



## **Official Minutes**

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

**Wednesday, August 19, 2009**

**Work Session – 5:30 PM**  
**Regular Session – 7:00 PM**

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

**Town Administrator – Jim White**  
**TOWN CLERK/TREAS – Jay Brunvand**

**COUNCIL MEMBERS:**

Shelley Bellm  
Lorraine Haslee  
Jerry Bumgarner  
Aggie Martinez  
Matt Scherr

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 – 5:30**

- Site visit to the “RBLA” Subdivision – Villarreal- (45min)
- Discussion regarding possible Medical Marijuana dispensaries – (30min)-Christensen

### **Regular Session – 7:00 PM**

#### **1. Call to Order**

- a. Roll Call
- b. Pledge of Allegiance

Mayor Pro Tem George Brodin called the meeting to order at 7:01 p.m.

Those present included Mayor Pro Tem George Brodin, Lorraine Haslee, Shelley Bellm, Jerry Bumgarner, Matt Scherr and Aggie Martinez. (Note: Mayor Hawkeye Flaherty was absent/excused)

Staff present was Town Administrator Jim White, Town Planner Victor Villarreal, Planner Chris Cerimele, Town Treasurer/Clerk Town Jay Brunvand, Deputy Clerk Carrie Kendall, Attorney Allen Christensen and Chief of Police Lorenzo Martinez.

## STANDING ITEMS

### **2. Approval of Agenda**

- a. Items to be Pulled or Added

Motion by Shelley B, seconded by Jerry B., to approve the agenda as presented, all voted in favor. (*Note: Hawkeye was absent/excused*)

### **3. Approval of Minutes and Action Report**

- August 5, 2009 Regular Council Meeting
- Action Item Report

Motion by Lorraine H., second by Jerry B., to approve the Minutes as presented; all voted in favor, (*Note: Hawkeye was absent/excused and Shelley B abstained.*)

Shelley B. inquired regarding a meeting with the School District. Jim W replied that they will meet the first week of September.

### **4. Public comments on items, which are NOT on the agenda (5 minute time limit per person).**

John Moritz, 731 Main St., Mr. Moritz appeared before Council to express his past appreciation for lights on the tree in front of Chilly Willy's restaurant and to let Council know that he wished that the tree would be lit up once again.

### **5. Special Presentations/Citizen Recognition**

- Recognition of Mary Parker, owner of the The Pantry

George B. presented a plaque and welcomed Mary Parker and her catering business and new restaurant, The Panty to the Town of Minturn. Council and Staff wished to recognize Ms. Parker for her efforts and her valuable addition to the Town.

### **6. Town Administrator's Report**

Jim W. presented his Administrator's report. He gave an update on the Eco Trail /Dowd Junction trail project. He recently met with Ellie Caryl from Eco Trails. The bid opening is set for Aug 24, 2009 and the project is on schedule. The project is expected to take about 6-7 weeks.

The Water Master plan has been delivered to the Town from Baseline Engineering. Jim W. planned to distribute these electronically to Council and provide hard copies to Aggie and Joe Tom Wood, the Town Engineer. Jim W. plans to have Rod Cordova present the plan to Council on September 16, 2009. Matt S. requested that Joe Tom Wood take the Council on a water tour through the Town.

In regards to a recent water main break on August 6, 2009, Staff met with the Fire District in order to discuss the situation that happened near Valley Fabricators. The break caused a loss of 100-125K gallons per minute, Town Hall was kept open all night for residents to obtain water and use the facilities and several businesses had water delivered by Staff. Jim W. stated that this reminds us of the need to address the water system. More discussion will occur on Sept 16, 2009 when the Master Water plan is presented to the Council.

On August 12, 2009 Jim W. hiked with Bill Thompson from USFS to the Radio Repeater site to review the scope of work required for the removal of the Radio Repeater building.

Jim W. was informed that Jay B. had achieved the status of Master Municipal Clerks. The Council congratulated Jay B. on the achievement.

A final Community meeting on August 20, 2009 will be held to recap all the work that has been done at the previous 5 Community Plan meetings.

