Official Minutes

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

Wednesday, October 7, 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 PM

- Discussion regarding Red Cliff traffic proposal – White/Christensen
- Discussion of Resolution in support of the Energy Smart Local Improvement District Vote – White/Scherr (30min)
- 2010 Budget Presentation – Brunvand (40min)

Regular Session – 7:00 PM

1. Call to Order

a. Roll Call
b. Pledge of Allegiance

Mayor Hawkeye Flaherty called the meeting to order at 7:10 p.m.

Those present included Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Lorraine Haslee, Shelley Bellm, Jerry Bumgarner, Matt Scherr and Aggie Martinez.

Staff present was Town Administrator Jim White, Town Treasurer/Clerk Town Jay Brunvand, Town Planner Victor Villarreal, Planner1 Chris Cerimele, Police Chief Lorenzo Martinez and Attorney Allen Christensen

STANDING ITEMS

2. Approval of Agenda (5 min).

a. Items to be Pulled or Added

Motion by George B., second by Shelley B., to approve the agenda as presented; all voted in favor.

3. Minturn Liquor Authority

- Deutschman Family LLC dba Kirby Cosmo's BBQ Bar Hotel/Restaurant Liquor License Annual Renewal; 474 Main St, Michael Deutschman, Owner – Brunvand (5min)

Jerry B. recused himself from the Council due to a financial Conflict of Interest.

Hawkeye introduced the item and referred the item to Jay B. for Staff report. This application is a standard annual renewal with no outstanding Staff concerns. Lorenzo M. confirmed compliance. Mr. Mark Tamberino, Manager, was present to represent the applicant and available for questions.

Motion by Lorraine H., second by Aggie M., to approve the Deutschman Family LLC dba Kirby Cosmo's BBQ Bar Hotel/Restaurant Liquor License Annual Renewal, 474 Main St, Michael Deutschman, Owner as presented; all voted in favor.

Jerry B. resumed his seat.

- Gail Crowder, Sole Proprietor The Minturn Mile Liquor Store License Annual Renewal; 341 Main St; Gail Crowder, Owner – Brunvand (5min)

Hawkeye introduced the item and referred the item to Jay B. for Staff report. This application is a standard annual renewal with no outstanding Staff concerns. Lorenzo m. thanked the applicant for their help on the Town wide parking plan. Gail Crowder, Owner, introduced and was present for questions.

Motion by Lorraine H., second by George B., to approve the Minturn Mile Liquor Store License Annual Renewal; 341 Main St; Gail Crowder, Owner as presented; all voted in favor.

4. Approval of Minutes and Action Report (5min)

- September 16, 2009 Regular Council Meeting
- Action Item Report

Shelley B. asked if Jim W. had rescheduled with Eagle County Schools Superintendent Sandra Smyser; yes she will be at the October 21, 2009 meeting.

Aggie M. requested an update on the bike path project; Chris C. stated the project is on task and the retaining wall portion of he project will be installed next week.

Motion by Jerry B., second by Shelley B., to approve the Minutes of the September 16, 2009 Regular Council Meeting as presented; all voted in favor.

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

- Ms. Leal Engstrom, 112 Taylor Ave, citizen, business owner and Minturn Planning Commissioner, read a statement regarding an event at a prior Council Meeting of which she was a party to. Ms. Engstrom clarified her position and apologized as a Commissioner and a resident for what she considered was an error in judgment during the event and her reaction to things that were said. Matt S. thanked Ms. Engstrom for her concern.

- Ms. Susie Kincade, Eagle County Hidden Gems Wilderness Campaign, noted she was present to inform Council of the issues in the campaign; a citizen's effort to expand the wilderness in and around the White River National Forest and adjacent BLM land. The intent of the Hidden Gems is to protect the land for the wildlife and to maintain the wilderness as roadless trails (non-motorized) by maintaining the identified land in its natural state or returning to natural state. Ms. Kincade began her position in April 2009 and has been working since then to create an open bi-directional discussion with the communities.

  Shelley B. stated that she has concerns; motorized sports are a huge draw to the County and a beneficial part of living in the area. Snowmobilers, hunters, etc appear to have been left out of the conversation. She stated that she is opposed to the campaign due to the effect it would have on the County and its draw to citizens and tourists alike. Ms. Kincade stated she needs these groups to come to the table to see what the campaign is about and how it is trying to work with the needs and draws of the area.

