

New Castle Town Council Meeting
Tuesday, September 20, 2011, 7:00 p.m., Town Hall

Call to Order

Mayor Breslin called the meeting to order at 7:06 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 Planner Tim Cain, Consultant Engineer Jeff Simonson, Town Clerk Melody Harrison and Town Administrator Andy Barton.

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 Bunn excused herself from the Robert Bunn discussion, as she was the property owner.

Agenda Changes

There were no agenda changes.

Citizen Comments on Items NOT on Agenda

There were no citizen comments.

Consultant Reports

- Consultant Attorney – not present
- Consultant Planner – present for agenda items
- Consultant Engineer – present for agenda items

Action Items

Items for Consideration

Consider reducing Letter of Credit for Alder Ridge

Town Planner Tim Cain told council that the letter of credit was for landscaping, and that in his estimation, the landscaping was approximately fifty percent complete. Both Planner Cain and Engineer Jeff Simonson felt the requested reduction of the letter of credit was appropriate. Planner Cain said that there was a third amendment to the SIA, to extend the agreement until October 2012, and that there would be either an extension of the existing LOC, or that a new letter of credit would be issued by the bank.

The council asked if \$10,000.00 would be sufficient, and when the final review of the improvements would be done. Planner Cain said the amount was adequate, and the final review would be completed in a year.

MOTION: Councilor Bunn made a motion to approve the 3rd Amendment to the Subdivision Improvement Agreement for Alder Ridge. Councilor Leland seconded the motion.

Discussion: Councilor Russi asked if professional fees were paid out of the letter of credit. Planner Cain stated that professional fees would be billed, and not paid from the LOC. **The motion passed unanimously after a voice vote.**

Consider Approving Changes to Jerkunica Improvement Plan

The Council greeted Anthony Jerkunica and his engineer Chris Hale. Consultant Engineer Jeff Simonson told council that the new drawings reflected all the agreed-upon changes from the previous meeting. He reviewed the changes. Councilor Leland asked if CDOT had given their approval for the project, and Engineer Simonson said approval was pending, and that CDOT needed a traffic control plan, a schedule and contractor insurance.

Councilor Riddile asked for a timeline for completion and Engineer Simonson felt that completion by October 31, 2011 would be appropriate. Councilor Russi asked for clarification of the sidewalk plans. Councilor Bunn asked Mr. Jerkunica if he saw any problem completing the project by October 31, 2011. Mr. Jerkunica said it would be no problem provided the bids came back within his budget. After a brief discussion, the Council agreed that Mr. Jerkunica would be required to complete the project by October 31, 2011 without exception.

Councilor Russi, speaking to Mr. Jerkunica, made the following statement for the record:

"The agreement is that you will provide curb, gutter and sidewalk in front of all those units that have been in place since April 12, 2006, that's five and one-half years ago, and now you have five and one-half weeks to finish it up, and we're looking forward to it."

Councilor Leland asked Administrator Barton if the Town road budget had the \$8,400.00 to complete the work on D Street and Administrator Barton said they did.

Motion: Mayor Breslin made a motion to approve changes to the agreement for Lots 1 through 9 owned by Mr. Anthony Jerkunica. Work to be completed by October 31, 2011. Councilor Bunn seconded the motion and it passed unanimously.

Councilor Bunn left the Council Chamber.

Robert Bunn - Consider Request to Exempt Mattivi Motor Company from the Conditional Use Permit and Sign Code Requirements

Robert Bunn told council that he had circulated a petition which included the same information as his letter to council. He stated he had been successful in obtaining eighty-five signatures in support.

Mr. Bunn gave the petition to the Town Clerk.

Clerk Harrison directed council to the memo provided by the Town Attorney regarding the municipal code.

Councilor Russi noted for the record that included in the council packet was an e-mail document titled "Tab D" which was an e-mail from the Town Attorney David Smith regarding points in the Town zoning law, conditional use permit law and the ability of the town council to alter the municipal code, and spot zoning. Mayor Breslin read the e-mail aloud. Mayor Breslin asked why Mr. Bunn did not want to apply for the conditional use permit (CUP). Mr. Bunn stated that he felt his intended use in his family building was a use by right, not a special use. Mayor Breslin said that many years ago, everything was a use by right, but not now, and that the council did not have the ability to ignore their own code. He told Mr. Bunn that waiver of the CUP application fee was available to him. Mr. Bunn asked for clarification of Attorney Smith's statements regarding use by rights. Councilor Leland stated that the zone district listed several uses by right, and several conditional uses. Attorney Smith's statement meant the council could amend the code to move automotive repair from the conditional use list to the use by right list, but that it was a complicated process. He noted that point 5 in Attorney Smith's e-mail said that there was not a way to avoid filing for a permit or asking the council to amend the town code. Mayor Breslin added that it would take some time, perhaps months, to amend the code, yet applying for a CUP would require one meeting.

Administrator Barton explained to Mr. Bunn the process to ask for the CUP fee waiver, and offered to meet with him to go over it more thoroughly.

Councilor Russi told Mr. Bunn he had asked about the history of conditional use permits, and was told that in the mid-1970's the state of Colorado adopted a statewide zoning code, as did the Town, and he believed the CUP came into existence at the same time. He stated that a CUP would actually work in Mr. Bunn's favor in that they were the grounds for leniency, allowing an otherwise unpermitted use. Councilor Russi acknowledged Mr. Bunn's business vision, stating that the council would like to do what they could to help him and that the CUP process was the method by which they could. He also stated that Mr. Bunn's request was called "spot zoning" where the council would change the code, for one person, on a whim. The democratic process provided constraints on council powers for this very reason. Councilor Leland noted that one of the reasons automotive repair business were not a use by right in the C-1 zone was because of the potential parking issues, which Mr. Bunn addressed in his letter to council. Councilor Leland said that the parking issue should be addressed in the CUP application and stated on the public record in a Planning & Zoning public hearing as part of the official conditions of approval. Council said that the process was not difficult, and suggested that Mr. Bunn speak with Mike Rieger, who recently received an approval on his CUP. Mr. Bunn stated that his reluctance was not in regard to difficulty, rather, his own stubbornness and that he simply did not agree that an automotive repair business should require a conditional use permit. Mayor Breslin said that the democratic process provided an opportunity for the public to comment or voice support or concerns about the application, and eliminating that opportunity would be a problem.

Engineer Simonson said that changing the code to make automotive repair a use by right would give everyone the right and provide more competition, whereas a CUP gave only Mr. Bunn the right.

Council thanked Mr. Bunn for speaking with them.

Councilor Bunn returned to the Council Chamber

Christy Hamrick - Discussion Regarding School Mill Levy Override

Christy Hamrick, the Finance Director for Garfield RE-2 School District. Ms. Hamrick gave

the council an updated letter that had additional signatures of supporters on it. Ms. Hamrick said the District would be going to the voters in November on a new mill levy. She said they district had to cut 3 million dollars from their budget, and further required cuts would begin to impact kids and communities. After considering the economic times, holding community forums and surveys, the district decided to move forward with the proposed mill levy. The mill levy would cost the taxpayer an additional \$17.00 per \$100,000.00 in property value, totaling approximately 3 million dollars overall. She noted that all the neighboring school districts were putting mill levies on the ballots, and fortunately the mill rate on the RE-2 general fund was quite low at 4.7 percent. Councilor Leland asked if the district had to draw on reserves, and Ms Hamrick said they did, but they could only do it a few years and then it would no longer be sustainable. Councilor Leland stated there was a state ballot issue that would temporarily increase state taxes for education. If both ballot issues passed, he asked if the district would hold off imposing the mill levy. Ms. Hamrick said they would consider it. Mayor Breslin asked what the district's annual budget was and Ms. Hamrick said 35 million dollars, and that they would spend 37 million this year, creating a 2 million dollar deficit. Ms. Hamrick asked council to provide their endorsement for the mill levy. Mayor Breslin said that the council was prohibited by the constitution to endorse a ballot issue, but they could do it as individuals. Ms. Hamrick provided the council members with her e-mail address so they could send their personal endorsements if they wished. Councilor Bunn said that because she worked for the county, she could not endorse it at all. The council asked Ms. Hamrick to please invite her board to attend a Town Council meeting as the council would enjoy more contact with the local schools.

John Lavey - Sonoran Institute - Discussion on Garfield Legacy Project

Larry Dragon, with the Garfield Legacy Project, explained that the Garfield Legacy Project began two years prior as a citizens initiative for a county-wide, funded, voluntary open space, trails, recreation and agricultural land preservation program. He said many of the neighboring counties had such programs but Garfield County did not. They were considering putting it on the ballot as an initiative next year. Mr. Dragon said they were before council to ask for their support and involvement, particularly with a project called the "Green Printing Project." Mr. Dragon introduced Mr. John Lavey of the Sonoran Institute.

Mr. Lavey said he was helping the Garfield Legacy Project (GLP) build its capacity towards its goal of creating an open space and trails program. He said that GLP identified and was awarded grant funds from Great Outdoors Colorado which would be used to support the Green Printing Project. They also built partnerships with the County, Aspen Valley Land Trust, the Trust for Public Lands and the Sonoran Institute to pool funds and resources in order to execute the project. The project is intended to be a community visioning, collaboration process around the question of "If there was funding specific to preservation of open lands, which types of places would the GLC like to see conserved?" All involvement would be voluntary and it would not be used as a regulatory tool. They would like to engage the citizens to draw out their open lands values, and then prioritize those values.

Mr. Lavey stated that the GLP was beginning to organize a steering committee, and asked if a council member and a staff member would like to participate on the committee. He said there would be only four, two-hour meetings in the next nine months. Garfield County did not have a citizen's initiative for open space and trails. Councilor Russi thanked them for coming, and asked if they would review comprehensive

plans as part of their project. Mr. Lavey said they would, and had reviewed New Castle's Comp plan as well as the master trails plan, saying that New Castle had done more than many other municipalities. GLP would use the existing municipal open space plans and fill in where plans did not exist, such as unincorporated areas. Mayor Breslin asked if GLP would facilitate conservation easements, and Mr. Lavey said they did not know yet if conservation easements or fee simple ownerships were more appropriate for Garfield County, and that they were still developing the ballot initiative. He also said that GLP was not interested in being a regulatory group. Mr. Lavey asked again if anyone would like to volunteer to be part of the steering committee. Mayor Breslin agreed to be the New Castle contact.

Tom Baker - Consider approving Mayor to Sign the Garfield Clean Energy 2012 IGA

Tom Baker of Garfield Clean Energy (GCE) greeted the council. He began by saying that GCE had broken up the discussions with each partner into two steps. The first step determines if they can maintain the partnership through the 2012 IGA. The second step will ask that the partners consider GCE's funding targets as part of their budget discussions and arrive at an amount the town felt was appropriate. Mr. Baker offered to come back during budget discussions if the council wished. He said they had met with a number of other municipalities as well as the library and RFTA. He explained several items in the IGA, and asked council for their input.

Mayor Breslin asked if GCE had any discussion regarding the life cycle of clean energy devices, and whether GCE would make a statement supporting human rights in impoverished countries where rare earth metals were mined. Mr. Baker said it had not been brought to the board's attention, but the overall tenor of the board supported a sustainable future. He felt they could make a statement regarding rare earth metals and agreed to bring that back to his board.

Regarding the life cycle of clean energy devices, he said that he understood that the inverters in solar panels were the weak link, but that the panels had a 30 to 40 year life expectancy.

Councilor Leland asked how much New Castle had contributed to GCE in 2011, and Councilor Russi said \$4,000.00. Councilor Metzger asked if the council signed the IGA, if they were bound to the \$15,000.00 funding target and Mr. Baker said no, that the council could make a different funding decision for the Town.

Motion: Councilor Leland made a motion to approve the Mayor signing the 2012 Intergovernmental Agreement, Establishing an Authority called Garfield Clean Energy Collaborative. Mayor Breslin seconded the motion and it passed unanimously.

Ordinance TC-2011-7 - Littering fines (first reading)

The council reviewed the proposed littering ordinance. Councilor Leland noted that the fee portion was blank. Clerk Harrison said she had done research on the fines established by other municipalities in Garfield County which ranged from \$15.00 to \$25.00, except for the Town of Silt, where fines were "up to" \$500.00, and she asked council to provide the fine amounts they desired. Councilor Russi felt that cigarette butts were a serious problem, not only because they look bad, but also because they can start fires such as the one on Jolley Mesa. He asked Police Chief Chris Sadler how likely it

would be that the officers would actually cite someone for throwing a cigarette butt onto the street. Chief Sadler said he had stopped vehicles for it, but had never actually seen someone cited for tossing a butt while walking on the street. Councilor Metzger asked if garage sale signs left beyond the date of the sale would be considered litter. The council discussed the problem of those signs. Planner Cain said the sign code prohibited garage sale signs in the public right of way. The council also discussed how to alter the ordinance language to include tobacco products in the definitions and to increase the amount of the fines. Planner Cain asked if fines could be dedicated to a particular fund to perhaps pay for the littering signs. The council thought they could be specified to a particular fund. Councilor Metzger asked if the littering code or fines could be applied to Rosie Ferrin's property. Councilor Leland said the code made affirmative defense provision to property owners, so the fines would not apply to Ms. Ferrin's property.

MOTION: Councilor Leland made a motion to approve on first reading Ordinance TC-2011-7, an Ordinance of the New Castle Town Council Amending the Municipal Code Concerning Littering on Public and Private Property, with the following changes: in the fifth "whereas" statement insert "fire prevention" after the word degradation; in the sixth "whereas" statement insert "wildfires" after the word degradation; change wording in section 9.40.040(E) to say "... punishable upon conviction by a fine of no less than \$25.00 and up to \$500.00"; and adding to section 9.40.040 (C) the words "cigarette and cigar butts" after the word debris. Councilor Russi seconded the motion and it passed on a roll call vote: Councilor Riddile: yes; Councilor Metzger: yes; Councilor Bunn: yes; Councilor Stuckey: yes; Councilor Russi: yes; Councilor Leland: yes; and Mayor Breslin: yes.

Consider Extending Conditional Use Permit (CUP) application fee waiver in the amount of \$250.00 until October 2012

Administrator Barton explained that this was an extension of the existing policy. Staff would like it extended until October 2012.

MOTION: Councilor Riddile made a motion to extend the Conditional Use Permit Fee Waiver an additional year, until October 2012. Councilor Stuckey seconded the motion and it passed unanimously.

Consent Agenda

- Minutes of the April 19, 2011 council meeting
- Minutes of the September 6, 2011 council meeting
- Resolution TC-2011-13 - recognizing Mike Miller

MOTION: Mayor Breslin made a motion to approve the consent agenda, removing the minutes of April 19 for corrections. Councilor Metzger seconded the motion and it passed unanimously.

Mayor Breslin asked why such an old set of minutes was on the agenda. Clerk Harrison said that they somehow vanished from existence and she had had to recreate them from the audio recording only.

Mayor Breslin offered corrections to the minutes.

MOTION: Mayor Breslin made a motion to approve the minutes of April 19, 2011 with corrections. Councilor Bunn seconded the motion and it passed unanimously.

Council Comments

Mayor Breslin said he would be taking a tour of weeds, visiting several places where invasive species were. They would learn what it cost, and how to manage and eradicate invasive species.

Mayor Breslin asked that staff look into mold mitigation for the museum. Clerk Harrison stated she had looked into mold inspections for a citizen the prior week, and told the council that the EPA had an Indoor Air Quality Division that could be contacted for more information.

Mayor Breslin also noted there was not a current committee rotation schedule.

Regarding Town Park sprinklers, he asked if the Town could water at night or during regular watering hours like every one else. Councilor Bunn said the sprinklers run every night in Burning Mountain Park. Staff agreed to address the watering issues.

Mayor Breslin said he attended the annual CDOT meeting along with Tom Jankovsky, John Martin, John Wenzel and Andy Barton. They agreed to each take a turn attending the Regional Transportation meetings, and they would encourage them to recognize the dangers of the overpass bridges. The council felt Engineer Simonson could present his bridge designs. Councilor Russi felt a funding plan needed to be in place.

Mayor Breslin mentioned the proposed bus shelter Eagle Scout Project, and asked if the council would like it built at the 6th Street ROW.

Councilor Bunn said there was tagging on the bus schedule in the downtown bus shelter and asked that it be removed.

Councilor Stuckey mentioned that recently he had noticed more and more ATVs and dirt bikes driving on the streets in Lakota Canyon, mostly on the weekends, and asked if that could be looked into.

Councilor Metzger asked that Chief Sadler provide the council with his wish list on a new facility.

Councilor Leland said he would like to see a report from the Chamber regarding Burning Mountain Festival. Clerk Harrison said the chamber had asked for a wrap-up meeting with the Town and she would get back with them on it.

Councilor Russi said he had been contacted by Representative Roger Wilson's wife, thanking him and Mayor Breslin for testifying at the redistricting hearing. It looked as though New Castle had been included in district 61 along with Glenwood Springs.

Councilor Bunn said she had information that Mr. Briston Peterson, owner of Elk Creek Campground, had provided the BOCC with some misinformation regarding the Town's use of the bridge. Mayor Breslin asked if the council would like to meet with the BOCC to get updated on Elk Creek Campground, Economic Development and East Elk Creek Road. They agreed that October 11 at 6:00 p.m. would be good if it worked for the BOCC.

Mayor Breslin said he had spoke with Administrator Barton about delaying the special meeting scheduled for September 27th. Administrator Barton told council that he and Finance Director Lyle Layton had not reviewed the entire 2012 budget, and they would be in a better position to inform council if they had more time. He suggested that it wait until the October 4th meeting when the preliminary budget would be on the agenda. Councilor Russi said one of the reasons he proposed a special meeting was that expenditure of the mineral severance money should come from council. Administrator Barton assured him that was the case.

MOTION: Councilor Leland made a motion to cancel the special meeting

scheduled for September 27, 2011. Councilor Riddile seconded the motion and it passed unanimously.

Staff Reports

Public Works Director – not present

Town Clerk – Clerk Harrison reviewed for council her items on the council pending business list, providing a status for every item.

Town Administrator – Administrator Barton reviewed for council his items on the council pending business list, providing a status for every item. Additionally, he told council that a recreation director had been hired. Larry McDonald will start on October 31, 2011. Administrator Barton agreed to bring Mr. McDonald to a council meeting soon after his start date to meet them. There will be a Colorado Municipal League meeting, October 3, 4:00 p.m. at the Meeker Hotel in Meeker. The topic will be the upcoming legislative session, and he asked that anyone interested in going should let him know soon. He said that an RFP for prosecutorial services had gone out the week before, and would close in Mid-October.

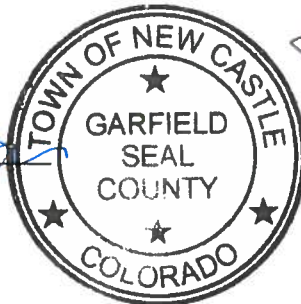
Town Planner- - not present

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

Adjourn, 10:00 p.m.

Respectfully Submitted,


Town Clerk Melody Harrison




Mayor Frank Breslin