

**Town Council Regular Meeting**  
**Town of Paonia, Colorado**  
**May 13, 2014**

RECORD OF PROCEEDINGS

The Regular Meeting of the Town Council held Tuesday, May 13, 2014 was called to order at 7:03 p.m. with the Pledge of Allegiance. Those present were Mayor Neal Schwieterman, Trustees David Bradford, Eric Goold, Ross King, Amber Kleinman, Charles Stewart, and Suzanne Watson; Chief Scott Leon; Finance Officer Cindy Jones; Deputy Clerk Corinne Ferguson and Town Clerk Barbara Peterson.

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

**Approval of Agenda**

Mayor Schwieterman suggested removing the audit report presentation until the next meeting. Auditor Pete Blair was not available to present due to illness. Trustee King moved to approve the agenda as amended. Trustee Stewart seconded and the motion passed unanimously.

**Announcements**

None

**Visitors**

Daniel Gonzalez thanked the public works crew for cleaning up Apple Valley Park in such a timely manner.

**Unfinished Business**

Ordinance 2014-05 - Codification

Mayor Schwieterman noted the codification work session prior to the regular meeting. Several more work sessions may be necessary if the Board continues to address the review with the same format. Mayor Schwieterman asked the Board how they wished to proceed. Consensus was to continue work sessions prior to each regular meeting. The next codification work session is scheduled for 6:00 pm May 27, 2014. Trustee Watson requested a brief explanation of what the codification was. Mayor Schwieterman explained that each law since 1902 when Paonia was incorporated are all in an individual format, some undated, making it difficult to decipher. Codification will bring the laws of the Town in to one document, eventually available electronically, to simplify the reviewing of the Town ordinances.

**New Business**

2MG Lamborn Water Treatment Project – Filtration Mfg Contract Award

Mayor Schwieterman gave a brief explanation of the three (3) estimates received for the filtration system and the documents presented to the Board in the packets. Clerk Peterson, Public Works Director Travis Loberg, and Engineering contact Kelly Knowles were present for discussion. Ms. Knowles stated all three bids fall within the Town budget. This gives the Board more flexibility to base a decision on the operator, Travis Loberg, opinion. Once the project is completed, the operator will spend the most time working with the system design chosen. The estimates all meet or exceed requirements for the system. Director Loberg added that the 1MG treatment plant design was completed by Pall. The plant is a good operation that provides good water. After touring several plants Director Loberg believes the Filter Tech plant design is more user friendly, as well as less expensive to operate.

Trustee Kleinman asked if there were any issues with operating two plants designed differently. Director Loberg answered that the only down-side is stocking for two types of equipment instead of one type. Trustee Goold believes it is a fair trade-off regardless of which estimate is chosen and asked Director Loberg if he had a preference. Director Loberg prefers Filter Tech, stating the system offers better filtration. Clerk Peterson added that Filter Tech is local; prior Boards strived to keep business local whenever possible. Discussion ensued regarding cost differences and extra charges, including possible delay fees.

Trustee King moved to award the contract to Filter Tech with Trustee Goold seconding. Trustee

Stewart asked if the proposed contract was available for review and whether the contract had been reviewed by the Town attorney. Ms. Knowles has a copy of the proposed agreement and will make it available for legal review. The motion was brought to a vote and passed with Trustee Stewart voting “nay”. Trustee Stewart moved to reconsider the contract award for Filter Tech, contingent upon review and approval of the contract. Trustee Goold seconded and the motion passed unanimously.

Ms. Knowles offered a brief update on the environmental assessment and the process. Ms. Knowles believes the assessment can be completed simultaneously with the 1MG project and will not delay the process. The 1MG storage rehab request for proposal (RFP) will be published in the May 14, 2014 Delta County Independent (DCI). There is some concern that the 2MG project will not be completed by the December 31, 2014 deadline. Ms. Knowles believes May, 2015 is more accurate completion date. Mayor Schwieterman asked if the State will show some leniency with the completion deadline since the Town will be far along in the process to comply; and due to the unrealistic timeline expected. Ms. Knowles believes the Town will need to continue the quarterly letters updating the community until the treatment plant is completed.

Mayor Schwieterman tentatively added the contract award to the special meeting Scheduled for May 20, 2014.

#### Living Farm Café – Liquor License Renewal

Mike Gillespie was present on behalf Living Farm Café. Living Farm Café, located at 120 Grand Avenue is requesting the renewal of the liquor license through May 29, 2015. Chief Leon stated there have been no negative reports. Clerk Peterson stated the lease date had been corrected on the application. Trustee King moved to approve the Living Farm Café Liquor License Renewal request. Trustee Kleinman seconded and the motion passed unanimously.