- Beth McNicholas, 1011 main St, spoke re 1003 Main St. Ms. McNicholas read a prepared statement which questioned how the referenced property has been able to receive a building permit with out an easement agreement and other questions re the approval. Ms. McNicholas stated she was under the impression that the building permit would require a written agreement from her prior to the issuance of the building permit. She stated she can not locate anywhere an easement for the property and asked how this was

overlooked. She stated the conditions of approval given at the June 24th Planning Commission meeting stipulated this easement agreement. The driveway is less narrow than what was approved at the June 24th meeting. She is concerned that the project will use her driveway and negatively affect her property next door that shares an existing driveway with the property.

Allen C. noted both parties are under legal council and advised Council not to comment. Lorraine H. asked for an Executive Session at the end of the meeting to allow Staff to fully apprise the Council of the situation.

- Mr. Gusty Kanakis, 201 Pine St, spoke regarding the Eagle County Hidden Gems Wilderness Campaign representing as a citizen and the Powder Hounds Snowmobile Group, stated several statistics that do not benefit the County regarding the amount of land the Hidden Gems Campaign wants to protect by disallowing use of the Public Lands acquired by the campaign. Mr. Kanakis noted that all mechanized vehicles are banned including bicycles and other equipment such as those utilized in hunting. He stated concern regarding questions of how emergency vehicles are going to get in to the forest for emergency and fire mitigation if there is no access. He does not want the Town to support this bill and does not feel it is a benefit to the Town, the County or even the forests. He stated very often Hidden Gems arrives unannounced and gives their pitch. By not being announced in advance; this does not allow citizens to be aware of the issues to confront the facts stated.

- Mr. Frank Lorenti, 1081 main St., expressed concern that Matt S. has an undisclosed Conflict of Interest regarding the Energy Smart Local Improvement District. It was clarified that Matt S. does not have a conflict. Mr. Lorenti quoted a newspaper article and various loan calculations to reflect the actual cost to the community and the individual who utilizes these Special District funds.

  Mr. Lorenti asked the council to consider a mill levy credit for the citizens of Minturn due to the Ginn Land speculation. Hawkeye gave calculations of reducing the mill levy a set amount which represented the minimal affect a taxpayer would recognize in respect to the significant impact the Town would recognize in the budget. Mr. Lorenti stated Ginn is not paying there way, it is resting on the citizens and asked for relief.

- Jim Gonzalez, 472 main St., commented for the Hidden Gems Campaign and recommended and encouraged those against the program to come to the table and talk the issues. Mr. Gonzalez noted you have to look at the entire health of the forest not just the effect change will have on you personally.

- Ms. Kerry Donovan, 102A main St, spoke representing the Minturn Community Fund. She highlighted the successes the organization has celebrated in 2009 specifically noting the open house of the organization's office, they held 4 block parties this summer for citizens, brought back the Missoula Children's Theater for their third year, Minturn Rocks a free music show which is gaining popularity at the Little Beach Park Amphitheater. Going forward they are doing a Minturn window painting to enhance the

Halloween period and are bringing back Live in Minturn. The first concert is October 17th and Christmas on Main St. will be held in December. She stated they have invested about $60k this year and are looking forward to a successful year next year.

6. Special Presentations/Citizen Recognition

7. Town Administrator's Report (10min)

Jim W. note his report in packet. He has been working with Battle Mountain (Ginn) on the EPA issues. Updated on the other issues on his report regarding the GID budget.

Battle Mtn is considering renting the old Cowboys and Indians building (100 Main St.) It was noted the property has very limited parking.

EC schools superintendent will be at the next meeting.

We are trying to fill the vacant front office position.

Victor V. stated the updated draft of the Community plan is ready and outlined the proposed schedule of public hearings and approval. October 21st will be a joint PC/TC meeting; Nov 4th will be a public hearing, possible adoption December 18th.

Jim W. stated Bill Burg sent an update. Water well monitoring will commence on the Eagle River. The purpose of the monitoring is to assess the water going into the Eagle River.
Matt S. asked about a tour of the water plant; that is pending.

8. Town Council Comments (5min)

Matt s. announced his organization is holding the monthly green drinks social at Vinn 48 in Avon on October 8th.

