



REGULAR MEETING OF THE • MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street • Minturn, CO 81645 • (970) 827-5645

Wednesday, April 18, 2007
Regular Session – 5:45 PM

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 Clerk at 970/824-5645 302 Pine St. Minturn, CO 81645

Regular Session - 5:45 PM

1. Call to Order

- a. Roll Call
- b. Pledge of Allegiance

Mayor Hawkeye Flaherty called the meeting to order at 5:49pm Roll call: Those present included Mayor Flaherty, Mayor Pro Tem George Brodin, Bill Burnett, Tom Sullivan, Kelly Brinkerhoff, Shelley Bellm, and Jerry Bumgarner. *(Note: Bill Burnett was excused absent)*

Staff present was Town Manager Ann Caplea, Town Planner Wiley Smith, Planner 1 Chris Cerimele, Police Chief Lorenzo Martinez, Town Attorney Allen Christensen, Public Works Director Rod Cordova, Economic Development Director Ashley King and Assistant to Town Manager Dylan Zastrow.

EXECUTIVE SESSION

2. Minturn Town Council will convene into executive session:

- a. Pursuant to Colorado Revised Statutes (CRS) 24-6-402 (4)(a) to consult and receive legal advice from the Town attorney's Allen Christensen, Anne Castle, Todd Miller and Arthur Ferguson concerning purchase, acquisition, lease transfer or sale of real property for the purpose of discussing the acquisition of property for construction of wastewater treatment plant.
- b. Pursuant to Colorado Revised Statutes (CRS) 24-6-402(4)(b) to consult with Town attorney and Special Counsel Arthur Ferguson for the purpose of receiving legal advice on specific legal questions for the purpose of consulting with our attorneys on conducting an annexation hearing.

Motion by George B., second by Shelley B, to convene in Executive Session pursuant to Colorado Revised Statutes (CRS) 24-6-402 (4)(a) to consult and receive legal advice from the Town attorney's Allen Christensen, Anne Castle, Todd Miller and Arthur Ferguson concerning purchase, acquisition, lease transfer or sale of real property for the purpose of discussing the acquisition of property for construction of wastewater treatment plant, also pursuant to Colorado Revised Statutes (CRS) 24-6-402(4)(b) to consult with Town attorney and Special Counsel Arthur Ferguson for the purpose of receiving legal advice on specific legal questions for the purpose of consulting with our attorneys on conducting an annexation hearing.

3. Discussion/Action or Direction to Town Manager and Town Attorneys from the Executive Session.

There was no direction to the Town Manager or Town Attorney from the Executive Session.

Hawkeye asked the Council, Staff and audience for a moment of silence in honor and remembrance of the victims of the Virginia Tech shooting.

4. Approval of 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 Shelley B, second by George B, to approve the amended agenda as presented; all voted in favor. (*Note: Bill B. was excused absent.*)

5. Approval of Minutes and Action Report

- April 4, 2007
- Review/Comment – Council Action Report (Council needs to set dates on Action Items)

Kelley B, add on page 32, Approval of the amendment to the zoned map
Shelly B, Page 10 items April 18th RR Deadline is May 12

Motion by George B, second by Shelly B, to approve the April 4, 2007 amended Council Meeting Minutes and Council Action Report as presented; all voted in favor. *(Note: Kelley B. and Tom S. abstained for absence at the April 4th meeting and Bill B. was excused absent)*

6. Special Presentation/Individual Introductions/Citizen Recognition/Project Update

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

Liz Campbell 512 Main St.

Brochures for Radio Free Minturn are out and available. She handed them out the Council Members and Staff. She thanked Hawkeye, Tom S. and Ann C. for her continued support for Radio Free Minturn and the Town of Minturn for their donation.

She would like to be put on the next meetings agenda to address legally non-conforming buildings. There is major diversity on interpretations on building codes and nothing has been done in the past 7 years to address these gray areas. Mr. Boyd has major code problems and nothing has been done about it. Even two individuals on the Town Council have admitted it yet again, nothing has been done.

Jerry B, called for a point of order. This issue has been addressed and voted on there is no need to revisit it. This issue has been decided and its over. We don't bring it back up.

Hawkeye, allow her to continue.

Allen, point of order overcomes anything.

She would like to be put on the agenda for a discussion for a moratorium be put on building non-conforming structures until the Town can figure out how to interpret the code and avoid these mistakes.

Council agreed to put Mrs. Campbell on the next meeting agenda (May 2, 2007) as an action/discussion item. Note: Jerry B. and Tom S. apposed such an action.

8. Discussion/action of Emergency Items, if necessary

STAFF REPORTS AND OTHER ITEMS

9. Reports/Correspondence/Announcements/New Business

b. Economic Development Director

Ashley K, had a few quick things she wanted to address. She handed out a colored map of the Minturn Market layout in order to show the set up of the Market and use of its space this year.

She gave an update on an OZ focus group meeting and stated there will be another Oz focus group meeting on April 24th @ 6:00pm regarding trails, recreation and open space. It will be held the Town Council Chambers.

Anyone who wants to submit news for the Minturn Express is welcome. Just e-mail her at market@minturn.org.

Tom S, did the Molly G building issue work out in regards to the Market, Yes.

Shelly B, how are the volunteers so far? They are some but I can always use many more. People just need to know that they don't have to commit to the entire 13 weeks.

c. Public Works

Rod C. is excused for family matters but, Ann C. would be more than happy to address any of the Councils questions or concerns.

d. Police

Chief stated his staff report is on page 26. He addressed the command system talked about last Council meeting and gave an update. Also the FEMA training is scheduled for May 12, 2007 from 9:00am-12:00pm in the Town Council Chambers. This training will be an introduction to the FEMA system. Chief recommends that all Staff and Council attend. It is a requirement to obtain funding in a disaster issue. That is all needs to report on and is open for questions.

George B, will not be able to make the FEMA training.

Kelley B, will not make it either, she will be out of town.

Chief, will figure out what needs to happen to take it on line.

e. Treasurer/Clerk

Jay B. is out of town at the moment but, Ann C. will address any questions or concerns the Council may have.

f. Town Planner

His report is separate from the Ordinance on a zoning map for the Forest Service Land and would like to know if the Council would like to table the zoning map for the Forest Service Land.

Hawk: We are at least going to discuss it at this evening's Council Meeting.

g. Town Attorney

h. Town Manager

Ann C. said it is glad to be back. She thanked everyone for their well wishing and stated the Town Staff didn't miss a beat on Town business while she was out. She wanted to announce her acceptance of the Town Planner's resignation and thanked Wiley S. for his services.

Wiley S, thanked Ann for her kind words.

i. Town Council

Executive Session will be held on April 24 at 5pm for continuation of the Town Manager's contract.

Shelly B, the ADHOC meeting is postponed due to Wiley S. leaving his position with the Town of Minturn. We are still struggling to get the Union Pacific Rail Road lease agreements and have not gotten anything at this point.

George B, I met with the OZ Group and spoke to them about obtaining the CDOT grant and getting a side walk on the South side of town.

Kelley B, updated the Council, Staff and audience on the Minturn Community fund. Its low impact so we won't need extra parking. We are doing a family day starting at the end of June to the End of August 10-12pm including music, arts and science presentations. We are looking to get the Missoula Montana traveling show here to perform. They will audition local kids and practice all week and do a show at the end of the week.

DISCUSSION, HEARINGS AND ACTION ITEMS

10. Discussion/Action – 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.

Public hearings will be held for the following separate files.

- #1 Battle Mountain Planned Unit Development Preliminary Plan and Environmental Impact Report-PUD Preliminary Development Plan-Battle Mountain
- #2 Amendment to Zone District Map – PUD Preliminary Development plan-Battle Mountain
- #3 Preliminary Subdivision Plat-Battle Mountain Planned Unit Development Preliminary Plan

Note: The public hearing began at 7:36pm

Author Ferguson, introduced the discussion/action as a continuation on the 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 from February 21, 2007.

Hawkeye, asked all council members to address any communications with members in the community regarding the Ginn annexation.

Aside from Hawkeye no other Council member has had any encounter with a citizen regarding this issue since the last public hearing disclosures.

Hawkeye; was stopped by two residents in the Town of Minturn who said they thought it was a good idea to annex the Ginn property if the town would benefit from it largely.

Sarah Baker of Ginn; 1914 Bear Creek Trail Edwards, CO.

3 mile plan states that an annexation must benefit the local residents and the Town.

The proposal has been kind to Wildlife with minimal impact.

There are two superfund sites on the acreage, which Ginn will be cleaning that up and that is beneficial to the residents to the Town.

Bennet Ralley; Centinial CO.

He has been working on wildlife mitigation plans for many years.

Mitigation starts with avoidance, minimizing impacts on wildlife. The standards for mitigation in the valley are higher than most places. Even though Ginn is not accountable for the clean up they will abide by all standards

This proposal maintains wildlife corridors and cleans up the 2 sections of the superfund site, Bolts Lake and Gilman.

The development focuses on multiple Government agencies requirements for Wildlife and Habitats.

This plan exceeds the requirements at the Bachelor Gulch and Arrowhead development sites.

The projects idea is to minimize the affects to all wildlife, trash impacts, fences and many other facets.

The priorities are to minimize impacts on 3 specific wildlife species that are prominent in the proposed area; the Lynx, Peregrine Falcon and Elk

He didn't go into much detail on the Lynx issue because the federal protection is so great at this point that following the federal protection policy would be sufficient and they will address it and make mitigation changes if they believe it can help.

