



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

Wednesday, September 5, 2007

Work Session – 5:00PM

Regular Session –5:45PM

MAYOR - Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

Interim Town Administrator – Gary Suiter
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

Work Session – 5:00 PM

- Carter Burgess – Possible Water Tank on the north end of Town for the purpose of impact on businesses during water outages (30 Min)
- Discussion – Ordinance 19 – Series 2007 – An Ordinance Amending Chapter 2 of the Minturn Municipal Code by Repealing and Re-enacting Section 2-24 as it pertains to powers and duties of the Town Administrator – Christensen (15 Min).

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 5:45pm. Roll call: Those present included Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Bill Burnett, Tom Sullivan, Shelley Bellm, Kelly Brinkerhoff and Jerry Bumgarner

Staff present was, Interim Town Administrator Gary Suiter, Town Planner Chris Cerimele, Town Treasurer Jay Brunvand, Police Chief Lorenzo Martinez, Town Attorney Allen Christensen, Public Works Director Rod Cordova and Assistant to Town Manager Dylan Zastrow.

EXECUTIVE SESSION

2. Minturn Town Council will convene into executive session: (1 Hour)

- Pursuant to Colorado Revised Statutes (CRS) §24-6-402 (4)(b) to consult with Town Attorneys Allen Christensen and Anne Castle for the purpose of receiving legal advice on the Ginn PUD/Annexation
- Motion by Shelley B, second by Jerry B, to convene into Executive Session Pursuant to Colorado Revised Statutes (CRS) §24-6-402 (4)(b) to consult with Town Attorneys Allen Christensen and Anne Castle for the purpose of receiving legal advice on the Ginn PUD/Annexation

3. Discussion/Action or Direction to Town Manager and Town Attorneys from the Executive Session (5 Min.).

Direction is to have the legal team continue negotiations with the applicant

7:00 P.M.

4. Approval of Agenda (5 min).

- a. Items to be pulled or added
- b. Order of the Agenda Items

Motion by Bill B, second by George B, to approve the September 5, 2007 Council Meeting Agenda as presented. *All Voted in Favor*

5. Approval of Minutes and Action Report (5 Min).

- August 15, 2007

Motion by George B, second by Hawkeye, to approve the August 15, 2007 Council Meeting Minutes as presented. *All Voted in Favor (Note: Shelley B. abstained)*

- Review/Comment – Council Action Report

6. Liquor License (5 Min)

Minturn Town Council will now convene as the Minturn Liquor Authority

- Shop-N-Hop, Retail Liquor License; 401 Main Street, Minturn Colorado. Terry Marcum: Owner - Christensen/Martinez

Jay: This is an annual 3.2 liquor license renewal. Chief has include a report that states he has not found any issues with Shop-N-Hop having a 3.2 liquor license in the past and that he is okay with the current renewal request. Charlene, the Shop-N-Hop Manager, is here to represent the applicant.

Charlene Martinez: Nottingham Road, Avon.

She had nothing to add but would like to ask the liquor license authority approve the application for a 3.2 liquor license.

Motion by George B, second by Tom S, to approve Shop-N-Hop, Retail Liquor License; 401 Main Street, Minturn Colorado. Terry Marcum: Owner

The Minturn Liquor License Authority will now re-convene at the Minturn Town Council

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

- Eagle County Health and Human Services-Detoxification Services
– Hunsaker/Martinez

Jill Hunsaker – A representative of Eagle County Health -551 Broadway Eagle, CO:

Also with here presenting the program is Jeff Laiman, Eagle County under Sheriff.

Carol Thayer- Councilor at Colorado West Regional Mental Health Center (CWRMHC).

Krista McClinton – Regional Program Director at CWRMHC.

We are here in attempt to gain the Councils support on a new program called the Last Call Program, which addresses people found to be intoxicated whether detained or arrested in order to take the liability off the hands of the local law enforcement considering intoxicated persons will no longer be jailed. There isn't a center like this in Eagle County at this moment, only Pitkin County. Currently people found intoxicated are usually sent to Jail or the Sheriffs office, which may no longer be the case. They will be sent back out into the public without proper care and usually the instances become habitual without addressing the main issue of abuse. The program will create a collaborated effort with local mental health, human services, medical public health, recovery and policing agencies in order to ensure obtaining, transport, provide case management and follow up care for people with substance abuse problems. We have sent out a publication on a study we did with Colorado West who has stated they will spear head this project. The County has also stated they would pay for the first 6 months of this program. Carol is the contact who would lead the program through CWRMHC and have an on staff person pick up the intoxicated person from the jail or other respected facilities so the local police department wouldn't have to baby sit them.

Partners are Eagle County Health and human, Public Health, CWRMHC, Eagle Sheriff's department, Basalt police department as consultants and the DA's office.