Shelley B. updated the Council on her and Jim W.'s attendance at the September 23rd School Board meeting. Lots of dialog on closing the Minturn MS. Great concern of closing the school but keeping an educational institution on the site; she felt this was a plus. She advised the District at the meeting that the level of public outreach is lacking. The School District will hold a public meeting in Minturn and in Avon. They are hoping to make a decision within the next two school board meetings. Minturn MS is not the only school of concern by parents. An additional proposal being discussed is to have a K-8 school. Concern is the effect this would have on the communities involved. The Oct 14th School Board meeting will have a discussion on this topic and asked if Jim W. and/or a Council Member could attend that meeting.

Hawkeye stated at the last meeting he and Jim W. were directed to meet with the Chairman of Planning Commission, Stewart Brummet, this was done. He stated the meeting was very heated and very passionate. At the time, Hawkeye reminded Stewart B., and now was reminding the Town Council, that the passion is acceptable but no personal attacks, respect others opinions and

in the future the meetings will be held in a respectful manner based on what is said not what is heard individually.

Matt S. congratulated Stewart and Jane on their new baby.

PUBLIC HEARINGS AND ACTION ITEMS

9. <u>Discussion/Action</u> – Resolution 24 – Series 2009 A Resolution approving Conditional permit application CU 09-05 a request for a conditional use permit for a motorcycle repair, manufacturing and retail sales operation. The property is located at 1040 Main St. Unit D. Applicant Dan Holtkamp – Cerimele (10min)

Hawkeye introduced the Resolution and opened the Public Hearing then asked Council if any members have had outside contact on the matter; nothing material. He then referred to Chris C. for his Staff Report. The project will include motorcycle service, part sales and fabrication. Chris C. outlined the proposed hours, and recommended approval of the resolution. Chris C. introduced Mr. Dan Holtkamp, applicant, for his presentation.

Mr. Holtkamp, 06465 Eagle Park Dr, Eagle, feels Minturn is a prime location for his business but was unable to find a good spot for the business until recently. Although the property is not zoned for his business he is asking for Council to grant a Conditional Use Permit to allow his store.

Public Comment; no comments

Aggie M. asked if this will be for repair of motorcycles; yes all testing is done in the shop area not outside other than the road testing which would be performed south of Town. Noise will be limited to the shop area. Mr. Holtkamp stated they sent notice to all property owners in a 250ft radius; no comments pro or con. He has been in the business for 7 years, but as a hobby for many years. Shelley B. asked if the noise produced, in his opinion, would create more noise than the businesses in the area; it will be equivalent. George B. asked if he sold new bikes; no. Jerry B. asked about manufacturing; he machines custom parts as needed but does not manufacture complete bikes.

Public hearing closed.

Lorraine H. inquired how the hours of operation were determined; some public discussed at the Planning Commission Meeting and agreement was reached. It was not the intent to limit his hours but to limit the times customers would be arriving and leaving the business. Shelley B. expressed concern that two manufacturing businesses are immediately adjacent and we are placing these new restrictions on this applicant. She was concerned that this is not fair to the applicant; we should not be making this impossible for the applicant to open a business. Chris C. outlined the process Mr. Holtkamp has followed. George B. stated this is not an unreasonable approach and to review is not a problem. Matt S. asked if we revise our code later and allow this

use, will he still be required to adhere to these conditions; Victor V. stated the intent of the future review is to recognize these issues and address them at that time.

Aggie M. stated he did not feel we were being hard but that we were looking out for the residents in the area.

Hawkeye asked that, during the future code review, we do away with the fee on this type of Conditional Use and any review as well. Hawkeye wants this to be reviewed every few years and that it not become a burden to the Town.

Matt S. confirmed the hours of operation, could there be a problem or miss understanding. What if he wants less hours, by stating not to exceed the hours conditioned it could be disallowed. He can be in the shop working but not open to the public; Allen C. stated we need to refine the finding to state "open to the public" and eliminate the days of the week.

Motion by George B., second by Shelley B., to approve Resolution 24 – Series 2009 A Resolution approving Conditional permit application CU 09-05 a request for a Conditional Use permit for a motorcycle repair, manufacturing and retail sales operation. The property is located at 1040 Main St. Unit D. Applicant Dan Holtkamp as presented and including the following findings and conditions; all voted in favor.