The Peregrine Falcon was once protected federally. It is a huge resource to this area.

The best way to avoid impact on these species is to avoid interaction or disturbances during their nesting time. Ginn will make those sensitive areas non-skiing areas and use low profile lifts in areas near there. They are also proposing an ECO trail. Homes will be built on the other side of the ridge away from the known nesting sites.

They have taken steps to protect the nesting sites during high activity times. The time they have come up with regarding their high sensitivity times, nesting times, are between March and June and they will close those certain areas off during that time. Tree clearing for the ski resort will be conducted away from those sensitive areas during nesting time. Helicopters won't be near the area during sensitive times. There will ¼ and ½ mile zones where no tree clearing or construction can be conducted during nesting times.

Bottom line is the Wildlife officers don't want Ginn's mitigation plan to be based on other plans that have been implemented.

Hawkeye, are you going to address this plan to any other nests, not just the currently existing ones? We will address the situation with this plan for any active nests.

Elk impact at the winter range is the largest. The net project impact is less than 1.39% of The Elk Winter Range in the GMU 45 (GMU Game management unit, Ginn will be in the range #45).

Mitigation Payment Formula: 1 Time payment for fertilization and elk range every 3 years.

Formula Impact x Mitigation Replacement (1.57:1) x Fee per acre to enhance (total cost to enhance every 3 years) Total Cost x 3 years + Average Cost Per Year.

Average Cost Per Year divide by Annual Rate of Return = one time mitigation fee.

2 Options. 1. Ginn's preferred option

2. Detailed and specific analysis of actual impact to Winter Range.

He showed the Mitigation Payment Offer on a diagram with numbers in regards to impacts of all kinds, ie. Wildlife, habitat..... \$500,000 is Ginn's proposal for Mitigation Payment.

They will also pay \$100,000 to the Town of Minturn to use as a Wildlife Reserve Fund. Resulting in total payment of \$600,000 to the mitigation fund.

Tom; how will you guarantee that the \$500,000 will be spent in this valley? We will work with the Forest Service to ensure the money is used in areas that need it specifically areas located in this Valley.

Hawkeye, can we negotiate the funds to stay in the county? They are proposing that the Town of Minturn will have to work to see what they want to do with the funds.

Rebecca Alman; 115 Jersey St Denver, CO. She is an Environmental Lawyer for the superfund site. She has worked with the United States Environmental Protection Agency (E.P.A.) and Attorney General's office.

Eagle Mine superfund Site/Bolts Lake: Viacom is responsible for added zinc in the water and soil. To this date Ginn has no liability for the problems at the site. If they purchased the site they would take on the responsibility and they have worked hard with the E.P.A. to remedy the site for human use. As of now it is not human friendly due to leaching of contaminants in the soil and Eagle River. Ginn will repair the existing conditions and cap the area. The E.P.A. and State have worked together to configure the best plan for clean up of the Superfund sites and Ginn's plan satisfies all requirements and meet/exceeds expectation. Ginn's Superfund clean up plan perfect for the sites. End result is the development plan and the excavating of the soils and capping of the area is approved by the E.P.A. and State. The will not transport any hazardous materials on State Highways.

The plan is to excavate, cap, install interceptor trenches, capturing, grading and contouring and repairing the area.

Rebecca then showed slide after slide of how the land looks via layers and how it will look post remedy plan. She then explained how these layers will be cleaned, repaired, replenished and capped. It will be above and beyond the EPA's requirements.

Multi Year Process: Pursuant to the CERCLA process

Prior issues

Remedial Investigation

Human health risk assessment

Feasibility study

Proposed Plan: This will be published locally and there is 60 days to comment on the plan.

Record of decision: Final decision on the plan will be after the public comment period and what they are planning to do will then be published. They can however change this plan

Remedial Design/Remedial Action

Administrative Order on Consent: Via the state approving the remedial plan and design plan and upheld by law on all proposed plans for the project.

The E.P.A. and State are very pleased the plan that was presented to them and that the plan is better than what is required by the E.P.A. and State.

The second environmental remediation is located at Gilman. The process will be the same and the impacts thus far are similar to Bolts Lake Superfund Site.

George, has this process and plan been done before on other sites?

Rebecca, yes, we have worked diligently as the E.P.A. to clean these Superfund sites enough for human use. The Anaconda site (Jack Nicholas' Golf Club) is a good example. The town worked with the PRP to build a golf course and these remedial plans are very similar to the plans presented for these two sites. Such Superfund sites are also being turned into ball parks, soccer fields, home depots and many other human interactive places.

