

Minutes
Town Board Regular Meeting
Town of Paonia, Colorado
April 26, 2016

RECORD OF PROCEEDINGS

The Regular Meeting of the Town Board of Trustees held Tuesday, April 26, 2016 was called to order at 7:00 PM by Mayor Pro-Tem Charles Stewart, followed by the Pledge of Allegiance.

Trustees present were as follows:

Mayor Pro-Tem Charles Stewart
Trustee David Bradford
Trustee Eric Goold
Trustee Ross King
Trustee Amber Kleinman
Trustee Suzanne Watson

Mayor Neal Schwieterman was absent.

Town Staff present were as follows:

Town Manager/Town Clerk Jane Berry
Finance Office Cindy Jones
Sergeant Neil Ferguson
Public Works Director Travis Loberg

A quorum was present and Mayor Pro-Tem Stewart proceeded with the meeting.

Approval of Agenda

Motion by Trustee King, Supported by Trustee Goold to approve the agenda as presented. Motion carried with five (5) ayes and zero (0) nays.

Announcements

Mayor Pro-Tem Stewart made a statement concerning the preparation and posting of Town Board Meeting agendas. The Town Board Meeting agenda will be developed on Wednesdays and posted on the Friday before the regular meetings of the Town Board. Those requesting to be considered on the agenda must complete the request form which is available at Town Hall or contact either Charles Stewart or Town Manager Jane Berry by no later than the Wednesday before the regular meeting.

Mayor Schwieterman is unable to attend tonight's Town Board meeting due to a family matter. Special recognition of Mayor Schwieterman's contributions to the community will be honored at the May 10, 2016 Town Board Meeting beginning at 7:00 PM.

Mayor Pro-Tem Stewart instructed the audience that visitors addressing the Town Board will be limited to five (5) minutes and this rule will be enforced. Those wishing to address the Town Board on a matter requiring more than five minutes, should contact Town Manager Jane Berry at least by the Wednesday before a regular meeting, as the issue may need to be considered as an agenda item.

Visitors

Citizens David Weber, Celia Roberts, Dave Duncan, and Dave Knutson addressed the Town Board on various issues including the appointment to the vacant Town Trustee position, expressing appreciation to the outgoing Town Board Trustees for their service, and a recognition of Mayor Neal Schwieterman's legacy to the Town of Paonia.

Mayor Pro-Tem Charles Stewart commented regarding the statutory requirements regarding the position of Mayor Pro-Tem; Town Officers must be appointed within thirty (30) days of the newly elected Town Board assuming their offices and this will be a priority issue for the Town given the requirement of the shorter consideration period for these appointments; Stewart indicated the issue of the appointment to what will become the vacant Town Board Trustee position will be discussed at the Board meeting on May 10, 2016; the Town Board has sixty (60) days to make an appointment to the Trustee position vacancy which allows for consideration at the next three Town Board Meetings to be held beginning on May 10, 2016, May 24, 2016, and June 14, 2016.

Trustee Bradford commented on the research he has compiled regarding prior Town Board appointments over the past 26 years since 1990 stating that eighteen times Town Boards have appointed persons to vacant Trustee positions and there is no statutory reason to use election results as the basis of such appointments.

Mayor Pro-Tem Stewart also indicated to all present there is a new rule in effect which is anyone wishing to speak must first be recognized by the Chair (Mayor) of the meeting before speaking.

Trustee Goold spoke to several issues including responding to remarks from visitors who had addressed the Town Board.

Unfinished Business

Consideration to Approve Ed Marston Landscaping Project

Carried over from the April 12, 2016 Town Board Meeting is the consideration to approve a Landscaping Project for Ed Marston who is the adjacent property owner to the Town's right-of-way located along Third Street just west of Grand Avenue. Mr. Marston had provided the Town with a sketch for the landscaping plan to be considered for approval by the Town Board. A brief discussion of the project and the landscape plan provided ensued as well as a discussion indicating the lack of Town ordinances regarding this specific issue.

Motion by Trustee Bradford, Supported by Trustee Goold to approve the landscape project along Third Street west of Grand Avenue in the Town's right-of-way as presented by Ed Marston. Motion carried with five (5) ayes and zero (0) nays.

Consideration of Proposed Sidewalk Program Options

Town Board Trustee David Bradford and the Public Works Committee requested this item be placed on this meeting's agenda from the March 8, 2016 Town Board Meeting for consideration of Proposed Sidewalk Program Options. Trustee Bradford inquired of Trustees if there were any questions before proceeding with presenting once again the proposal options. Option 5 is the current Town ordinance but each of the proposal options are based on current ordinances in place. Bradford further expressed that implementing sidewalk plans is hindered by trees causing problems but planning efforts for 2016 are for areas not impacted by trees.

Trustee Watson referred to the Town's Community Forestry Survey that provides details of trees in Town by location.

Trustee Stewart questioned Option 9 to go acquire easements to go around trees in some cases would be an expensive proposal. Trustee Bradford stated there have been nine sidewalk ordinances since 1903 he reviewed in his research of this issue. Of the ordinances requiring property owners to construct sidewalks, less than 50% have been built, with 50% receiving variances not to be constructed. The \$3.00 per month assessment approved by voters in 2013 is not generating enough revenue to address all of the sidewalk projects and those that need construction and or replacement.

A discussion of the 2013 ballot issue approving the sidewalk assessment was led by Trustee Bradford stating the monies generated from this fund can be utilized for both construction of new sidewalks as well as repair/replacement of sidewalks.

Trustees also discussed several other issues concerning sidewalks including sidewalk construction and concrete specifications, re-establishment of the Tree Board to address some of these issues,

the Town's current self-funded grant program that reimburses property owners who replace their own sidewalks for up to \$500.00 (50/50) toward the concrete costs, and the Pathways Report.

Motion by Trustee King, Supported by Trustee Goold to adopt Proposal Option 5. Motion by Trustee Kleinman, Supported by Trustee Goold, to amend the original motion to also include Proposal Options 8 and 9. After a discussion the amendment to the main Motion carried with five (5) ayes and zero (0) nays. The maker and supporter of the main Motion agreed to add the language to the amended main motion to direct the Town Attorney with assistance of the Town Staff to draft an ordinance incorporating Proposal Options 5, 8, and 9 regarding sidewalks and trees. Motion by Trustee Watson to amend the amended main Motion to also include Proposal Option 4. The motion failed due to lack of support. The issue was brought to a vote and the amended main Motion carried with five (5) ayes and zero (0) nays.

Trustee Bradford presented a proposal for a 2016 Sidewalks Program: 1) Repair sidewalks and curbing on Grand Avenue from 1st to 3rd Streets; 2) Construct sidewalk along Fourth Street from North Fork traveling east emphasizing "Safe Routes to Schools", and 3) Construct a sidewalk along Fourth Street in Town Park from North Fork to the opposite Teen Center driveway.

\$30,000.00 from the Sidewalk Fund would be used for the sidewalk and curb construction and repair projects along Grand Avenue and Fourth Street/Safe Routes projects with \$5,000.00 from the Sales Tax Capital Improvement Fund being used to construct the sidewalk at Town Park along Fourth Street.

Motion by Trustee Bradford, Supported by Trustee King to proceed with the 2016 Sidewalk Program and to direct Town Staff to develop specifications and put out to bid these projects with the limitation of funding as described being \$30,000.00 from the Sidewalk Fund and \$5,000.00 from the Sales Tax Capital Improvement Fund. Motion carried with five (5) ayes and zero (0) nays.

Minutes

Motion by Trustee King, Supported by Trustee Kleinman to approve the Town Board Regular Meeting Minutes as amended for April 12, 2016. Motion carried with five (5) ayes and zero (0) nays.

Disbursements

Motion by Trustee King, Supported by Trustee Bradford to authorize the disbursements as reviewed by the Finance Committee with the Town's Finance Officer. Motion carried with five (5) ayes and zero (0) nays.

Trustee King commended the Town's Finance Officer Cindy Jones for an outstanding job; Letters of Credit have been paid-off and the Town is in good financial condition, and thanked the Town Staff for their work with him and for the Town.

Committee Reports

1. **Finance and Personnel**: Trustee King reiterated the Town is in good financial condition due to the Town Board, Staff, and advisors. The 2015 Audit is currently being conducted and is going well.
2. **Public Works**: A meeting was held with the former members of the Hawks Haven, LLC. The Town is waiting for responses from these members. The Town's 2016 CCR Drinking Water Quality Report has been mailed and is available to the Town's water customers. The CCR included the last required Tier 2 Notice at the end of the report.
3. **Governmental Affairs**: No report.
4. **Services and Recreation**: No report.
5. **Facilities & Development**: No report.
6. **Public Safety**: Trustee Goold paid special recognition to the Paonia Police Department and its Police Officers stating support for these Town Employees.

Trustee King requested a point of special privilege to thank voters for their confidence that enabled him to represent them; thank-you to the Town Staff for their professionalism and

competency; thank-you to his fellow Trustees for all of their time, efforts, and personal sacrifices; extended congratulations to the new Trustees saying it will be a challenging experience and expressed his personal thanks for the past four years.

Trustee Kleinman also expressed thanks to “all those on the journey”; the front office staff who deserve kindness and gratitude; thank-you to Neal Schwieterman for being a peacemaker and a bridge builder; thank-you to Town Manager Jane Berry for her tireless efforts and professionalism under difficult circumstances; thank-you to Travis Loberg for his dedication and know-how for fixing the Town; thank-you to Neil Ferguson for stepping up and bettering the Paonia Police Department, and a thank-you to her fellow Town Board members expressing how they all love this Town.

Resignation of Charles Stewart as Town Trustee

Charles Stewart submitted a written resignation from his position as Town Trustee in order to assume the Office of Mayor (to which he was elected at the recent Town Municipal Election) effective at the close of Unfinished Business on April 26, 2016.

Administer Oath of Office to the Newly Elected Mayor

Town Clerk Jane Berry administered the Oath of Office to Mayor Elect Charles Stewart. Mayor Stewart was sworn into the Office of Mayor, signing as well the Oath of Office and immediately assumed his duties.

Administer the Oath of Office to the Newly Elected Town Board Trustees

Town Clerk Jane Berry administered the Oath of Office to Town Board Trustees: Trustee Elect William Bear, Trustee Elect William Brunner and Trustee Elect Karen Budinger. The Town Board Trustees were sworn into their respective offices, signing as well the Oaths of Office and immediately assumed their duties.

Presentation to Outgoing Town Board Trustees

Mayor Stewart presented to the outgoing Town Board Trustees, Trustee Eric Goold, Trustee Ross King, and Trustee Amber Kleinman “Certificates of Appreciation” for their service to the Town of Paonia. Former Mayor Schwieterman unable to be present at this meeting, will be presented with special recognition at the May 10, 2016 Town Board Meeting.

Mayor Stewart recessed the meeting briefly from 8:50 PM until 8:55 PM. The Town Board meeting was reconvened at 8:55 PM by Mayor Stewart.

Trustees present were as follows:

Mayor Charles Stewart
Trustee David Bradford
Trustee William Bear
Trustee William Brunner
Trustee Karen Budinger
Trustee Suzanne Watson

A quorum was present and Mayor Stewart proceeded with the continuance of the meeting.

New Business

Selection of Mayor Pro-Tem

Mayor Stewart indicated the statutory requirements, the experience considerations, and duties of the position of Mayor Pro-Tem.

Motion by Trustee Bear, Supported by Trustee Budinger to appoint Trustee David Bradford as the Mayor Pro-Tem. Motion carried with five (5) ayes and zero (0) nays.

Consideration to Approve the Hotel & Restaurant Liquor License Renewal Application for The Living Farm Café LLC dba The Living Farm Café

All fees have been received for the renewal application and there have been no issues since last year's license renewal. The Town Staff recommended renewal approval of this license but noted the required annual lease renewal has not yet been received by the Town.

Motion by Trustee Budinger, Supported by Trustee Bradford to approve the Hotel & Restaurant Liquor License Renewal Application for The Living Farm Café LLC dba The Living Farm Café contingent upon receiving within the next fourteen days a twelve (12) month lease renewal for their existing location. Motion carried with five (5) ayes and zero (0) nays.

Consideration to Approve the Liquor Store License Renewal Application for Paonia Liquors Inc. dba Paonia Liquors

All fees have been received for the renewal application and there have been no issues since last year's license renewal. The Town Staff recommended renewal approval of this license.

Motion by Trustee Bradford, Supported by Trustee Brunner to approve the Liquor Store License Renewal Application for Paonia Liquors Inc. dba Paonia Liquors. Motion carried with five (5) ayes and zero (0) nays.

Consideration to Approve the Liquor Store License Renewal Application for One Thirty-Three LLC dba West Elk Wine and Spirits

All fees have been received for the renewal application and there have been no issues since last year's license renewal. The Town Staff recommended renewal approval of this license.

Motion by Trustee Brunner, Supported by Trustee Bear to approve the Liquor Store License Renewal Application for One Thirty-Three LLC dba West Elk Wine and Spirits. Motion carried with five (5) ayes and zero (0) nays.

Consideration to Amend Town Code Section 2-3-10

Mayor Stewart provided an explanation of this agenda item stating:

1. Statutory obligation for appointments within thirty (30) days or by May 26, 2016 for the positions of Town Clerk, Town Treasurer, Town Attorney, and the Municipal Judge (there will be 2 regular meetings to address);
2. A Town ordinance and the Town Code state an appointment provision for other Town Officers of the Town Administrator, Chief of Police, and the Public Works Director;
3. Appointed Town Officers stated in Town Code Section 2-3-10 cannot be removed from office without a hearing and a charge in writing;
4. The Town of Paonia should not have more appointments than statutory requirements which is four positions versus the seven stated in Code Section 2-3-10;
5. This Town Code section gives employees more protection and explained the requirements of the removal process once again being the written charge and hearing which is a cumbersome process with the Town Board having no flexibility;
6. There are issues with the Town's current Code specifically sections in the Code where the underlying ordinance cannot be found, there is no specific ordinance;
7. There are legal questions which Town Attorney David Marek is currently reviewing;
8. There are questions concerning adoption of the Code without ordinances, and
9. Town Attorney is also reviewing for what is valid and enforceable in the Code.

Recommendation by Mayor Stewart to the Town Board for an amending ordinance to only reflect the four (4) statutory appointments in Town Code Section 2-3-10.

Discussion by Town Board Trustees ensued with several questions being addressed including:

Trustee Watson stating this is difficult to be put on the spot with only 30 days to review, Trustee Budinger questioned the hiring process and how this section point does not fit; Mayor Stewart responded explaining hiring versus appointed, there are contracts which would prevail, and ordinances to appoint also remove control; Trustee Brunner questioned the redundancy with

Mayor Stewart responding the Code should mirror state statutes so understanding of the statute is required; Trustee Brunner inquired if repealing the ordinance is the correct process; Mayor Stewart responded stating deleting the three officers in this section of the Code not required by state statute is the recommendation; Trustee Brunner asked if a Trustee can also serve as the Town Treasurer with a response indicating yes; Trustee Bradford indicated the large costs associated with conducting a hearing and its cumbersome involved process and Trustee Watson inquired if this would be accomplished as an emergency ordinance with Mayor Stewart stating “yes” which as an emergency ordinance would require a ¾ vote of the Town Board for adoption and again there is only 30 days to address this issue.

Motion by Trustee Brunner, Supported by Trustee Budinger to strike in the Town of Paonia Municipal Code Section 2-3-10 numbers (1) Town Administrator, (6) Chief of Police, and (7) Director of Public Works and to direct the Town Attorney and Staff to draft an emergency ordinance repealing any prior codes inconsistent with the same amending Section 2-3-10 from seven (7) to four (4) position appointments with a provision enacting the same as an emergency ordinance. Motion carried with five (5) ayes and zero (0) nays.

Regular Business

Mayor’s Report: Mayor Charles Stewart reported:

1. Delta County Municipal Quarterly will be hosted this Friday, April 29th by the Town of Paonia here at Town Hall from 9:00 AM until approximately 3:00 PM. The Municipal Quarterly is a meeting of Delta County, City, Town, Schools, and Hospital officials discussing a variety of issues facing the County. On this agenda is a report from the West Elk Mine as well as an update on the Broadband projects.
2. Distributed a worksheet to Town Board members to indicate their preferences for serving on Town Board Standing Committees. Select choices in order of preference and return to Town Manager Jane Berry.

Trustee Brunner questioned the state statutes and can these appointments be interim appointments with the response of no indicated. Mayor Stewart also indicated the need for the appointments within 30 days as the duties of the positions are a necessity.

Motion by Trustee Brunner to advertise for the Town Attorney position. Motion failed for lack of support with Mayor Stewart stating this is not the proper time and process as the issue is not on this meeting agenda and will be on the next meeting agenda.

Trustee Watson inquired if CIRSA, Tami Tanoue would be coming out for a Town Board meeting with Town Manager Jane Berry indicating this is not currently being planned however; materials and a video on Public Official Liability will be presented during the New Board Member Orientation. At a future time a request could be made for Tami Tanoue to meet with the Town Board.

Town Manager Report: Town Manager Jane Berry reported:

1. Town Board Orientation is in the planning and currently will cover numerous issues over several meetings of at least 12-15 hours of training, tours, and executive sessions.
2. New Town Employees Kirk Morgan and David Coleman are doing great and introduced Kirk Morgan who was in attendance.
3. Developing the 2016 Town of Paonia Contact List and would like to know Town Board preferences for contact information as well as what they would like to be made public. We will also be assigning new Town email addresses for new Trustees. Reminder of Trustee mailboxes located at Town Hall in the Town Manager’s Office.
4. Explained the status of planned and under design and engineering phase the 2016 Water Distribution Projects and the requirement just learned for environmental assessment issues to be addressed before being allowed to proceed by CDPHE. CWRPDA also confirmed this week in the same telephone conference call as the environmental assessment issues that the Town will have all of 2016 and into 2017 to expend the loan funds from the Colorado Water Resources Power Development Authority.
5. The Town received a thank-you note from the 2016 Senior Class of PHS.
6. We have been working with the Thliveris Family on an annexation petition which we believe

will be presented within the next few weeks. An extension of the Town's water mains will be required to serve the Berg Harvest building and property owned by the Thliveris Family and we are in the process of obtaining quotes and developing this project. The Town plans to pay for this project from the tap fees required for water and sewer connections.

7. Town Clean-Up Week will be May 16 – May 20, 2016. 2 dumpsters are planned to be placed at Town Park, one for yard waste and one for trash.
8. 2015 Audit is proceeding well. A Federal Single Audit will be required as the Town received approximately \$1.02 million federal dollars with the threshold for a single audit being the receipt of \$750,000 in federal monies in a single fiscal year. Town Manager Jane Berry also indicated to the Town Board that she executed the 2015 Audit Letter of Engagement with RubinBrown LLP contingent with the notation that any audit services costs in excess of \$28,000 (the awarded contract amount for each of the three fiscal year periods) must receive prior approval by the Town Board.
9. Noted the 2016 CCR Water Quality Report has been distributed to all Town Water System customers.

Trustee Brunner questioned if the Town Board can hold an executive session to discuss appointments with the response by Mayor Stewart indicating yes, this is a real possibility. Trustee Brunner also inquired as to the cost of an environmental assessment with Town Manager Jane Berry indicating it could be as much as \$20,000.00.

Public Works Department Report: Public Works Director Travis Loberg reported:

1. Water meters are now being read again from having been estimated the six months of winter.
2. The fire hydrant has been replaced on 2nd Street and a rock barrier will be installed to prevent future issues with vehicles backing into the hydrant.
3. The Upper Water Treatment Plant is working nicely and very pleased with the upgrades.
4. The Lower Water Treatment Plant after being offline for 18 months has a few minor issues that we are working through before it is functioning properly.
5. The crew has been busy with street patching and water leak repairs these past few weeks.

Trustee Watson commented about water pressure measurement referring to a method used by the Town in the past. Public Works Director Loberg was not familiar with the practice but stated the pressure in the water mains is controlled through valves (PRV's) in the vaults of the system.

Police Department Report: Sergeant Neil Ferguson reported:

1. The Police Department has been leading the effort with Code Enforcement. The timing for the Town's Clean-Up Week is positive to assist these efforts. Junk vehicles, appliances, weeds and grass are being enforced.
2. April 30th will be the "Drug Take Back" program initiated by the DEA here at Town Hall.
3. The Police Department Incident Table ("Blotter") had been distributed to the Town Board for the period covering 4/1/16-4/15/16. There were no questions.

Adjournment

The meeting was adjourned by Mayor Charles Stewart at 10:17 PM

Jane A. Berry, Town Manager/Town Clerk

Charles Stewart, Mayor