Jim W. and Allen C. attended a meeting with Attorneys and Engineers in Denver on Tuesday, August 18 to discuss the status of the Battle Mountain Project. An update will be given during the Executive Session. Jim W. also attended a recent meeting of the Eagle County Commissioners on August 11, 2009 in order to introduce himself.

As part of Jim W.'s administrator's report, Jay B. introduced a portion of the 2010 budget to get preliminary feedback from Council and asked for direction regarding a few of the 2010 budget items. Shelley B. expressed concern regarding the CDOT contract paying for a portion of a staff member. It was noted that the current contract was for 5 years and will expire in November 2010. Council directed Staff to pursue the contract and look into options of increasing the amount. The Town's land lease with LaFarge Concrete is set to expire in November 2010. Council directed Staff to pursue a short lease or annual renewal for the next renewal. Jay B. inquired regarding the Radio Tower lease. He stated that the underground infrastructure and the transmitter building remain even though the Tower is no longer standing and the lease still exists. Council requested to seek legal recourse regarding back payments owed to the Town. Council directed collection of funds before additional lease can be considered. Regarding the Rail Road property lease Jay B. suggest that one possible revenue source could be to reinstate a snow dump lease, but to consider many factors prior to allowing a snow dump. Council agreed to consider other leases as they come up.

Regarding the staffing budget, Jay B. inquired if the Town should continue to budget for the yet to be hired 4<sup>th</sup> police officer. Jay B. questioned the existing raise schedule for the 2010 budget as well. He explained the “Mercer study” that put the Town into a step and grade process each year. Shelley B. requested the option of a hiring freeze. Council requested the item come back in the next few meetings during work sessions. Election in April of 2010, Jay noted that there may be a potential tax issue to vote on in the spring of 2010. Council requested the item also come back for discussion during a work session. Trash and water rates discussion – the Town is at the bottom of the rate scale compared to other local communities currently but it needs to be discussed. Council requested that Jay B. bring these items back during future work sessions to allow more detailed discussion.

Jerry inquired to Staff about the amount of the Stimulus funds will be used for the costs of the overview process as related to the proposed bike path construction. Chris C. replied that he will look into the issue.

## **7. Town Council Comments**

Shelley B. stated the Budget Trucks is in violation of their Conditional Use permit due to several trucks being parked on Main St. and even blocking a crosswalk. Staff stated that they would be looking into the issue.

Matt S. reiterated his encouragement for the public to attend the last Community Plan meeting due to the importance of the document that will come out of the meeting. Shelley B. noted her concern regarding the not yet approved document.

George B attended the service for longtime Vail local Jim Viele who recently passed away. George B. expressed his condolences to the Viele family.

The Swift Eagle Charitable Foundation is having an event with Phil Jackson contact Jenny Snowden for more information.

Shelley B noted that school will be back in session so there will be many buses and children out on the streets and reminded the public to keep an eye out for them.

## **PUBLIC HEARINGS AND ACTION ITEMS**

### **8. Discussion/Action – Extinguishment hearing on 2001 Subdivision approval of the “RBLA” subdivision at 721 Main St – Villarreal-(30min)**

Public hearing was opened at 7:48 p.m. It was noted that this was a continuance from the July 1, 2009 hearing. Staff is seeking a formal extinguishment of that approval. Victor V. retraced the history of the now expired subdivision and noted that this is the formal extinguishment of the subdivision. He noted the initial approval was on Oct 3, 2001. Victor V. reiterated to Council that these items expire due to circumstantial changes, new decision makers, and better information available to make more informed decisions. It was noted that the site was visited

earlier in the evenings work session so that Council could see the area of the subdivision. Victor V. stated that the costs estimate need to be updated and bonding in place for developments and that these were required by current and past code. The subdivision also lacked compliance with code regarding the lot sizes and the applicants' inability to include the Right of Way in the formulation of the lot size. He also noted an access issue that will need to be addressed due the property line at the end of Boulder St and Mann. The subdivision had planned a gated access on Hwy 24 and the Fire Marshall and Police Chief would like to see access at the end of Boulder St. for emergency purposes. Victor V. stated they are not looking to impede the development. Victor V. recommended extinguishment.