People introduced to the Last Call Program will have the option to follow up with CWRMC for counseling and possible long term help offered through another program

affiliated with the Last Call Program. The program cost would total about \$210k annually. To be a part of the program, have access to the program and be in support of the program we are asking Minturn to contribute \$3,913 for the 2008 program year. This number was mainly based the number of liquor licenses dispersed in the Town of Minturn.

Chief: I endorse this project. We have been looking at this program since 1998. By the Minturn Town Charter the Town is in charge of health and human services for the Town and this would alleviate some of the responsibility and liability to the town. We are currently responsible for people we take people home who are intoxicated and the liability lies on us as a Town if something happens to them once we drop them off at home. He then went over some statistics on alcohol related problems in the area and within the Town limits.

Shelley B: I think it's a great program.

George B: Who do we call if we have a problem with someone in Town who we think is intoxicated. Does it still go through our Police Department?

Chief: It still goes through the local Police Department then we contact the director of the program or staff member via dispatch if we think they are a candidate for The Last Call Program.

Carol Thayer: If they are over .35 they will go straight through us.

Chief: I have seen people who are .15 who can handle it fine and some who cannot stand on that level. The ideal is if they are a danger to themselves or others it is within our discretion to enter them into the program.

- Introduction and Swearing in: Officer Summer Rains

Chief: Introduced the new Minturn Police Officer; Summer Rains and stated she started on September 1, 2007 and that she has just finished the academy. Also, she helped with and volunteered at the Market last Saturday and has been walking through the community and meeting the citizens.

Hawkeye: Swore her in and congratulated her.

Chief: Presented her with her badge.

8. Public comments on items, which are NOT on the agenda (3 minute time limit per person).

Rob Davis: Resident of Minturn, Main Street:

I have some prepared affidavits on the Ginn proposal I would like to present them to Council to put on the official record.

Hawkeye: We need to check the legal issues on this.

Allen: He can file them anytime, but if he wants to comment on them he needs to do it at the public comment period. He can present them to us for review and then come back and comment.

Mr. Davis: He then presented the affidavits to the Town Council Members.

9. Discussion/action of Emergency Items, if necessary

10. Town Administrator's Report (10 Min)

Hawkeye: Can the re-codification of Minturn Municipal Code (MMC) be spread out between the remainder of this year and the next year?

Gary S: We are trying to get it done now because it needs it and work on spreading the cost of it between this years budget and next years budget.

Tom S: Will the cost of appraisals for the USFS parcels be incurred by the Town?

Gary S: I believe the cost would go to the Town but I am not 100% but I can pursue it further and report back to Council.

Hawkeye: I would like some of these issues on the action Item memo.

Gary S: He explained what took place at the Council retreat to the public. He thanked Council for attending and Staff participation.

11. Town Council Comments (10 Min)

Shelley: Wild West Day is about to present to the Eagle County School District to fundraise and we need volunteers. The more people we have the bigger impact we will have.

Hawkeye: I just wanted to inform the citizens that the Bears are out and about in our neighborhoods and they are in their prime feeding time. We have Ordinances regarding trash dispensing in order to regulate the amount of wildlife interaction. We want to remind everyone about these Ordinances and to also please put the trash out the morning of trash pick up to avoid interaction with the wildlife.

Also, school is in session and we appreciate the compliance with school bus regulations. He then sighted to collision on Battle Mountain. I am an advocate for zero tolerance he stated and if you are not going to follow the rules the Police Department will address the situation.

DISCUSSION, HEARINGS AND ACTION ITEMS

12. Discussion/Action Item – Minturn Town Homes Update: Project Concerns – Cerimele (10 Min)

Chris C: I sent a certified letter stating the Town's concerns. Mr. Commeford has falsely stated he has been in constant contact with Carol Mulson (Deputy Chief of Eagle River Fire). There is a concern of the fire trucks being able to access the property. I have given him 10 days to comply and will report back to Council.

Hawkeye: Have you been there and noticed any Council concerns being addressed.

Chris C: I have been on site and have not noticed anything of the Council concerns being addressed. They also stated no one would be here tonight to report to Council on your concerns. I told him the monthly statements/reports are required and it is no acceptable that they will not be here to report to Council. I believe we need to set penalties soon for these violations.

Tom S: These violations are hazards and I don't want the Town to be liable. I think we need put a notification out that states that they have a Temporary Certificate of Occupancy (TCO) noting that it may be revoked and a Certificate of Occupancy (CO) may not be issued with the current conditions.

Allen C: I have already spoken to their lawyers on these issues.

Tom S: We have given the developer plenty of time to address the Council's concerns and nothing has taken place. The items of concerns take months to fix and a lot of money and they haven't even begun to address them.