#### Yates – Objection to Goat Exception

Roxanne Yates, 127 Niagara Avenue, was present objecting the exception given June 24, 2012, permitting two (2) goats on the property of Ms. Chrys Bailey, 118 Main Avenue. Mayor Schwieterman gave an overview of the documents and photographs included in the Board packets and read the minutes from the council meeting held June 24, 2012 for the record. Ms. Yates stated that the objection has nothing to do with Ms. Bailey; the issue is that Ms. Yates felt the exception was made without neighbor knowledge and input. Ms. Yates added that the location of Paonia afforded a rural living environment very close, and that livestock do not belong within the Town limits. Ms. Yates provided a petition signed by six (6) neighbors, including herself, requesting the removal of the goats and the goat enclosures be removed within thirty (30) days. Michael Bailey was present on behalf of his mother. Mr. Bailey stated his mother had written a letter addressing the objection, but he wanted to add that the family presented the original request based on the initial approval given by the neighbors contacted in 2012. The Bailey family is in the process of purchasing land more suited for the caretaking of animals. Mr. Bailey requested that his family be allowed to maintain the status quo until the end of June. This will allow plenty of time to complete the purchase and relocate from the property at 118 Main Avenue. Trustee Goold clarified that by the last day of June, 2014 the goats will no longer be on the property in question. Mr. Bailey confirmed that was accurate.

Discussion ensued regarding the use of the goats and the ordinance regarding livestock within Town limits.

Trustee Watson asked what the difference was between an exception and a variance. Deputy Clerk Ferguson explained that a variance requires certain legal support to rescind, while granting an exception allows the Board to address the situation and rescind the exception based on such measures as a neighbor complaint.

Mr. Doug Long stated the allowance of livestock in Town limits will turn Paonia in to a farm. The county area provides land for such living, not in town. Trustee Stewart reiterated that the previous council granted the exception with the understanding that if it became an issue the exception would be revoked. There are neighbor concerns now and the situation calls for the removal of the goats, which the owners are in the process of doing. Trustee Stewart moved to allow the Baileys until the end of June to remove the goats from Town limits. Trustee Kleinman seconded and the motion passed unanimously.

#### Creek Vista/ Hawks Haven

BLM Access

Alison Elliot, Hal Baril, and Chip Meneley were present on behalf of the Hawks Haven/Creek Vista

developers. The developers are requesting a new road agreement in lieu of the previously adopted agreement from 2005. Ms. Elliot believes the minutes provided from the April 15, 2014 provided a good synopsis of the Planning & Zoning (P&Z) Commission recommendation. Ms. Elliot felt that the meeting was very productive; all parties were able to voice their concerns, and felt the compromise to move forward was very amicable. The P&Z Commission recommends to approve gravel road built to AASHTO standards, the BLM access be moved to the permanent location suggested, and discussion continue regarding a traffic study, speed mitigation, road ownership, and gate placement. The only remaining point that needed clarification was whether the road would remain private or be opened to the public. To make the road public the Town of Paonia would need to take the responsibility for a gravel road. The developer's request that work sessions be planned to work through the finer details of road ownership. Mayor Schwieterman added that both the Pan American and Creek Vista Home Owners Associations were well represented at the P&Z meeting. Letters from Creek Vista Senior Apartments, Ali Lightfoot, and Ron Rowell were read in to the record. Trustee Goold stated the main area of contention from the P&Z meeting seemed to be whether the road should be kept private or opened for public access. The issue of the road access, speed, and other issue require more time to work through. Discussion ensued regarding the ownership and location of the road. Town Attorney Marek clarified that while the road is deeded to the Town; the Town is not required to accept the road prior to all Town requested conditions are met.

Trustee Watson expressed frustration that the project had been completed in pieces and questioned whether the Board should move forward with a few points or start again with reviewing the processes from the beginning. Trustee Goold stated that all the issues warrant discussion, but the few, such as the gravel vs. pavement and the BLM access point are issues that can be resolved tonight. Mayor Schwieterman added that the final plat approval will give the Board an opportunity to look over the full scope of work.

Trustee Stewart believes consensus is both parties agree that there needs to be a dual access and that the road needs finished, and the BLM access needs to be moved to a permanent location.

Ms. Elliot reiterated if the road remains private it will not be paved, but if the Town plans to take ownership it is up to the Town whether the road is gravel or paved. Trustee Stewart added that personally, Ms. Elliot has no obligation to improve the road at all. Ms. Elliot confirmed, adding that for safety an all season access road improvement is needed. Trustee Kleinman asked if there was a benefit to the Town taking ownership, and what kind of maintenance or safety liabilities would be assumed with road ownership? Director Loberg stated the cost to maintain the gravel road is significantly less than the maintenance of a paved road. Discussion continued regarding engineering of the road and the possibility of future changes.

