

**New Castle Town Council Special Meeting
Tuesday, May 24, 2011, 6:30 p.m., Town Hall**

Call to Order

Mayor Breslin called the meeting to order at 6:30 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 was Consultant Attorney Mike Sawyer, Town Administrator Andy Barton and Town Clerk Melody Harrison.

Meeting Notice

Clerk Harrison verified that her office gave notice of the meeting in accordance with Resolution TC-2011-1.

Conflicts of Interest

There were no conflicts of interest.

A. Discussion regarding Lakota Canyon Ranch Bankruptcy Filing

Attorney Mike Sawyer told council that he would provide a factual update to council in open session and then move into executive session to advise council regarding the bankruptcy filing by Mr. Elmore.

Attorney Sawyer stated that Mr. Elmore had filed a chapter 11 petition, which is reorganization under the federal courts. Most bankruptcy filings are under chapter 7, which is a liquidation of all assets. Chapter 11 gives a business an opportunity to stay collection and enforcement proceedings by its creditors, and gives the business a chance to try and negotiate terms and conditions to allow it to continue to function. This results in a reorganization plan. Reorganizations allow the debtor to remain in possession and management of the business. The Lakota situation is unique in that the state court authorized a receiver for the Lakota properties a few months prior; control and management of Lakota is currently vested in the receiver. Mr. Elmore has petitioned the court to give control and management of Lakota back to him. The bankruptcy petition was filed in North Carolina, which is Mr. Elmore's home state, yet all the holdings in the petition are in Colorado. Alpine Bank intends to file a petition to change the venue to the state of Colorado. The request for the venue change may or may not delay some of the

deadlines as listed in Attorney Sawyer's memo. Both the receiver and Alpine Bank intended to oppose Mr. Elmore regaining possession of the Lakota properties. The receivers informed Attorney Sawyer that their proposed budget to Alpine Bank for 2011 was \$800,000.00, which would include operations as well as warranty items. Regrettably, the general operations of Lakota exceeded the revenues, and they felt Mr. Elmore lacked the funds to subsidize the operations. Alpine Bank felt they had a strong argument that management should be left with the receiver. Attorney Sawyer clarified that as long as the receiver remained manager of the properties, representations made to the council and the HOA would remain effective. Should the courts decide to allow Mr. Elmore possession, it would change. Attorney Sawyer stated that he asked the receiver if any warranty work could be completed in 2011, and the receiver stated that a list of the most pressing items would be compiled and taken to the bank for approval, whether or not the courts allow Mr. Elmore possession. Attorney Sawyer stated that the receiver saw the value in completing vital warranty items, regardless the outcome of the bankruptcy. The council asked about Whitehorse Village, and Attorney Sawyer stated that Phase II was owned by a separate entity, and that it was not impacted by the bankruptcy or any of the contractual agreements related to the developer.

Councilor Stuckey asked if the individuals appointed by the receiver to the HOA were still valid and Attorney Sawyer said yes, that everything the receivers had done was valid and remained effective, and that the receivers were in control of the properties until such time the courts rule the debtor should be in possession of the assets.

Attorney Sawyer stated that he would like to ask council to allow him to retain a bankruptcy attorney, as he was not qualified to speak on bankruptcy issues.

Executive Session, 7:05 P.M.

MOTION: Councilor Russi made a motion to go into an executive session (1) for conference with Town Attorney for purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); and (2) for purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) - concerning potential litigation :

Concerning Lakota Canyon Ranch Bankruptcy Filing

Councilor Leland seconded the motion and it passed unanimously.

Executive Session Concluded, 7:38 p.m.

Mayor Breslin announced, "The time is now 7:38 p.m., and the executive session has been concluded. The participants in the executive session were: Mayor Breslin; Councilors Russi, Riddile, Metzger, Mayor Breslin, Councilors Bunn, Leland and Stuckey; Town Clerk Harrison, Town Administrator Barton, and Consultant Attorney Sawyer. For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record."

No concerns stated.

MOTION: Councilor Riddile made a motion to direct staff to retain a bankruptcy

attorney specifically for the Lakota bankruptcy filing. Councilor Metzger seconded the motion and it passed unanimously.

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

Adjourn, 7:40 p.m.

Respectfully Submitted,


Town Clerk Melody Harrison


Mayor Frank Breslin

