of the August 16, 2006 minutes and the concern that the debate time was not appropriate. It was determined that Allen C. would investigate the question and have an answer at the next meeting.

Gerry asked that the minutes be amended to reflect the reconsideration of the Town Manager's compensation and to accept the Mercer study. The Manager would be reconsidered at the September 20, 2006 meeting.

Motion by Kelly B., second by Jerry B., to approve the minutes of August 16, 2006 as presented with the following changes; all voted in favor.

- The Manager's compensation discussion will be added to the September 20, 2006 agenda.

6. Special Presentations/Citizen Recognition/Project Update

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

Bill B. asked about the lighting of the cross on the hill side as noted by Polly Jeffries. This would be taken up at the staff comments.

8. Discussion/action of Emergency Items, if necessary

STAFF REPORTS AND OTHER ITEMS

9. Reports/Correspondence/Announcements/New Business

a. Economic Development Director

Karen E. was absent. Ann C. stated this is the final market and it will highlight a Locals Appreciation Day as well as some great music.

b. Public Works

Rod C. was available for questions. The question of the Lion's Head Mountain Cross was discussed; the Cross takes 120 volts with the sole source being solar power. The solar system is in dyer need of repair as is the building and the access road is also bad. Nothing that time and money can not resolve, it is not in the budget. If directed it could be considered for the 2007 budget.

Hawkeye asked if we have a means to measure the School District water use; yes, the water that is diverted to the school is measured although it is not metered. In a typical month it runs about 350,000 gallons and supplies the mobile homes, and school. The irrigation is not from our water system.

In response to concern Rod C. updated the Council on the status of the Pearson's water service line (Hwy 24 and Maloit Park Road). They are waiting on contractors which are scheduled to begin next week. The replacement has been committed to replace 700 linear feet of ductile iron pipe with PVC. The PVC should hold up better in the acidic dirt.

c. Police

Lorenzo has no further report was available for questions.

d. Treasurer/Clerk

Nothing budget will be in the council boxes prior to the 9/20 meeting.

e. Town Planner

Updated the Council on items he is working on and the status of the Chapter 16 update.

f. Town Attorney

No report. Hawkeye inquired regarding attorney/client material. Allen C. stated questions from Council will be handled the same as in the past by first going through the Town Manager. Updates will be in writing and available for all Council Members in order to best keep all informed.

g. Town Manager

Updated Council on Senate Bill 06-090 which was placed in the packet. It has been signed and submitted to the state. The appropriate policy was in place for the Town as directed in the Bill and we were never in worry violation. This was executed by the Council and will be approved retroactively at the September 20, 2006 meeting if necessary. Direction was given to bring it before the Council for retroactive approval on September 20, 2006

Add this to the next meeting.

h. Town Council

Bill B. noted that he watched the Council Meeting on TV and no sound was on the last meeting; the cameraman stated the part was replaced and is working now.

Kelly B. updated the Council and the citizens on the three programs presented by the Minturn Community Fund. She stated that they will be holding a community meeting on what and how future programs will be presented.

Kelly B. stated the Minturn Community Fund will consider applying for more GOCO funds to further the use and quality of the amphitheater and park area by adding other amenities. It was requested that this be placed for discussion on a future meeting.

Hawkeye stated the Battle Mountain teams are doing well.

DISCUSSION, HEARINGS AND ACTION ITEMS

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.

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

Hawkeye opened the Public Hearing at 7:37 by reading a brief introduction and noted this is a continuation of the hearing opened on Feb 15, 2006. He then outlined the process and upcoming steps. He then asked Council if they had had any contacts regarding the petitions and that, if so, they be disclosed on the official record.

Jerry was contacted by the newspaper and told them it could not be discussed outside of the meeting.

Hawkeye was approached by the newspaper as well. In March a citizen told him that if the project benefited the community it was okay; Hawkeye stated he could not discuss the project out side of the meetings. Again in April another contact; again he told them he could not discuss. Again in May after a Council Meeting same thing, again he could not discuss. Again in August a citizen at the Post Office ; again he could not discuss.

Hawkeye introduced Arthur "Boots" Ferguson Town Attorney.

Boots addressed the meeting by stating this was a continuation of the February 15, 2006 meeting instigated by the filing in November 2005 of 9 annexation petitions. The February meeting was held for approximately 1-2 hours and then continued to September 6, 2007. Boots updated the meeting by stating that this will be the conclusion of the description of the 9 annexation petitions and then the Hearing will be again continued to a date certain at which time we will begin to review the land use and what not.

Ms. Sarah Baker, 164 Railroad Ave, Ginn Suites, Attorney for Ginn Minturn was introduced. Ms. Baker introduced the various groups that comprise the Ginn Minturn and were represented in the audience and that some of these individuals would be called to testify and present as necessary. Ms. Baker announced the hearing is for the purpose of consideration of the annexation eligibility of the petitions. The Colorado Revised Statutes (CRS) 31-12-105 et al require the meeting be held for at least 1 hour. It was noted that, at the conclusion of this evenings proceedings, the applicants will be requesting the meeting be continued to February 21, 2007. She also stated they would like Council to pick a date that all could meet on the property for a site tour.

Ms. Baker reviewed the presentation of slides for the Council beginning with the annexation timeline. The Annexation, PUD plan and land use will all come together at a date projected sometime in the spring of 2007. Ms. Baker reviewed the statutory conditions required for the annexation which must meet the three rules of the 3-mile plan, the 1/6 contiguity, and the 50% rules. The 3-mile states that no annexation can be further than 3 miles from the existing town limits. The 1/6 contiguity states that the proposed annexation can not be less than 1/6 contiguous with existing town lines. The 50% rule states that if the 3-mile plan is exceeded it can not contain more than 50% of the proposed annexation proposal as long as the entire parcel is owned by the same entity. If the parcel(s) to be considered is annexed an additional annexation petition can not be submitted less than one year from the approval. Ms. Baker stated this is the reason

only approximately 4,300 acres are petitioning of the entire 5,300 acre site. A follow up petition would be requested in conformance with the CRS regulations.

