

**New Castle Town Council Meeting  
Tuesday, May 3, 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,

**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**

Councilor Leland stated that Mr. Rieger, whose conditional use permit application was on the evening's agenda, had indirectly consulted with the New Castle Economic Advisory Committee. Because Councilor Leland is a member of the EAC, the Town Attorney advised that he mention any applicant that came before council that has also contacted the EAC, although Attorney McConaughy did not feel any conflict existed.

**Citizen Comments on Items NOT on Agenda**

Local artist Carmel Walden presented her wayfaring sign to the council. She spoke briefly of the materials and methods she used to create the sign, and stated that she thought it would be installed the following week. The Council thanked her and complimented her on the fine job she had done.

**Agenda Changes**

Item E, Resolution TC-2011-7 was removed from the agenda and moved to the June 7<sup>th</sup>, 2011 council meeting.

**Consultant Reports**

Consultant Attorney – Not present  
Consultant Planner – Not present  
Consultant Engineer – Not present

**Action Items**

### **Consider approving a Conditional Use Permit for Rieger Performance Motors**

Town Planner Tim Cain described the application to council and provided them with photographs of the property. The applicant, Mr. Michael Rieger, spoke to council about his business and asked that council approve his application. Councilor Stuckey voiced his concern regarding stored vehicles on the property. Mr. Rieger stated that vehicles would remain no longer than a week, and that he expected no more than eight vehicles in the course of a week. Additionally, the property owner was opposed to stored items. He further stated that parts storage would be in a building or shed on the property. Councilor Russi asked about Mr. Rieger's environmental protection plan. Mr. Rieger said Safety-Kleen would do parts washing and hauling of waste oil, etc. He said that oil pans would be used on the concrete floors and in the event work was done outside the shop. Plastic bottles and waste oil would be recycled. Councilor Stuckey asked how he would handle servicing large vehicles, such as boats and RVs, and Mr. Rieger said they would be done outside and that he had only had two large vehicles in the past six months and expected no more than that.

**MOTION: Councilor Russi made a motion to approve the Conditional Use Permit for Rieger Performance Motors. Councilor Metzger seconded the motion and it passed unanimously.**

Councilor Russi told council that Attorney Mike Sawyer had another meeting to attend, and would not be arriving until 7:30. Administrator Barton suggested that Mr. Bucky Moser be heard next and council agreed.

### **Bucky Moser - Burning Mountain Festival**

Mr. Bucky Moser said he was representing the New Castle Chamber and the Burning Mountain Festival. He said that the event would be moved to September 9 and 10 when the weather is cooler, and that the date change was an experiment. For the sake of tradition, the Chamber will consider scheduling the Coal Country Feud the second weekend in July. Mr. Moser apologized for not having considered the police department in their date change, and stated he would work out police issues with Chief Sadler and hire more security if necessary. The same people as in previous years would organize the event, but the board would have more involvement in the planning. They were considering a 'passport' event in which guests would have their 'passport' stamped by the local businesses, thus earning a gift or discount for a local business. Planner Cain suggested perhaps a grand prize. They also thought they could involve the local schools. Councilor Metzger noted that Sunday, September 11 would be the tenth anniversary of the 9/11 attack, and suggested the Chamber consider extending Burning Mountain Days through Sunday to honor 9/11.

### **Discussion regarding littering within Town Limits**

Mayor Breslin told council that a Ms. Cynthia Dawes had approached him in regard to litter about Town. Council discussed the littering issues in Town and what could be done about it, and whether "No Littering" signs should be posted. It was suggested that the fines for littering be increased. Resident Brett Payne asked about a property located south of River Bend that seemed to be a dump site. Planner Cain stated that the property in question was in the county. Councilor Russi felt that Planner Cain and Clerk Melody Harrison could write an amendment to the code, which could be discussed at a future council meeting.

### **Items for Consideration**

**Consider an Agreement to Cure Defaults between the Town and Lakota Canyon Ranch Development acting by and through the court appointed receiver Cordes and Co.**

