



## **Official Minutes**

### **MEETING OF THE MINTURN TOWN COUNCIL**

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

**Wednesday September 4, 2013**

**Work Session – 5:00pm  
Regular Session – 6:30pm**

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

**TOWN MANAGER – Jim White  
TOWN CLERK/TREAS – Jay Brunvand**

#### **COUNCIL MEMBERS:**

Shelley Bellm  
Earle Bidez  
Aggie Martinez  
John Rosenfeld

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 – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/827-5645 302 Pine St. Minturn, CO 81645

#### **Work Session – 5:00pm**

- TST Inc update on Eagle Street Construction – White
  - TST has reviewed the minutes and the video of the last meeting
  - Both Pine St and Eagle St projects are a hybrid of engineering and design-build. There is some ambiguity when projects are done this way.
  - Project on Pine St started as maintenance and repaving. Issues regarding a flat section and timely neighbor response were addressed however overall TST felt the project was a success and within budget.
    - Shelley B. stated the Pine Street project was a success but the lack of communication between the property owners and the contractor caused problems and countered the success. This is the same thing occurring on Eagle St this summer. The answers are coming from multiple individuals who don't have the same information. and has caused confusion; this reduces the success of the project. .
  - Aggie M. expressed concern with discrepancy between the amount of the bid compared to what we currently are paying for. Aggie M. also asked if we would have the as-built plans for the project; and Steve told him yes, we will.

- Steve Humann answered that much of the overruns are due to originally not having a survey and then the poor quality of the survey. Don Toronto stated much of the \$50,000 overrun is due to two items, the additional 143ft of roadway on Eagle St and the cost of not having a valid survey.
  - George B. asked why is the Town paying for the mistakes of others? We had a contract for a set amount and now the cost is way over. Don Taranto stated the survey bust cost issue will be segregated out and dealt with. The second cost is due to the design-build process. The contingency overrun could not anticipate everything that was encountered under the ground. Don Taranto stated the alternative would be to engineer the project for all possible contingencies; this is not feasible or advised as the costs would be even higher than what we have experienced.
  - Don Taranto assured everyone the costs of the bad survey will be identified and we will work to reduce any cost overruns that were a result of those errors.
  - Hawkeye asked who was responsible to identify the missed 143ft of road, why it was missed, and how a reasonable cost was determined.
    - Steve Humann stated the site was walked, the end of the existing pavement was located and that is where the bids were developed from. It was later found that, although it was the end of the pavement, it was not the end of the Right of Way and new numbers were developed to include the addition at the same unit costs.
    - Hawkeye stated the project has taken longer than planned; Steve Humann stated tonight he did not have an updated schedule but it would be completed soon. The original schedule was to have the project completed by September 15<sup>th</sup>.
    - Hawkeye asked about the moving of the phone pole on Eagle (100 Block), this is Xcel and they have stated it will be soon. Hawkeye asked if we needed a second light at that location (a Town fixture and an Xcel light very close to each other); they will look at it and proceed appropriately.
  - Shelley B. asked regarding the stub out for a restroom; yes that has been done in anticipation of two restrooms (men and women). The fire hydrant at Eagle and Main will not be moved at this time due to the web of utilities at that corner that cause it to be cost prohibitive.
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- Review of Ordinance 07 – Series 2013 (Second Reading) an Ordinance of the Town of Minturn, amending Chapter 10 of the Minturn Municipal Code by the repeal and re-enactment of Section 10-6-70 as it pertains to theft – White/Christensen
  - Review of Ordinance 08 – Series 2013 (Second Reading) an Ordinance of the Town of Minturn, amending Chapter 7 of the Minturn Municipal Code to reconcile the Minturn Municipal Code with Section 16 of Article XVIII of the Colorado Constitution (Amendment 64) – White/Christensen
  - Minturn Fitness Center (MFC)
    - John R. has worked on a budget based on what the bidders of the project had included. It is now evident that some of the original cost assumptions are significantly off. John R. stated there are opportunities for value engineering cost

savings. John R. reviewed some of the savings and emphasized that the MFC needs to move on any potential savings now, not wait.

- Shelley B. stated she felt we had a maximum agreement of \$1m and no more. At the last MFC board meeting it was discussed that if we had any over runs, those would be set up on a 50/50 share between the school and the Town. All agreed this was not what has been agreed to, but that Minturn would only go up to \$1m total.
- Allen C. stated it might be best to allow our representatives the authority to hold the project for a year to get some of these questions answered. Shelley B. stated that we could at least slow the project down until the costs and questions can be pinned down.
- The Council confirmed that the \$1m is firm and we have no more money to allocate.

### **Regular Session – 6:30 pm**

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

##### a. Roll Call

The regular meeting was called to order by Mayor Hawkeye Flaherty at 6:35pm.

Those present included: Mayor Hawkeye Flaherty, Town Council members George Brodin, Earle Bidez, John Rosenfeld, Shelley Bellm and Aggie Martinez.

Staff present: Town Manager Jim White, Town Attorney Allen Christensen, and Town Treasurer/Town Clerk Jay Brunvand.

##### b. Pledge of Allegiance

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

##### a. Items to be Pulled or Added

- i. Michael Cacioppo would like to address the Council prior to the appointment process
- ii. Add a special presentation by Chris Romer of the Vail Valley Partnership

Motion by Shelley B., second by George B., to approve the agenda as amended. Motion passed 6-0.

Mr. Michael Cacioppo addressed the Council regarding residency of the candidates and asked if the appointment was required to be by paper ballot. He stated these questions are just to make sure all is “legitimate”.

(Note for Record:

- Colorado Revised Statute Title 1 Section 1-2-102(1)(a)(1) Rules for Determining Residency defines residency as “A principal or primary home or place of abode is that home or place in which a person’s habitation is fixed and to which that person, whenever

absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence.”

- Minturn Town Charter Chapter 4.6 states “In case of vacancy the remaining council members shall choose by majority vote, within thirty (30) days after such a vacancy occurs, a duly qualified person to fill the unexpired term so vacant.”; however, it does not state it must be a verbal, hand or paper vote.)

### **3. Interview and Appoint Council Vacancy – White**

Hawkeye asked if anyone in the audience currently present wanted to express interest tonight, but had not previously submitted a letter, if they desired to do so?; no one responded.

Hawkeye stated he would proceed with a regular interview process and only one candidate would be present at a time initially. He asked Darell Wegert to go first and asked the other candidates: Matt Scherr and Frank Lorenti to exit the room. (Each of the other candidates was subsequently called).

Darell Wegert,

- Is a qualified electorate. He has a lot of experience on the Minturn Town Council, Planning Commission and other various boards. He has a history of the Town that he feels is important and would be prudent to current issues facing the Town. He has also been on various county and regional boards that would assist the Town to be a team player in the county. Darell stated he is on the ERWSD Board through April 2014 and the Eagle River Fire District Board. He has conferred with both attorneys (ERWSD and Town) and has been told there is no conflict of interest.
- Could you serve on two boards?; yes.
- Biggest challenge Town is facing?: traffic on Main St. Streetscapes as they have been presented would be a big safety improvement. Main St is the first thing you see and it should be a priority. Yes, there are other items, several number 2's, but that is the number 1.
- Do you support South Minturn sidewalks?; yes, Minturn has a lot of families and we need to have those interests in mind.
- Medical Marijuana was overwhelmingly approved by the citizens and then banned by the Council, did the Council have the authority?; No, we had the voice of the citizens and the Council is here to represent the citizens.
- Three items to spend money on, infrastructure, employees, and economic development, what is most important?;the employees.
- Amendment 64 allows the sale of retail marijuana, would you be in favor of the retail sale of recreational marijuana?: the Town can ban the sale but they would lose the control of how the sales take place.
- Conflict of interest in light of the Battle Mountain Resorts and ERWSD, do you foresee any problems of stepping down in light of a conflict of interest on those issues? No, no issues with recusing himself as a conflict of interest.

Matt Scherr:

- Stated he was out of the country until about a year and a half but had always intended to return. Matt stated that he is a resident based on State Statute. He was on Council but

resigned to serve for the betterment of his family. He does desire to be on the Council and feels he would make a positive addition.

- Do you have enough time to devote the time to Town Council? yes, he has less commitments then when he was previously on the Council and he has his current schedule well managed so it would not interfere with the work.
- What do you feel is the biggest challenge the Town has? currently we are in a transition or waiting stage with BMR. We need to move forward with projects and our future to manage what we have and what we “may” have.
- Medical Marijuana was overwhelmingly approved by the citizens and then banned by the Council; did the Council have the authority? Statutorily yes they had the authority. However, from his perspective, Council should have passed the ordinance and he would have voted for it. The question is if the citizens desired this we are there to represent them.
- Three items to spend money on, infrastructure, employees, and economic development, what is most important? it is important to give the employees something they value. A consultant could assist in the identification of those values; however, at a cost.
- Amendment 64 allows for the retail sale of marijuana and to ban the sale within the town, do you feel it is in the best interest of the Town to ban or allow? the people of state approved it, as did the citizens. The state wide current dynamics are such that it is now not going to be an even distribution across the state. His desire would be to ban and let the state and larger entities handle it.

Frank Lorenti:

- Stated we need someone on council that can read contracts and be looking out for the best interests of the Town and that makes him qualified. He noted the Eagle St contract and that the contract was not final and it is costing lots of money. Change orders need to be addressed, what does the Town need in the future. He has the experience to read contracts and then enforce them. He asked who is overseeing the projects? The Town Manager? The Council? Communication is very lacking, something is missing somewhere. The Council needs new blood.
- Can you admit to making a mistake and reverse a decision if you made a mistake? yes. What is [minturntimes.com](http://minturntimes.com)?, Would you use [Minturn.com](http://Minturn.com) and the letter's to the editor as a forum or would you accept the majority rule and keep your ire and antagonism in check?: yes when those things are not public but once those items go out to the public they are fair game. There is a majority vote but you can still have and voice your own opinion. If an issue does not go your way in a vote, would you feel compelled to make your case as a public outcry, would you feel compelled to make your point in other venues, would you want to explain your side? sure, it is public and when other facts come forward that prove (his) point that is important for the citizens that one not be quiet. Would you air your point of view on the paper and on your website or would you go with the majority of the council and not disrespect your fellow council members in the paper and on your website?; everyone has the option to do that but if he needs to point out facts then he will continue to do that. It was noted opinions are not necessarily facts.
- What is the biggest challenge the Town faces and how would you address that?; money, ski lift, anything to get money, even as Red Cliff has done by approving the retail sale of marijuana. Infrastructure, new water plant, more money. The Town has tried to do it the

slow way and that is not working, a ski lift is a good option and I am 110% for it, the railroad land could be a money maker, let the old grudges go and move to the future. Offer to have the Gold Peak training over here with one central location for everything, a school, a mountain, training facilities, everything. Have a vision where building codes are addressed but we encourage growth.

- Medical Marijuana was overwhelmingly approved by the citizens and then banned by the Council, did the Council have the authority?; this is Minturn. Council gave the decision to the citizens; they voted yes, the Council said no. Don't ask the citizens and then go the opposite direction when you get the answer.
- Three items to spend money on, infrastructure, employees, and economic development, what is most important?; it is chicken and egg, you want the money first to pay for the infrastructure and good employees. You need them all.
- Amendment 64 allows for retail sale or to ban it, should the Town allow the retail sale?; the citizens voted for it, it should be allowed. Like animal control, it isn't rocket science.

- Council vote by paper ballot

Hawkeye noted all ballots had each of the three candidate names on them and passed them down.

Hawkeye collected all ballots and tallied; the person with the lowest vote would be eliminated and a second balloting would be held if it resulted in a tie. Vote was 4-1-1 Darell Wegert was elected with 4 votes.

Hawkeye outlined how this seat will be up for election in April 2014.

- **Discussion/Action Item:** Resolution 7 – Series 2013 a Resolution appointing Town Council Members – White

Hawkeye read Resolution 7 – Series 2013

Motion by George B., second by Shelley B., to approve Resolution 7 – Series 2013 appointing Darell Wegert as Town Council Member as amended to correct the date. Motion passed 6-0.

- Swearing in of Council Member by Municipal Judge Terry Quinn – White

Municipal Judge Terry Quinn swore in Darell Wegert to his appointed seat as Town Council Member.

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

- August 21, 2013

Motion by John R., second by Aggie M., to approve the minutes of August 21, 2013 as presented/amended. Motion passed (6-0). Note: Darell W. abstained as he was not present.

- Action Item Report

Earle B. inquired regarding the status of the Park and Rec Master Plan. Jerry B. was on the committee and Council needs to appoint a replacement. Earle B. also requested a meeting be set up soon.

Hawkeye stated he would be willing to serve on that committee.

Jim W. stated Oldcastle, United Companies, is now owner of Lafarge, the Town will now be moving forward on some sidewalk projects as issues with new management have been worked out.

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

**6. Special Presentations**

Mr. Chris Romer, Vail Valley Partnership, gave a presentation on the process the organization is undergoing on their regional economic development plan and updated the Council of the current events in the Partnership.

Mr. Romer opened the floor to questions and answers at the end of his presentation.

**PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS**

**7. Discussion/Action Item: Council to discuss and give direction on the potential need for a more strict animal control or leash law – White**

Shelley B. stated Animal Control would be changing their patrol, police dept would be more attentive, and neighborhood watch would be used. No further discussion needed at this time.

**8. Discussion/Action Item: Discussion and request for direction on the status of the Town wide ban on the medical and retail marijuana - Brunvand**

Hawkeye stated this was to be brought back at the end of the summer, after consideration Council directed that no action be taken at this time and we wait until after the April 2014 election.

**9. Discussion/Action Item: Ordinance 06 – Series 2013 (First Reading) an Ordinance of the Town of Minturn, amending Chapter 7 of the Minturn Municipal Code by the creation of a new section as it pertains to graffiti – White/Christensen**

Motion by Hawkeye, second by George B., to table Ordinance 06 – Series 2013 (First Reading) an Ordinance of the Town of Minturn, amending Chapter 7 of the Minturn Municipal Code by

the creation of a new section as it pertains to graffiti to the September 18<sup>th</sup> meeting. Motion passed 7-0

**10. Discussion/Action Item: Ordinance 07 – Series 2013 (Second Reading) an Ordinance of the Town of Minturn, amending Chapter 10 of the Minturn Municipal Code by the repeal and re-enactment of Section 10-6-70 as it pertains to theft – White/Christensen**

Allen C. stated no changes had been made since first reading.

Hawkeye stated he was still not in support as he felt it was too broad and would allow merchants and or police to act inappropriately. Others disagreed.

Motion by Shelley B., second by Darell W., to approve Ordinance 07 – Series 2013 (Second Reading) an Ordinance of the Town of Minturn, amending Chapter 10 of the Minturn Municipal Code by the repeal and re-enactment of Section 10-6-70 as it pertains to theft as presented. Motion passed 6-1 (Hawkeye voted Nay)

**11. Discussion/Action Item: Appointment of a Town Council Member to the Minturn Scholarship Committee and to appoint a Council Member to the Little Beach Park Committee – White**

It was requested that the Scholarship appointment be brought back once it is determined how many council members can be on that committee as both George B. and Shelley B. would like to serve.

Motion by George B., second by Shelley B., to appoint Darell W. as Little Beach Park Committee representative. Motion passed 7-0.

**12. Discussion/Action Item: Ordinance 08 – Series 2013 (Second Reading) an Ordinance of the Town of Minturn, amending Chapter 7 of the Minturn Municipal Code to reconcile the Minturn Municipal Code with Section 16 of Article XVIII of the Colorado Constitution (Amendment 64) – White/Christensen**

Motion by Shelley B., second by John R., to approve Ordinance 08 – Series 2013 (Second Reading) an Ordinance of the Town of Minturn, amending Chapter 7 of the Minturn Municipal Code to reconcile the Minturn Municipal Code with Section 16 of Article XVIII of the Colorado Constitution (Amendment 64) as presented. Motion passed 7-0.

**OTHER MATTERS**

**13. Planning Department Update**

Jim W. reported the Planning Commission has not had a meeting last month and will not have a meeting this month. Jim W. indicated a new Town Planner will be hired before the end of September.

John R. asked if we could enforce the noxious weeds.

#### **14. Town Manager's Report**

##### **Eagle Street Project**

Steve Humann, TST Engineering, is monitoring this project for the Town. Both he and Don Taranto will be here on Wednesday September 4th to provide a more complete update on the project and associated costs for the Eagle Street project. While here, they can also report on the Master Meter and the Isolation Valve Projects, both of which are part of this year's DOLA grant which are to be completed this fall.

##### **Fitness Center**

The Groundbreaking Ceremony was well attended on August 19, 2013. Ever since, work has been underway in earnest. Soil testing was completed; grubbing of the site has been started; work on utility easements is in progress; contract elements have been completed. Viele Construction has Scott Ashburn assigned to the project as the primary contact with the Minturn Fitness Center Board. Jack Snow is the architect on the project. Alpine Engineering has replaced Peak Land Consultants.

##### **Water Subcommittee**

The Water Subcommittee applauded the work done by Leroy Cruz, Colorado Rural Water Association. Leroy reviewed his preliminary work at the Town Council meeting held recently at Colorado Mountain College and made several recommendations for Town Council consideration. Town staff is in the process of gathering some additional information for Leroy so he can revise his numbers and come back to the October 16, 2013 meeting with new recommendations.

##### **Gas Line Leak**

A gas leak occurred on August 22, 2013 on a single service while construction was in progress on the Eagle Street project. A 911 call was made and Town of Minturn Police Department (Officer Belt) and the Eagle River Fire District were quickly on scene. A safety perimeter was immediately established, and XCEL was notified of the leak and inherent dangers. Subsequently, the gas leak also resulted in a traffic delay during the duration of the repair. Great cooperation by the Town of Minturn, the Eagle River Fire District and XCEL in maintaining public safety and completing the repair in a timely manner was reinforced when Town representatives met with the Eagle County Fire District on Wednesday, August 28, 2013 to debrief on the situation.

Shelley B. stated a reverse 911 would have been beneficial as well.

##### **Scholarship Subcommittee**

The Scholarship Committee met on Thursday, August 15, 2013 to review three more scholarship applications for the Fall Semester. Outgoing Town Councilman, Jerry Bumgarner, remained on

the committee to review these applications. We awarded three scholarships to each of the applicants. Award letters have now been sent to all of the colleges and to the scholarship recipients. A new Town Council representative to the Scholarship Committee is scheduled for discussion and selection at the September 4, 2013 Town Council meeting.

#### **Planning Position**

The Town's Planner position interviews took place in late August. The position is intended to be filled by the end of September. Chris Cerimele, Town Planner since 2007, finished his last day on the job on Friday, August 30, 2013.

#### **Police Officer Hired**

We have made an offer to one of the candidates interviewed earlier this month. Our new officer will be Jason Donfris. He currently resides in Chetopa, KS; is married with two young children. He is scheduled to begin employment on September 16, 2013.

#### **Recent Events/Upcoming Events:**

Eagle County Education Foundation /Special Event Permit for Saturday August 24, 2013 at Little Beach Park.

Labor Day/ Holiday, Monday, September 2, 2013

The Minturn Summer Market continues for two more Saturdays, 9am-2pm through September 14, 2013.

The Minturn Winter markets are planned for December 7 and December 14, 2013 from 10am until 2pm.

#### **15. Town Council Comments**

Aggie M. noted that an area in the 800 block of south Minturn has some rocks and issues, this should be brought forward with CDOT at Jim W's meeting tomorrow; Jim W. stated he will.

Hawkeye asked Jim W. to look at some dates in October to set up a retreat to schedule a Council Retreat for setting goals for 2014.

### **EXECUTIVE SESSION**

#### **16. Executive Session: Pursuant to Section 24-6-402(4)(f) for the purpose of discussing the Town Manager's annual review and pursuant to Section 24-6-402(4)(e) for the purpose of discussing the Town Attorney's contract – White/Christensen**

Hawkeye requested that, due to the late hour, the council handle only one review tonight. Council requested that the Town Attorney's review be moved to the September 18 agenda.

Motion by Shelley B. second by George B. to convene in Executive Session pursuant to CRS section 24-6-402(4)(f) for the purpose of discussing the Town Manager's annual review as presented. Motion passed 7-0.

**17. Action by Council or Direction to Staff as a result of the Executive Session - White**

**FUTURE AGENDA ITEMS**

**18. Next Meeting –September 18, 2013**

- Work Session – Eagle Street Construction Update – White
- Ordinance 6-2017
- Scholarship appointment

**19. Future Meeting**

- Work Session – Eagle Street Construction Update – White
- Work Session – Continued work on the Town Council Vision Statement – White
- Discussion with Xcel Representative – White

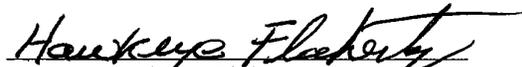
**20. Set Future Meeting Dates**

- a) Council Meetings:
- September 18, 2013
  - October 2, 2013
  - October 16, 2013
- b) Planning & Zoning Commission Meetings:
- September 11, 2013
  - October 9, 2013
  - November 13, 2013

**21. Other Dates:**

**22. Adjournment**

Motion by George B., second by John R., to adjourn the meeting at 11:50pm.

  
Mayor Hawkeye Flaherty

ATTEST:

  
Town Clerk, Jay Brunvand