13. Presentation – Eagle County Animal Services IGA Presentation – Natalie Duck

Nathan Lehnert: 1400 Fairgrounds Road Eagle, CO.

There have not been any changes to the IGA contract from last year except the cost and we got rid of the on call service.

Hawkeye: Is this for 2008?

Jay B: This will be in the budget for 2008 and it's a small cost.

14. Discussion/Action Item – Ordinance 17 – Series 2007 (First Reading) – An Ordinance allowing the Mayor of the Town Of Minturn to sign an Inter Governmental Agreement (IGA) with Eagle County for Animal Control Services. – Christensen (15 Min)

Motion by Shelley B, second by Tom S, to approve Ordinance 17 – Series 2007 (First Reading) – An Ordinance allowing the Mayor of the Town Of Minturn to sign an Inter Governmental Agreement (IGA) with Eagle County for Animal Control Services.

15. Discussion/Action Item - Public Hearing on CU 07-03; Torrey Enterprises (Budget Trucks) is requesting Conditional Use Approval for a motor vehicle parking lot at North Main Street, in the P.U.D. Holding Zone of the Game Creek Character Area – Cerimele (15 Min)

Hawkeye: He introduced the conditional use for Torrey Enterprises and asked Chris if there was anything else he would like to add.

Chris C: I received a call last night from Dusleana Brown asking this conditional use application hearing be tabled until Oct. 3.

Hawkeye: He opened the public hearing on cu 07-03, and asked Chris what Staff recommendation is.

Chris C: Staff recommends approval with the conditions of her current lease of UP land she has presented. Any dispute with the Turntable on the other proposed leased area is a civil issue and between the two businesses and the leaser of the property.

Shelley B: Has she obtained a business license?

Dylan: She has presented her paper work and paid the fee for this year's business license. I have yet to process her application request.

Jerry: She hasn't complied with her state registration and she needs it before we grant a CU.

Hawkeye: We will have our lawyers look into this issue.

Motion by Tom S, second by George B, to table CU 07-03; Torrey Enterprises Conditional Use, a motor vehicle parking lot at North Main Street, in the P.U.D. Holding Zone of the Game Creek Character Area until the Oct 3, 2007 Town Council Meeting. *All Voted in Favor*

16. Discussion/Action Item – 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.

Hawkeye: He introduced the discussion/action item and the applicants for the annexation hearing - Ginn Battle North LLC, Ginn Battle South LLC and Ginn LA Battle One LTD, LLLP

He then opened the public hearing that has been continued from August 1 2007. He explained that there were also three land use application and all information will be added as testimony to all applications to this public hearing, as well as the process of the public hearings.

The order of the public hearing is important. It begins with the Staff presentation, the Applicant presentation, Public comment (verbal or written), the applicant's response to any testimony and then staff can provide response to any testimony. He then asked if any council members had contact with the public about the annexation since the last public hearing held August, 2007.

Shelley B: A physician I work with stated to me that the Town of Minturn shouldn't allow the development to happen on a Superfund Site.

Tom S: Randy Milhoan asked what was going on with the process. He told Mr. Milhoan that the public comment period was to follow up the preliminary plan presentations.

Bill B: No, I have not had contact with the public about the public hearings.

Kelly B: Several peopled asked where we were in the process. I stated we are in the applicant presentation phase and I told them public comment will follow this phase.

Jerry B: I have just had a few questions regarding the process. I inform them where we are at in the process and invite them to attend the meetings

George B: Questions on process and where we are at and I tell them we are in the applicant presentation phase and public comment period will follow.

Hawkeye: I received a letter and passed it on to Chris C and had him incorporate it into the public record.

Sarah Baker on behalf of the applicant: 1914 Beard Creek Tr.

I do not have anything to address at this time and I will turn it over to Dominic.

Dominic Mauriello of Mauriello Planning Group: On behalf of the applicant. Agenda:

Housekeeping:

- The Design Guidelines were resubmitted on 8/15, applicant response to agency comments.
- Final traffic plans and report submitted on 8/21.
- Revised Battle Mountain Partnership Pass Membership Plan submitted on 8/30 after addressing the concerns of the Town Council Member.
 - Revisions of the Partnership Pass Plan include:
 - Number of member days from 30 to 45 days
 - 30 days are during Winter Season
 - At least 10 days included on weekends and holidays.
 - 16 y.o. and up are full members, treated as an adult
 - 14-16 y.o. need an adult to accompany them on site
 - 14 y.o. and under needs an adult member with them
 - Residency requirements are voter registration, lease agreement, utility bills.

Tom S: it sounds like you covered yourself to specify those 45 days and you can have them not within the peak part of the season.

Mr. Mauriello: It is not the intent to keep those days out during the middle of the season.