James Normandin, 30 Pan American Avenue, asked for clarification regarding the location of the new BLM access point and turnabout for vehicles. Celia Roberts asked for a better description of locations when the Board discusses things such as the road and gate locations.

Trustee King stated the project comes down to three (3) issues. 1. The filing for the Creek Vista Crossing subdivision, 2. The existing agreement from 2005 and 3. The BLM access point. Waiting for a decision leaves the Pan American subdivision without an emergency access point. Trustee King stated he does not understand why the agreement from 2005 is considered null and void. Trustee King questioned what legal recourse the Town has to move forward. Trustee Bradford recommended that the discussion of options take place in an executive session. Trustee Goold questioned the necessity of re-reviewing the 2005 agreement and stated no decisions were ever going to be made at this rate with this Board.

Trustee Bradford moved to go in to executive session for a conference with the Town attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b). Trustee Watson seconded. Discussion ensued with Trustee Goold reminding the Board that holding an executive session on an item not previously listed on an agenda was something the Board refused to do and had never done in the last two (2) years. The motion was brought to a poll vote and failed for lack of a two-thirds majority with Trustees Goold and Stewart voting "nay".

Trustee Watson moved to add an executive session for Hawks Haven legal advice to the next agenda, May, 27, 2014. Trustee Goold seconded and the motion passed with Trustee Kleinman voting "nay".

Trustee Goold moved to direct the developers to move the BLM access to a permanent location and gravel the road to AASHTO standards with no pavement. Trustee Kleinman seconded. Richard Schmidt stated that roads should be implemented at the beginning of a process for exactly this type of reason and believes approving the developers to move forward prior to the executive session to obtain legal advice is wrong.

Steve Gulick stated on behalf of the Creek Vista HOA that they support the developer's request to gravel and move the BLM access, while leaving the more difficult discussion for future work sessions. Tom Gifford asked what recourse the Town will have if the developers fail to gravel like the developers failed to pave per the last agreement. Ron Rowell added that the taxpayers need an agreement that guarantees the steps forward. Mr. Rowell is not in favor of the gravel road, believing it will need paved in the future and that it will then be the taxpayer's problem. Mr. Rowell believes that correct emergency access is necessary now, and encourages the Board to require a bond to ensure the project is completed.

Ed Marston agrees that the BLM access is an important amenity and should be moved to a permanent location.

Trustee Watson expressed some confusion over the decision to place five (5) lots in conservation easement and whether the new direction requested was a change of use. Trustee Watson feels the Board should take a closer look.

The motion was brought to a vote and failed with Trustees Bradford, King, Stewart and Watson voting "nay".

Trustee Stewart moved to have an executive session at the next meeting so members of the Board are advised of the recourse they have if the Board decides to require paving, and to add the specific issues of moving the BLM access point, accepting the gravel road offer, and when completed to the Town standard accepting ownership of the road to the next meeting agenda. Trustee King seconded the motion. Trustee Watson asked if the Board was locking themselves in to what type of road they would accept if the specified the road type on the agenda. Mayor Schwieterman stated that the motion had not been voted on yet, but if accepted the motion states the Town will accept the gravel road. The motion was brought to a vote and passed unanimously.

#### Town Manager – Executive Session

Trustee Kleinman asked to speak prior to the calling for executive session to discuss the Town Manager position. The personnel committee, Trustees Goold and Kleinman met with Elyse Ackerman-Casselberry from the Department of Local Affairs (DOLA) and the Town Human Resource representative Dave Knutson and completed a recommendation to present to the Board. The personnel committee requests that the Board seek to hire an interim Town Manager to establish the role of a Town Manager, complete a budget analysis to identify the sustainability of a permanent Town Manager position, and participate in the hiring efforts for a permanent Town Manager. The personnel committee has four (4) solid candidates provided by DOLA and would like to narrow the candidates to the top two for selection by the Board.

Trustee Goold added that it is necessary to shift the culture in how the Town has been functioning. The issues the interim will face are the lack of a Town Manger for seven (7) years, making it a difficult transition for the Town. The big decision is whether the Town can afford to have a permanent Town Manager. Trustee Goold does not believe the position of Town Manager is sustainable. The interim Town Manager can also assess whether the expectations of the Board are attainable. Trustee Goold believes that many people think the Town Manager is a "magic bullet" who will solve all the issues in Town, and that is not the case.

Trustee King asked Mayor Schwieterman if the four (4) finalists from the original hiring process had been contacted as requested at the prior Board meeting. Mayor Schwieterman contacted the finalists and all four (4) stated they were still interested in the position. Discussion ensued regarding the individual costs associated with each interim Town Manager candidate.

