



REGULAR MEETING OF THE • MINTURN TOWN COUNCIL
Wednesday, February 1st, 2006

REGULAR SESSION 5:45

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

MAYOR - Gordon “Hawkeye” Flaherty, **TOWN MANAGER** - Ann K. Capela
MAYOR PRO TEM - Darell Wegert **TOWN CLERK/TREAS** - Jay Brunvand

COUNCIL MEMBERS:

George Brodin
Jerry Bumgarner
Bill Burnett
Fred Haslee
Tom Sullivan

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

WORK SESSION – 5:45 P.M.

- South Minturn sidewalk discussion – Carter/Burgess

REGULAR SESSION – 6:15 P.M.

1. Call to Order

- a. Roll Call

Mayor Gordon “Hawkeye” Flaherty called the meeting to order at 6:21. Those present included Bill Burnett, Tom Sullivan, Fred Haslee, George Brodin, and Jerry Bumgarner.

Staff present were Ann Capela, Town Manager; Wiley Smith, Town Planner; Derrick Slocum, Town Planner 1; Allen Christensen, Town Attorney; Jay Brunvand, Town Clerk/Treasurer; and Torrey Maxwell, Court Clerk/Admin Tech.

b. Pledge of Allegiance

2. Executive Session (6:21pm – 6:55pm)

- Colorado Revised Statute (C.R.S.) 21-6-402(4)(f) for the purposes of discussing the Town Manager's Annual Evaluation.

Motion by George B., second by Fred H., to convene in Executive Session pursuant to 21-6-402(4)(b) C.R.S. for the purpose of consulting with the Town Attorney on water and contract issues. Those to be included in the Executive Session are the Council present, Town Manager Ann Capela, and Allen Christensen, Town Attorney, all voted in favor. Executive session ended at 7:05pm and Hawkeye F. called regular session back to order 7:12pm.

3. Discussion of the Agenda

- a. Items to be pulled from Action Calendar
- b. Items to be pulled from the Discussion Calendar.
- c. Items to be pulled from the Consent Calendar.
- d. Emergency Items to be added.
- e. Order of the Agenda Items.
- f. Approval of the agenda.

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

Amendments to agenda:

- Add Discussion/Action on House Bill 106-1053 regarding Local Government Master Plans to Agenda Item #7
- Add the wording modification to the Agenda item regarding RA Nelson

4. Approval of the Minutes:

- January 18, 2006

Motion by Jerry B. and second by Fred H. to approve the January 18th, 2006 Minutes as presented; all voted in favor.

5. Special Presentations/Citizen Recognition/Project Update

Hawkeye F. introduced Mike Wheelersburg for the Minturn Towne Homes Monthly Update

Mike Wheelersburg, 1849 Oden Drive, Silt, Colorado. Building E anticipate final inspections first of next month. Building D in the rough stages, most of siding up, building dried

in. They are keeping the cars off of the road by leasing more property from Union Pacific Railroad to aid in snow plowing on Taylor St.

Hawkeye F. asked how many more buildings are going up; four more on the backside of the hill, three duplexes and a tri-plex.

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

7. Discussion/action of Emergency Items, if necessary

House Bill 106-1053 Local Government Master Plans. Town Manager's recommendation was to join NWCCOG in opposition to the bill

Motion by Tom S., second by Bill B., to support NWCCOG's request. A letter will be prepared by the Town Manager and sent to NWCCOG opposing House Bill 106-1053.

STAFF REPORTS AND OTHER ITEMS

8. Reports/Correspondence/Announcements/New Business

a. Economic Development Director

Karen E. updated the Council on upcoming events that include a follow-up on the Economic Forum workshop.

b. Public Works

Rod reported that Public Works has been working on snow removal over and over.

Discussion ensued as to various snow issues and piles throughout the Town; Rod C. will investigate.

c. Police

Hawkeye informed the Council of the passing of Lorenzo M.'s mother and expressed his condolences on behalf of the Council and Town to Lorenzo and his family.

d. Treasurer/Clerk

Fred H. displayed a radio read meter and inquired if the Town could afford to have this upgrade on each meter at a reasonable cost: Rod C. stated that he is investigating that and other options.

e. Town Planner

Fred H. inquired if we were aware of the lease that the Minturn Town Homes has for parking with Union Pacific; yes, conformance issues are being investigated.

f. Town Attorney

Allen reported that the Ginn Public Hearing process is scheduled to begin at the next Council Meeting (2-15-06). That hearing will be scheduled for 1 ½ Hours. The public, although encouraged to attend, will not be giving the opportunity to speak due to this time constraint. We don't have a land use application and they haven't told us what they are going to do with this land. When we receive these applications we will make every attempt to make this information available to the public and to take public comment at that time. We don't want our public to go away thinking they will not be able to speak on this issue. They have plenty of comment time once the Land Use application(s) are presented and can comment at meetings, by mail, etc at that time

g. Town Manager

Ann C. reported the company hired to complete our Record Retention inventory had completed their work and those records have been removed from the Old Town Hall.

h. Town Council

Hawkeye reminded everyone that the election is coming up election on April 4th and that the Mayor, three Council seats, and a Smoking Ban question will be on the ballot. Petitions for the seats will be available beginning Feb 13th and must be returned before Mar 3.

DISCUSSION, HEARINGS AND ACTION ITEMS

9.Discussion/Action – Conditional Use Request: A Cut Above Forestry, North Minturn Road

Hawkeye F. introduced the item and opened the File for Public Hearing at 7:39pm.

Derrick S. explained that applicant Rick Herwehe, Owner of A Cut Above Forestry, has applied for a Conditional Use Permit for property that he is leasing from Union Pacific Railroad in the PUD Holding Zone of the Game Creek Character Area. The subject site is approximately 3,600 Square Feet and is generally located west of the intersection of 4th Avenue and Minturn Road; just south of the old Train Depot.

The staff recommends approval of this Conditional Use request with conditions. The Planning Commission also recommends approval with conditions.

Staff Conditions:

- Bathrooms at the site for daily employee usage.

- All parking must be done within the fenced yard and/or building
 - Any chemical storage will require material safety data sheets
 - Emergency access of 20' through the yard and at both access gates
 - Any refuse/trash material must be stored on property and must be properly screened.
 - Letter stating the hour and dates of operation to staff
 - Off-season use will require site storage of snow and keeping emergency access cleared.
 - Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
- The conditions the Planning Commission recommends include:
 - Fenced and screened property
 - Vehicles to be parked within fenced area
 - Notify Fire Department (Carol Mulson) for inspection
 - Letter of inspection findings to staff

Hawkeye F. asked if when Derrick S. is talking about chemical storage does that include spill and over flow protection; yes.

Mr. Herwehe, 229 Continental Court # 102, Breckenridge stated he has 3600 sq ft which will be used as an operations yard. There will be a few vehicles stored, a small office trailer, porta potty, trash, fuel and tree spraying chemical storage, etc.

Hawkeye F. asked if there were any proponents or opponents that would like to speak on the subject.

Harry Gray, 291 Main Street, Minturn asked if this parcel being taxed as commercial real estate? A for-profit company is using it as an industrial yard and that is fine, but he stated he is a commercial landlord and because of that he pays higher taxes. His concern was the ownership of the parcel and any taxes. How does our town get any revenue from that?

Harry asked if the railroad pays any property taxes at all; no.

Tom S. questioned Allen if the RR were to change the use of the property; Allen C. stated he will look into this matter but it may be out of our control. Rick stated that the chemicals would be in containers.

Hawkeye F. asked if there were any additional questions; hearing none he closed the public hearing

Darell W. directed a question to Jay B. if there any avenue that we can look into that would be of assistance to the town regarding the railroad tax issue; Jay B. responded that he has previously contacted the state and it is doubtful of the RR giving up their status.

(Hawkeye asked for a Short recess at 7:54pm to confer with Allen C and reconvened at 7:55pm)

After discussion, Wiley S. stated there are no findings that town council has to use. Allen C. stated the findings are as follows:

- That the proposed location is in accordance with the purposes of the chapter, community plan and purposes of the zone on which this 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 materiel injuries to property or improvements in the vicinity.
- That the proposed use will comply with each of the applicable provisions of this chapter.

Motion by Tom S., second by Bill B., to approve a Conditional Use Permit for a landscaping storage yard as presented with the following findings and conditions the motion was amended to require the Planning Dept to inspect and report back to Council annually in September any issues or complaints received from the property., all voted in favor..

Findings:

- That the proposed location is in accordance with the purposes of the chapter, community plan and purposes of the zone on which this 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 materiel injuries to property or improvements in the vicinity.
- That the proposed use will comply with each of the applicable provisions of this chapter.

Conditions:

- Bathrooms at the site for daily employee usage.
- All parking must be done within the fenced yard and/or building
- Any chemical storage will require material safety data sheets
- Emergency access of 20' through the yard and at both access gates
- Any refuse/trash material must be stored on property and must be properly screened.
- Letter stating the hour and dates of operation to staff
- Off-season use will require site storage of snow and keeping emergency access cleared.
- Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
- Fenced and screened property
- Vehicles to be parked within fenced area
- Notify Fire Department (Carol Mulson) for inspection
- Letter of inspection findings to staff

10. Discussion/Action: Variance, Bill Burnett

(Note: Bill B. stepped down from the Council at this point due to a conflict of interest)

Hawkeye F. introduced the conditional use request for 80 Toledo Avenue and opened the Public Hearing.

Derrick S. noted for the record the request is for a Variance at 80 Toledo Ave, not a Conditional Use Permit.

Derrick S. explained that applicant Daniel Ritsch, representing property owner Bill Burnett, is requesting a Variance for 80 Toledo Avenue Lots 7-10.

Derrick S. presented 4 slides of pictures to orient the property.

The Variance request is for the placement of a shed on the property. The original shed was built before the property was subdivided and subsequently became a nonconforming use when the subdivision and zoning was approved. It was discovered during construction of the Molly G building to the immediate north. The developer proposes to rebuild the shed in its previous location and since the shed is located on the property line and there is no other available space within the lot for locating the shed, a hardship variance is requested for the placement of the shed within the setback.

Staff and the P&Z recommend approval of the variance as presented

Findings:

- The applicant making any modifications to the plan document as requested by the Planning Staff, Town Clerk, or other service districts.
- The applicant shall pay all required fees and charges related to development of the subject property.
- The Town Council/Board of Zoning Appeals grants a recommendation for a variance approval for exceptional or extraordinary circumstances.
- The applicant making any modifications to the plan document as requested by the Planning Staff, Building Inspector, and Eagle River Fire Protection District prior to Certificate of Occupancy.

Hawkeye F. stated that at this time applicant could state their case.

Mr. Daniel Ritsch – 268 Cedar Drive, Gypsum, Colorado. Mr. Ritsch stated that prior to construction of his building; they had determined the type of soil and found no issues. During construction they found quite a few unstable pockets of soil, one of which was under Mr. Burnett's shed. To stabilize the soil they soil nailed or pinned the soil and shock treated the bank. During that time frame, from the excavation and the shock treatment, Mr. Burnett's shed became unstable.

Hawkeye F. inquired if there were any proponents of this project that would like to address this council; no.

Allen C. stated for the record that the contractor of the Molly G Building has the permission of the Mr. Burnett to work this application and work as agent for the owner. And the owner is present.

Darell W. inquired is the new shed smaller then the original; approximately the same size.

Hawkeye F. asked if it wasn't for the soil conditions would the shed have fallen; no.

Discussion ensued as to the new development being so close to the property line; in that zone commercial buildings have less of a set back and that this is something to note for the future. It was noted that the shed had been replaced and then they noticed that they needed a permit; this is to rectify the permit issue.

Hawkeye closed the public hearing. .

Jerry B questioned Wiley and asked if it is normal that if a person is going to build a non-compliance building that they are granted a permit?

Wiley S. most of the time you would have to get the variance first, but as Daniel R. had pointed out, that there was miscommunications between contractor and Mr. Lanci. By the time we got clear communication the shed was under construction. Normally they would ask for a variance first and then build the shed.

Allen C. noted that nothing like this had been in front of the town before. This is really a hardship.

Tom S. stated he felt that the brunt of this should have been on the contractor knowing he shouldn't have dug that deep so close to that shed.

Motion by Tom S., second by Darell W., to approve the variance for the construction of a shed to sit against the rear property line within the 20 foot rear setback at 80 Toledo Ave with the following Findings; all voted in favor.

Findings:

- There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not generally apply to other properties in the same zone
- The exceptional or extraordinary circumstances of this site create a situation in which the strict literally interpretation and enforcement of the specified regulation would result in impractical difficulty or unnecessary physical hardship inconsistent with the objectives of this chapter.
- That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to the properties or improvements in the vicinity and will not result in substantial impairment to the purposes of this Chapter.
- There is no substantial impairment to the public that would result from the granting of the variance.

11. Discussion/Action – Resolution No. 4 – Series 2006: A Resolution setting the Ballot Title for the non-smoking question

Hawkeye F. introduced the item and opened the Public Hearing.

Jerry B. asked Jay B. that he had said in the last meeting that 53% of the town people wanted to see a smoking ban; yes, according to the November County election, to clarify that is 50% of Minturn registered voters that voted.

Motion by Fred H., second by Jerry B., all voted in favor, Hawkeye voted no.

12. Discussion/Action – Reconsideration of the RA Nelson parking approval.

Hawkeye F. introduced the item and opened the Public Hearing.

Derrick S. stated that the applicant due to new information the applicant is present, however, is requesting the item be tabled until the March 15, 2006 Council meeting.

Motion by Darell, W., second by Fred H., to table this until March 15, 2006; all voted in favor.

13. Executive Session 9:06pm

- Colorado Revised Statute (C.R.S.) 21-6-402(4)(f) for the purpose of completing the Town Manager's employee evaluation.

Motion by Bill B., second by Tom S., to convene in Executive Session pursuant to Colorado Revised Statute (C.R.S.) 21-6-402(4)(f) for the purpose of completing the Town Manager's employee evaluation. Those to be included in the Executive Session are the Council present, and Town Manager Ann Capela; all voted in favor.

Executive session ended at 10:30pm no decisions were made as a result of the Executive Session.

FUTURE AGENDA ITEMS / WORK SESSIONS

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

1. Mike Wheelersburg – Minturn Towne Homes Update – 3/1/06
2. Ordinance 26 – Series 2005 (First Reading): An Ordinance authorizing the Mayor to enter into a lease agreement with the Radio Tower Contract. – Tabled until completed
3. Annexation Public Hearing – 2/15/06

18. Set Future Meeting Dates

1) Council Meetings

- February 15, 2006
- March 1, 2006
- March 15, 2006

2) Planning & Zoning Meetings

- February 8, 2006
- February 22, 2006
- March 8, 2006

3) Other

19. Adjournment

In that there was no further business the meeting was adjourned at 10:30pm

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand