

Town Council Regular Meeting
Town of Paonia, Colorado
September 24, 2013

RECORD OF PROCEEDINGS

The Regular Meeting of the Town Council held Tuesday, September 24, 2013 was called to order at 7:03 p.m. with the Pledge of Allegiance. Those present were Mayor Pro-Tem Larry Wissbeck, Trustees Brian Ayers, Eric Goold, Ross King, and Sarah Sauter; Chief Scott Leon; Public Works Director Travis Loberg; Finance Officer Cindy Jones; Attorney James Briscoe; and Deputy Clerk Corinne Ferguson.

Mayor Pro-Tem Wissbeck determined a quorum was present and proceeded with the meeting.

Approval of Agenda

Trustee Goold moved to approve an amended agenda adding the Library request for endorsement for the mill levy increase. Trustee Kleinman seconded and the motion passed unanimously.

Paonia High School Update

Spencer Jackson, attending for Paonia High School Student Council, reported Paonia tested above the State and National average on the spring American College Testing (ACT). The high school added Advanced Placement (AP) and College courses to the high school curriculum this year. The volleyball team remains undefeated. Mr. Jackson requested anyone who would like to volunteer to come out to the high school September 28 and 29 for “demolition days,” to begin to clear land for the new sports facilities.

Announcements

Mayor Schwieterman and Town Clerk Barbara Peterson are absent because they both traveled to Telluride to meet with the Colorado Water Conservation Board (CWCB) to request additional funding for the water treatment plant upgrade. The grant and loan process has gone smoothly thus far. The Town requested \$350,000 in funding, but initial correspondence reflects a recommendation for \$7,000. Mayor Schwieterman and Clerk Peterson are hoping for reconsideration. Any funding received will help reduce the necessary water rates increase.

Visitors

Richard Schmidt attended the Friday morning staff meeting and asked whether it was appropriate, ethical or legal for a trustee to state the way they plan to vote on an agenda item prior to the open meeting. Mayor Pro-Tem Wissbeck stated that for some the meetings are a grey area and that one trustee giving an opinion is not a violation of the Sunshine Law. Attorney Briscoe said it is not a violation if there is not a vote.

Karen Fogg also questions the legality of Friday staff meetings. Ms. Fogg does not believe the meetings are work sessions and says a detailed agenda must be posted for the meeting to be legal. Ms. Fogg believes Mayor Schwieterman began inviting Trustees to the staff meetings after the retirement of John Norris because he was not confident in his own decision making. Trustee Goold stated that the meetings are staff meetings and that an agenda is posted showing items for the upcoming meeting, but that staff does not always have it completed by that time. Discussion ensued about proper positing and proper agendas. Attorney Briscoe reiterated that there is a law requiring an agenda for the council meetings, but whether an agenda is needed for Staff requires further investigation. Trustee King reassured that decisions are not being made ahead of time, nor attended a staff meeting where that occurred. Mayor Pro-Tem Wissbeck added that the meetings give him opportunity to be informed of issues. Ms. Fogg asked for follow-up from the Town Attorney.

Jim Black wanted the Town to be aware that the tennis courts are not in good shape. They are already peeling, has holes, and standing water near the net. Mr. Black questioned the responsibility of the contractor for their less than quality craftsmanship. Trustee Sarah Sauter asked if the concerns had

been shared with the North Fork Pool Park and Recreational District (NFPPR), because the Town contracts with them and the NFPPR is responsible for the tennis courts. Trustee King hopes the manufacturer gave a warranty and instructed staff to notify the NFPPR and advise the Council.

Unfinished Business

Chesnik – Civil Action

Trustee King moved for the Town Attorney to begin the civil action lawsuit against Kristin Chesnik. Trustee Ayers seconded. Discussion ensued on the cost and effort to the Town and attorney to pursue a case against Chesnik while she is incarcerated. Trustee Sauter is concerned with the likelihood of recovering the embezzled funds as well as the additional costs of staff and legal time. Trustee Goold added the lawsuit would be throwing good money after bad, and will saddle future trustees and the new Town attorney with problems created before them, just as the current Board of Trustees has been. Attorney Briscoe stated that the discovery portion of the civil suit will be the opportunity to look in to Ms. Chesnik's assets and get a clearer inventory of where the embezzled funds were used. The civil suit can include all legal, attorney's fees, and staff time expenses involved in the case. Upon winning the suit all assets may be pursued, including wages and the judgment can be renewed every twenty (20) years, essentially making the repayment to the Town a lifetime debt. Mayor Pro-Tem Wissbeck read a letter into the record from Doug and Linda long supporting the civil action. Further discussion on the overall support of a civil action within the community ensued. Charles Stewart added that the civil suit forces disclosure of where the funds were spent and that the townspeople have a right to know that. Susanne Watson was in agreement with Trustee Goold but had had a change of heart. The entire experience is proof of poor hiring practices in the past and that the Town has been settling for a lower standard and that the embezzlement is the cost for that mistake. The motion was brought to a vote and passed with Trustee Goold voting "nay".

