



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, SEPTEMBER 24, 2013
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER & ROLL CALL

Mayor Carroll called the meeting to order at 5:30 PM. A roll call was taken and Council members present were Dave Dantas, Chris Evans, Jennie Fancher, Todd Goulding, and Jake Wolf. Buz Reynolds arrived at 4:10 pm. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, and Assistant Town Manager/Town Clerk Patty McKenny.

2. APPROVAL OF AGENDA

There were some minor changes to the agenda related to the order of items considered.

3. PUBLIC COMMENT

Public input was given by Avon resident Amy Phillips who was present to ask some questions about the investigation, a public records request, ask that the agenda would identify a time to “Disclose Potential Conflict of Interests”.

4. Action Items

4.1. Special Water Counsel Action on Agreement to Retain Special Water Counsel (Virginia Egger, Town Manager)

There was a brief review of the submitted letter of engagement by law firm Moses, Wittemyer, Harrison and Woodruff, P.C. to provide special water counsel to the Town of Avon. Attorney Patricia deChristopher was present. It was noted that two smaller groups made up of council members, town attorney, and town manager interviewed both Jay Montgomery (currently retiring water attorney) and Ms. deChristopher who would be serving in this role as water attorney for their firm. Councilor Fancher moved to authorize the Mayor to execute the Letter of Engagement with Moses, Wittenmyer, Harrison and Woodruff, dated September 19, 2013; Councilor Wolf seconded the motion and it passed unanimously by those present (Councilors Dantas, and Evans absent).

4.2. Review an Appeal, in accordance with Avon Municipal Code §7.16.160, Appeals, for a Planning and Zoning Commission decision to not approve a portion of a color change application for Lot 65-B, Block 2, Benchmark at Beaver Creek Subdivision (aka “Annex Building”) – Jon White, President, Hoffmann Commercial Real Estate. A quorum of the Planning and Zoning Commission will be present for this item. (Jared Barnes, Planner II)

There was a review of the council packet memo that addressed the appeal of a PZC decision to not approve the proposed color “Monterey white” as the base color to the Annex Building, pursuant to §7.16.160, Avon Municipal Code. The letter was submitted by Greg Hoffmann, Principal of Hoffmann Commercial Real Estate on August 21, 2013. There were several people present for this matter and input was given by John White, attorney representing the Hoffmann group, and all of the PZC members.

Some of the discussion on the appeal focused on the following items:

- Overall support for improvements being made by Hoffmann Commercial Real Estate
- Description of PZC review of the minor design and development plan application and why there was not approval for the “alternative equivalent compliance” request, i.e. the choice of the paint color that was used without approval. The specific code referenced was 7.28.090(c)(v) as the premise for their decision not to approve the request.



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- Discussion about the design review guidelines and what was allowed over time, and through the approval of the new development code
- Discussion about how they got to a 70 “LRV” and support for reviewing this value again

There was Council input and a decision was made to allow them to keep the current color through the winter and ask that PZC review the language determining the color values for buildings in the town. There were some procedural comments made by the Town Attorney who noted the following options for the decision at this time: 1) take no action, 2) extend the appeal, 3) direct staff and PZC to evaluate the “LRV” component of the code during the extended appeal timeframe. Councilor Wolf move to table the public hearing and final decision on the appeal until April 22, 2014 provided that the applicant agrees to the extended review timeframe for this matter. Mr. White agreed to the proposed timeline. Councilor Fancher seconded the motion and it passed unanimously by those present (Councilors Dantas, and Evans absent).

4.3. Public Hearing - Second Reading of Ordinance 13- 12, Series 2013, Amending the Avon Municipal Code for Personal Possession of Marijuana (Eric Heil, Town Attorney)

Mayor Pro Tem Todd Goulding joined the meeting at 5:50 pm. It is noted that while he arrived earlier he did not participate on the Appeal matter due to a conflict of interest. Town Attorney Eric noted there were no changes to the ordinance on first reading. There was some discussion about the amount one could have in personal possession as well as the number of plants that could be grown at home. Mayor Carroll opened the public hearing, no comments were made, the hearing was closed. Councilor Wolf moved to approve Ordinance 13- 12, Series 2013, Amending the Avon Municipal Code for Personal Possession of Marijuana. Mayor Pro Tem Goulding seconded the motion and it passed unanimously by those present (Councilors Dantas and Evans absent).

4.4. Council Review and Direction for Amendments to the Water Authority Master Agreement (Todd Goulding, Councilor)

Mayor Pro Tem Goulding presented this memo and requested direction from the Town Council on how to proceed with reviewing a number of topics that need to be addressed in the Water Authority Master Service contract. He noted that the items need attention in order to align the Service Contract with current practices and procedures of the UERWA. The items are interrelated and show be considered together as follows:

- I. Withdrawal by a Contracting Party
- II. Distributions on Termination
- III. Policy and Procedures for using or distributing “Unallocated Water Rights”, which have been purchased over time by the UERWA with customer revenues; and
- IV. Consideration of water restrictions due to low snowfall periods, including consumptive water rights
- V. Town of Avon SFE calculations – conversion evaluation and formula for additional SFE purchases

After some discussion there was unanimous Council support to review the five topics together and move forward with one amendment that would address all of them.