Consultant Attorney Mike Sawyer informed council that he would be presenting a draft agreement as well as ask for direction from council regarding a few particular points. He stated that Receiver Marcie Jaeger had completed a warranty items list that was examined and agreed to by the Town Engineer and the Public Works Director. The estimated cost of the warranty items was \$218,000.00. The agreement anticipated the receiver would complete the warranty items by October 2011, and included a procedure for the Town to inspect and approve the work. Additionally, contractor warranties would be assigned to the Town. In regard to the tap fee agreement, the Town and Lakota would agree to a calculation of the amount of credit that had accrued over several years that tap fees had been collected by the Town. Based on figures done by the Town treasurer that most benefited Lakota, they have a credit of \$272,460.00. The tap fee guaranty payment due from Lakota for 2011 is \$184,140.00, which reduced the credit to \$88,320.00. The tap fee guaranty payment due in 2012 will be \$189,720.00, leaving a potential deficit \$101,400.00, assuming no taps are sold in 2011 or 2012. To ensure the warranty work is completed and that the tap fee guaranty is paid, Lakota would provide to the Town security in the form of a first deed of trust on a piece of commercial property on the south side of Castle Valley Boulevard. One point of disagreement between the Town and the receiver was related to the length of the term of the security for the tap fee guaranty payment. Mike Staheli, Receiver, said his authority would only extend through 2012. Attorney Sawyer reminded council of the long-standing issue with Lakota and a lack of security, and stated that he understood council's direction to him was to obtain that security, particularly because the credit balance Lakota had would run out in 2012, or expire. This would leave the Town in a completely unsecured position in 2013 and in succeeding years. The notice of default filed by the Town against Lakota would be released at the time the security was provided. Attorney Sawyer stated that the receivers requested that the agreement include a waiver of any and all claims up through the date of the agreement. He said that signing a complete waiver was problematic in that unknown claims could exist. Lastly, the Town was willing to waive approximately \$22,000.00 in consultant fees in exchange for the receiver taking care of a few contentious items. Attorney Sawyer offered the floor to Mike Staheli, Receiver.

Mike Staheli told council that he felt they had good framework for an agreement. He said that because the people involved were relatively new to Lakota, it made for calm negotiations and reasonable thinking. Mr. Staheli felt that the proposed items were within their authority. He noted that the 2003 tap fee agreement that had caused many problems between the developer and Town was not something the receivers had authority to amend. Lastly, he stated that he was working towards a 'clean bill of health' for the property so as not to encumber a future owner. Councilor Russi said there were issues not covered by the proposed agreement and that he was concerned that item 5 and item 11 contradicted one another, and made the agreement ambiguous. He felt the agreement needed to be more specific. Councilor Russi also did not like the idea of waiving development fees, although he thought that perhaps waiving some attorney fees would be all right. Mayor Breslin agreed with Councilor Russi, stating that the 2003 water tap agreement was confusing and had cost too much in attorney fees attempting to make sense of it. Ms. Jaeger stated she had created a punch list for the warranty work and had it approved by all pertinent parties. Councilor Leland asked if the warranty work could be completed by October. Ms. Jaeger stated that asphalt and concrete work would be started soon, as well as noxious weed control, and re-vegetation would be done in the fall.

Councilor Leland asked what would be done regarding the security because the agreement states the security would be effective into 2012, and at that point, the Town would be forced again to file a default against Lakota and to strip the vested rights. Attorney Sawyer felt a long-term security obligation would be in the banks' best interest because it would secure the development with the Town for a future buyer. Councilor Russi felt that a paragraph should be added to the agreement that allowed the opportunity for the Town to file default against Lakota. Mr. Staheli agreed that could be added. Councilor Leland felt that any potential buyer should meet with the council to clarify all agreements, in the hope of avoiding future conflicts. Mr. Staheli told council that the tap fee agreement was embedded in the development approvals, and would be assigned to a new owner. Council asked Attorney Sawyer to provide a breakout of fees that accrued as a result of trying to interpret the tap fee agreement, a rough approximation of other accrued fees and what they related to. Attorney Sawyer felt that he and the Receivers could work out the specific items in the agreement and bring it back to council in two weeks' time.

**Consider approving Ordinance 2010-2, an ordinance of the New Castle Town Council Revoking the Vested Rights for the Remaining Undeveloped Portions of Lakota Canyon Ranch P.U.D. (second reading)**

**MOTION: Councilor Leland made a motion to continue Ordinance 2010-2. Councilor Riddile seconded the motion and it passed unanimously.**

**Consider approving Attorney Sawyer to enter into Stipulation with Trexlers to drop Town's Opposition to Water Court Case #09CW60**

Attorney Sawyer, acting as the Town's water attorney, briefly described the Trexler water case, and advised council that the Town no longer had reason to oppose it. He suggested council approve the stipulation to drop the opposition.

**MOTION: Councilor Riddile made a motion to approve Attorney Sawyer to enter into Stipulation with Trexlers to drop Town's Opposition to Water Court Case #09CW60. Councilor Bunn seconded the motion and it passed unanimously.**

~~Consider approving Resolution TC 2011-7, A Resolution of the New Castle Town Council Agreeing to Act as a Reviewing Entity for the State Income Tax Credit Program for Qualifying Rehabilitation Projects Under Colorado House Bill 90-1033 (C.R.S. §39-22-514, as amended) (8:20 p.m.)~~

**Item E was removed from agenda at the request of the HPC.**

**Discussion concerning Joint Transit Development with RFTA's Park-N-Ride**

Mayor Breslin told council that he heard that the RFTA board chair felt he had a conflict of interest and should recuse himself commenting on the New Castle Park and Ride project. Town Planner Tim Cain, who attended the meeting, said that the representative from Snowmass brought up the issue. The RFTA Attorney explained that no conflict existed because there was no financial gain. The RFTA attorney will be returning to the next RFTA meeting with other information on what other transit authorities' policies were, and it would be discussed at the next RFTA meeting. Councilor Leland was curious to know if other Town's representatives recused themselves when RFTA issues in their towns were discussed. Mayor Breslin said no, and felt that perhaps there was a hostility towards

business partnerships. He asked council to please support him in asking RFTA to proceed with the park-n-ride. He also said that the board had a problem with Councilor Stuckey because of his relationship with a client. Councilor Leland asked about the RFP, and how it could be developed without Councilor Stuckey. It was suggested that perhaps Planner Cain and Engineer Simonson could develop an RFP. Planner Cain stated that he thought RFTA would develop a process to decide what the RFP would look like, and to decide whether the RREDC would manage it. Councilor Leland felt that RFTA was afraid of losing control of the project if RREDC managed it, and suggested that Michael Langhorn, Engineer Simonson and Planner Cain draft the language of the RFP and then let RFTA have it. Mayor Breslin stated he would build a flowchart of incident command with RFTA in charge. Planner Cain offered a team approach, and the council liked the idea. Councilor Leland further suggested that RFTA be told that the Town of New Castle had no stake in who was awarded the contract, only that the park-n-ride project be completed.

### **Consent Agenda**

Minutes of the March 29, 2010 Council Meeting

April Bills of \$312,828.22

Renewal of Elmer Suds Liquor License

Garfield County Hazard Mitigation plan resolution

Letter of Resignation from Kevin O'Brien from Planning & Zoning Commission

**MOTION: Councilor Stuckey made a motion to remove the minutes from the consent agenda, and to approve the remaining consent agenda items. Mayor Breslin seconded the motion and it passed unanimously.**

**MOTION: Councilor Russi made a motion to approve the minutes of the March 29, 2010 council meeting with corrections. Councilor Leland seconded the motion and it passed unanimously.**

### **Council Comments**

Councilor Russi commented that the council should do something for P&Z Chair Kevin O'Brien. Chair O'Brien would be leaving the commission to return to school. Council agreed they should give him a framed certificate of appreciation signed by all the council members.

Councilor Russi also commented that in considering the council goals, he found that he wanted everything done at once which caused him to struggle with prioritization. He also mentioned that the Town had a seat on the Intermountain Transportation District board and felt the Town should utilize that seat and be more involved.

Councilor Leland said he had been to a Source Water Protection Group meeting (which is different from the Middle Colorado Watershed Protection Group). The Source Water Protection Group will be assessing pollution sources to Elk Creek, the old mine being the primary concern.

Mayor Breslin said he went to a seminar on micro-hydro electric plants, and found out that there are provisions excepting small projects from FERC regulations.

Mayor Breslin also stated that he had spoken with Sam Garcia regarding his restaurant remodel and the possibility a financial agreement with the town to purchase additional taps.

Councilor Leland felt that when the council and BOCC did the site visit at East Elk Creek the following week that they should insist on walking the entire trail/road so they had a clear understanding of the residents' concerns.

Councilor Russi told council he had attended a BLM meeting regarding oil shale, and that

he commented to them that New Castle was concerned about water because there is no replacement for water. The industry should consider conservation to be the new source of oil. It takes approximately two barrels of water to produce one barrel of oil. Councilor Stuckey said that there were now three people appointed by the Receivers to the architectural design committee for Lakota, and that there may be a building permit for a new home in the near future.

**Staff Reports**

Town Planner – Planner Cain told council that he had recently received a full set of construction documents for the library project.

**MOTION: Mayor Breslin made a motion to allow the meeting to go past 10:00p.m. Councilor Metzger seconded the motion and it passed unanimously.**

Public Works Director – not present

Town Clerk – Clerk Harrison told council the new rotation for the various committees and commissions, and asked if anyone was willing to volunteer for the Climate Action Advisory Committee.

Town Administrator – Administrator Barton informed council that public works employee Robbie Gibson had accepted a position in Denver and would be leaving New Castle's employment. He also told council that Officer Tony Pagni had spoken with Rosie Ferrin regarding the condition of her property on Main Street, and had given her until the 15th to clean it up.

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

The meeting adjourned at 10:08 p.m.

Respectfully Submitted,

  
Town Clerk Melody Harrison



  
Mayor Frank Breslin