Town attorney Briscoe requested with Trustee permission to contact other criminal attorneys since he will be retiring at the end of this year and also felt it foolish to begin the suit when unable to see it through completion. Permission granted. Attorney Briscoe will bring the information back to the Trustees.

New Business

Mannan - Roof Variance Request

Willow Mannan, Artistic Director of Elsewhere Studios was present requesting a roof variance for the project located at 107 Third Street. The roof will offer protection to the straw bale bench seating. Trustee Goold stated he attended the Planning and Zoning Commission (P&Z) where the variance request was sent with a unanimous recommendation to approve. Trustee Goold moved to approve the variance request as presented. Trustee King seconded and was skeptical of the project at the beginning, but has found the project to be very attractive, interesting, and artistic. Trustee Kleinman added that it is a nice change to a historically sketchy spot in Paonia. Trustee Ayers asked for clarification on what the variance specifically addressed. Mayor Pro-Tem Wissbeck stated that because the specifics of the bench and roof are not defined in the Land Development Regulations (LDR) it requires a variance, but does not violate any height or setback requirement. Karen Fogg felt that not enough information was being shared with the attendees of the meeting and explained that usually there is explanation and a history given for the media and public. Richard Schmidt added that transition in a small town can be difficult. The variance request might not have gotten this far had it been given to the Building Official because of confusion and a lack of understanding the LDR. A variance is not even necessary because the structure height and setback are within the LDR requirements. All this did was have the Mannans pay for a confirmation that they got what they are allowed to have. The motion was called for a vote and passed unanimously.

Gutshall – Greenhouse Variance Request

Tamra Gutshall was present with three (3) variance requests for a greenhouse constructed in an R1 Single Family Residential zone located at 220 Box Elder Avenue. The variance requests are for the hoop greenhouse which puts the lot coverage at greater than 30% and a variance for the lot setback requirements, and exceeding the non-conforming use restriction. Mayor Pro-Tem Wissbeck, Chair of the Planning and Zoning Committee (P&Z), gave a brief summation of the P&Z meeting held September 17, 2013 resulting with P&Z sending the variance request to the Board of Trustees without a recommendation and encouraging the Board to obtain a legal interpretation of what type of structures fall under the non-conforming use definition. For clarity purposes Mayor Pro-Tem Wissbeck wanted the variance requests addressed in two parts, the first being the variance for exceeding lot coverage and

the second to address the variances for setback and non-conforming use, and that he would entertain a motion to deny the setback and non-conforming use variances. Trustee Goold recommended discussion on the information given to the Board before any motions were made, because the information could alter the direction of the motion. Trustee Kleinman agreed. Trustee Goold stated that the requests were complicated and unclear, and stated that the Building Inspector needed to be in attendance. Discussion ensued about the number of variances being requested and whether an agreement could be made to reduce the number. Ms. Gutshall added that the Building Inspector had no issues with the greenhouse and that the alternatives were given only as a back-up should the Board of Trustees not approve the requests. Ms. Gutshall states that the greenhouse is a steel framed structure covered in plastic. The greenhouse cover would only be in place for three (3) months out of the year to extend the growing season. The Building Inspector, Chad Gartman, was approached about the greenhouse in May and did not see a problem with it. Had Mr. Gartman foreseen the variance issue, Ms. Gutshall she would have applied earlier and would not have spent the time and money she has on the greenhouse. Ms. Gutshall spoke to Fred Zamarippa from the County Assessor's office and Mr. Zamarippa said the greenhouse is not a structure. Ms. Gutshall questioned the concern over access to the property. Ms. Gutshall feels the setback violation is not an issue since the greenhouse will not be covered for the majority of the year. Trustee Goold asked Ms. Gutshall if she were interested in any of the options to which Ms. Gutshall replied that she was not interested in any other options unless council denies her requests.

Mayor Pro-Tem Wissbeck stated that the Town Attorney interpreted Article 20 of the LDR and the greenhouse is in fact a structure. Attorney Briscoe reiterated to Ms. Gutshall when questioned directly that the greenhouse is without question, a structure. One alternative to bring the greenhouse in to compliance leaving only one (1) variance request was discussed. Should Ms. Gutshall bring her greenhouse within the six (6) foot setback requirements the structure would also fall within the 25% non-conforming use requirements, leaving only the lot coverage variance. Ms. Gutshall reiterated that she did not want to take that option unless the Trustees voted against the specific variance requests. Conversation continued over the confusion over what exactly would need to be denied and accepted. Trustee Ayers asked if the Board could call it a temporary structure. Mayor Pro-Tem Wissbeck explained that it was a structure as defined by the LDR, no such thing as a temporary structure is defined in the LDR therefore the Town has no way to identify or regulate a temporary structure. Discussion continued on how the alternative option would work. Trustee King stated the variance was very confusing and that it was bad timing to be faced with the request because of the absence of the Mayor, the Clerk, and the Building Inspector. What also poses a problem is that to allow the variances would require a neighboring property owner to comply with a larger setback on the property to be in compliance.