4.5. Resolution 13-26, Series of 2013, Resolution Establishing a Special Event Admission Ticket Fee for the purposes of Equipment Investments and for Defraying Town Costs (Danita Dempsey, Special Events Coordinator)



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There was unanimous support to establish the special event admission ticket fee in an effort to help offset the costs of events, and a motion was made by Councilor Wolf to approve Resolution 13-26, Series of 2013, Resolution Establishing a Special Event Admission Ticket Fee for the purposes of Equipment Investments and for Defraying Town Costs. Councilor Fancher seconded the motion and it passed unanimously by those present (Councilors Dantas and Evans absent).

4.6. Resolution No. 13-27, Series of 2013, Resolution to Adopt the Town of Avon 2013-2014 Strategic Plan Update (Virginia Egger, Town Manager)

Town Manager Virginia Egger noted some revisions to the document. Some suggestions were made about including the PZC review of the "LRV" standards in first quarter Economic Development category, 2) add a category called ongoing efforts, 3) review quarterly, 4) evaluate if it is too aggressive, 5) contemplate adding a section that contributes more to enhancing the "community" of Avon. Mayor Carroll moved to approve Resolution No. 13-27, Series of 2013, Resolution to Adopt the Town of Avon 2013-2014 Strategic Plan Update; Councilor Reynolds seconded the motion and it passed unanimously by those present (Councilors Dantas and Evans absent).

4.7. Appointment of Town Council members to serve on a Town of Avon/Eagle River Fire Protection District Task Force

Councilor Wolf moved to appoint Councilor Reynolds and Councilor Fancher as the members to the ERFPD and Town of Avon Task Force; Mayor Pro Tem Goulding seconded the motion and it passed unanimously by those present (Councilors Dantas and Evans absent).

4.8. MINUTES FROM SEPTEMBER 10, 2013 MEETING

Mayor Pro Tem Goulding moved to approve the minutes; Councilor Wolf seconded the motion and it passed unanimously by those present (Councilor Dantas and Evans absent).

4.9. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

- ✓ Upper Eagle Regional Water Authority Board Meeting (Todd Goulding, Mayor Pro Tem) presented an update on a tour, instream flows decreased, water rights case for USFS,
- ✓ EGE Air Alliance (Rich Carroll, Mayor) update from last presentation
- ✓ Leadership Conference Meeting Update (Jake Wolf, Councilor) Met w/ Eric Sale – regarding the possibility of sponsoring a leadership conference with 100 CEOs attending
- ✓ Senator Gail Schwart (Rich Carroll, Mayor)

5. EXECUTIVE SESSION (THIS MEETING IS NOT OPEN TO THE PUBLIC)

Both Councilors Dantas and Evans arrived at this time. Mayor Carroll moved to meet in Executive Session at 6:30 pm for the following matters:

- 5.1. Meet with Special Counsel for the purpose of receiving legal advice pursuant to Colorado Revised Statute §24-6-402(4) (b) related to the investigation of alleged ethics violation and review of residency requirements.

Mayor Carroll noted that the discussion would be confined only to the purposes of the executive session as stated below and that if at any time during the executive session anyone believes that the discussion does not concern the topic and purpose of the executive session, to please raise your objection immediately. The



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following people were present during the executive session: Mayor Rich Carroll, Councilor Dave Dantas, Councilor Jennie Fancher, Councilor Buz Reynolds, Councilor Jake Wolf, Town Manager Virginia Egger and Scott Krobs, Special Counsel for the Investigation. (Councilors Evans and Goulding were not present).

Mayor Carroll noted that the next discussion would be confined only to the purposes of the executive session as stated below and that if at any time during the executive session anyone believes that the discussion does not concern the topic and purpose of the executive session, to please raise your objection immediately. The following people were present during the executive session: Mayor Rich Carroll, Councilor Dave Dantas, Councilor Chris Evans, Councilor Jennie Fancher, Mayor Pro Tem Councilor Buz Reynolds, Councilor Jake Wolf, Town Manager Virginia Egger, Town Attorney Eric Heil, Town Clerk Patty McKenny.

- 5.2. Meet with Town Attorney for the purpose of receiving legal advice pursuant to Colorado Revised Statute §24-6-402(4)(b) related to settlement matters regarding Town of Avon v Traer Creek Metropolitan District, 2008 CV 0385 and Traer Creek, LLC, et.al. v Town of Avon 2010 CV 316.
- 5.3. Meet Pursuant to Colorado Revised Statute §24-6-402(4) (f) for the purpose of discussing personnel matters related to the appointment of the Town Manager as representative to certain Housing Boards. (Councilor Evans stepped out of the room at this time due to conflict of interest).

The executive session was adjourned at 9:25 pm and Mayor Carroll noted that the meeting now reconvened in regular session at 9:30 pm. He asked if any Town Council member believed that any discussion in executive session was inappropriate and not related to the topic and purpose of the executive session to please state the objections at this time; there were no objections.

