

New Castle Town Council Meeting
Tuesday, September 6, 2011, 7:00 p.m., Town Hall

Call to Order

Mayor Breslin called the meeting to order at 6:59 pm

Pledge of Allegiance

Roll Call

Present	Mayor Breslin
	Councilor Russi
	Councilor Riddile
	Councilor Metzger
	Councilor Bunn
	Councilor Leland
	Councilor Stuckey

Also present were Town Clerk Melody Harrison, Public Works Director John Wenzel, Water Operator Greg Coulter, Consultant Attorney David McConaughy and Consultant Engineer Jeff Simonson.

Meeting Notice

Town Clerk Melody 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.

Agenda Changes

There were no agenda changes.

Citizen Comments on Items NOT on Agenda

Robert Bunn – Mr. Bunn addressed the council to voice his concern that the Town of New Castle was making it difficult for him to open a business. He told council that his grandfather was Mr. Pete Mattivi, and reviewed Mr. Mattivi's history with the Town as mayor and as a county commissioner. Mr. Bunn said that Mr. Mattivi had also built the Mattivi Building downtown, in which he opened Mattivi Motor Company. Mr. Bunn stated that he decided he wanted to open an automobile repair shop in the Mattivi Building, and learned that it would require a conditional use permit from the Town. Additionally, he said he wanted to repaint the Mattivi Motor Company sign on the building, and found that he would also be required to apply for a sign permit. Mr. Bunn stated he did not feel the Town should be involved in his efforts, and he told the council that he would paint the sign and open the auto repair business with or without the Town's approval. Mr. Bunn offered a written copy of his complaint to the Town Clerk for the record. He also offered to show a photo to council of the sign he would like to have on the building. Mayor Breslin said the council could not answer his questions regarding the code regulations without any notice of his appearance, particularly considering Mr. Bunn's threatening attitude. Mayor Breslin told Mr. Bunn that the code provisions were in place to prevent things such a person opening an asphalt batch plant next door. Mayor Breslin offered Mr. Bunn the opportunity to be on the council agenda to discuss his concerns. Councilor Leland suggested the Mr. Bunn speak with the Historic Preservation Commission as well as the Economic Advisory Committee as they may be able to help him accomplish his goals.

Consultant Reports

Consultant Attorney – Present for agenda items only.

Consultant Planner - not present

Consultant Engineer - not present

Items for Consideration

Consider letter of interest from Larry Borgard for appointment to vacant seat on the Planning & Zoning Commission.

The council spoke briefly with Mr. Borgard, who stated he was excited about the Town and loved living in New Castle. He also said he had previously served on the P&Z and Council.

Motion: Councilor Leland made a motion to appoint Mr. Larry Borgard to the Planning & Zoning Commission. Councilor Bunn seconded the motion and it passed unanimously.

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) regarding Elk Creek Campground

The Executive Session was tabled.

Consultant Attorney McConaughy spoke with the council regarding the request from Mr. Briston Petersen, owner of Elk Creek Campground, for the Town to pay a maintenance fee to him of \$2,000.00 per year for use of the bridge. Attorney McConaughy felt it would be good to have an agreement with Mr. Petersen on use of the bridge, but that the Town had a prescriptive easement to access the water treatment plant and the Town water source, and an agreement was not necessary. He said the Town water rights pre-dated the campground. Public Works Director John Wenzel told council that the amount of money Mr. Petersen was asking for would, over the lifetime of the bridge, equal three times the cost of the bridge. Director Wenzel felt it was excessive. Councilor Leland reminded everyone that the old bridge had failed because of Mr. Petersen's misuse of the bridge, not the Town. Councilor Russi asked if it would be best to sign agreement and Attorney McConaughy said again that it was not necessary. The council discussed offering Mr. Petersen a one-time payment. Councilor Bunn asked if there was another access to the Town water plant, and Director Wenzel said there was not, although the area was not land locked and a bridge access could be built off the county road. The council agreed that Attorney McConaughy should continue negotiations with Mr. Petersen.

Items for Consideration

Update on Filing 9 Litigation and Consideration of Declaring Default

Consultant Attorney McConaughy updated Council on the status of pending litigation regarding excess funds from a letter of credit that was called to cure a default of the Castle Valley Ranch Filing 9 SIA. The town paid the funds into the court registry, and various claimants have asserted a right to the funds including several contractors, the original developer Village Homes, the new developer CVR Investors, and the bank. Recently, the court denied the contractors' claims and one of them, Metco Landscaping, has filed a new claim for payment directly against the Town. In

response, Mr. McConaughy sent a letter to Village Homes and CVR Investors requesting that they indemnify the Town against Metco's claims under the SIA. Neither Village nor CVR agreed to do that, so Attorney McConaughy recommended that the Council declare a new default of the SIA based on the indemnity provision with respect to Metco's claim. This will then allow the Town to make a new claim to the excess funds to the extent necessary to cover Metco's claims and also give the Town some input on how the funds are ultimately distributed.

Council directed staff to take the necessary steps to record an affidavit or take other action to formalize the default. Council also authorized Mr. McConaughy to file an amended complaint to assert the new claim against the funds already paid into the court. This motion was limited to a claim against the funds. Councilor Russi clarified that the Town appreciates CVR Investors' involvement in the project, and the Town has no desire to assert any direct claim against CVR. The claim is only against the funds from the letter of credit originally provided by Village Homes. Council authorized Mr. McConaughy to participate in a mediation already scheduled for September 20, 2011 and to proceed with the steps to formalize the default and amend the complaint only if the case fails to settle at the mediation.

Motion: Mayor Breslin made a motion to declare a default of the Filing 9 SIA based on the nonperformance of the indemnity obligation with respect to Metco's claims. Councilor Bunn seconded the motion and it passed with Councilor Russi voting no.

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) for the purposes of consultation with attorney to review pending litigation.

The executive session was tabled

Councilor Russi asked Attorney McConaughy about history of special use permits in the Town Code. Attorney McConaughy said there had been special or conditional use processes since at least 1999. He felt the current code was less restrictive than it had been previously, although the noise section was tricky, and the adjoining property owner notice requirement was sometimes onerous. He felt the code was very workable over all.

Jeff Simonson, Jerkunica Improvements Discussion

Attorney McConaughy told council that the escrow agreement with Mr. Jerkunica had expired, so the Town had called the escrow money, and now held those funds. The Town had granted an extension on the agreement to build, so the Town would continue to hold the funds until or unless there was a breach of the agreement to build. He said that council needed to decide to accept the plan, amend the agreement or to call it in breach.

Mayor Breslin disclosed that Mr. Jerkunica had called him the week prior and told him that the council needed to decide if they were going to require Mr. Jerkunica to build sidewalk in front of the empty lots, which he felt was not part of the agreement. Councilor Russi thought the Planning & Zoning decision was that all the lots needed to have sidewalk built. Consultant Engineer Jeff Simonson gave the council a history of

the negotiations, agreements and approvals for the Jerkunica project. Mr. Jerkunica addressed the council, asking for some relief from the agreement requirements. His engineer, Mr. Chris Hale, offered an alternative improvement plan that included curb and gutter along the entire street front, up to D Avenue, hard surface sidewalk in front of the existing building and soft surface (gravel) walk paths for the remaining sidewalk. The council, staff and Mr. Jerkunica discussed the proposal at length and agreed on the proposed changes. Engineer Simonson and Mr. Chris Hale agreed that new plans would be submitted as soon as possible, and that council would review the changes at the next council meeting for approval. The council also offered to provide a letter to Mr. Jerkunica's bank indicating the escrow funds held by the town which could be used essentially as collateral. Mr. Jerkunica told the council he would get the work done.

Approving Draft RFP for Prosecutorial Services

Councilor Russi recused himself from the discussion because he occasionally performs work for Sandy Karp of Karp.Neu.Hanlon, a potential applicant, and he left chambers. The council felt the Request for Proposals was fine as it was. Councilor Russi returned.

Consider Approval of Ware & Hines Lease Agreement

Public Works Director told the council that a lessee had been found for the Ware and Hines water rights owned by the Town. He described the five-year agreement and asked council to provide their approval as well.

MOTION: Councilor Leland made a motion to approve the Ware and Hines lease agreement. Councilor Bunn seconded the motion and it passed unanimously.

Walters Lane/Castle Valley Blvd./City Market Entrance Discussion

The council agreed that the concerns regarding the intersections at Walters Lane, Castle Valley Boulevard, the City Market entrance and Highway 6 was a project to be pursued in a study in 2012. Council thought Administrator Barton could look into an RFP for the study. Council also felt they would like to hear input from McDonalds, New Castle Center, Kum & Go, RFTA and Scott Balcome. Engineer Simonson felt Consultant Planner Farrar should be involved in the study in relation to the Town's comprehensive plan, and he also stated he could put together a cost estimate. Councilor Russi felt a budget should be suggested for the project which included notice to the local businesses and constituents. Police Chief Sadler said that one of his concerns was that the speed on Main Street should be reduced coming into the intersection from the west, and that flashing signs indicating a speed reduction would be ideal.

Pending Business

Open Space Calculation for Walters Center PUD

Mayor Breslin said he had contacted the attorney for RFTA regarding the Eagle Scout bus stop project, asking them for a required footprint for the bus stop. He said Mr. Walters was going to consider the bus stop to be placed on his property, but that Planner Tim Cain said he had already met the dedication requirements for open space for his development. The last option was 6th Street.

Clerk Harrison told the council that they had asked for the open space calculation at the previous council meeting.

Consent Agenda

August Bills of \$499,436.32

Minutes of the August 16, 2011 Council Meeting

Resolution TC-2011-13 - Special Events Liquor Licensing

MOTION: Mayor Breslin made a motion to move the minutes off the consent agenda, and to approve the remaining items on the agenda. Councilor Bunn seconded the motion and it passed unanimously.

Council offered a few corrections.

MOTION: Mayor Breslin made a motion to approve the corrected minutes. Councilor Stuckey seconded the motion and is passed unanimously.

Council Comments

Mayor Breslin asked Director Wenzel if it would be beneficial to the public works department to perhaps allow some of the grasses in town spaces to grow long as opposed to cutting it regularly. Director Wenzel said it was more efficient to cut it regularly.

Councilor Bunn asked if anyone had noticed the traffic lane realignment in the Town of Silt, and she asked how they managed to get approval from CDOT. Clerk Harrison said she would find out and report back to council.

Councilor Leland stated that on Wednesday there will be a library-topping event, placing the final beam. Thursday there will be an ice cream social fundraiser for the River Center, to raise money for the basement remodeling job. He noted that there was still an available slot for an opening band for Saturday evening at Burning Mountain Festival. He said the festival schedule had been posted on the Chamber of Commerce website. He said there is an invitation for all the council to attend a county workshop called "Getting Acquainted with Open Space and Trails" that would take place on September 20th. .

MOTION: Councilor Leland moved to hold special meeting at 6:00 p.m. on September 27, 2011 to discuss the disposition of severance monies received by the Town. Councilor Metzger seconded the motion and it passed unanimously.

Councilor Leland thought the council should consider a possible rezone of the downtown area to allow more visible home businesses, as part of our economic development efforts.

Mayor Breslin ask about the remote access to the Town server, noticing that a new access had been up and was now gone. He also mentioned that there was a suicide prevention workshop on Tuesday, September 13 in the Town Hall.

Councilor Metzger stated that she thought Administrator Barton's evaluation should be in executive session with only the mayor and councilors present since they would be discussing his contract. Councilor Leland said the evaluation would be discussed during the personnel committee meeting, not in open session. Mayor Breslin said an executive session could be added to the council agenda if need be. Councilor Metzger also felt that 30 minutes was not long enough, and preferred an hour. Councilor Russi suggested 45 minutes.

MOTION: Councilor Leland made a motion to change the personnel meeting time on September 20, 2011 to 6:15. Councilor Russi seconded the motion and it passed unanimously.

Councilor Metzger stated that she felt Administrator Barton should not be part of the personnel meeting so council could speak freely, and Councilors Bunn and Leland said the employee had to be present. Councilor Russi felt that Administrator Barton would take criticism well.

Councilor Leland said the evaluation form was difficult to use because it was not designed for use by council, and said he would work on developing a new form. He asked that the council assist him and they agreed.

Councilor Russi asked that Clerk Harrison e-mail everyone to remind them of the early start for the personnel committee on September 20, and the special council meeting on September 27. She agreed to do that.

Councilor Bunn said she did not like the new web site, saying it was too difficult. Clerk Harrison explained how to navigate to the Town Council page, and how the web site committee planned to set up all the pages. She also stated that it had turned out to be more work than anyone realized recreating portions of the site. She also said that they would be expanding the calendar to include local special events, sporting events, senior lunches and more, to make it a complete community calendar.

Staff Reports

Public Works Director – not present

Town Clerk - Clerk Harrison gave the council copies of the master calendar that she and Deputy Clerk Wendy Mead had been working on. Council seemed pleased with the calendar. Clerk Harrison asked council for their input on items to add to the calendar. Mayor Breslin thought franchise agreements should be added.

Mayor Breslin asked Clerk Harrison to research the fire station property and its dedication to the Town.

Clerk Harrison told council that staff and the chamber had their last meeting in regard to Burning Mountain Festival and it appeared all issues had been addressed and the festival should run smoothly. She also had the commendation resolutions on letterhead for Mayor Breslin to sign, and last she said she hoped to have the littering ordinance and a special events ordinance on the next council agenda.

Mayor Breslin said he had attended the redistricting hearing the previous week. He had also spoken with Mike Blair who with Don Ensign, inventoried all of Glenwood Springs' land, and presented to them a plan to make their land profitable. Mayor Breslin said he would like to speak with Mike Blair and Councilor Stuckey to do the same for New Castle.

Town Administrator – not present

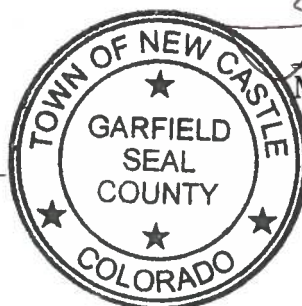
Town Planner – not present

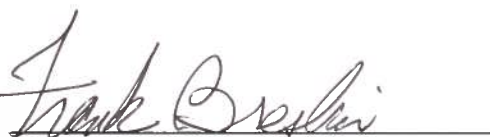
MOTION: Councilor Leland made a motion to adjourn. Mayor Breslin seconded the motion and it passed unanimously.

Adjourn, 9:50 p.m.

Respectfully Submitted,


Town Clerk Melody Harrison




Mayor Frank Breslin