

MINUTES
Town of Crested Butte
Special Town Council Meeting
Monday, November 14, 2016
Council Chambers, Crested Butte Town Hall

Mayor Michel called the meeting to order at 6:03PM.

Council Members Present: Jim Schmidt, Chris Ladoulis, Roland Mason, and Laura Mitchell

Staff Present: Town Manager Dara MacDonald, Town Attorney John Belkin, Town Clerk Lynelle Stanford, and Building and Zoning Director Bob Gillie

Town Planner Michael Yerman (for part of the meeting)

Michel announced that MacDonald received a letter of resignation from Erika Vohman. Michel read the letter. It was confirmed the letter was effective November 11. Stanford explained the process and requirements for appointing a new Town Council member. The member would be appointed at the regular meeting on December 5, or at a special meeting no later than 30 days from the resignation.

APPROVAL OF THE AGENDA

Mitchell moved and Ladoulis seconded a motion to approve the agenda. A roll call vote was taken with all voting, "Yes," except for Mason who was not yet present. **Motion passed unanimously.**

NEW BUSINESS

1) Presentation by Ashely Bembenek of the Coal Creek Watershed Coalition on Site Specific Standards Update on Coal Creek Regarding Mt. Emmons Mining Company (MEMC).

Bembenek introduced herself as the Technical Coordinator with the Coal Creek Watershed Coalition (CCWC). She had been working with special counsel to the Town, Barbara Green, to revise water quality standards in Coal Creek. In general, they knew there were metals in Coal Creek. They were most concerned with cadmium, copper and zinc, which exceeded statewide standards. Mt. Emmons Mining Company (MEMC) committed to additional investigation of metal loading sources, and they proposed an adaptive management framework to evaluate sources at the Keystone Mine property.

The current temporary modifications remained in place. They agreed on the path to take no action. They would participate in a rule making hearing in June of 2017, which was according to the original plan. The stakeholder group needed to continue collaboration. In order to support a five year extension of the temporary modifications for metals,

MEMC would likely provide a revised or expanded plan on the proposed activities on the Keystone Mine property and a plan for water quality monitoring during the proposed extension.

Michel asked Bembenek to explain what it meant to the average person in Crested Butte. Bembenek stated MEMC was taking responsibility to reclaim impoundments, and there had been an incredible improvement. Bembenek explained that stakeholders typically met monthly or bi-monthly. The meetings included local and state level partners. Overall, there had been a good, collaborative effort. Bembenek explained the process to establish standards would continue, and water quality would be changing over time.

2) Update from Legal Counsel on Mt. Emmons.

Belkin affirmed the ballot issue had been approved. He referred to the MOU and the MOI that were in the packets. Specifically, he mentioned bullet point number four in the MOI, which addressed the parties working collaboratively with the federal administration and legislative delegation on an administrative and/or legislative withdrawal of the lands on and around Mt. Emmons from future location of mining claims.

Belkin referenced the map included in the packet. He pointed out unpatented mining claims and the patented acres. The unpatented claims to be retained wouldn't be enough land to develop a mine. He explained the bill that referred to the withdrawal to remove the threat of mining for all time how a bill became a law. Senator Bennet was advocating to move the bill through Congress. Belkin confirmed for Schmidt that it would also require Cory Gardner's participation. He thought it made sense to push. Schmidt confirmed they wouldn't do anything yet with the bond that was approved, and Ladoulis confirmed there was not a sunset on the issue.

Michel asked what withdrawal meant. Belkin explained the deal was structured to eliminate (the claims) from mineral entry forever. Responding to Michel, Belkin explained Freeport would be in charge of the treatment plant because there was a discharge permit that required somebody operate it. Michel asked Belkin to explain the ongoing liability for the mine. Belkin was comfortable the treatment plant would be run by Freeport, but he reiterated that someone had to run the plant. Belkin listed steps towards completion: 1) Congress withdrew 2) President signed the bill 3) Freeport would offer a letter that they disposed of claims, but they would not get paid until that happened.

Responding to a question from the public, Belkin talked about an administrative withdrawal, which had to go through the Secretary of the Interior, and had to be approved by Congress to become permanent. The current plan was the fastest, easiest, and cheapest. Belkin answered Michel that the County had been great. The question of what was in it for MEMC was posed. Belkin reviewed the history of the acquisition of Freeport-McMoRan. They were in the chain of title, and they had no choice. He thought Town had a willing partner in Freeport-McMoRan. Green elaborated that it was in their best interest under CERCLA to clean it up. Under CERCLA, those who had the deepest pockets owned the responsibility. Bembenek added that they were maintaining control in

being pro-active. Green said that they saw themselves on the edge of clean up technology. Michel thanked Belkin, and Belkin thanked others who were involved.