George B. polled Council members for outside discussions that might have occurred. None of the Council had outside discussion.

Mr. Richard Berridge, 721 Main St., Minturn, CO. Mr. Berridge addressed Council to answer questions. Jerry B. inquired if Boulder St was a dedicated Street up to the subdivision. Mr. Berridge noted there was nothing of record that Boulder St. extended farther on to the property. Mr. Berridge stated that their position is that they seek to gain another extension and fully comply with all issues. Mr. Berridge appealed to the Town for fairness in the issue. Mr. Berridge stated that they have continued to work on the subdivision and stated that they were not advised to extend the subdivision approval. He declared the subdivision consisted of 6 single family home sites of 5000 sq feet or large with private egress off of Main St. Mr. Berridge stated that at the time of initial approval, the residents of Boulder St. were not in favor of Boulder St. as a through road connecting to Main St. Mr. Berridge appealed to reason and fairness because he did not have anything in writing advising of an expiration of the subdivision.

Mr. Greg Perkins, 30 Bunker Way. Mr. Perkins, as a representative for the applicant, presented an email regarding the lot sizes presented. Mr. Bunker stated that a private Street in our code is not excluded in the definition of lot area in the Minturn Municipal Code. Mr. Berridge has offered to work with the Town with several of the issues brought up and are considered "non-issues" that should allow extension of the subdivision. He noted that Mr. Berridge has been paying taxes on the 6 separate lots. Mr. Bunker stated that there could be issues with the lot lines and the yellow house to the South if the subdivision is extinguished.

The hearing was opened for Public comment.

Mr. John Moritz, 735 Main St. Mr. Moritz owns the yellow house adjacent to the subdivision. Mr. Moritz stated that this was a significant issue to the character of the Town and is in support of the project. He also feels that the item should meet the current codes. Mr. Moritz had spoken to Mr. Berridge regarding the project and feels that the character should be cottage type house and supports the project.

Mr. Shane Sorenson, 681 Boulder St. Mr. Sorenson wanted to know if the power lines were staying in their current place. Mr. Berridge stated that he has made attempts to get the power people to discuss the issue but had been unsuccessful in moving them. If they are unable to make adjustment then they would at least "sleeve" (set up to put underground) the power lines at Boulder St. but it was noted the main transmission lines will stay in their existing positions.

The Public hearing was closed at 8:16 p.m.

Lorraine H. inquired to Allen C. regarding the applicants' interpretation of a public street as part of a lot. Allen C. affirmed Victor V's interpretation of not being able to include a street as a part of the lot when calculating lot size. It was noted that from the Planning Department and Emergency perspective it cannot be included as a private Right of Way. Victor V. stated that he had never seen where one could include the Right of Way in the lot size. Victor V. stated he feels this could be a great project for the Town but there are many concerns. Victor V. wished to address the issue new instead of many fixes to a 10 year old project. Allen stated that this is the plat that ends at Boulder St. Mr. Perkins stated that there is a sliver of land that was conveyed at the time that the lot was platted. Allen C. noted that there were 30 days to make the decision after the public hearing had been closed.

Mr. Berridge stated that all of the issues mentioned by Victor V. do need to be dealt with and could be repaired without extinguishing the subdivisions with the exception of lot size. He offered expert testimony regarding lot size. He stated that the Town may lose a good project and he would suffer monetarily and that he would be seeking compensation for his taxes if the extinguishment goes through. Allen C. read the code reiterating failure to proceed, and other reasons that state the applicant must prove in order to not extinguish.

Motion by Matt S., seconded by Aggie M. to direct Staff to bring back for extinguishment by Resolution on September 2 meeting the formal extinguishment. Council voted Shelley no, Lorraine No, Matt Yes, Aggie Yes, George Yes, Jerry Yes. Voted 4-2 to. (*Note: Hawkeye was absent/excused*)

Council took a break at 8:36 p.m. and came back at 8:43 p.m.