Tom S: Maybe we can reword that so it sounds like we are able ski during the middle of the winter. Specify days so the 10 day weekends/holidays in the middle of the season and not at the beginning or end.

Kelly B: Maybe we set specific black out dates like Vail.

Shelley B: It's difficult to address those black out days with kids school schedules.

Mr. Mauriello: We can address the Council's concerns with the designation and wording of those dates.

Kelly B: I haven't seen anything in writing stating this is a permanent program for the residents.

Mr. Mauriello: I see it as a permanent item and so does the applicant.

Ms. Baker: If you would like it as a permanent program make that as a condition to accepting the annexation.

Kelly B: Could you explain the summer t-time issue on the golf course.

Ms. Baker: Eight foursomes equal 1 day.

Kelly B: So if they don't reach 8 then that's not a full day and it will carry over?

Ms. Baker: They will have to set a t-time on the course for that day and if it's not met then it still counts.

Tom S: Have you set costs to the use of the golf course?

Ms. Baker: Not as of yet and we would mimic it after Red Sky and other courses of that nature in the valley.

Kelly B: Does summer time usage only include the golf course?

Ms. Baker: It includes the clubhouse and other activities located on the property.

Mr. Mauriello: We are working on a GID with the Town Staff and Attorneys to guarantee funding for private infrastructure improvements. Also, we are still working on PUD Guide revisions. We are also addressing the Bolts Lake concerns Tom brought up during the last public hearing.

Tom S: When will we be getting that?

Mr. Mauriello: We will get that to Council within the next two meetings.

Ms. Baker: We hoped it will be here no but considering Boots' condition we have been delayed and hope to get it to Council within the next two meetings pending delays.

Bill Weber-On behalf of the applicant-Rail Road Avenue Minturn, CO: We have met with the Senior Executives at Union Pacific (UP) and will have another meeting in Omaha soon. We have agreed to do a study on the issue of running a train. We are very hopeful at this time and feel we are making progress.

Hawkeye: Is this going to be supplies/freight as well as passenger cars coming through?

Mr. Weber: We have only talked about supplies/freight but hope to work on passenger carts as well in the future.

Wildlife Mitigation:

Bennett Raily – On behalf of the applicant - 6573 S. Heritage Place, East Centennial, CO:

Our Wildlife Mitigation Plan has been through the Planning Commission extensively and passed with some conditions. We presented our Wildlife Mitigation information to the Town Council in April. Some things have changed either on our side or on the request of the Council or stayed the same as presented in April. We have been working and meeting with Mr. Andre of the Department of Wildlife (DOW) on all the issues Council has addressed from our previous presentation and we appreciate his time.

Key elements of the Battle Mountain Wildlife Plan are as follows:

- Land planning to avoid and minimize impact to wildlife.
- Over 70% of land remains open space
- Concentration/clustering of density in core areas
- Avoid ridgeline development
- Maintain wildlife movement corridors
- Enhancements-Superfund site clean up and Bolts Lake habitat enhancement
- Have wildlife plan that's "equal to" or "better than" recent plans and requirements.

Wildlife Mitigation and Enhancement plan includes the following:

- Regulations and mitigation activities proposed for project.
- Plan meets or exceeds for other projects in the area. For example, Frost Creek and Arrowhead/Bachelor's Gulch.

Plan components Include:

- Pets
- Bears
- Trash
- Fencing
- Seasonal closures
- Lighting
- Mitigation funds.

Priority Issues:

- **Canadian Lynx:** Federally identified as an endangered species. This requires us to create a wildlife habitat conservation plan (HCP). I presented a plan to Bill Weber that would be legal but easier than some other plans. He stated he did not want to go that route and wants a plan that goes through the federal government. This will make us go through the National Environmental Protection Act (NEPA) as well, something very strict. Fish and Wildlife has been addressed and they have not had objections at this point to our proposals, but its not a final plan so they may still have objections prior to our final plan.

- **Elk:** Impacts to winter range is primary issue/concern as well as the migration corridors. There are 2 options we have looked at regarding the Elk:

Option 1: To create a mitigation payment program. This would require the developer to pay into a mitigation fund which will then go back into creating new habitat to replace any habitat that was damaged during the winter. The formula has been used on other projects and mitigation plans and is as follows: Acres impacted x 1.57 + interest ratio and cost of re-fertilization material and implantation = amount put into the habitat mitigation fund.

Option 2: A detailed specific analysis of actual impacts to elk winter range forage areas. Ginn prefers option one.

Mr. Raily then went over the formula for option number one, the Ginn preferred method.