3) Ordinance No. 12, Series 2016 - An Ordinance of the Crested Butte Town Council Amending Chapter 6 of the Crested Butte Municipal Code to Include New Regulations in Article 6 Thereof for the Licensing of Vacation Rentals and Making Such Other Recommended Changes to the Code in Connection Therewith.

Michel described the ongoing issue of short-term rentals (STRs), and he framed where they were right now. He recognized the legal aspects challenged the value side of the issue. Michel read the title of the ordinance. Ladoulis confirmed the ordinance was not related to a cap on STRs. Michel explained how the meeting would be handled. The Council wanted to discuss how they handled the quantity of STRs in Crested Butte. Ladoulis said that the Council didn't want a cap that said a person couldn't rent his or her home. However, there was a point at which an excess, if left unfettered, became too much. The big question was how much was too much. He thought there was a solution that would preserve the community. Schmidt agreed there were two different issues. He would like to see working through monitoring of STRs. He determined partly from the CAST report, that no one really had it figured out. His issue with limiting was he was not sure what would be accomplished. Schmidt acknowledged the issue was exacerbated by VRBO and Airbnb. Mason agreed with Ladoulis's opening remarks. Ordinance No. 12 dealt with the nuts and bolts, and they could move forward with most points in the ordinance. The big question was what the limit was on STRs in Crested Butte. Mitchell saw Ordinance No. 12 as low-hanging fruit and what they were working towards all summer. The reason was so the community didn't turn into a motel room. She asked if it was really a house if someone rented it out 300 days a year. Michel felt STRs would change the community more than any other issue. STRs were good for retail and restaurants, but he wanted to maintain a real community. The Town never went wrong following core values. Michel identified core questions of when was too much, too much, or if there was too much. Ladoulis reviewed the existence and history of zoning. Michel reminded everyone that they wouldn't solve the affordable housing problem with the STR ordinance, and they wouldn't compel second homeowners to rent their homes out for long-term. Gillie agreed STRs were undoubtedly changing the character of the community. He stated the percentage of STRs had increased greatly due to new marketing tools.

Michel opened the meeting to public comment.

Alex Fenlon - 307 8th Street

- He handed out a petition that was signed by concerned citizens.
- He agreed there was a point in which STRs were harmful, and he asked Council to address the situation.
- Listen to the people that live in Crested Butte.
- Something needed to be done.
- Never underestimate the industry.

- Michel asked what the problem was they were trying to solve. Fenlon answered if it continued unfettered they wouldn't have enough people living in houses in Crested Butte. The best future would be having people living here.

Jeff Scott - 810 Elk Avenue - Business owner at 719 B 4th Street

- He assisted Fenlon in assembling signatures for the petition.
- He was not against the STR business.
- He asked the Council to make smart decisions and manage the negative impacts.
- Explained what happened in Aspen.

Dan Escalante - 29 Gothic

- Believed legislation reflected a community's values.
- Talked about takings such as horizontal zoning and medical marijuana that became retail marijuana. Told the Council to stick through it and they would get the results.
- The (STR) Committee recommended caps.

Kyle Ryan - 712 Gothic #12

- Problem was he wanted to keep community, neighbors, and relationships.
- Neighbors and community were why he was here.

Holly Harmon - 103 1/2 Elk Avenue

- Not opposed to homeowner renting out home for a short period of time.
- Tone from Town on the CAST study was to wait and see what the report said. Time had passed. She urged them to do something.
- Neighborhoods were very much affected, and they would only get worse.

Ben Oldread - 826 Elk

- When he bought his house it wasn't next to a hotel, but now it was.
- Had a lot of problems (with short-term renters). People were disrespectful.
- Renters didn't understand the rules.
- He would like to see the frequency go down. Fifty-two different people staying next to his home in a year were too much.

Steve Ryan - 75 Escalante

- Rebutted Oldread because he managed the home at 822 Elk Avenue. The home rented less than 90 days a year, and most rentals were 1-2 weeks.
- Was on the STR Committee, and due to Colorado laws, they couldn't take fees from STRs and build affordable housing.
- It was not right to say all people coming here were bad.

Emily Montesinos - 25 Hunter Hill in Mt. Crested Butte

- Needed to preserve Town for people who could stay and people who visited that wanted to be part of the community.
- If there was not a cap, there would be no option for long-term renters.