**9. Discussion/Action** – Consideration of Ordinance 5 – Series 2009 (First Reading): An Ordinance Amending Chapter 1, Chapter 7, and Chapter 16 of the MMC by Repealing Section 1-5-20 and Repealing and Re-Enacting Sections 1-5-10, 7-2-30, 7-2-40, 16-1-20, 16-1-40, 16-1-50, and 16-1-90 to Revise the Procedures for Code Enforcement within the Town of Minturn-Villarreal- (30min)

Victor V. presented the first reading of Ordinance 5 – Series 2009 which enable Council to modify procedures regarding enforcement which would put enforcement on the shoulders of Staff and Municipal Court. Victor V. gave a brief overview of how the issue has come about. It was noted that Planning Commission did not make any amendments after reviewing at the last meeting. Jerry B. inquired if this put the Town into Constitutional guidelines regarding the right of entry and it was affirmed. Victor V. noted that the modifications would give Staff the ability to cite an offender officially and bring the item to Court to plead their case. The ordinance seeks to reduce the redundancy of bringing the item to Council to declare items a nuisance by Council. Victor noted that the current situation creates an enforcement issue. Shelley B. questioned who would be doing the code enforcement? It was noted by Jim that the issue would be case specific depending on the issue and would be addressed through him. Victor V. noted that the intent of the process is to make things easier to deal with. Much discussion ensued regarding a previous declared nuisance violation.

Motion by Jerry B., seconded by Aggie M., to approve Ordinance 5 – Series 2009 (First Reading) An Ordinance Amending Chapter 1, Chapter 7, and Chapter 16 of the MMC by Repealing Section 1-5-20 and Repealing and Re-Enacting Sections 1-5-10, 7-2-30, 7-2-40, 16-1-20, 16-1-40, 16-1-50, and 16-1-90 to Revise the Procedures for Code Enforcement within the Town of Minturn. Lorraine: Yes, George: Yes, Jerry: Yes, Shelley: No, Aggie: Yes, Matt: Yes, Item passed 5-1 (*Note: Hawkeye was absent/excused*)

**10. Discussion/Action** – Consideration of Ordinance 6 – Series 2009 An Ordinance Imposing a Temporary Moratorium on the Submission, acceptance, Processing, and Approval of Any Application for a Town of Minturn Permit or License Related to the Operation of a Business that sells medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution, declaring an EMERGENCY and providing for an immediate effective date of this Ordinance – Christensen

It was noted that the issue was discussed extensively in work session and that Staff planned to research the issue fully.

Michael Grimaldi, 433 Eagle Blvd. Eagle-Vail, Mr. Grimaldi had applied for a business application to operate a Medical Marijuana Dispensary in the Town of Minturn. Council requested that an operating guideline be presented. Chief Martinez obtained a copy of the manual “Cannabis Therapeutic” which is an unofficial guideline for some of the dispensaries operating in Colorado. Mr. Grimaldi felt confident that this would be a positive adventure and proposed that this be processed faster than the proposed 90 day moratorium. He noted that he had spoken with Victor V. and will be meeting with an attorney to obtain more information regarding selling Medical Marijuana. Matt S. suggested we keep it at 90 days but to shoot for 45 days. Allen C. promised to try to obtain the information as soon as possible

Motion by Jerry B., seconded by Matt S., to approve Ordinance 6 – Series 2009 An Ordinance Imposing a Temporary Moratorium on the Submission, acceptance, Processing, and Approval of Any Application for a Town of Minturn Permit or License Related to the Operation of a Business that sells medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution, declaring an EMERGENCY and providing for an immediate effective date of this Ordinance; all voted in favor (*Note: Hawkeye Flaherty was absent/excused*)

## GENERAL IMPROVEMENT DISTRICT

### **11. Minturn Town Council will convene as the Minturn General Improvement District:**

Roll call at 9:08 p.m. as the Minturn General Improvement District. (*Mayor Flaherty was absent/excused*)

Motion by Jerry B., seconded by Lorraine H. to approve the agenda as presented; all voted in favor. (*Mayor Flaherty was absent/excused*)

Motion by Shelley B. , seconded by Jerry B. to approve minutes as amended – change spelling of Shelley’s name; all voted in favore. (*Mayor Flaherty was absent/excused and Lorraine H. abstained*).