- The Prior plan the total comes to \$95k annually (Total mitigation Fee).
- Revised current Plan = \$186k
- Proposed PUD Mitigation = \$457k is what Ginn offering .
- It was also proposed that Ginn give an additional \$100k to the Town for a wildlife reserve making the total amount = \$600k
- Total Project Mitigation Plan = \$735k

- The \$100k paid to the Town by Ginn will be under control of the Town Of Minturn, able to provide additional assurance, gives Minturn a place at the table with DOW and provides Minturn ability to ensure that mitigation occurs in the Minturn area.

The applicant will continue to work with the Town and the DOW to compile a mitigation plan for the entire project that is satisfactory to all parties.

The DOW asked to address some other concerns and come up with another mitigation plan/proposal which they are currently reviewing. This proposal would offer less financially to go back into a mitigation reserve fund.

Also the DOW requested we add in gladded areas of ski runs as well the islands of ski runs areas of a specific size to the damaged habitat locations. We have been working to get the numbers requested but, we are willing to commit the total findings of these numbers. We will also shift affected habitat and funding accordingly if the ski terrain changes during construction.

Jerry B: You stated the Minturn reserve fund we have the right to spend it anywhere we choose?

Mr. Raily: Yes, you may use it within Minturn or any other place. You are the authority. We just have to request the usage from the DOW.

Peregrine Falcon: The Peregrine Falcon is not a federally listed species. There is proposed buffer zone requirements/recommendations around the last known nesting site and future nesting sites. We believe we have addressed issues of concerns. Within the ½ mile radius we are planning ski trails, only about 3 dropped down from 5. Also highway 24 is within that area ½ mile buffer zone. We are not planning any housing/infrastructure building within this area and have actually moved 15 proposed dwelling units out of the area. As well we moved the gondola from within this ½ mile buffer zone. We are not proposing anything within the ¼ mile buffer zone but note US Highway 24 does encroach into the ¼ mile buffer zone.

Proposed Protection of the Peregrine Falcon: Substantially modified developments plan to avoid and minimize impacts. These include:

- reduce ski terrain/lifts in proximity to nest
- reduce height of lifts
- Reduce development and avoided ridgeline
- Low profile lifts and gondolas to reduce collision risk
- Seasonal use and construction restrictions
- No visual impacts to the nest sites – the nesting sites are physically concealed from the mountain development by the ridgeline
- Nesting sights will be protected from construction and other human intrusions during critical periods – March to June is considered the maximum protection period.
June to July- is considered the moderate protection period where there will be an implementation of a buffer zone of ½ mile from the nesting are to avoid clearing of trees and other activities.
During the other months there will be no implementation of restrictions aside from no helicopter activity with ½ mile of the nesting area.

Whirling disease: The proposal includes a mitigation plan for Bolts Lake in regards to whirling disease. The applicant will follow all Fish and Wildlife guidelines for mitigation. The only time water will be released from the Bolt's Lake is on our 100 year flood plan. We

can have a fish shredder that will kill the fish before they enter other water ways and affect other fish.

Bill Andre: Department of Wildlife.

Mr. Andre: To address Jerry's question; that is not how a reserve fund is set up. The DOW doesn't hold the money nor can they designate where the money is spent. The money cannot be spent on anything it has to be spent to mitigate the habitat impacts. The DOW suggests the Town have a 3rd party holding the money so that there is no question that the Town has dipped into it.

They also stated there is going to be about 650 plus acres affected. The DOW believes that is a very low number. We have them working on it again. We are making progress but won't know until the final plan.

We are working on getting a GIS crew together in order to get a better perspective of what the DOW thinks what amount of acreage would be affected. Unfortunately we do not have our own crew and the crew we have in the State of Colorado is located in Ft. Collins and is back logged about 6-8 months. The areas we are looking also include the roads and road side. I believe we are getting a good grip on the acreage affected but as Bennett said we won't know until we have the final design for the ski area.

We were getting close in negotiations with the applicant and then we got further away. They started at \$130k then back up to \$700k for the mitigation and the DOW believe that is a more reasonable number. We are a regulatory agency not the regulatory agency for this circumstance therefore you can take our recommendation and say ok or change it because the Town is the regulatory agency.

Whirling Disease: It depends on if there is going to be fish in the lake. We believe they want fish in the lake. The lake is an open system (pass through system) therefore you would have to create a wetland filter system to capture the spores. It is not deep enough for fish to pass through this system. This is not the case during the 100 year flood. But even given the amount of rain we have had this summer that would flood so we haven't been able to come up with a filter system yet. It would be good to create a shredder system that would filter the spores except during the 100 year flood. Once the final design is in and we hear what the EPA is requiring we are going to require that screens be put in the lower end because we don't want fish from Cross Creek getting in and then spreading the disease further. The more waterfalls in between the better.