Trustee Ayers moved to table the variance requests until the next meeting. Trustee Goold stated that to table meant to drag the request out longer in a system that is not working. Trustee Goold was dissatisfied that P&Z did not make a recommendation when that is their job. Mayor Pro-Tem Wissbeck asked if there was a second to send back to P&Z. Attorney Briscoe stated that the motion is to table until the next meeting. Discussion ensued on the actual motion. Trustee Ayers withdrew the motion. Trustee Goold moved to table the request until a recommendation was given from P&Z. Trustee Sauter seconded. The motion passed with Trustee King voting "nay".

Public discussion ensued about which certifications the Building Inspector holds, who the Building Inspector works for, who he provides services to, and who supervises him. Mayor Pro-Tem Wissbeck and Trustee Goold stated that the Building Inspector is a one-man department, part time, and very busy. Susanne Watson added that it is sad that the Building Inspector has to police everyone and people should be more neighborly. Chief Leon asked if a Cease and Desist could be ordered in the meantime. Discussion ensued with no order issued.

DCED Update and Funding Request

Trustee Goold moved to table until a representative could attend the meeting. Trustee Kleinman seconded. The motion passed unanimously.

Penny- Consideration Request

Linda Penny was present. Ms. Penny requested that the Board of Trustees take in to consideration the past services of a former employee and possibly offer him some type of gym membership or equipment to assist him in his failing health. John Norris had been in contact with the employee while he was the Town Manager. Chief Leon stated they will contact the former employee and see how he is doing. Mayor Pro-Tem asked for legal direction on how to handle the request. Attorney Briscoe stated the matter can be taken under advisement; a motion is not always necessary.

Library Mill Levy Initiative Endorsement Request

Mayor Pro-Tem Wissbeck stated he was not 100% sure, but assumed the request was for the Town to be in favor of the library asking to increase the Mill Levy. Trustee King stated he loves the library but believes the increase to be extreme. Trustee King also stated that he was under the impression from Mayor Schwieterman that the request had been withdrawn. No action was taken.

Additional Business

Mayor's Report: Mayor Schwieterman was absent but Mayor Pro-Tem Wissbeck stated that because of absences and possible quorum issues the October 8, 2013 meeting was tentatively being cancelled. Trustee Sauter was appointed to take the place of former Trustee Ferguson on both the Water and Personnel Committees.

Public Works: The engineers are ready to begin the Third Street engineering. A storm caused a sewer storm drain to become plugged and flooded one basement. Apple Valley Park continues to be worked on for the grand Re-Opening. Mayor Pro-Tem Wissbeck asked if the Town bears responsibility for costs similar to flooding issues in the past with The Flying Fork. Mr. Loberg stated if the problem is a failure on our part, yes. Finance Officer Jones stated the basement flooding is being investigated and considered by the Town's insurance agency.

Police Report: There has been some extreme vandalism in the parks. Bathroom stall doors were removed and debris was scattered around. The Police Department is looking in to different types of camera systems in hopes to deter the incidents from happening. Further pricing, recording, and retrieving of the videos is being investigated to determine whether it is an avenue worth attempting at this point. Mayor Pro-Tem Wissbeck questioned if the vandalism occurred in the renovated bathrooms in Apple Valley Park. Some did occur there, but the cost was minimal. The restrooms are being locked early to deter vandals as well and the portable bathrooms remain for public convenience.

Finance Report: Mayor Pro-Tem Wissbeck and Trustee Ayers had nothing to report.

Parks Report: Trustee Kleinman announced that the re-opening of Apple Valley Park has been postponed until October 19, 2013.

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 Sauter has a committee meeting scheduled for Thursday of this week.

Minutes:

Corrections noted. Trustee King moved to accept the minutes for September 10, 2013 as amended. Trustee Sauter seconded and the motion passed unanimously.

Disbursements:

Trustee Ayers moved to pay the bills through September 24, 2013. Trustee Kleinman seconded, and the motion passed unanimously.

Trustee Ayers moved to pay the bills through October 10, 2013. Trustee Kleinman seconded, and the motion passed unanimously.

9:25 p.m. Meeting adjourned.

Town Deputy Clerk, Corinne Ferguson

Mayor Pro-Tem, Larry Wissbeck