

MINUTES
Town of Crested Butte
Regular Town Council Meeting
Tuesday, February 16, 2016
Council Chambers, Crested Butte Town Hall

Mayor Michel called the meeting to order at 7:01PM.

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

Staff Present: Town Manager Todd Crossett, Town Attorney John Belkin, and Town Clerk Lynelle Stanford

Public Works Director Rodney Due, Building and Zoning Director Bob Gillie, Finance Director Lois Rozman, Town Planner Michael Yerman, and Parks and Recreation Director Janna Hansen (all for part of the meeting)

APPROVAL OF THE AGENDA

Crossett said they would need to discuss, under Other Business, scheduling a special meeting regarding the MOU on the mine.

Mason moved and Mitchell seconded a motion to approve the agenda with the amendment by Todd. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

CONSENT AGENDA

1) Approval of February 1, 2016 Regular Town Council Meeting Minutes.

Schmidt moved and Mason seconded a motion to approve the Consent Agenda. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

PUBLIC COMMENT

None

STAFF UPDATES

Rodney Due

- Although they had been maintaining the snow pack on 1st Street for the Nordic Center, they would have to now scrape it.
- Ladoulis questioned if they were working on the potholes on Gothic Road at the Four Way. Due said the freeze/thaw cycle resulted in the patches coming out. He said they were working on it daily.

Michael Yerman

- More than 50 people attended the first open house for Blocks 79 and 80.
- Applications were available for Blocks 79 and 80 on the Housing Foundation's website.

Lynelle Stanford

- Arranged for CML newsletters to be sent electronically.

Janna Hansen

- Had been working to form the Weed Commission. The first meeting would be in February.
- The first Creative District meeting would be next week. Schmidt asked that someone from the Cemetery Committee was involved. Hansen said Jessie Earley was included.

Todd Crossett

- There was a press release this afternoon, and the information on the MOU for the mine was posted on the Town's website. They also needed to schedule a special meeting.
- The RFP was out for the Town's engineering services.
- Referenced a memo provided to the Council on the One Valley Prosperity Project (OVPP). He listed the four phases of the process that were started last March: Values Identification; Analysis of Trends; Visioning; and Action Planning. The action planning was being refined to actionable items. Crossett described his past, current, and upcoming time commitments to OVPP.
- Michel asked if representatives from OVPP would come to the Council to present on the action plan and the culmination of efforts. Crossett anticipated a roadshow presentation would be put together, mostly likely in the 2nd Quarter. Michel requested sooner rather than later.

NEW BUSINESS

1) Ordinance No. 1, Series 2016 – An Ordinance of the Crested Butte Town Council Authorizing the Short Term Borrowing of Funds Not to Exceed \$170,000.00 and the Expenditure of Such Funds for Purposes of Purchasing a Certain 2016 John Deere Loader by Way of a Lease to Purchase Arrangement.

Due said the deal worked out really well for Town. They were able to try other brands, but John Deere offered \$70K in trade-value. Rozman also obtained a good interest rate. There were no questions from the Council.

Schmidt moved and Mason seconded a motion to set Ordinance No. 1, Series 2016 for public hearing at the March 7th Town Council Meeting. **Motion passed.**

2) Resolution No. 4, Series 2016 – Resolutions of the Crested Butte Town Council Approving the Pre-Annexation Agreement Pursuant to Section 13-1-280 of the Crested Butte Municipal Code between the Town and Cypress Foothills, LP.

Cameron Aderhold, Vice-President of Cypress Foothills LP (Cypress), Marcus Lock, Attorney for Cypress, Tyler Harpel, Engineer for Cypress, and Paul Casey, Principal Engineer from Casey Resources Inc, were present on behalf of the applicant.

Michel questioned what had changed from the previous agreement. Lock stated they added a provision that no gate would be erected. They added language to contemplate recreational uses to include a boater access easement, not just to the river, but along the river. Lock cited concerns they heard about the dump clean-up process, which was the reason Casey was present to provide the Council with a brief overview of the process and the voluntary clean-up plan (VCUP).

Casey described the VCUP as a regulatory process with the Colorado Department of Public Health and Environment. Casey was part of the VCUP program when it started in 1994. He had completed 70 to 80 projects. Casey explained the clean-up was based on the end use of the site. Clean-up separated the end user from contaminants. Casey said the landfill had heterogeneous materials, which made it difficult to characterize. They dug 102 test pits, and they did not find methane. They thought there was most likely aged material that could not create methane. There were some metals, most of which were probably naturally occurring. Casey stated the ground water was deep at the site, and there wasn't anything of concern. Regulators wanted to protect the water sources of the State. Schmidt recognized they were remediating fairly small sections. He wondered if that was common and if Casey had done it before. Schmidt also stated that neighbors were concerned about dust and contamination. He wanted to know what the cap would look like. He didn't see anything in the agreement about re-vegetation. Casey said that the contractor who would do the dirt work would fall under a dust control permit by definition. They had zero tolerance for visible dust. The contractor would be required to have water wagons to keep soil conditions wet and to make certain there was no dust issue. Casey said the cap for open space would minimally be two feet of clean soil with a vegetative cover. Casey had been working on the redevelopment of Stapleton, the largest in-fill site in the country. They faced everything. He was tuned into what was built to make sure it was protective. Schmidt asked if they could put picnic structures on the cap. Casey answered that concrete and asphalt were considered protective layers. They could have a combination that might not require two feet of clean fill. Schmidt also questioned the water source for the water trucks. Casey said they would use fire hydrants. Michel asked how the final open space would have two feet of dirt and not be dusty. Casey said the developers would re-vegetate, and they would need 75% growth before they could release the permit.

Belkin said they had property lines that bifurcated the old Town landfill. The majority of fill was on the Town's side, and applicant would clean their side of the property. Casey said the VCUP program was boundary driven, and they had to clean-up to the boundary

line. A change in condition, which would be reported to the State, would be over and above what was indicated. It would then be the property owner's responsibility.

Schmidt asked the applicant why they wanted to keep the river bottom considering liability problems with the river. He thought there seemed to be something else going on. He wondered why they didn't give the river bottom to Town or split it halfway. Lock said they were offering the Town public access. If they couldn't reach an agreement, Town would not have access. Secondly, Lock said there was nothing nefarious other than the agreement allowed them to keep control of the river corridor. He further explained it was not Cypress's intent to put up boater obstacles. Michel confirmed it was memorialized in the agreement.

Schmidt asked if the traffic study done by the County would be based on 30 lots. Harpel said it would be based on the lots east of the river and uses west of the river. Michel confirmed the entire build out would be considered. Schmidt thought it was interesting that on Town Parcel 1, there was a specific limitation of 30 feet in building height. Yerman stated that the typical residential use limitation in Town was 30 feet. Schmidt wondered why the limitation wouldn't apply to parcels on the east side of the river. Lock answered that they had worked hard to protect the County's jurisdiction on the east parcel, and the limitation would be addressed by the County. Schmidt thought it was hard to give blessing to something when they wouldn't know how it would look. He had concerns they couldn't comment on anything brought forth to the County. Lock explained the language was revised per Staff. He thought the governments had to trust each other. Ladoulis's biggest concern was they had an understanding or belief about what the County would allow, and they could be faced with something unexpected. Aderhold suggested that if anything changed from the current land use regression (LUR), they could come back to Town for approval. Belkin explained the applicant went to the County and was prepared to file, but Town requested they come in and make an offer. This was the offer. Lock reiterated that in the event of amendments in the LUR that lessened restrictions, the applicant had no problem coming back to Town.

The discussion turned to specifying uses on certain plots. Yerman explained they talked about using residential zoning in the future on the capped part of the dump. Parcel 2 was specified to be used for a preschool, which limited its future potential. They would want to keep the area for public use. Yerman stated the capped parcel was originally going to be used for open space, but Town wanted flexibility. They could add a block for affordable housing, and the rest would be zoned as the P Zone. He thought it would take a rec center to initiate clean-up on that portion of the landfill. Schmidt had a problem it could only be a preschool or associated uses. Yerman said they had to be cleaning up to a certain use. Council was agreeing to a use there, and it was a preschool. Uses were required per an annexation. Schmidt disagreed with the limitation, and Mitchell agreed with Schmidt. Michel wondered if they could step back and use the land for something else. Casey answered that with the VCUP it was a complete clean-up. They would typically classify an unrestricted residential use as the best classification. Commercial uses stepped down from there. Michel wondered if they could put some other public amenity there. Aderhold said if they cleaned up to preschool standards, they would have

to spend a lot of money for no reason. The applicant was trying to control the very little amount they could. Lock reminded the Council that it was private property that belonged to Cypress. The applicant had a vested interest since they were considering conveying to Town, and they would like to exert some degree of control on the west parcel.

Ladoulis identified triangles south of the road that would be likely places for snow storage. He wondered if Town would have the right of first refusal or a lease. He asked if there would be an intended use that would affect Town in the future. Aderhold said they could discuss through the annexation process. They were willing to work with Town, and the area by the river was for boat access.

Glo Cunningham - 324 Teocalli Avenue

- If the dump was cleaned up and capped to preschool standards, then it was good for all.
- Questioned why the developer would tell Town what to do with the land until it was Town's.
- Up to six (lots), rather than no less than six (on the side west of the river).
- Town needed to know what the County said, and they should have recourse.
- Town should get plans for the construction of Road A before constructing.
- Applicant could own the east side of the river and over, and Town should own the river and the west side of the river.
- Wondered why they would let anyone out of any liability for the dump.
- The County did not listen to citizens.
- Thought they could keep working on the west side.

Jim Starr - 323 Gothic Avenue

- Mentioned that he had sent comments on the previous agreement, and he referred to a letter he sent to be included on the public record.
- After the VCUP, if there were uses of the land where people would be in buildings for an extended period of time and they were sickened, they could sue the Town. VCUP immunity wouldn't apply.
- He was concerned that the clean-up could trigger the Town to be forced into cleaning up the Town's property. If drums were found on Town's portion, they could spend millions cleaning up.
- Said it was important that Town had ownership of the river. He said the property would be managed by a HOA.
- Traffic studies would cover both sides of the river, but they wouldn't consider roads and streets that were not County roads or streets. They would only consider impacts to traffic on Gothic Road. They needed comprehensive traffic and parking studies.
- Stated the County could require above ground water storage and Town would have no say.
- There should be no limitations on the use of land being given to Town. He said they needed to have it cleaned up to the highest standard.

- He had an objection to the limitation of ten years before making use of the property.
- The County Commissioners hadn't looked at the proposal. Town had more leverage than they thought.
- A major issue was not having a gate at Road A. The agreement was such that they couldn't put a gate on the boundary line, but they could put a gate to the east of the boundary line.
- The agreement needed changes to benefit the public.

Sue Navy - 324 Gothic Avenue

- Agreed with Cunningham and Starr.
- Wondered if Town had been working with Barbara Green (sometimes used as special counsel to Town) and what Green had to say.
- Hoped Town would weigh in on the wildlife corridors during the County process.
- Once something was done, it was forever.

Crockett Farnell - 201 Sopris Avenue

- In support of the proposal in that substantial benefit was gained for Town.
- Town did not get anything without the agreement.
- Staff did a tremendous job bringing benefits that wouldn't otherwise be there.

Public Comment was closed, and it was opened to Council discussion.

Crossett read a letter from Councilor Vohman. She wanted issues brought forth by Starr clarified, and she wanted Town to have more discretion on the west side.

Schmidt confirmed that the public use on Town Parcel 1 was not limited to an emergency services center. Yerman confirmed with Gillie that a senior center would be allowed in the P Zone. Gillie said the P Zone was public use with public money involved. Schmidt had a real problem with Parcel 2 being limited to a preschool. He reminded the applicant that all public uses were going to be used by people on the east side. Schmidt, referring to Starr's comments, said they would have to deal with a HOA for river access. Lock countered that it was not true. He read from the agreement that it was between Cypress and Town, and not a HOA. Yerman then read the uses allowed in the P Zone.

Mitchell voiced an objection with Parcel 4 being tied up for ten years. She thought there needed to be a reciprocal provision that once the County approved, then they could proceed. She also didn't agree with the limitation of a preschool. Michel was a proponent of early childhood development, and he thought it was a wise move to designate the use for a preschool. Ladoulis recognized there was no perfect solution. He saw a big issue around trust. At some point they needed to trust the process. Mason agreed with Ladoulis. He said the proposal gave control over more property than Town would have had. Michel made sure there would be no gate 25 feet down the road. Both Aderhold and Lock confirmed there would be no gate dividing parcels.

Schmidt brought up clean-up costs. He asked if Casey had ever estimated too low.

Casey said it was not an exact science, and his biggest problem was forecasting. Invariably it was never the number. Aderhold stated they were assuming it was all landfill debris, and some of it was dirt that would not be removed. Schmidt asked Casey again if he had missed projections, and Casey said he had. Aderhold added that the characterization had been extensive, and they had done more than a normal amount of testing.

Belkin stated the whole deal came as an understanding the applicant was going through the County process. Town had the chance to get something from the developer they were not going to give. Town, as operator of the landfill, had liability for the landfill, but Town did not have responsibility to clean it up. It was liability but not active liability. The applicant could initiate clean-up on their property without anything from Town.

Aderhold said they could ease up and specify six lots. The applicant was willing to take uses applied in Parcel 4 and apply them to Parcel 2. He also said they could take the clean-up provision from 110% to 125%. Lock summarized for the Council and stated they were being asked to vote on the pre-annexation agreement with five amendments:

- Parcel 2 being allowed the same public uses as Parcel 4.
- An increase in the estimated clean-up cost provision from 110% to 125%.
- Clarification there shall be no more than six residential lots on the west parcel.
- Requirement for Town approval if there was any reduction in restrictions by virtue of amendment to the LUR.
- Language regarding the clean-up of Parcel 2.

Michel thanked the Town Attorney, Staff, and the developer for their hard work. He was comfortable with the deal, and he appreciated the amendments. Belkin added that Town consulted with special counsel from Bryan Cave on landfill matters.

Mason moved and Ladoulis seconded a motion to approve Resolution No. 4, Series 2016 with the five amendments that Staff was advised of including: Going to 125% on the cleanup; No more than six lots on the western parcel; Requirement for Town approval if there was reduction in the LUR clause; Clean-up on Parcel 2 and the election of Town to instruct applicant to cease further VCUP efforts; Same public uses for Town Parcel 2 that the agreement articulates for Town Parcel 4. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

3) Discussion and Possible Approval of Big Air on Elk Special Event Application and Special Event Liquor Permit Proposed for Saturday, March 5, 2016 in the 200 and 300 Blocks of Elk Avenue.

Event organizer, Corey Tibljas, stated that Big Air had taken strides forward. He listed sponsors. He cited they had increased staff, production quality, and interest from athletes. Tibljas also said they had both food and a beer garden on site, and they had increased their trash plan.

Stanford reviewed the items that were missing for a complete application. Tibljas had worked with Stanford the same afternoon to complete most of the items. However, Stanford said that a certificate of insurance for the event was still missing. Schmidt said he wouldn't have even listened to Tibljas's request for funds (at the previous meeting) knowing that the sales tax from last year's event was unpaid. Tibljas said he would pay anytime. He had an issue with changing Post Office boxes. Michel found it frustrating and problematic. Schmidt reiterated that not remitting sales tax from last year bothered him. Mason was disappointed, even though he liked the event. He said they ran into things every year. He was going to approve the event, contingent upon insurance. Ladoulis said they needed to start with penalties. He would approve, too, but he said no truck of any kind should start set up without a certificate of insurance and until the 2015 sales tax was paid. He thought event organizers needed consequences. Mitchell said she would approve based on Tibljas completing his paperwork. She reminded him to request money in the grant cycles. Michel was not comfortable with the exposure to Town with so much left undone. He thought it was Tibljas's job to bring the information to the Town. Schmidt suggested they approve based on the event organizer remitting sales tax, plus \$2K a week from now, plus insurance. Ladoulis countered that \$2K was for the risk manager with services rendered during the event, and he would actually be paying in advance. Michel confirmed that Tuesday the 23rd was a drop dead date.

Schmidt moved and Mitchell seconded a motion to grant the permit with the conditions of providing a certificate of insurance naming the Town as additionally insured and the sales tax payment from last year by end of business, at 5PM, a week from today on Tuesday, February 23. A roll call vote was taken with all voting, "Yes," except Michel voted, "No." **Motion passed.**

4) Discussion of Locations for Food Cart and Farmers' Market Vending.

Crossett explained the Code did not require Council approval of the vending locations. The parking lot west of the tennis courts had been under construction last year, and it was not used for vending. Due emphasized that Staff did not recommend using the parking lot for vending going forward. He mentioned concerns such as congestion and possible traffic accidents. Crossett said that Staff discussed how to maximize space, including that vendors weren't allowed to park vehicles by their carts. Michel explained to the Council they were setting policy for vending carts this summer. If someone asked for special consideration, they would uphold it. The Council approved of the locations as presented, with the exception of moving the location in the public right of way where a vehicle was pictured on the map on the north side of Elk farther to the west.

LEGAL MATTERS

Belkin referred to information that he sent around on quasi-judicial and ex parte. He asked if anyone had questions. He summarized that they couldn't do it. He said the strict reading even determined that Council couldn't communicate with Staff. He asked where they wanted it to fall. Michel asked if they could interpret as they pleased. Belkin said that reality could be different, and he wanted to know how they wanted to do it. He felt

they could communicate with Staff on factual matters as long as they didn't push policy. Crossett said it was comforting, when involved in a lawsuit, to have followed process. Belkin said to really honor quasi-judicial they would need to stay within the guidelines. Michel wanted to make sure they were on the same page with not having extra conversations. Ladoulis heard conflicting messages. Belkin said they couldn't have meetings in an email thread. If Ladoulis wanted to talk, Belkin suggested he call himself or Crossett. Ladoulis confirmed items could be brought up under Other Business. Crossett clarified that open meetings and ex parte were different things; if more than two people were involved, discussing back and forth, they were having a meeting. Belkin said if a person wrote an email, and then wanted to further discuss, then it was a meeting. He said that a person could send out an informational email as long as it wasn't discussed. Ladoulis said they should go out of their way to have a fluid exchange of information. He thirsted for more information. Michel reminded him that one person's fact was another person's propaganda. He said they had to preserve their non-bias. Michel said they all had to play by the same rules. Schmidt asked Belkin if the zoning change was quasi-judicial, and Belkin said it was. Schmidt then questioned if the pre-annexation agreement (approved at the meeting) was quasi-judicial or legislative. Belkin thought it was more quasi-judicial than legislative. Schmidt asked if they could still say no to the annexation, and Belkin didn't think they could. Michel wanted to be sure the absent councilors were informed of the conversation.

COUNCIL REPORTS UPDATES AND COMMITTEE UPDATES

Laura Mitchell

- Attended a Chamber meeting. There were 279 fat bikers at the Fat Bike World Championships.
- Someone who worked at the Chamber had stolen \$630 in Butte Bucks. The person no longer worked there.

Roland Mason

- There would be a Mountain Express meeting on Thursday.
- There would not be a RTA meeting this month.

Jim Schmidt

- Attended a Housing Committee meeting last week.
- They would be changing the time of the Creative District meetings, so he could do both Creative District and Housing Committee.
- Anthracite Place was basically on time. The roofer was behind schedule due to leaks in a seam that caused soaking of the insulation. The attorney's fees were over budget. They were confident it would be open for people moving in by July 17. They received 26 to 28 applications for 30 units, and they estimated that 19 applicants would qualify.

Glenn Michel

- Was asked to serve on a joint committee with the MCBPAC and the Center for the Arts. They were working to come out with a joint statement.

OTHER BUSINESS TO COME BEFORE THE COUNCIL

Crossett said they were working to schedule a Special Town Council Meeting to potentially approve the MOU on the mine. The duration of the meeting was discussed, and it was decided to begin at 6PM and to schedule until 9PM. It was decided to hold the meeting on Friday, February 26, 2016 in order to capture another cycle of the news before the meeting.

Schmidt referred to the letters in the packet regarding winter travel management. He wondered if they needed to include the discussion on winter travel management on an upcoming agenda. Michel asked if anyone else on the Council agreed with Schmidt, and no one did.

Next, it was discussed if phoning into a meeting should be allowed. Crossett explained Merck requested it for this meeting. Michel said a person who was absent could listen to the recording and review the minutes.

Schmidt stated he was bothered by the Gothic Corridor report. Michel said the Forest Service was taking public comment.

Schmidt reminded the Council they needed to set up a review of Crossett. The Council tentatively decided it would be April 4 at 9AM, pending discussion with absent Council members.

Ladoulis suggested that concerning special events, with the upcoming budget amendment, they should consider the fees. He wanted to offer those who submitted the application on time a steep discount. He was tired of spending time in meetings on events not being on time. Ladoulis wanted Town to wrestle events from planning, providing P & L sheets, and estimating tax revenue. He said Town had an event-based economy, and they needed to be pro-active. There was a discussion on the priorities chosen by the Council, and the importance of special events on the list, in which the need for a special event planner was listed third. Crossett said that vacation home rentals (VHRs) were next after the mine to be discussed from the priorities. Ladoulis thought it would be a shame to wait until June. Michel asked the Council if they wanted to switch the order of priorities. Mason wanted to consider what Telluride and Aspen were doing and have the information added to the events discussion. Crossett was trying to communicate a staffing capacity issue. Ladoulis asked if Town would be willing to hire a person. Crossett explained that event organizers drove events, and what Ladoulis described was a different model from what Town was currently following. The Council needed to decide which way to go. Michel said they would tee events up after the VHRs, and they would have a good discussion. He noted there was room for improvement, and Mitchell agreed the topic was on the radar.

Next, Ladoulis brought up the need for a public information officer (PIO). Michel said communication was discussed at the retreat. Crossett said not everything needed to be

funneled through a specific person. Ladoulis thought it was confusing. He would prefer a single point of contact. Crossett said he would send out the model discussed at the retreat. Ladoulis thought the Council had agreed to appoint a PIO. Schmidt heard they needed a chain of command. Crossett said he would send out a diagram for them to review.

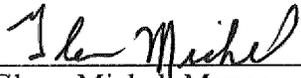
Belkin mentioned that Schmidt had asked for a review of the Town's water rights. He said it would be in Executive Session for the purpose of discussing Town's water rights. Ladoulis preferred to discuss in July. Michel asked Schmidt what he was doing with the information. Schmidt heard a certain development might be asking Town for water, and he wanted to become informed. Michel questioned the cost. Mason and Mitchell agreed with Schmidt that they wanted a water inventory.

DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE

- Monday, March 7, 2016 – 6:00PM Work Session – 7:00PM Regular Council
- Monday, March 21, 2016 – 6:00PM Work Session – 7:00PM Regular Council
- Monday, April 4, 2016 – 6:00PM Work Session – 7:00PM Regular Council

ADJOURNMENT

Mayor Michel adjourned the meeting at 10:49PM.



Glenn Michel, Mayor



Lynelle Stanford, Town Clerk (SEAL)