Peregrine Falcon: Seems to still be an outstanding issue. In the state wide standard there is a ½ mile buffer zone not a ¼ mile. The nest site isn't just the last site the bird nested in it is the entire cliff ban because they don't build a nest, they nest on a cliff. So when we map a nesting area take the entire cliff ban and put a ½ buffer zone around it. Occupied sites aren't necessarily one where mating takes place. If they are gone for 5 years from the nesting site then it is abandoned but there are still buffer zones. March 15 July 31 is the mating season. We have discussed with the applicant to lower the lifts to less impact the Peregrine Falcon. These guidelines are based on the original recovery plan stating you had a mile buffer zone. It used to be a listed species and now it has been de-listed therefore the buffer zone has been put to ½ mile buffer zone. Peregrines don't nest in visual site of another nesting site of a peregrine falcon. Surface occupancy items, which include ski runs and lifts, and items of that nature we would not like to see within that ½ mile buffer zone. You are right if you sit 1 ft outside the 1 mile buffer zone but, if you put a 30 story building 1 ft outside that buffer zone then there is a problem, we need to use common sense. I mean did you do any good by doing this or did you just meet a requirement? We have not taken any issue that is below the cliff

ban at this point because Peregrines usually do better with disturbances below them rather than above them.

QUESTIONS:

Tom S: If you use the entire cliff ban how much construction is within the ½ buffer zone?

Mr. Andre: We asked them to move about 10-12 houses outside that identified cliff ban buffer zone.

Tom S: It looks like there are some houses in the buffer zone in that development area.

Mr. Andre: It appears there will be a few in that area but I am not sure I would have to have one of the GIS crews survey it first. Also, the Gondola was right on that buffer zone and it seems they moved it a little but it will still impact it.

Tom S: Are Peregrines there year round? If not when do they leave the area?

Mr. Andre: The winter time, they would be leaving right about now in September. You could see them as late as October though.

Hawkeye: Will they be most affected during the construction time or when there are people living there?

Mr. Andre: If a falcon picks a place with activity currently there it will most likely affect them. That is why we are not concerned with HWY 24.

Kelly B: The formula being used for the \$600k, given the scale/scope and length of time is this formula adequate?

Mr. Andre: We have some differences on the formula. The 1.5 number is old and not appropriate for this site. Also the difficulty of de-weeding the site and fertilizing the site is much different and that would bring the cost up as well. You would have to fertilize the site on foot. Gas prices will also be taken into consideration with the total cost.

Kelly B: How far would \$600k go for mitigation?

Mr. Andre: We don't touch the principal we take the interest so it depends on what the interest rates are. If they affect 100 acres every year, we want enough money every three years to fix 100 acres. Three years is the period where the fertilizer wears off.

Tom S: How much of an effort would it take to get the expert on Peregrine Falcons back here?

Mr. Andre: Just work with his teaching schedule.

Kelly B: I think we also need some clarification on what percentage of the development is actually impeding that ½ mile buffer zone.

George B: Is there terrain in that area that can be treated by the air?

Mr. Andre: There is some on their property. As for this area no, you would need to do it by horse or foot, very costly and you would have to kill the weeds first and that would take about 7 years before treatment can take place.

George B: When you cut trees you will increase their foraging in the summer.

Mr. Andre: Yes, but that isn't necessary here in Colorado and they have trouble reaching the higher areas.

Tom S: Is this considered Canadian Lynx habitat?

Mr. Andre: Yes, hey base it on vegetation in the area and winter foraging for habitat qualifications.

George B: What is the size of the elk herd in this area?

Mr. Andre: It's about 1,900. They travel where there is food and where we attempt to feed them.

Kelly B: How does the MOU tie into the mitigation?

Mr. Andre: We work on it with the applicant then present it to the board for denial or approval. We will negotiate with the applicant and get that to you when the negotiations have been agreed upon.

Tom S: It seems like we need the fish and wildlife here to talk about the lynx, should we do that before the plan has been presented?

Mr. Raily: The Fish and Wildlife division is different then you regulatory board they approve the final project not tell you do this do that and modify this. They are considered the action board.

Tom S: Who is the regulatory board on the HCP?

Mr. Raily: It is the Fish and Wildlife division.

Tom S: I would like them to come because it sounds like we can impose more than they can during our annexation process.

George B: I agree. I would like to tell the public what we did about the lynx and not say that the developer is taking care of it.

Tom S: When will you have the plan complete?

Mr. Raily: By the end of the year is our goal.

Shelley B: What can they tell us? If they can't tell us much I would like to have some one here to discuss our concern.

Mr. Andre: They can tell you where they are on the process, what step they are at and what their next step will be. They are just about to release their biological opinion on the north property. As well they are talking about the Wolf Creek area which is a ski development and seeing how they did their biological opinion and to see if it is relevant to this development.

Sarah Baker: I would like to submit the power point presentation.