Ms. Baker noted on the Annexation map the 9 serial parcels. The CRS allows these parcels to be carried forward simultaneously as long as they meet the three conditions listed still meets the 3 mile and the 1/6 rule. Currently approximately 1000 acres is not in the annexation plans due to the 3 mile concern even though this is an ultimate desire of the applicant.

Feb 15 2006 established the first 8 annexation petitions. Ms. Baker reviewed the petitions and how they meet the 3 mile and 1/6 rule as presented at the February 15, 2006 Hearing.

At this point Ms. Baker introduced the Ginn Minturn surveyor, Mr. Brent Biggs of Peak Land Consultants, 1000 lions head loop, Vail.

Ms. Baker began her interview of Mr. Biggs by allowing him to state his professional credentials. Mr. Biggs prepared the survey in accordance with generally accepted surveying practices. Battle Mountain parcel 9 includes two parcels. The two parcels were detailed as to location. Mr. Biggs established the contiguous boundary for the Hearing in detail by itemizing the perimeter boundaries of the parcel. The perimeter of the first 80239 feet, the total 82469 for the second parcel. The calculation of acreage of 1870 acres within the 3 mile area and the area outside of the 3 mile is 1828 acres clearly less than the 50 percent meeting the concern in the CRS statute. Once the perimeter was established Ms. Baker established the ownership of the various properties by the various Ginn companies with Mr. Biggs as the surveyor of the property. This conformation ties together the perimeter, the contiguous land, and the meets and bounds to the actual ownership of the land thereby confirming the land and the owners for the record. For this purpose Ms. Baker entered into the Public Record the following documents:

1. Eagle Co Clerk and Recorder (ECCR) document number 900519. A Special Warranty Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle South LLC.
2. ECCR 900520. A Quitclaim Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle South LLC.
3. ECCR 932053. A Quitclaim Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle North LLC.
4. ECCR 932054. A Quitclaim Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle North LLC.
5. ECCR 932055. A Quitclaim Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle North LLC.
6. ECCR 932056. A Correction Special Warranty Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn-LA Battle One LTD., LLLP.
7. ECCR 932057. A Correction Quitclaim Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn-LA One LTD., LLLP.

8. ECCR 932058. A Correction Special Warranty Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle North LLC.
9. ECCR 932059. A Correction Quitclaim Deed between Turkey Creek LLC, Tigiwon Properties LLC, Notch Mountain Corp (collectively, "Grantors") and Ginn Battle North, LLC.
10. ECCR 937291. A Special Warranty Deed between GINN-LA BATTLE ONE LTD., LLLP AND GINN-LA BATTLE ONE LTD., LLLP.

Ms. Baker stated that at this point they had confirmed the 50 percent rule, the 3 mile plan conformance and the 1/6 rule.

Mr. Dominic Mauriello, Land Planner for Ginn-Minturn, took the podium for the purpose of the land use issues. It was noted in conformance with CRS rule that this annexation does not remove any land from an existing school district and into another. Mr. Mauriello stated the land does create a community of interest in that the Town is the logical annexing municipality as well as other concerns that have been addressed by the proposed annexation. Using maps and aerial photos the property was linearly outlined. It was noted the Concept Plan Overview consists of 5 planning areas. These were detailed. Mr. Mauriello summed up the presentation by requesting the council extend the hearing to the February 21, 2007 date and to set a site visit date for the Council.

It was determined the site visit will be a public meeting and the public will also have to be accommodated. The visit will run approximately 4+ hours. Thursday September 14, 2006 at 1pm will be the site visit and February 21, 2007 is the Hearing continuation date. Tuesday at 5pm should be the cut off time for the site visit sign up.

Bill B. asked if he could be excused as he is quite familiar with the site and is limited in mobility. This will be an excused absence.

Motion by Jerry B., second by George B., to extend the Ginn Annexation Petition Hearing until February 21, 2007 with a the site visit to be scheduled on Thursday September 14, 2007 at 1pm. The Hearing will begin at 7:00pm and will be held at the Minturn Town Center, 302 Pine Street; all voted in favor.

(Note: The Public Hearing stood continued after 1 hour and 13 minutes of testimony.)

FUTURE AGENDA ITEMS

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

- Mike Wheelersburg – Minturn Towne Homes Update – September 20, 2006
- Old Town Hall
- Minturn Municipal Code building height limitations for new construction

- Old Town – Minturn Municipal Code Parking Regulations
- Resolution Endorsing the US Mayors’ Climate Protection Agreement, Kris Trigg – September 20, 2006
- Ordinance No. 26 – Series 2005 (Second Reading) An Ordinance authorizing the Mayor of the Town of Minturn to Sign an Agreement with Pilgrim Communication, Inc. for Lease of Real Property for a Radio Tower
- Minturn Town Staffing and Staff Compensation – September 20, 2006
- Town of Minturn Nuisance Ordinance; Process for Enforcement September 20, 2006
- GOCO funding request outline – Brinkerhoff – September 20, 2006

12. Set Future Meeting Dates

1) Council Meetings

- September 20th
- October 4th
- October 18th

2) Planning & Zoning Meetings

- September 13th
- September 27th
- October 11th

3) Other

13. Adjournment

In that there was no further business the meeting was adjourned at 8:35pm

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand