

**New Castle Town Council Regular Meeting
Tuesday, February 1, 2011, 7:00 p.m., Town Hall**

Call to Order

Mayor Breslin called the meeting to order at 7:00 P.M.

Pledge of Allegiance

Roll Call

Present	Mayor Breslin Councilor Russi Councilor Riddile Councilor Metzger Councilor Bunn Councilor Leland Councilor Stuckey
Absent	None

Also present were Town Administrator Andy Barton, Town Clerk Melody Harrison, Town Planner Tim Cain, Town Finance Director Lyle Layton, Town Public Works Director John Wenzel and Consultant Attorney David McConaughy.

Meeting Notice

Town Clerk Melody Harrison verified that her office gave notice of tonight's meeting in accordance with Resolution TC-2011-1.

Conflicts of Interest

There were no conflicts of interest.

Citizen Comments on Items NOT on Agenda

There were no citizen comments.

Consultant Reports

Consultant Attorney - Garfield & Hecht letter withdrawing from issues dealing with Lakota Canyon Ranch.

Consultant Attorney David McConaughy addressed the council regarding his letter of withdrawal from all Lakota matters. He told council that Alpine Bank had requested that he no longer represent the Town on matters relating to Lakota Canyon Ranch, although they were comfortable with him providing factual information to a new attorney. He provided council with a copy of the state statutes that require his withdrawal in the event that one of two potential opposing clients objected to his representation. Attorney McConaughy stated that both the Town and the bank would have to find alternate representation on Lakota matters. The council discussed the impacts of having to hire another attorney.

Attorney McConaughy updated the council regarding the letter of credit case involving Castle Valley Ranch and Village Homes, and stated that all concerned parties have agreed to wait to take further action until after the judge makes a ruling on the case. Last, Attorney McConaughy asked the council for direction regarding landlord and tenant disputes in which code enforcement issues were brought to the Town's attention. Attorney McConaughy felt that the Town staff should refrain from any involvement in civil matters unless it was a life and safety

issue. Administrator Andy Barton offered to draft a policy to bring back to council for their consideration. Attorney McConaughy advised that it be addressed during the next Public Works Committee meeting.

Consultant Planner – not present

Consultant Engineer – not present

Middle Colorado River Partnership Presentation by Clark Anderson of the Sonoran Institute

Clark Anderson addressed the council and described Middle Colorado River Watershed area that extends from Glenwood Canyon to DeBeque Canyon. The Partnership included The Sonoran Institute, the Colorado River District and Colorado State University Extension. He explained that the Partnership intends to provide a unified voice to promote the protection and enhancement of the watershed. Their stakeholders include the energy industry, local government, agriculture, conservationists, the private sector as well as the river district. In developing the partnership, several things became important as goals, including education and a watershed plan. They will be applying for federal grant monies, funded under Section 319 of the Clean Water Act, which provides funds for local watershed plans. Mr. Clark asked for support from the Town in the development of the plan by appointing a member to attend the monthly meetings. This would provide in-kind support, and he asked the Town council to consider a nominal monetary contribution as well. The council and Mr. Clark spoke briefly about the partnership and plan and proposed that MCRWP apply for the Town's grant funds in November 2011. Councilor Leland felt that the Climate Action Advisory Committee would be interested in the project and should be notified of the Partnership's meeting schedule. The council agreed to modify the support letter in regard to the contributions, and send a signed copy to Mr. Clark.

Public Hearings

Comcast Franchise Negotiations

Mayor Breslin opened the public hearing at 7:54 P.M.

Attorney McConaughy told council that the public hearing was a required step in the federal cable act. He stated that staff was still working on the survey results and a technical needs analysis necessary for the negotiations. He felt council could take public comments, but that the hearing should be continued, pending the staff studies.

Public Comments

Lorraine McNeal, New Castle resident, commented that she had not received a survey and wondered if all the Town residents had received one. Mayor Breslin informed Ms. McNeal that the surveys were sent at random to the town residents and that not everyone had received one.

MOTION: Mayor Breslin made a motion to continue the Comcast Franchise Public Hearing to the February 15, 2011 council meeting. Councilor Riddile seconded the motion and it passed unanimously.

Mayor Breslin closed the public hearing at 7:57 P.M.

East Elk Creek Road Maintenance MOU.

Mayor Breslin opened the public hearing at 7:58 P.M.

Mayor Breslin asked about the volunteer aspect of the MOU agreement, and what the Town's liability would be. Attorney McConaughy stated that the Town had governmental immunity, and there would very limited circumstances in which it did not apply.

Public Comments

Local resident John Kelly told council he was disappointed in the agreement, and what he felt were the misleading statements made by the various agencies involved. He said that there was a lot of illegal and dangerous activity taking place on CR 241 (FDR654) and on the trail, and felt strongly that there should be no motorized access. He talked about incidents during the Burning Mountain Festival, when people drove up the road and shot at signs and gates and left garbage, shell casings and illegal fire rings. Mr. Kelly stated that his neighbors, the Chandlers, gave land for the parking lot, turnaround and outhouse. He said they had been asked to sign a non-motorized right-of-way agreement by both the Forest Service and Garfield County, which they signed. He felt double-crossed in that the road remained open to motorized vehicles. Mr. Kelly felt that if the road is left open to vehicles, some day a vehicle would end up in the creek. He said a state patrol truck had gone into Boiler Creek the previous year, and that the state delayed in retrieving it. The truck leaked diesel fuel into the water, water which Mr. Chandler uses for irrigation. He also stated that Boiler Creek flows into East Elk Creek, which should be a concern to the Town. Mr. Kelly stated that the winter pedestrian traffic that used the area had a great deal of respect for it and it stayed clean. He felt the motorized traffic encouraged guns and camping.

George Chandler, County Resident, stated that he could see no point in vehicles being allowed on the road because enjoying nature should not be done from a car. He felt there was a lot of shooting and garbage being left there. He was concerned that people using the area were not using the outhouse. He also stated that that younger drivers who use the road have little respect for the area. When fifteen vehicles drive up the road at 11o'clock at night, their purposes may be suspect.

Mayor Breslin asked Forest Service employee Joe Fazzi to comment. Mr. Fazzi stated that the remarks he heard were not what he expected. He spoke of a Travel Management Plan under review by the forest service in which CR 241 (FDR654) would be closed as early as summer, 2011. The reason that CR 241 and many other roads would be closed is due to a lack of funding. The Forest Service would install a pipe gate and lock it to keep vehicles out, yet providing local access for those residents whose headgates were beyond the gate.

Steve Rippy, former Town Mayor, stated that the road and trail had been used by locals for several decades, and that allowing motorized access provided the opportunity for disabled persons to enjoy the area.

Joe Fazzi of the Forest Service clarified that County Road 241 (FDR 654) was actually Forest Service property, and the road was a county right-of-way with a land use agreement. The agreement gave the county the task of maintaining the road to the Forest Service standards, which Mr. Fazzi said had not been met. That would be part of the reason CR 241 had been chosen to be closed, in addition to the budget cuts.

Mr. Wyatt Keesbery, Garfield County Road and Bridge, District Foreman, responded by saying he had not been notified by the Forest Service at any time regarding issues with the road maintenance, nor had he seen any Forest Service standards. He stated that the county typically bladed the road once or twice per year, and also if they were called on it.

Mr. Kelly told council that the road is actually a trail, and had not been maintained in many years. Mr. Rippy disagreed, stating that the road was in good shape, and was definitely more than a trail.

Mayor Breslin asked if there was any reason for the council to consider the MOU, considering that the Forest Service was contemplating the Travel Management Plan which would close the road.

Attorney McConaughy said the until the FS made a decision to close the road , and until any dispute between the county and the FS over the closure was settled, that the Town had nothing to decide, having no jurisdiction, unless the Town wanted to make a political statement regarding the closure of the road.