Hawkeye: We have been asking clarifying questions along the way but more questions may be asked and we reserve the right to bring these issues back up again.

Motion by Shelley B, and second by George B, to continue 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 to the September 19, 2007 Council Meeting. *All Voted in Favor*

17. Discussion/Action Item – A Public Hearing will be held for the following file PUD PDP 06-01 (File #1) Battle Mountain Planned Unit Development Preliminary Plan and Environmental Impact Report-PUD Preliminary Development Plan-Battle Mountain

Hawkeye: Introduced the next public hearing - PUD PDP 06-01 (File #1) Battle Mountain Planned Unit Development Preliminary Plan and Environmental Impact Report-PUD Preliminary Development Plan-Battle Mountain, the applicants are Ginn Battle North, LLC, Ginn Battle South LLC and Ginn LA Battle One LTD, LLLP.

He then opened the public hearing.

Allen C: The public record on the petition for annexation of the battle mountain annexation parcels 1-9 is here by incorporated into this public hearing file.

Chris C: He had nothing to add to his report.

Ms. Baker: Nothing to add but asked that the testimony for annexation of battle mountain be added to the record of this public hearing file. Also, that this public hearing be continued.

Motion by Shelley B, second by George B, to continue the public hearing on file PUD PDP 06-01 (File #1) Battle Mountain Planned Unit Development Preliminary Plan and Environmental Impact Report-PUD Preliminary Development Plan-Battle Mountain to the September 19, 2007 Council Meeting. *All Voted in Favor*

18. Discussion/Action Item - A Public Hearing will be held for the following file PUD AZDM 06-01 (File #2) Amendment to Zone District Map – PUD Preliminary Development plan-Battle Mountain.

Hawkeye: Introduced the next public hearing - PUD AZDM 06-01 (File #2) Amendment to Zone District Map – PUD Preliminary Development plan-Battle Mountain. The applicants are Ginn Battle North LLC, Ginn Battle South LLC and Ginn LA Battle One LTD, LLLC. He then opened the public hearing

Allen C: The public record on the petition for annexation of the battle mountain annexation parcels 1-9 is here by incorporated into this public hearing file.

Chris C: He had nothing to add to his report.

Ms. Baker: Nothing to add but asked that the testimony for annexation of battle mountain be added to the record of this public hearing file. Also, that this public hearing be continued.

Motion by Shelley B, second by George B, to continue the public hearing on file PUD AZDM 06-01 (File #2) Amendment to Zone District Map – PUD Preliminary Development plan-Battle Mountain to the September 19, 2007 Town Council Meeting. *All Voted in Favor*

19. Discussion/Action Item - A Public Hearing will be held for the following file PUD PP 06-01 (File #3) Preliminary Subdivision Plat-Battle Mountain Planned Unit Development Preliminary Plan

Hawkeye: Introduced the next public hearing - PUD PP 06-01 (File #3) Preliminary Subdivision Plat-Battle Mountain Planned Unit Development Preliminary Plan. The applicants are Ginn Battle North LLC, Ginn Battle South LLC and Ginn LA Battle One LTD, LLLP. He then opened the public hearing.

Allen C: The public record on the petition for annexation of the battle mountain annexation parcels 1-9 is here by incorporated into this public hearing file.

Chris C: He had nothing to add to his report.

Ms. Baker: Nothing to add but asked that the testimony for annexation of battle mountain be added to the record of this public hearing file. Also, that this public hearing be continued.

Motion by Shelley B, second by Jerry B, to continue the public hearing on file PUD PP 06-01 (File #3) Preliminary Subdivision Plat-Battle Mountain Planned Unit Development Preliminary Plan to the September 19, 2007 Council Meeting. *All voted in Favor*

NOTE: Tom S. left the Town Council Meeting at 9:58pm

20. Discussion/Action Item – Ordinance 16 – Series 2007 (First Reading) – An Ordinance Amending Chapter 16 of the Minturn Municipal Code as it pertains to Variance Revisions – Christensen (15 Min)

Hawkeye: He introduced the Ordinance and asked Allen C. if there is anything to add

Allen C: It is asking us to re-amend the code on variance reviews. He also stated we removed review of the code MMC CH 16 by the Planning Commission. We cleaned up redundancy and definitions to follow State Statutes. We broadened the appeal process where the citizens can appeal to the Town Council an administrative decision.

Motion by George B, second by Bill B, to approve Ordinance 16 – Series 2007 (First Reading) – An Ordinance Amending Chapter 16 of the Minturn Municipal Code as it pertains to Variance Revisions. *(Note: Tom S. was absent/excused) All voted in Favor*

21. Discussion/Action Item – Ordinance 18 – Series 2007 (First Reading) – An Ordinance Amending Chapter 10 of the Minturn Municipal Code by Repealing and Reenacting Section 10-104 as it pertains to Public Indecency Creation of a new Section Prohibiting Indecent Exposure Providing Penalties for the Violations. – Christensen (15 Min)

Hawkeye: He explained the Ordinance and he asked Allen C. if there is anything to add.

Allen C: This section has been beefed up because we ran into this in a Court and addressed it by adopting the State Statute pertaining to this issue. This Ordinance is not gender specific.

Kelly B: Is the whole thing new?

Allen C: We repealed a section and adopted a section.

Shelley B: I have a concern about breast feeding women. I want to make sure we are not limiting it by adopting the State Statute.

Allen C: I do not believe this would restrict this but I will check up on it.

Motion by George B, second by Jerry B, to approve Ordinance 18 – Series 2007 (First Reading) – An Ordinance Amending Chapter 10 of the Minturn Municipal Code by Repealing and Reenacting Section 10-104 as it pertains to Public Indecency Creation of a new Section Prohibiting Indecent Exposure Providing Penalties for the Violations. *(Note: Tom S. was absent/excused) All voted in Favor*

22. Discussion/Action Item – Ordinance 19 – Series 2007 (First Reading) – An Ordinance Amending Chapter 2 of the Minturn Municipal Code by Repealing and Re-enacting Section 2-24 as it pertains to powers and duties of the Town Administrator – Christensen (15 Min).

Hawkeye: He introduced the Ordinance and asked Allen if there was anything to add.

Allen C: The only change to Chapter 2 is in section 10

Hawkeye: I want to clarify this. The authority of spending is up to \$20K for the Town Administrator can approve. If the amount is above that threshold it has to come before Council for approval by a motion or resolution. Also, if the amount is \$20k and not budgeted it needs to come before the Council and approved by a motion or resolution.

Allen C: Correct

Motion by Kelly B, second by Jerry B, to approve Ordinance 19 – Series 2007 (First Reading) – An Ordinance Amending Chapter 2 of the Minturn Municipal Code by Repealing and Re-enacting Section 2-24 as it pertains to powers and duties of the Town Administrator. *(Note: Tom S. was absent/excused) All voted in Favor*

23. Discussion/Action Item – Eagle County School District – Direction from Council for Communicating with ECSD regarding the Annexation of Maloit Park and Obtaining the Deed to the Parcel of land, which the Water Plant is located – Christensen (15 Min)

Allen C: We have had productive meetings with the School Board on this issue but, the turn over problem with the School Board has created problems in getting this matter taken care of. This issue applies to the Ginn annexation process as well as getting the deed to the water plant. We need Council involvement to get a meeting set up because they have been ignoring Staff.

Hawkeye: We need to write a letter to the interim Superintendent updating on the previous conversations and our intentions. I believe this is a good way to go about it.

Allen C: We can draft a letter but I want it signed by the Mayor.

Kelly B: I would like some advice from Gary S. on building those relationships.

Gary G: We can give the back ground information in the letter and call him and hand deliver the letter.

FUTURE AGENDA ITEMS

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

- Ginn Petitions for Annexation – Continued from: 9/5/07 – 9/19/07
- Public Hearing will be held for the following file PUD PDP 06-01 (File #1) Battle Mountain Planned Unit Development Preliminary Plan and Environmental Impact Report-PUD Preliminary Development Plan-Battle Mountain – Continue 9/5/07 – 9/19/07
- Public Hearing will be held for the following file PUD AZDM 06-01 (File #2) Amendment to Zone District Map – PUD Preliminary Development plan-Battle Mountain. – Continue from 9/5/07 – 9/19/07
- Public Hearing will be held for the following file PUD PP 06-01 (File #3) Preliminary Subdivision Plat-Battle Mountain Planned Unit Development Preliminary Plan– Continue from 9/5/07 – 9/19/07
- CU 07-06; Tom Sullivan is requesting Conditional Use approval for approximately 1,900 square feet of commercial space in the mixed-use zone of the Old Town Character Area – October 3, 2007

25. Set Future Meeting Dates

- a) Council Meetings
 - September 5
 - September 19
 - October 3

b) Planning & Zoning Commission Meetings

- August 22
- September 12
- September 26

c) Other

- Cowboy Poetry - Little Beach Park September 22, 2007
- Special Joint Meeting: Town Council and ERWSD September 26, 2007
- Special Joint Meeting: Town Council Representatives and Staff with USFS October 9, 2007

26. Adjournment

Motion by George B, second Shelley B, to adjourn the September 5, 2007 Town Council Meeting at 10:29 pm. *(Note: Tom S. was absent/excused) All voted in Favor*

Hawkeye Flaherty, Mayor

ATTEST:

Jay Brunvand, Town Clerk