6. VILLAGE OF AVON UPDATE (ERIC HEIL, TOWN ATTORNEY)

- 6.1. Public Hearing Second Reading of Ordinance 13-13, Series of 2013, Ordinance Amending the Consolidated and Amended and Restated Annexation and Development Agreement for the Village at Avon (Eric Heil, Town Attorney)

Town Attorney, Eric Heil, presented an update to the negotiations occurring for the amendments to the Village at Avon Development Agreement. Munsey Ayers (Otten Johnson Robinson Neff Ragonetti), Brandy Caswell (Faegre Baker Daniels) representing BNP Paribas, Mary Jo Dougherty, Kathy Kanda (McGeady Sisneros), Marcus Lindholm, and Michael Lindholm were present. There were some comments made by Mr. Ayers and Ms. Caswell. There were discussions about some further revisions to the amendments for the CARADA related to the TC-RP financing proposal for the water tank. Some of the proposed revisions that were discussed and acceptable included the following:

- Water tank cost overruns would be the responsibility of TC-RP and would not be reimbursable by TCMD or Town
- Interest wouldn't accrue on the construction funds between the time the funds are provided by TCRP & the time the Water Authority accepted the water tank
- The interest rate calculation and that would not count against the Credit PIF Cap, and the language used to define this formula
- That the portion of the water tank project included construction of a road on Planning Area J, identified in the capital projects list in the CARADA, so that this amount would reduce the amount reserved to finish this project on the list



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There was a preference to delay second reading so that these business points could be drafted into the document and allow some time for council and the public to review the materials. There were some comments made about when the bond closing would take place, and December was identified as a possible date for closing. Mayor Carroll opened the public hearing; no comments were made, the hearing was closed. It was noted that the presentation in October should provide details about the proposed changes to the financial component of the CARADA, in summary an analysis about the costs of the components of the new deal in comparison to the settlement term sheet including that of the water tank. Councilor Reynolds moved to continue second reading and public hearing of Ordinance 13-13, Series of 2013, Ordinance Amending the Consolidated and Amended and Restated Annexation and Development Agreement for the Village (at Avon) until October 22. Mayor Pro Tem Goulding seconded the motion and it passed with a six to one vote (Councilor Dantas – nay). Councilor Dantas' nay vote was because of his frustration with the last minute changes and that the deal should have been closed months ago.

6.2. Approval of Amendments to the Traer Creek Water Tank Agreement, including Pledge Agreement Terms (Eric Heil, Town Attorney) (May be continued)

There were no updates provided on this item for consideration.

7. Appointment of a Town Representative to serve on Boards of Directors for the Buffalo Ridge Affordable Housing Corporation, Eaglebend Affordable Housing Corporation and Kayak Crossing Affordable Housing Corporation (Patty McKenny, Assistant Town Manager)

Councilor Evans stepped down at this time due to conflict of interest. After some discussion, Councilor Dantas moved to name Town Manager as designee to the Housing Boards, Mayor Pro Tem Goulding seconded the motion and it passed unanimously.

8. Appoint Council Members to Town Manager Evaluation Committee

Mayor Carroll noted this item as an addition to the agenda. After a nomination by Councilor Evans and seconded by Councilor Reynolds, Mayor Carroll and Councilor Fancher were chosen and agreed to serve as the “ad hoc committee” to begin the process for the town manager evaluation, serving to gather information and facilitate the process.

9. WORK SESSION

9.1. Budget Work Session - Council Review and Direction on recommended:

9.1.1. Employee Compensation Package, including Salary Market Analysis and Health Insurance Premium Contributions (Virginia Egger, Town Manager)

Town Manager Virginia Egger presented the memo addressing the proposed Employee compensation and Benefits Program and estimated 2014 costs. There were three sections to the memo that were discussed as 1) Salary, 2) Avon's Health Plan, and 3) Economic Recovery Payment. There was information presented about Avon's new culture statement, high performing employees and the salary structure that would align with the performance of the employees through a Step program. There was Council support to continue to provide superior benefits package as part of the total reward package. There was support for each of the three components described at the 2014 levels.



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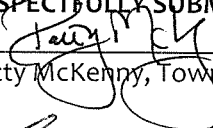
9.1.2. Town Attorney and Special Counsel Budgets, including Water Counsel (Virginia Egger, Town Manager)

Virginia Egger, Town Manager, reviewed the memo that outlined the proposed 2014 budgets for the legal services provided by Heil Law and Elizabeth Pierce-Durance. There was support to include these estimates in the budget.

9.2. Fiscal Year 2013 Financial Report dated September 24, 2013 (Report Only from Finance)

There being no further business to come before the Council, the regular meeting adjourned at 10:45 PM.

RESPECTFULLY SUBMITTED:



Patty McKenny, Town Clerk

APPROVED:

Rich Carroll
Dave Dantas
Chris Evans
Jennie Fancher
Todd Goulding
Albert "Buz" Reynolds
Jake Wolf