Councilor Russi asked Mr. Fazzi to gather information about the Travel Management Plan and the possible closure of CR 241 and bring that information back to council. Mayor Breslin asked Mr. Keesbery if he would find out what the county's position was on the road right-of-way and the possible closure and provide that information to council. Council and staff agreed to hold a public forum on the MOU at the March 1, 2011 council meeting.

Councilor Bunn asked how the Forest Service would provide ADA access if the road is closed. Mr. Fazzi promised to look into that.

Administrator Barton asked to change the agenda, moving the Lakota discussion after the discussion regarding medical marijuana. The Council agreed.

Items for Consideration

Discussion regarding Patti's Main Street Coffee House Compliance Plan

Administrator Barton told council that ten days earlier he had notified Patty Reich and Bill Pugh that they would need to draft a compliance plan for two issues: the tap fee agreement and the need for a hood over the grill as required by the fire code. On Friday, January 28, Mr. Pugh agreed that they would grill outdoors until they could afford the hood. Administrator Barton reviewed the history of the tap fee agreement, and relayed to the council Ms. Reich and Mr. Pugh's assertion that they are unable to make the tap fee payments. Attorney McConaughy described for Council the taps owned by Sam Garcia, the building owner, and where those taps belonged. He further described how staff had calculated the additional taps required by the business and the cost of \$19,200.00. Ms. Reich told council she had not bothered to read the contract she signed and did not understand the EQR table at the time. She told council she could not afford to pay for the tap fees, and asked council to consider allowing her to reduce the number of seats in the restaurant as opposed to paying the \$19,200.00. Attorney McConaughy clarified the EQR schedule and noted that even by reducing the number of seats in the restaurant, Ms. Reich would still owe for one EQR, or \$12,000.00. Ms. Reich then told council that she had reviewed the water bills for the past months, and noted that both her business and Mr. Garcia's business used far less water than they were allowed by the 2.6 EQRs, and wanted council to consider the usage in calculating what she owed. Ms. Reich also asked if taps owned by Sam Garcia could be transferred to her business, and Attorney McConaughy stated that the Town code did not allow for tap transfers. He also explained the purpose of taps and the associated fees, and that actual gallons used was not a gauge by which the Town could arbitrarily modify fees. He stated that all other businesses in town were required to obtain appropriate taps according their uses, and that the coffee house was no exception. Council reminded Ms. Reich that they had accommodated her and her business by amending the Tap Fee ordinance and by paying the tap fees for her out of the general fund, providing her with a loan. Mayor Breslin said council had provided her unprecedented assistance, and she had not honored that contract and was in breach. After an extensive discussion, Ms. Reich agreed to reduce the restaurant seating to 24 and to sign a new contract, and council agreed to rewrite the contract for \$12,000.00. Mr. Bill Pugh of Cowboy Bill's Steakhouse agreed to have a plan to install the required hood over the stove to

Administrator Barton by Thursday, February 3rd.

MOTION: Councilor Russi made a motion to continue the discussion at the February 15, 2011 council meeting to give Ms. Reich time to work with the Town to come to terms for a new tap fee contract in the amount of \$12,000.00. Mayor Breslin seconded the motion.

Discussion: Councilor Leland asked that the agreement have a penalty clause in it, and Mayor Breslin said it would.

The motion passed unanimously.

Discussion and direction to Staff concerning the regulation of medical marijuana.

Attorney McConaughy explained to the council the statewide moratorium on medical marijuana would end in July 2011, and he needed direction from the council on how to proceed with drafting an ordinance regulating and/or banning medical marijuana. Council discussed their concerns with allowing medical marijuana dispensaries within town. They also discussed the possible tax revenue and crime problems associated with growers and dispensaries. After a short discussion about the advantages and disadvantages of medical marijuana and the state laws governing sales, production and use the council made three motions to direct staff:

MOTION: Councilor Russi made a motion to ban the production or manufacturing of infused products, including tinctures, within the Town limits of New Castle. Councilor Bunn seconded the motion and it passed unanimously.

MOTION: Councilor Russi made a motion to approve optional premises cultivation operations within the Town limits of New Castle, and to refer the item to the Planning & Zoning Commission for study and development of a draft zoning policy. Councilor Bunn seconded the motion.

Discussion: Councilor Metzger voiced a concern that perhaps the P&Z members did not have appropriate knowledge of medical marijuana. Councilor Leland explained that it would go to P&Z for zoning only, and then to the attorneys and council for review.

Public Comments

Mr. Brett Payne told council that he felt a total ban was appropriate for the New Castle community. He also asked what a citizen could do to have their voice heard at council, or if a citizen could vote. Attorney McConaughy said that public comment was a citizen's opportunity to be heard, and that public hearings would be held on the zoning issue and the public would have an opportunity to voice their opinions then.

The motion failed on a 3 to 4 vote.

MOTION: Councilor Leland made a motion to ban medical marijuana dispensaries within the Town limits of New Castle. Councilor Riddile seconded the motion and it passed on a 5 to 2 vote.

Attorney McConaughy asked council if he should draft an ordinance, or draft a ballot question to go to the voters. The council agreed to have Attorney McConaughy draft an ordinance. Councilor Stuckey asked if the voters had an opportunity to force the issue to an election. Attorney McConaughy said that any ordinance could be followed up with an initiative or referendum petition, delaying the ordinance from going to effect and forcing it to the voters. They could come in and comment when the ordinance is on the agenda, and the citizens could bring an initiated ordinance to council.

Lakota Canyon Ranch - additional discussion considering denial of the CUP extension

Mr. Steve Rippy and Mr. Bill Wentzel were present to provide a voice for John Elmore as he could not attend the meeting.

Mr. Wentzel said that he felt there were communication problems between the developer and the council. He also said that they were available to discuss some terms with the council regarding warranty issues, but that their primary reason for being at council was to discuss their concern with the Town shutting down the golf course. Both Mr. Rippy and Mr. Wentzel felt the golf course an amenity to the Town, and also that the clubhouse and golf course should be separated, so that the course was not shut down because of the clubhouse. Mr. Wentzel stressed the importance of maintaining partnerships with larger developers. Councilor Leland explained that by denying the CUP extension, it gave the council and Mr. John Elmore the opportunity to separate the clubhouse from the golf course on different conditional use permits, which could prevent future complications.

MOTION: Councilor Riddile made a motion to extend the meeting beyond 10:00 P.M. Councilor Metzger seconded the motion and it passed unanimously.

The council discussed their frustration with the lack of communication from the developer. After much discussion with Mr. Rippy and Mr. Wentzel, the council was pleased to understand that Mr. Elmore was willing to extend the warranties and was concerned with continuing the golf course use. They asked that Mr. Elmore maintain better contact with the Council. Council also asked Mr. Rippy and Mr. Wentzel to ask Mr. Elmore to submit a written request for reconsideration of the CUP denial, and Mr. Rippy agreed that could happen. Council also discussed the lack of an attorney to handle the Lakota items, who they should hire and for what issues.

MOTION: Councilor Leland made a motion to hire Mike Sawyer, of Karp.Neu.Hanlon, for the purpose of negotiating an extended warranty agreement that would address the road issues in Consultant Engineer Simonson's report on Lakota Canyon Ranch. Councilor Russi seconded the motion and it passed unanimously.

MOTION: Mayor Breslin made a motion to reconsider, on a future agenda, the motion denying the Lakota Canyon Ranch Golf Co. request for an extension on their Conditional Use Permit. Councilor Leland seconded the motion and it passed unanimously.

Council agreed to place the Lakota Canyon Ranch Golf Company CUP extension on the February 15, 2011 Council agenda.

Printer RFP

Mayor Breslin asked why the printer leases were on the agenda, and Administrator Barton said because they had a five-year lease option which would bind a future council.

MOTION: Councilor Leland made a motion to approve the five-year lease agreements for new multi-function printers for the administrative office and the police department. Councilor Riddile seconded the motion and it passed unanimously.

Entryway Sign Discussion

Administrator Barton said that the entryway sign had been put back on the agenda for their reconsideration. When the temporary sign had been installed, it caused enough disturbance with business owners in the City Market shopping center to deserve additional council thought, especially considering the cost of \$10,000.00.

MOTION: Councilor Leland made a motion to approve a monument sign that said "Welcome to New Castle, Established 1888." The motion died without a second.

After a brief discussion, the council agreed to table the item.

MOTION: Mayor Breslin made a motion to table the item. Councilor Riddile seconded the motion and it passed unanimously.

Garfield County Comprehensive Plan Discussion

Councilor Russi provided a letter to council that could be submitted to the county regarding the county comp plan, asking that the plan be "mandatory" as opposed to "advisory."

Consent Agenda

Approval of Minutes of the January 18, 2011 Council Meeting.

The minutes were removed from the consent agenda for minor corrections.

Approval of January Bills of \$486,747.51

Liquor License Renewal - Spirits

Consider acceptance of Public Improvements from Lakota Fire Station

Consider authorizing Consultant Water Attorney Mike Sawyer to sign a stipulation to end the Town's opposition to a water court case filed by Lazy Dog Properties LLC

MOTION: Councilor Leland made a motion to approve the consent agenda, with the exception of the minutes of January 18, 2011. Mayor Breslin seconded the motion and it passed unanimously.

The council offered suggestions to correct the minutes.

MOTION: Councilor Leland made a motion to approve the minutes of the January 18, 2001 council meeting with the corrections as noted. Mayor Breslin seconded the motion and it passed unanimously.

Council Comments

Councilor Russi provided the council with a letter from the Western Colorado Congress in regard to local oil and gas drilling. He directed the councilors to two comments in the letter he felt that the councilors should consider, and told the councilors that there was still an opportunity for their concerns to be heard within state deliberations and hearings. Mayor Breslin emphasized the need to make a statement on the record. The council agreed that they should place oil and gas on the next agenda and make the Council's concern for the issues part of the record. Councilor Russi noted that Frank Smith of Western Co. Congress could attend the meeting.

Mayor Breslin stated that he had read about the recent increase across the nation in home occupations, and asked if the Town code allowed for Home Occupations. Planner Cain said that it did provided the business did not create a negative impact on the residential neighborhood.

Administrator Barton told council that at the last council meeting a question was asked if a staff member could be an alternate on the RFTA board, and the answer was no, the member must be an elected official.

Mayor Breslin informed council that Dwayne Romero from Aspen was now heading the governor's Office of Economic Development and International Trade, and would be a good resource for the Town. He stated that Councilor Russi had brought up an issue a

few years ago regarding the federal energy regulatory commission having only one level of standards for approving a hydroelectric operation. He said that it would be great to have someone discuss a threshold limit under which small micro-hydroelectric plant could be permitted. Mayor Breslin felt council should write to Mr. Romero at OEDIT and ask them to look into allowing a small town such as New Castle to build and operate a micro-hydroelectric plant.

Mayor Breslin stated that RFTA wanted an RFP sent out for the New Castle park and ride project.

Councilor Metzger told the council that more members were needed for Planning & Zoning Commission, and asked if the Town's electric message board could be used to advertise the seats available. She also wondered if an alternate could be appointed. Councilor Leland stated that a councilor could be appointed to P&Z for a regular term. Councilor Metzger also said that an alternate to the Garfield County Senior Program was needed...

Staff Reports

Public Works Director - none

Town Clerk - Clerk Harrison told council that a code supplement was available for code books. She also asked if the council had any problem with the packet online and no one did.

Town Administrator - Administrator Barton mentioned that the fire station received their certificate of occupancy. He also stated that the staff did not anticipate the cost of mailings for the Comcast franchise survey, and consequently, there was no money for individual invitations to the Neighborhood Council meeting in the 15th. He told Council that staff was using a number of other free resources to get the word out about the meeting.

Town Planner - not present

Mayor Breslin made a motion to adjourn. Councilor Stuckey seconded the motion and it passed unanimously.

Adjourn, 11:23 P.M.

Respectfully Submitted,


Town Clerk Melody Harrison


Mayor Frank Breslin