Findings:

- The proposed location of the use is in accordance with the purposes of MMC Chapter 16, the Community Plan and the purposes of the zone in which the site is located.
- That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- The proposed use will comply with each of the applicable provisions of Chapter 16

Conditions

- Year-round hours of operations open to the public not to exceed 9:00am – 5:30pm
- Planning Commission review of the business after 2 years to determine whether new conditions should be placed on the business to minimize disturbances to the area
- The owner will take reasonable measures to limit the amount of noise to the surrounding area

10. <u>Discussion/Action</u> – Resolution 25 – Series 2009 A Resolution approving Variance Application VAR 09-03 a request for a variance to construct an attached garage in the front yard setback at 789 Main St. Applicant Western Capital Partners – Cerimele (10min)

Hawkeye introduced the Resolution and opened the Public Hearing then asked Council if any members have had outside contact on the matter; nothing material.

Chris C. outlined the request based on his staff report. Planning Commission has recommended approval as does the Planning Dept. Shelley B. stated the original house was approved without

the garage and now it is being called an exceptional circumstance; financial desire or desire for a garage does not make this an exceptional circumstance. Lorraine H. requested clarification on the location of the garage and the existing driveway from the staff; it was outlined. Jerry B. asked if the resident will be backing into the highway; no. Jerry B. stated that with the topography of the site this will not be a significant impact on the neighbors or the State Highway. Chris C. noted will be at least 4.5 feet from the property line so it will not be in the HW right of way. Matt S. asked if this is directly under the utility line; it is not and is to code.

Chris C. introduced the applicant, Mr. Luke Davis. Hawkeye asked if a new building permit will need to be issued; yes.

Mr. Luke Davis, Western Capital Partners, detailed the project background. His firm, as the financial backing agent, was given the keys of the property by the original developer. Due to the lack of interest in the property they are going to finish the project, including the proposed garage, and then sell the unit. Due to the price they have to ask to recover the costs on the project thus far incurred they are moving forward to complete and turn the property. Mr. Davis has gone door to door to the neighbors to detail his project and they support it.

Hawkeye inquired about the building height of the house; this will be addressed and enforced.

Public hearing was closed.

Motion by Jerry B., second by George B., to approve Resolution 25 – Series 2009 A Resolution approving Variance Application VAR 09-03 a request for a variance to construct an attached garage in the front yard setback at 789 Main St. Applicant Western Capital Partners as presented including the following findings; all voted in favor, Shelley B. Nay; Motion carries 6-1.

Findings:

- There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone
- The exceptional or extraordinary circumstances of the site create a situation in which the strict, literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this chapter
- That the granting of the variance would not be materially injurious to properties or improvements in the vicinity and would not result in substantial impairment to the purposes of the zoning code

11. <u>Discussion/Action</u> – Accept 2010 Budget and set Public Hearing Dates – Brunvand (10min)

Motion by Shelley B., second by George B., to accept the Fiscal Year 2010 Proposed Annual Budget and set Public Hearings at 7:00pm on October 21 and November 4, 2009 to be held in the Council Chambers at 302 Pine St, Minturn as presented.

12. <u>Discussion/Action</u> – Resolution 23 – Series 2009 A Resolution in support of the 2009 Eagle County ballot issue which will create the Energy Smart Loan Program Local Improvement District – White/Scherr (20min)

Hawkeye introduced the item. Matt S. advised the Council that he does not have Conflicts of Interest. Allen C. confirmed this.

Matt S. updated the Council on the resolution in support of a County wide ballot issue titled 1A which will appear on the Eagle county ballot in November 2009. He outlined the issues of the ballot proposal. Matt S. stated that if this ballot issue is approved by the voters the organization will come back to the Council and ask for permission to participate in the program.

Aggie M. asked about the funding and bond limits; if the aggregate requests come in at or below the level that will be addressed. It is not a tax, tax payers have no risk. Foreclosure on a home the debt would go to the holder of the lien, non payment of taxes would be bought through the annual tax sales. Matt S. stated all the municipalities are being asked to pass a resolution of support as are the major employers. Then, upon successful passage of the ballot as a result of the election, the municipalities will need to pass an ordinance to allow their citizens to participate.

Shelley B. asked how many other municipalities have passed a resolution; none as yet. Jerry B. stated he did not want our roll as a Council to be to pass a resolution prior to hearing the voice of the public. He felt the public is wise enough to make their own decision on the issues without the need of government to pass resolutions for a ballot issue.

Shelley B. expressed concern that the issue will pass on the ballot. She supports it but questions the public education and that it is not sufficient to inform the voters of the issue.

Public comment

Mr. Frank Lorenti expressed his opinion that the facts are not as stated. He outlined his position that it will cost almost $8k to close the loans. Eagle County has noted the loan interest rate can go up as high as 10%. It is a 15year loan that follows the property not the individual that pulls the loan because the improvements remain with the property. Mr. Lorenti felt that once the issue is voted on by the public then at that time the Council can vote to opt in to the program. Mr. Lorenti noted this loan program is designed for individuals that can not find credit through other means.

George B. commented if he takes on the loan he will be saving the energy cost and that savings will remain and increase as energy costs increase.

Matt S. stated this is based on an ability to pay related to the project itself. Loans would not be approved if the individual can not qualify and if the upgrade is energy qualified. The savings realized by the energy upgrades will be realized by the future owners so the savings will continue past the life of the original loan.

Lorraine H. stated she is uncomfortable voting on this as a Council Member feeling it should be passed by the citizens prior to the council declaring support or not; this is backwards.

Motion by Jerry B., second by Hawkeye F., to deny Resolution 23 – Series 2009 A Resolution in support of the 2009 Eagle County ballot issue which will create the Energy Smart Loan Program Local Improvement District as presented; Yes: Aggie M., Shelley B., Lorraine H., Jerry B., Nay: Matt S., George B., Hawkeye; motion carries 4-3

13. <u>Discussion/Action</u> – Ordinance 7 – Series 2009 (First Reading) An Ordinance amending Chapter 7 of the Minturn Municipal Code by the addition of new Sections 7-9-290 through 7-9-310 as it pertains to animal control in the Town of Minturn – Martinez/Christensen (10min)

Hawkeye introduced Ordinance 7 – Series 2009 on first reading. Allen C. informed Council that these sections were deleted during the recodification and should not have been. This is correcting that error.

Motion by Lorraine H., second by Shelley B., to approve Ordinance 7 – Series 2009 (First Reading) An Ordinance amending Chapter 7 of the Minturn Municipal Code by the addition of new Sections 7-9-290 through 7-9-310 as it pertains to animal control in the Town of Minturn as presented; all voted in favor

14. <u>Discussion/Action</u> – Resolution 26 – 2009 a Resolution appointing a representative to Northwest Colorado Council of Governments – White (10min)

Introduced by Hawkeye noting this could be a staff or Council member. Council opted to appoint Jim White, Town Administrator.

Motion by Lorraine H., second by Jerry B., to approve Resolution 26 – 2009 a Resolution appointing a representative to Northwest Colorado Council of Governments as presented; all voted in favor.

14a. <u>Executive Session</u>

Motion by Shelley B., second by George B., to convene in Executive Session pursuant to C.R.S. 24-6-402(4)(b) and (4)(e) to receive legal advice on specific legal question sand to give instructions to negotiators regarding:

- Armistead-McNicholas boundary dispute
- Recent developments at Battle Mtn land use and water litigation

All voted in favor.

Council exited Executive Session at 10:34pm.

No decision was made as a result of the Executive Session.

FUTURE AGENDA ITEMS

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

Next Meeting

- Ordinance 7 – Series 2009 (Second Reading) An Ordinance amending Chapter 7 of the Minturn Municipal Code by the addition of new Sections 7-9-290 through 7-9-310 as it pertains to animal control in the Town of Minturn – Martinez/Christensen (10min)

Future meetings

- 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

16. Set Future Meeting Dates

a) Council Meetings

- October 12, 2009 Council Budget Retreat
- October 21, 2009 (P&Z joint Work Session)
- November 4, 2009 (P&Z to attend Public Hearing)
- Novemeber18, 2009

b) Planning & Zoning Commission Meetings

- October 14, 2009
- October 28, 2009 CANCELLED
- November 11, 2009 (Veteran's Day) CANCELLED

c) Other

- Minturn Halloween – October 30, 2009

17. Adjournment

In that there was no further business the meeting stood adjourned at 10:35pm.

Hawkeye Flaherty

Mayor, Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

TOWN OF MINTURN, COLORADO
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