

Town Council Regular Meeting
Town of Paonia, Colorado
September 10, 2013

RECORD OF PROCEEDINGS

The Regular Meeting of the Town Council held Tuesday, September 10, 2013 was called to order at 7:00 p.m. with the Pledge of Allegiance. Those present were Mayor Neal Schwieterman, Trustees Brian Ayers, Eric Goold, Ross King, and Larry Wissbeck; Chief Scott Leon; Public Works Director Travis Loberg; Finance Officer Cindy Jones; Attorney James Briscoe; Deputy Clerk Corinne Ferguson; and Town Clerk Barbara Peterson. Trustee Amber Kleinman was absent.

Mayor Schwieterman determined a quorum was present and proceeded with the meeting.

Approval of Agenda

Trustee King moved to approve the agenda as presented. Trustee Wissbeck seconded and the motion passed unanimously.

Paonia High School Update

William Austin, co-president of the Paonia High School Student Council, reported Paonia performed better than the state average in math and reading on Transitional Colorado Assessment Program (TCAP) standardized tests. Paonia beat Grand Valley in both volleyball and football. Students are keeping the Gates family and the other two (2) Cedaredge families in their thoughts and prayers. The Paonia student body all wore blue in solidarity of the tragic death of Reid Gates. Mayor Schwieterman noted the elementary and middle school students also scored excellently on the TCAP exams.

Announcements

- Mayor Schwieterman announced that staff has been working on funding requests for the state mandated upgrade to the upper system (also known as the two-million gallon) water treatment project. This is a 5.4 million dollar project. To date, the town has been awarded grant funds in the amount of \$35,000 from the Gunnison Basin Roundtable, and one-million dollars (\$1,000,000) from the Department of Local Affairs (DOLA). Today, the Town received notification of principle forgiveness in the amount of \$847,920 and a guaranteed loan in the amount of \$4,200,000 from the Colorado Water Resources and Power Development Authority. This is great news as the Town was anticipating \$750,000 in principle forgiveness and the amount received is more than expected. Grant funds requested from the Colorado Water Conservation Board are still under review for later this month. The Town is still going to have to raise water rates, but with these awards, hopefully not as much. Thanks to staff for working really hard on these applications as it is showing in the awards being received.

Visitors

Nina DenBeste thanked those people who made it possible for the new tennis courts. Mayor Schwieterman noted those funds were made possible by the North Fork Pool, Park and Recreation District and to look forward to the new exercise path. Apple Valley Park is looking really nice.

Unfinished Business

Ordinance 2013-02 – Recreational Marijuana Moratorium

Trustee Kleinman provided a draft proposal for the Town to pursue sidewalk repairs. Trustees Kleinman and King met to discuss how to uphold the sidewalk ordinance and provide safe sidewalks without enforcing the imposing of tax liens on the properties that were not in compliance. Trustee Kleinman reiterated that the Council understood that the letters sent out were not received well and that is why the Board chose to hold the notices in abeyance while other options were examined. Trustees Kleinman and King felt that the options were minimal and recommended trying another ballot measure in November 2013 to impose a fee attached to the utility bills adding a sunset clause for reexamination

and specifically ear-marking the fee for sidewalk repair and replacement. Trustees Kleinman and King would like to include measures to keep existing trees and plan for roots to minimize future damages to the sidewalks. Trustee King hoped that the residents recognized that they were heard by Council at the previous meeting but wants people to understand that if the sidewalk issue can't be resolved, then Council has no other option but to move forward with enforcing the ordinance as is. Trustee King moved to direct staff to prepare ballot language for the sidewalk fee structure. Trustee Kleinman seconded. Scott Morley asked if the grant to offset the cost of concrete offered by the Town would continue should the ballot measure pass. Trustee Kleinman said yes, the grant would continue. Yvonne Hamby suggested a hybrid option that allows for larger grants offered to the homeowners with the worst sidewalk conditions while Council continues to work with the community for a long-term strategy. Mayor Schwieterman explained that the reason for using the term pathways instead of sidewalks on the previous ballot was to open up grant possibilities that were not otherwise available. Trustee Wissbeck stated that Council is not permitted to advocate for the ballot measure, but with such a large group attending the meeting their enthusiasm continued in the community for the sidewalk fee could be helpful in getting the ballot measure passed. Mayor Schwieterman clarified that while Council could not spend money advocating for a specific ballot issues, there is no prohibition discussing the ballot measure. The motion was brought to a vote and passed unanimously.

Chesnik – Civil Action

Mayor Schwieterman reiterated that the last meeting approved the process to claim insurance monies, while tonight is to specifically address moving forward on civil action. According to auditor calculations, the former Finance Officer absconded with approximately \$610,000 of Town funds. As a result of that, the Town expended an additional \$88,000 in staff, accounting and legal fees. Ms. Chesnik was charged and convicted of felony theft and sentenced to four (4) years Department of Corrections, five (5) years parole, and ordered to pay the approximate \$393,000 in restitution. Attorney Briscoe contacted the District Attorney's (DA) office regarding the procedure for when a defendant is required to pay restitution. No specific amount per month, or per year is required. Once out of prison, amounts are determined based on financial statements. In addition, the Town's insurance carrier, Colorado Intergovernmental Risk Sharing Agency (CIRSA), has agreed to waive first right of restitution. In order to address the gap between the restitution amount and the amount actually taken along with costs expended for the case, the Town could file a civil suit. If the civil suit is not contested, the costs for the civil case could be approximately \$5,000. If the defendant contests the case, those costs would definitely be higher. While another judgment might be obtained, the question remains if that judgment would serve a purpose. The court would determine if the town expenses for the investigation could be recouped. Trustee King felt the only responsible action would be to file the suit. Attorney Briscoe also noted that if the claim were limited to the difference, then the courts would still collect the restitution. If the Town requests more than just the difference, then the Town would need to collect the restitution itself. Mayor Schwieterman also noted that most likely, the judgment would also have to be renewed every twenty (20) years, making logistics an issue for future staff. Bankruptcy will not discharge the criminal court restitution, but a civil judgment maybe discharged. Trustee Goold felt that Ms. Chesnik is being punished and does not wish to pursue civil action. Trustee Wissbeck concurred with Trustee Goold. Trustee Ayers believes in forgiveness, but also in accountability and is inclined to go after a civil action. Charles Stewart indicated that a civil judgment would obtain an accounting of how those funds were expended and take into consideration any new income received from an inheritance, lottery winnings, etcetera. The Town could file a complaint if the defendant chose to file bankruptcy at that time. Attorney Briscoe said that when speaking with the DA regarding restitution, the parole officer is required to investigate assets and look into hidden or transferred funds and that will affect how the repayment process will be treated. Viva Kellogg thinks the Town should do everything it can to pursue real estate and other assets to use as repayment. If the Town decides to pursue civil action, it is recommended that outside counsel be used, as Attorney Briscoe will be retiring at the end of the year. Trustee King moved to table this issue until a full complement of Council is present. Trustee Goold seconded and the motion passed unanimously.

New Business

Trustee - Appointment

Mayor Schwieterman noted letters of interest from Charles Stewart, Linda Long, Sarah Sauter, Loretha Rolf, Cally Gallegos, Susan Pogano and David Bradford. Mr. Stewart, Ms. Sauter, Ms. Long, Ms. Pogano and Mr. Bradford all spoke on why they would be good candidates for Council. Ms. Rolf and Ms. Gallegos were not present. After a series of ballot submissions by to narrow down candidates, Trustee King moved to appoint Sarah Sauter to serve the unexpired term until April 2014. Trustee Wissbeck seconded. Trustee Goold noted that all were good candidates and encouraged those not appointed to run in April. Motion was brought to a vote and passed unanimously. Clerk Peterson swore in Ms. Sauter, who then took her place on the Board.

Sol Margaritas – Liquor License Renewal

Felix Baron was not present. Sol Margaritas is requesting a renewal of the hotel and restaurant liquor license for the property located at 240 Grand Avenue. Chief Leon reported no issues. Trustee King moved to renew the liquor license as requested. Trustee Ayers seconded and the motion passed unanimously.

Chamber of Commerce – Special Event Liquor License Request

Amy DeLuca was not available. The Chamber of Commerce is requesting a special event liquor license for a concert to be held on September 27, 2013 at the Paradise Theatre located at 215 Grand Avenue for the times listed on the application. Trustee King moved to approve the special event liquor license request as presented. Trustee Ayers seconded. Trustee Goold mentioned that it would be nice if representatives were present when requesting these items. Motion was brought to a vote and passed unanimously.

Mountain Harvest Festival – Special Event Liquor License Request

Margot Richardson was present. The Mountain Harvest Festival is requesting a special event liquor license for plays/musical performances on October 10-13, 2013 at the Paradise Theatre located at 215 Grand Avenue for the times listed on the application. Trustee Wissbeck moved to approve the special event liquor license request as presented. Trustee King seconded and the motion passed unanimously.

Third Street Engineering - Award

The Streets Committee, Public Works Director Loberg and Clerk Peterson met on September 9, 2013 to open and review bids. Bids received are as follows: Buckhorn Geotech-\$79,155; Del Mont Construction-\$89,750; Farnsworth-\$61,600; High Country Engineering-\$118,200 and SGM-\$59,030. Trustee King moved to award SGM the Third Street engineering contract. Trustee Wissbeck seconded. Discussion regarding the disparity between the bids ensued. SGM was selected because it is thought they will be better prepared to serve the Town with less travel time and better support. Motion was brought to a vote and passed with an abstention from Trustee Sauter.

Twin Lakes Campground Engineering – Award

Trustee Kleinman, Public Works Director Loberg and Clerk Peterson met on September 9, 2013 to open and review bids. Bids received are as follows: Ciavonne-\$40,600; Farnsworth-\$86,040; High Country Engineering-\$32,000; Mesa Engineering-No Cost to Exceed, Hourly rates plus expenses; SGM-\$52,180. Trustee Goold had spoken with Trustee Kleinman regarding the bids, and indicated there will not be an award due to budget constraints. Clerk Peterson further clarified that after doing preliminary budget reviews; it is looking like the Town will not have funds to move forward on this project next year, thereby making the engineering unnecessary for this year. Discussion regarding public input and the former property owners ensued. Trustee Goold moved to make no award on the Twin Lakes Campground engineering. Trustee Ayers seconded. Motion was brought to a vote and passed unanimously.

Additional Business

Mayor's Report: Mayor Schwieterman reported ballot questions were submitted for the November election. Last week, a request came in to officially endorse the library mill levy initiative. This item to be on the next meeting agenda. The office will be short staffed the rest of the week with Clerk Peterson going to Golden and Deputy Clerk Ferguson will be in Utah for training. Please be patient with staff. The Creative Coalition districts met today in Paonia to discuss ideas how to utilize art and generate economic development.

Public Works: Director Loberg reported waiting for a survey for the culvert repair project at Main Avenue and Second Street. As soon as the survey is received, work may commence.

Police Report: Chief Leon submitted a written report. The emergency preparedness plan for the schools has been completed. Mayor Schwieterman reported that the elementary school has voiced appreciation of the department being there every day.

Finance Report: Trustee Wissbeck reported this year has used reserve funds and monies are being transferred carefully.

Parks Report: Trustee Goold had nothing to report.

Public Safety Report: Trustees Ayers had nothing to report.

Street Report: Trustee King had nothing to report.

Water/Sewer Report: Trustee King had nothing to report.

Personnel Report: Trustee Wissbeck reported being in the throes of a grant request for a new town manager. Process is moving slowly.

Minutes:

Corrections noted. Trustee Goold moved to accept the minutes for August 13, 2013 as amended.

Trustee Wissbeck seconded and the motion passed with an abstention from Trustee Sauter.

Corrections noted. Trustee Wissbeck moved to approve the minutes for August 27, 2013 as amended.

Trustee Ayers seconded and the motion passed with an abstention from Trustee Sauter.

Disbursements:

Trustee Wissbeck moved to pay the bills through September 10, 2013. Trustee Ayers seconded, and the motion passed with an abstention from Trustee Sauter.

Trustee King thanked Attorney Briscoe for many years of devotion to this community. Trustee Goold concurred also noting Attorney Briscoe's service is very appreciated.

8:45 p.m. Meeting adjourned.

Town Clerk, Barbara Peterson

Mayor, Neal Schwieterman