- Had to fight to create more long-term housing.

Priscila Palhava - 312 Sopris

- Seasons were way longer than they used to be. Crested Butte was booming, but it hadn't always been that way.
- She owns two VRBO units. Long-term renters left them in shambles.
- Locals didn't live in Town because fees were so high.
- Town should start incentivizing.
- Require the right insurance.

Marcus Lock - Attorney in Gunnison representing Crested Butte Owners Supporting Sound Housing Practices

- They didn't have data to answer question of what they were trying to solve.
- According to the doctrine of unintended consequences, only the uber wealthy, who have no desire to short-term rent, would be able to buy property.
- Look at the data for taking the steps incrementally.
- Think about fairness. He didn't think caps could be implemented fairly.
- Time to act cautiously not precipitously.

Johnna Bernholtz - 731 Teocalli Avenue

- STRs had multiple issues, including people who rented out when they went on vacation.
- Taxes would eventually price her out of Town, not her mortgage.
- People moved out of Town because of high fees.
- Didn't know how Council could vote on issue of regulating something when 5 out of 7 Councilors had permits.

Mindy Sturm - 117 Teocalli

- Had a heart for the ski bum.
- The discussion changed from a long-term housing issue to more about protecting the community.
- STRs were not going to change Town; it was actually property values that would cause change.
- Limiting STRs would not solve the issue and wouldn't change this place. It would increase demand.

Eric Davis - 311 1st Street

- His neighborhood was wonderful, and it was a mixture of uses.
- Short-term renting out his property had been a boon for him.
- Issue he saw was preserving character of neighborhoods, which could be controlled via zoning.
- He asked about zoning, specifically if his B4 Zone was included with the other B's.

Will Dujardin - 711 Gothic Avenue

- Agreed with Michel, and he listed those with whom he agreed.
- They were trying to protect Town and values.
- A cap was needed on the number of licenses.
- Told the Council to encourage and incentivize homeowners to rent to long-term people.
- Had heard of long-term renters subletting for short-term, which was not good.
- Disappointed Town didn't take recommendations from the committee.

Shay Wyckoff - Owner of Alpine Property Management

- Her business had vested interest in keeping STRs alive.
- As Council moved through, she asked them to consider the economy of Town.
- Short-term rentals brought a variety of people into Town.
- They needed to keep elongating the seasons and therefore employment.

Molly Eldridge - Reported to live in Riverbend - Owner of Red Lady Realty

- Most people to whom they sell properties wanted to come to Town. They couldn't long-term rent because that would mean they couldn't come themselves.
- People were not getting rich from VRBO.
- If they restricted STRs, only the uber rich would be able to buy homes.
- Agreed they needed affordable places for people to live in Town, but it was a dangerous slope of those who felt they deserved to live in Town.

Mike Linehan - 9 Butte Avenue

- Appreciated the separation of affordable housing from STRs. He suggested the private sector could be helpful with affordable housing.
- He was impacted by STRs, and he also owned a home that he short-term rented.
- He wished there was a mechanism for a fair cap.
- The only fair way seemed to be that everyone could do it or no one could do it.
- He thought there should be serious consideration to the enforcement of issues, like noise.
- Concept of incentivizing made sense to him.

Chris Mackie - Representing VACASA vacation rentals

- He told the Council to start at the bottom and eliminate issues on the book that weren't being enforced.
- They needed a clear expectation of regulations.

Matthew Verona - 727 between Elk and Maroon

- A person could not rent out their home if it was not their primary, registered residence.

Mark Ewing - 10 Butte

- Town was empty, and it was sad.
- The cell blocks, where he lived previously, were set to be mowed flat.

- The opportunity for kids to grow up in Crested Butte would no longer be possible.
- He seconded the primary residence idea.

Michel opened the meeting to Council discussion.

Mitchell reminded everyone that short-term and long-term rentals were two separate issues. Michel disagreed because he saw price pressure caused by STRs. Mason thought there was a link between market pressure and long-term housing, but he didn't think that a \$1M house would long-term rented if they couldn't short-term. Schmidt agreed long-term and short-term rentals were somewhat connected, but the solutions were different. He agreed that data needed to be obtained. Limiting the number of days was a new consideration. They needed to talk about caps or capping the number of days. They couldn't solve the problem of caps, but Schmidt wanted to address issues such as noise, garbage cans, and contact information tonight, which were in Ordinance No. 12. Ladoulis added that given the choice, he would rather not do nothing. He wanted to figure out what they could do that would continue to keep Town desirable. Ladoulis wanted to be cautious and take small steps. Mason thought it seemed clear Council didn't want to implement a numerical cap, but he wanted to figure out how zoning and the possibility of limiting days could help address the issue. Mason wanted to see what other communities had done and if they had been challenged. Ladoulis would direct Staff to define business and when it was allowed in a residential zone. Michel didn't think a cap was appropriate. He thought limiting the number of nights could affect how zones were being utilized. Mitchell liked Michel's suggestion of limiting the number of nights, or a property owner could get a conditional use for more nights. Michel asked if Council wanted to direct Staff to look into the legality of limiting the number of nights and inform Council of a potential path forward with it, as well as when the use went from residence to business. MacDonald stated that it was possible, but they would need to hire a consultant. She said they could look at requiring reporting in the ordinance. Monitoring companies offered the ability to closely estimate the number. They discussed the collection of the average number of nights. Belkin cited the problem in New Orleans; there was a tug of war between residential uses with commercial aspects and business. It was a question of what the community wanted.

Michel brought the Council's attention to Ordinance No. 12. He explained it came from the committee's recommendations, excluding the recommendation of the cap. Mason wanted to re-word transient, and the word guest was suggested instead. Michel focused on various sections of the ordinance:

- 6-6-50 – License Required; Compliance
 - Michel believed that ceasing rental activity for a year (for operating without a license) seemed too short. Gillie said they needed to get STRs licensed. Mitchell was comfortable with two years, and Mason agreed.
 - The discussion changed to if the license belonged with the person or the property. MacDonald said it purposefully went with the property. Gillie said it realistically lived with the person and the property; there were

infractions that went with the property and ones that went with the person. Ladoulis thought the license would sit better with the person.

- Ladoulis wondered about a remedy period.
- 6-6-60 – Application
 - Michel questioned the last sentence of the section. MacDonald explained it was an annual renewal that would allow people to book out two years.
- 6-6-70 – Issuance and Renewal
 - The decision of the licensing official or of the Town Manager shall be the final decision of the Town for purposes of judicial review. Michel confirmed they were giving the Town Manager the final say. He preferred decisions were depoliticized, and they didn't want every single appeal coming to the Town Council.
 - Next, the Council discussed the part of Section C dealing with notification of all owners of real property within 200 feet of property. Belkin said the purpose was to create a file and collect data over time. Michel clarified it was notifying neighbors there was a decision being made and they could comment at any time. Ladoulis's concerns were: there was no way to enforce, collecting data was onerous, and it was not an efficient use of time. MacDonald suggested that local contact information could be included in the format of the notification. Michel was in favor. Schmidt said that the Town should collect the information. There was discussion on the 200-foot requirement. Mason thought a 200-foot requirement was too much. Mitchell thought 100 feet were fine. Schmidt was okay with 100 feet. Ladoulis's opinion was if the Town collected the information, then go for 100 feet.
 - Schmidt said there should be a database in Town Hall consisting of contact information. MacDonald said there could be a website available and people could access the information anytime. No one disagreed.
- 6-6-170 – Parking Required
 - Gillie explained that if Town approved the site plan with parking, the parking must be available. Belkin clarified it was not enlarging the requirement
- 6-6-180 – Maximum Occupancy
 - Two people per bedroom plus two.
 - Any increase above 10 people in a vacation rental shall include on-site parking space for each four potential occupants.

Michel suggested that the Council consider the decision points provided in Gillie's staff report. The first decision point was whether the Council wanted there to be places or zones within Town where STRs were not allowed or limited. MacDonald stated there were sections in Town where licenses had been issued where they should not have been, according to the Land Use Code. Schmidt asked about grandfathering existing ones.

Staff needed clear direction from Council what the trigger would be for non-renewal. Gillie asked if they wanted to limit by zone district. Mason wanted to know how current Code enforcement would affect areas right now. Mason recognized the committee relaxed zoning thinking they were capping the number. He sensed the committee wouldn't recommend relaxing without capping. The discussion became detailed to specific buildings and zones.

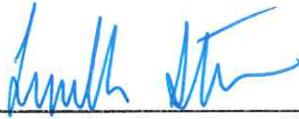
Schmidt moved and Ladoulis seconded a motion to continue this hearing to the December 5th Monday meeting. **Motion passed.**

ADJOURNMENT

Mayor Michel adjourned the meeting at 10:11PM.



Glenn Michel, Mayor



Lynelle Stanford, Town Clerk

(SEAL)