Allen Christensen announced that an agreement had been reached and all issues had been resolved. Shelley B. questioned several items in the agreement that referenced “other entities” ownership of proposed facilities.

Ms. Sarah Baker, 1914 Bear Creek Trail, Edwards. Ms. Baker spoke as representation of Ginn. She clarified that the language was intended to give flexibility of the Town for financial liability and the planning perspective. She stated that the decision making would be held by the board of the General Improvement District.

Motion by Shelley B., seconded by George B. to approve the Developer’s Agreement between the General Improvement District and Ginn Battle North, LLC, Ginn Battle South, LLC, Ginn-LA Battle One, LTD., LLLP; all voted in favor. (*Note: Hawkeye was absent/excused*).

Allen C. stated that within the Operation Funding Agreement, the only changes were dates. Jerry B. questioned the effective dates. Ms. Baker replied that this was due to the first year of the Developers Agreement being in effect.

Motion by Jerry. B, seconded by Matt S., to approve the Operation Funding Agreement between Ginn Battle North, LLC, Ginn Battle South, LLC, Ginn – LA Battle One, LTD., LLLP. There was to be one noted date change on line 1 to Jan 29, 2009.

Motion by Shelley B, seconded by Lorraine H., to set the next hearing on Nov 4, 2009; all voted in favor. (*Note: Hawkeye was absent/excused*).

Motion by Jerry B. to adjourn, seconded by Aggie M. at 9:22 p.m. Reconvene as Town council.

## EXECUTIVE SESSION

### **12. Minturn Town Council will convene into executive session:**

Council will go into executive session Pursuant to Colorado Revised Statutes (CRS) §24-6-402 (4)(b) and 4 (e) to consult with Town Attorneys to discuss the status of water court cases, Battle Mountain project, and to determine positions relative to matters that may be subject to negotiations, for development of strategy for negotiations and to provide instructions for negotiations.

Motion by Lorraine H., seconded by Shelley B., to convene in Executive Session pursuant to Colorado Revised Statutes (CRS) §24-6-402 (4)(b) and 4 (e) to consult with Town Attorneys to discuss the status of water court cases, Battle Mountain project, and to determine positions relative to matters that may be subject to negotiations, for development of strategy for negotiations and to provide instructions for negotiations, all in favor. (*Note: Hawkeye was absent/excused*)

Council convened in regular session at 10:30pm.

## FUTURE AGENDA ITEMS

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

#### Next Meeting

- Presentation of Main St. Future Land Use-(30min)-Cerimele-Work Session -September 2, 2009
- Resolution 20-2009 A Resolution Amending Fee Schedule for Right of Way Permit-September 2, 2009
- Presentation of the Water System Infrastructure Report-Work session (30min)-Cordova-September 16, 2009

#### Future meetings

- Sandra Smyser-Eagle County School District – (30min) – Date tentative
- Joint Meeting with Planning & Zoning- October 21, 2009 and November 4, 2009
- GID Budget hearing – November 4, 2009
- Use tax discussion – work session – December 2, 2009
- Sidewalk discussion – work session – December 2, 2009

### 14. Set Future Meeting Dates

#### a) Council Meetings

- September 2, 2009
- September 16, 2009
- October 7, 2009

#### b) Planning & Zoning Commission Meetings

- August 26, 2009
- September 9, 2009
- October 14, 2009

#### c) Other

- Last Minturn Market –September 5, 2009
- Rummage Sale- August 15, 16 and 22, 23

### 15. Adjournment

I that their was no further business before the Council the meeting stood adjourned.

  
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Mayor Hawkeye Flaherty

ATTEST:

  
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Town Clerk, Jay Brunvand