Sarah Baker would like to continue the public hearing for petitions of the annexation of parcels 1-9 of the Battle Mountain Annexation on June 20th. She would also like to continue the public hearings on the preliminary development plan files 1-3 on June 6th.

Note: The public hearing ended at 8:39pm

Motion by Hawkeye, second by George B, to continue the #1 Battle Mountain Planned Unit Development Preliminary Plan and Environmental Impact Report-PUD Preliminary Development Plan-Battle Mountain hearing on June 6, 2007, all voted in favor. (*Note: Bill B. was absent excused.*)

Motion by Hawkeye, second by George to continue the #2 Amendment to Zone District Map-PUD Preliminary Development plan-Battle Mountain hearing on June 6, 2007, all voted in favor. (*Note: Bill B. was absent excused.*)

Motion by Hawkeye, second by Jerry B, to continue #3 Preliminary Subdivision Plat-Battle Mountain Planned Unit Development Preliminary Plan hearing on June 6, 2007, all voted in favor. (*Note: Bill B. was absent excused.*)

Hawkeye, we would like to take a moment to thank Wiley S. for his tremendous services to the Town of Minturn. Hawkeye presented Wiley S. with a card signed by the Town Council and certificate, on behalf of the Town Council, with a monetary bonus.

Dylan Z. Presented Wiley S. with a card and gift certificate on behalf of the Town Staff and thanked him for his time and effort with the Town of Minturn.

11. Discussion/Action Item – Ordinance No. 9 – Series 2007 (First Reading): An Ordinance amending Chapter 2 of the Town of Minturn Municipal Code by repealing and re-enacting Section 2-102 as that section pertains to jurisdiction of the Municipal Court of Minturn, Colorado.

Motion by Tom S, second by Shelly B, to approve Ordinance No. 9 – Series 2007 (First Reading): An Ordinance amending Chapter 2 of the Town of Minturn Municipal Code by repealing and re-enacting Section 2-102 as that section pertains to jurisdiction of the Municipal Court of Minturn, Colorado, all voted in favor. (*Note Bill B was absent excused.*)

12. Action/Discussion Item – Zoning of the Forest Service map

Kelley B, what areas are included in this rezoning map?

Wiley S, he added a certain locations on the map to indicate the areas and explained what things you can and cannot do with those areas.

Kelley B, has the county already been transferring the land for rezoning

Allen C, yes they have been rezoning all of the land.

Shelley B, this map doesn't include all 14 sites does it?

Allen C, no, we have to follow code and processes.

Hawkeye, suggested the Council table this issue until 5/2

Hawkeye, asked Allen C. if he could explain the planning department now that Wiley S. will no longer be here.

Ann C, Chris C. has accepted the interim position and the Town is obtaining a consultant from Carter Burgess (Tim M.) to deal with the Ginn annexation and position has been posted a Planning Director. Wiley may be called on as a consultant.

Kelley B, on a daily basis how long will Tim be in the office? Ann 8-5pm

Kelley B, how do we know what we need of a Planner to fill the position?

Ann C, a planner with 7-10 years of experience and credentialing/licensing.

Kelley B, have we thought of having someone as the interim until the Ginn issue is done then we can decide what we needed of a Planner.

Executive Session

13. Minturn Town Council will convene into executive session:

- a. Pursuant to Colorado Revised Statutes (CRS) §24-6-402(4)(f) for the purpose of discussing the realignment and discipline of personnel matters and to consult with Town Attorney Allen Christensen and Attorney Arthur Ferguson concerning personnel matters.

Motion by Tom S, second by Shelley B, to move to Executive Session pursuant to Colorado Revised Statutes (CRS) §24-6-402(4)(f) for the purpose of discussing the realignment and discipline of personnel matters and to consult with Town Attorney Allen Christensen and Attorney Arthur Ferguson concerning personnel matters.

14. Discussion/Action or Direction to Town Manager and Town Attorneys from the Executive Session.

There was no direction from the Council to the Town Manager or the Town Attorney

FUTURE AGENDA ITEMS

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

- Minturn Towne Homes Update – May 2, 2007
- Ginn Annexation Continuation of Public Hearing – Continued from: 4/18 To: 5/27
- Minturn Parks only “Clean-up-Day”
- Discussion of strategy for the forest service properties – Christensen
- MMC Chapter 13 Municipal Utilities & ERWSD Rules and Regulations – Capela
- Continue executive session for personnel matters
- Town Manager’s employment contract.

Work Session

- **Prioritize Manager’s Goals for 2007**

15. Set Future Meeting Dates

a) Council Meetings

- May 2
- May 16
- June 6

b) Planning & Zoning Commission Meetings

- April 25
- May 9
- May 23

c) Other

- Minturn Town Clean Up Day – May 19 (Saturday)

14. Adjournment.

Motion by Tom S, second by George B to adjourn the council meeting at 9:41pm

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand