

**MINUTES OF THE REGULAR MEETING OF THE AVON TOWN COUNCIL
HELD JUNE 12, 2012**

A regular meeting of the Town of Avon, Colorado was held at the Avon Town Hall, One Lake Street, Avon, Colorado in the Council Chambers.

Mayor Carroll called the meeting to order at 5:35 PM. A roll call was taken and Council members present were Dave Dantas, Chris Evans, Todd Goulding, Amy Phillips and Buz Reynolds. (Ferraro Absent). Also present were Town Attorney Eric Heil, Interim Town Manager Patty McKenny, Town Advisor Larry Brooks, Finance Director Scott Wright, Director PW&T Jenny Strehler, Deputy Town Clerk/HR Asst. Catherine Mythen, Community Relations Officer Jaime Walker, as well as other staff members and the public.

APPROVAL OF THE AGENDA.

Mayor Carroll noted a couple minor agenda changes as follows:

- Item a) Email regarding Snowball Music Festival was moved after item b) Eagle River Fire Protection Districts updates.
- Presentation on Paperless packets from the work session was added to the regular meeting under council and staff updates.

COMMUNITY AND CITIZEN INPUT

- a. Email only regarding Snowball Music Festival from Tricia Gimbel Epstein
- b. Eagle River Fire Protection District Updates (Karl Bauer, Fire Chief) Review recent incidents
- c. Karl Bauer, Fire Chief gave a brief presentation on the recent fires here in Avon. Mayor Carroll commended the group for doing such a great job in handling the fires.
- d. Mike Cassioppo commented on the great job that the Eagle River Fire District and Avon did regarding the fires. He did have concerns that the Fire stations were having monthly closures in the districts.
- e. Charles Frey from Ticino restaurant commented that he would like to have access to his deck restored.
- f. Tamera Underwood an Avon resident mentioned that she was interested in Item # 13 "Discussion an review of consolidated, amended and restated Annexation and Development Agreement with Traer Creek Metropolitan District and Traer Creek LLC Representatives" and queried when the financial projections concerning the revenues and expenditures over the next 75 years for Traer Creek and Traer Creek Metro District would be available for public review.

Mayor Carroll asked if there were any comments from the public about the Snowball Music Festival, and no comment were made.

COUNCIL AND STAFF UPDATES

- a. Snowball Music Festival Review and Direction for 2013 (Rich Carroll, Mayor, Meryl Jacobs, Recreation Director) Discussion about hosting event in 2013

Meryl Jacobs presented the snowball festival update. She mentioned that the lodging community would like to know if the Snowball festival is coming back for 2013. She also mentioned that Snowball was looking at other venues to hold the festival but had not secured anything yet. Scott Stoughton was available to answer any questions and thanked the town for the opportunity to hold the festival in the Town of Avon. He mentioned that he would like to have the event again in 2013 but also noted that there were other communities interested in hosting the venue. Mayor Carroll thanked the promoter

and staff on the great job they did during the festival. After some discussion it was agreed that the further community input would be sought, and a final decision about the Snowball Music Festival would be decided at the next council meeting on June 26th. The following council members did not want to host the event again: Carroll, Dantas & Reynolds; the following council members supported further input from the public: Phillips, Goulding & Evans.

b. Transit Meeting Update with Eagle County Officials (Todd Goulding, Amy Phillips, Councilors)
Councilor Goulding gave an update on the Transit meeting with Eagle County. He noted that the meeting was very productive and was moving forward with the agreement. Eric Heil, Town Attorney noted that he was moving forward on creating the lease agreement.

c. Town Manager Search Update (Rich Carroll, Mayor, Dave Dantas, Councilor)
Mayor Carroll gave an update on the town manager search. He noted that the applications would be reviewed at the June 26th Council Meeting. He also noted that the onsite interviews would be scheduled for July 16th.

d. Paperless Council Packets Review **This Item was moved from the Work Session**
Cindy Kershaw, IT Administrator, presented the item on paperless packets. She gave an analysis of the cost to generate the printed packets as compared to the cost of buying the equipment. A brief review of the cost to complete the paper packets and the options that were available to upgrade to become paperless. She noted the next steps would be to do some testing on existing packets to identify work flows that will need to be modified to allow for efficient generation of the packet electronically. Following the testing efforts staff would present an update to Council in September as part of the General Government & Finance Presentation.

CONSENT AGENDA

Mayor Carroll asked for a motion on the Consent Agenda. Councilor Evans moved to approve the Minutes from May 22, 2012, Councilor Phillips seconded the motion and it passed unanimously by those present. (Ferraro Absent) (Carroll Abstained)

- Minutes from May 22, 2012

NEW BUSINESS

a. 2011 Comprehensive Annual Financial Report (*Paul Backus, McMahan and Associates*) *Review final report of the 2011 Comprehensive Annual Financial Report (CAFR) / Action to accept the report will be required*

Paul Backus, McMahan and Associates, presented the final draft of the 2011 Comprehensive Annual Financial Report as audited by McMahan and Associates. He noted that this presentation would provide Council the information and a chance to make any comments on the report. He noted that this financial report is designed to provide a general overview of the Town of Avon's financial condition. Councilor Phillips moved to accept the *2011 Comprehensive Annual Financial Report*; Councilor Goulding seconded the motion and it passed unanimously by those present (Ferraro absent).

b. I-70 Transportation Operations Facility Project Update and Change Order No. 01 (*Jeff Schneider, Project Engineer*) *Review change order and final bids*

Jeff Schneider provided an update on the I-70 Regional Transportation Operations Facility Project located at 500 Swift Gulch Road. He presented change order 01 to the preconstruction and construction agreement for FCI Contractors. Change order 01 accomplishes the following:

- ✓ Accepts the Guaranteed Maximum Price and construction schedule

- ✓ Incorporates those items into the agreement
- ✓ Offers some housekeeping and other contract cleanup to reflect changes in the project that have occurred since the contract was initially executed,
- ✓ Provides references to the construction plans and specifications.

Councilor Goulding moved to approve the I-70 Transportation Operations Facility Project Update and Change Order No. 01, Councilor Evans seconded the motion and it passed unanimously by those present. (Ferraro Absent)

- c. Trench, Conduit, and Vault Agreement between the Town of Avon and Holy Cross Energy for upgrades to the site electrical facilities for the I-70 Regional Transportation Operational Facility “(RTOF)” Project at Swift Gulch (*Jeff Schneider, Project Engineer*) *Work required to move utilities associated with public works modular building relocation*

Jeff Schneider, Project Engineer presented the Trench, Conduit and Vault Agreement between the Town of Avon and Holy Cross Energy for the I-70 regional Transportation Operations Facility project. The project involves removal and relocation of existing modular office building, demolition, and construction of new bus storage, wash and maintenance facility as well as associated utilities and infrastructure. Part of the utility improvements is removal and upgrade of the transformer serving the site. Holy Cross Energy requires an agreement for the transformer installation. Councilor Dantas moved to approve the Trench, Conduit, and Vault Agreement between the Town of Avon and Holy Cross Energy for upgrades to the site electrical facilities for the I-70 Regional Transportation Operational Facility “(RTOF)” Project at Swift Gulch, Councilor Phillips seconded the motion and it passed unanimously by those present. (Ferraro Absent)

- d. Professional Services Agreement for Testing and Inspection Services for the I-70 Regional Transportation Operations Facility (RTOF), Award of Contract to HP Geotech, Inc. (*Jeff Schneider, Project Engineer*) *Arrangement required to provide testing & inspection services during construction*

Jeff Schneider, Project Engineer presented the professional services agreement with Hepworth Pawlak Geotechnical, Inc for testing and inspection services related to I-70 Regional Transportation Operations facility project located at Swift Gulch in Avon. Staff conducted a qualifications based solicitation per federal and state requirements and recommends award of the testing and inspection services to HP Geotech, Inc. Councilor Evans moved to approve the Professional Services Agreement for Testing and Inspection Services for the I-70 Regional Transportation Operations Facility (RTOF), Award of Contract to HP Geotech, Inc, Councilor Reynolds seconded the motion and it passed unanimously by those present. (Ferraro Absent)

ORDINANCES

- a. **Public Hearing** on Ordinance No. 12-06, Series of 2012, First Reading, Ordinance Approving a Permit for Areas and Activities of State and Local Interested (1041 Permit) for the Eagle River Water and Sanitation District for an Expansion of the Avon Wastewater Treatment Plant (*Justin Hildreth, Town Engineer, Jared Barnes, Planner I*) *Review of 1041 Permit Application related to ERWSD expansion of Avon Wastewater Treatment Plant*

Jared Barnes, Planner I, presented the Ordinance No. 12-06 referenced above. He gave a brief summary on the proposal to expand the wastewater Treatment Plant; which application requires a 1041 review because the permit is for a major extension of existing domestic water treatment systems. Staff has approached the different entities ERWSC and NWCOG who had no objections to the request. Staff did discuss the CEPC process with other Wastewater Treatment Plants that have used or are currently using Ferric Chloride as requested by council. Both the Englewood Wastewater Treatment Plant and Metro

Wastewater Reclamation District and Southgate Sanitation District have used this process. Neither district had any negative feedback from their use of the process.

Mayor Carroll opened the public hearing, no comments were made, and the hearing was closed. Councilor Evans moved to approve Ordinance No. 12-06, Series of 2012, Second Reading, Ordinance Approving a Permit for Areas and Activities of State and Local Interested (1041 Permit) for the Eagle River Water and Sanitation District for an Expansion of the Avon Wastewater Treatment Plant. Councilor Phillips seconded the motion and it passed unanimously by those present. (Ferraro Absent)

- b. **Public Hearing** on Ordinance No. 12-07, Series of 2012, First Reading, Ordinance Approving an Amendment to the Gandorf PUD to Remove the Requirement for Deed Restricted Housing and Construction of a Pedestrian Path (*Matt Pielsticker, Planner II, Jared Barnes, Planner I*) Review proposed PUD amendment request related to two conditions of current PUD 1) pedestrian access easement, 2) sale of one dwelling unit to full time resident of Avon

Councilor Reynolds recused himself from this topic due to a conflict of interest. Jared Barnes, Planner I, presented the request from the applicant, Gandorf Tract B, LLC, for removal of the requirement for deed restricted housing and the path construction required for the Gandorf PUD. He gave a brief history on the application that was approved by Ordinance in 2009 which included as part of the PUD 1) pedestrian access easement, 2) sale of one dwelling unit to full time residents of Avon. Mayor Carroll opened the public hearing. Phil Matsen and Sean Reynolds presented their request and were available for questions.

The following Avon Residents were in favor of lifting the deed restriction on the unit in Wildridge

- ✓ Tim Savage
- ✓ Steve McDonald
- ✓ Matt Garnsey
- ✓ David Long

They noted that in the current market it was more difficult to sell properties with a deed restriction clause. After Council deliberation, Councilor Phillips moved to approve Ordinance No. 12-07, Series of 2012, Second Reading, Ordinance Approving an Amendment to the Gandorf PUD eliminating 1) Construction of the bike path easement and not eliminating the Requirement for Deed Restricted Housing. Councilor Goulding seconded the motion and it passed unanimously by those present. (Reynolds – abstained due to conflict of interest; Ferraro Absent)

DISCUSSION ABOUT POTENTIAL CONFLICTS OF INTEREST

Eric Heil, Town Attorney introduced the topic on conflicts of interest. He noted that last fall Councilors Evans and Goulding each disclosed a business relationship with Stone Creek Elementary and the Eagle County School District. The Towns Code of Ethics sets forth the definitions and procedure determining whether the council member has a conflict of interest. After some discussion between council members, Town Attorney Eric Heil asked that council officially vote on the conflict matter for each councilor.

Mayor Carroll asked the governing body if any member thought there was a conflict of interest for Councilor Goulding as related to his participation in the discussion and decisions to be made on the Consolidated, Amended and Restated Annexation and Development Agreement and the Village at Avon PUD Amendment Application, or any other Traer Creek documents. Deputy Town Clerk Catherine Mythen called the roll and it was agreed with a three to two vote that a conflict did not exist (Evans, Phillips, Reynolds – nay; Carroll and Dantas – yea; Ferraro absent).

Mayor Carroll asked the governing body if any member thought there was a conflict of interest for Councilor Evans as related to his participation in the discussion and decisions to be made on the


- General Comment that much of the language was too broad and encompassing and a general preference throughout the document to address the tone balancing the rights between the Town and Traer Creek Metro District. Chris Evans noted that there is an overriding tone that essentially states that if it is not expressly prohibited it is allowed. All council members agreed on this.
- Completion of Documents - documents referenced in the annexation agreement the escrow and pledge agreements were a part of these documents and Eric Heil Town Attorney noted that he has seen a most recent draft of the pledge agreement and close to a final draft that could be included in the first review of the annexation agreement document
- Bond Documents not a need to have the documents before the ordinance is approved but a need to know what terms are in the annexation agreement that will go in the bond documents and to review the bond documents
- School Site School site has been split up into 2 parcels needs to be in a condition to be accepted by the school
- Transit
- Developer advances and the financial modeling to be reviewed

Eric Heil Town Attorney noted that the Preliminary PUD would be reviewed at the next special council meeting on June 19th and that there would likely be PZC recommendations to review. Mary Jo Dougherty, McGeady Sisneros representing Traer Creek Metro District, was present to commend on the financial modeling. Brandy Caswell, Faegre Baker Daniels, representing BNP Paribas Bank noted that BNP has signed off on the pledge agreement.

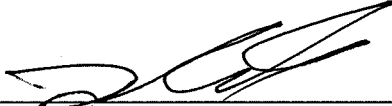
There were comments from the public as follows:

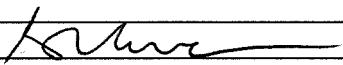
- ✓ Tamara Underwood, Avon resident, commented on the agreement and the time frame to review the document
- ✓ Ron Wolfe, President of Stone Creek Charter School, commented that the School still is interested in having a school site per the settlement agreement
- ✓ Brian Nolan, Avon resident and School Board Member, commented on the school site language in the settlement agreement and noted that the school district was very frustrated that communication has not existed between the town and the district.

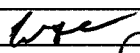
There being no further business to come before the Council, the regular meeting adjourned at 10:10 PM.

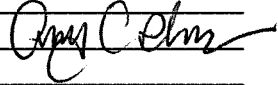
RESPECTFULLY SUBMITTED:

 Catherine Mythen, Deputy Town Clerk

APPROVED:
 Rich Carroll
 Dave Dantas
 Chris Evans
 Kristi Ferraro
 Todd Goulding
 Amy Phillips
 Albert "Buz" Reynolds









Consolidated, Amended and Restated Annexation and Development Agreement and the Village at Avon PUD Amendment Application, or any other Traer Creek documents. Deputy Town Clerk Catherine Mythen called the roll and it was agreed with a four to one vote that a conflict did not exist (Dantas, Goulding, Phillips, Reynolds – nay; Carroll – yea; Ferraro absent). It is noted that Munsey Ayers, Otten Johnson Robinson Neff & Ragonetti, attorney representing Traer Creek LLC, and Brandi Caswell, Faegre Baker Daniels representing BNP, did not think there was a conflict of interest for either councilor.

DISCUSSION AND REVIEW OF CONSOLIDATED, AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT AGREEMENT WITH TRAER CREEK METROPOLITAN DISTRICT AND TRAER CREEK LLC REPRESENTATIVES

Eric Heil, Town Attorney gave a brief update and noted that the town is following a stipulated schedule as part of the Settlement Agreement. The meeting is held to review and identify what are issues that need to be addressed before the public hearing and first reading of the ordinance.

The following issues were discussed:

- Interpretation Vested Property Rights
- Master Developer - Council has general concerns with regarding the role of the Master Developer which is new in this agreement
- Term of the Agreement Terms of the settlement agreement talked about the town tax obligation in paying the bonds and other obligations and what would be preferable to town if there are other obligation they would like these to be listed as bullet point and expressed defined points and the duration of these points
- Tax Credit Town's obligation for tax credit in magnitude only that is sufficient to pay back existing debt, supplement bonds and developer advances everything covered to the amount of 96 million total cap of the principal for repayment of capital improvements and not for other items
- Definition of Capital Projects – The town would like to see a list of capital projects stated and defined and the town's obligation to provide a tax credit related to these projects or other projects mutually agreed upon.
- Language that addresses Used Taxes and Fees goes beyond what was in the existing agreement and appears to be a catch all in the new agreement. In the old agreement it states that if there be any additional fee or taxes imposed in the existing agreements that was defined the town would collect the new taxes in the new agreement it expands the ability that anything new would be remitted to the metro district these are not a part of the settlement term sheet and council would prefer not to see this in the first reading.
- Urban Renewal Authority- the settlement term sheet contemplated the obligation to include a board seat for Traer Creek and BMP Parribas for matters effecting the Village at Avon and also impose an obligation if there is a renewal authority that a max of 10 million could be used to offset the \$96 million capital Improvements Cap. There was a third obligation that any property tax and income generated be remitted to the Traer Creek Metro District which is similar to the existing agreement with the Urban Renewal Authority and the Town Center West which was necessary for bonding. Council's preference would be to reduce those provisions down to the existing items in the settlement term sheet.
- City Market Sales Tax indemnification - This addresses if city market was to relocate to the village that type of protection needs to carry over to the new agreement which is being currently worked on
- Remedy Section reviewed the pros and cons to find remedy's for any defaults and preference of council would be to have defined specific remedy's for defaults to avoid potential conflicts