Trustee Goold asked for direction from the Board on how to proceed and whether looking at the original candidates was something worth doing again. Trustees Watson and Goold engaged in heated discussion over inconsistencies in their motions and votes as well as biases regarding the hiring of a Town Manager. Mayor Schwieterman redirected the conversation and asked the Board how they wished to proceed.

Trustee Stewart believes that an interim Town Manager is a way to move forward without making long term commitments. The interim provides some distance from the emotion and animosity that resulted from the previous hiring attempt. Trustee Stewart is in favor of moving forward with an interim to see if the Town can make the permanent position work for the Town.

Discussion ensued regarding whether to include any of the previous candidates for the permanent position as possible interim candidates.

Trustee Watson stated she is uncomfortable with allowing the personnel committee narrow the interim

candidate pool and felt the Board in its entirety should make those decisions. Trustee Kleinman assured the Board that the personnel committee was capable of narrowing the candidates, and would shorten the amount of time needed in interviews for the hiring of a short-term position. Trustee Watson reiterated that she believed that what the personnel committee thought was appropriate moving forward might not be what is appropriate and that the entire Board should have the input from the beginning of the process. Discussion ensued regarding the expectations of the interim Town Manager, what projects the interim would be assisting with, the necessity to have the permanent Town Manger, should one be hired, reside in the Town of Paonia. Mayor Schwieterman again asked the Board what direction they would like to take to proceed.

Trustee Stewart moved for the Board to review the resumes for an interim Town Manager and base the decision on who to interview from the resumes submitted. Trustee Watson stated she does not feel that she has had any input toward what the Board wants in an interim Town Manager.

Meeting recessed at 9:50 pm.  
Called to order at 9:55 pm.

Trustee King stated the Board should have all four (4) interim candidates interviewed. Mayor Schwieterman asked if the Board wished to perform telephone interviews prior to the special meeting scheduled for May 20, 2014. Trustee Stewart wants the entire Board to do the interviews as soon as possible and suggested the background checks start immediately. Mayor Schwieterman stated staff will look in to the availability of the candidates for telephone interviews on May 20, 2014. Discussion ensued regarding who would decide the questions to ask the candidates. Trustee Watson suggested the Board convene again prior to the interview to discuss the questions. Trustees Goold and Kleinman expressed frustration regarding the lack of trust had by other Board members regarding the personnel committee and felt that the work completed by the committee was intended to make the decision making process easier, while it seemed to be having the opposite effect.

Trustee Bradford moved to interview the four (4) interim candidates via telephone May 20, 2014 and that each trustee brings two (2) questions for the interview process. Trustee Watson seconded and the motion passed with Trustees Goold and Kleinman voting "nay".

#### Administrative Appointments – Police Chief, Town Clerk, Finance Officer

Mayor Schwieterman explained per statute the Administrative positions needed to be appointed or re-appointed following every regular Board of Trustee election. Trustee Bradford questioned if the Public Works Director position should be included. Trustee Watson asked if there was a process to follow that included job performance standards and job reviews. Trustee Goold asked if the state statute includes the Public Works Director position for appointment. . Mayor Schwieterman stated the Board could include the Public Works Director Position in the motion so there is no question. Discussion ensued regarding the state statute and the timeliness of the re-appointments. Trustee Bradford moved to re-appoint current department heads in the same positions. Trustee Kleinman seconded and the motion passed with Trustee Watson voting "nay".

#### Mayor Pro-Tem - Selection

Mayor Schwieterman explained per the 1903 Town Ordinance the Mayor appointed the Mayor Pro-Tem, but the Ordinance conflicts with the state statute which has the Board making the Mayor Pro-Tem appointment. Mayor Schwieterman recommended the appointment of Charles Stewart. Trustee King moved to appoint Trustee Stewart as Mayor Pro-Tem. Trustee Bradford seconded and the motion passed with Trustee Watson voting "nay".

#### Agenda – Deadline for Requests, Packet Distribution

Mayor Schwieterman asked if the Board wished to address the current timeline of events regarding the setting of the board meeting agenda and packet distribution since statements had been made regarding the lack of time to review materials. Mayor Schwieterman added that any change will require time to adjust for both the staff and the public. Trustee Bradford suggested making the changes effective June 1, 2014 to allow for the shift for staff and public. Trustee Stewart moved to close agenda item submittals the first and third Monday prior to regularly scheduled Board meetings with packets available the following Wednesday. Trustee Bradford seconded and the motion passed unanimously.

Mayor Schwieterman reminded the Board that last minute submittals do occur from time to time and that disbursements and minutes may not always be available in the Wednesday packets.

#### Additional Business

Mayor's Report: Mayor Schwieterman noted the desire of the Board to have committee appointments made with the understanding that most Town Managers do not function with the same

structure. Committee appointments are as follows:

Water/Sewer/Trash – Trustees King and Watson

Streets – Trustees Bradford and King

Parks – Trustees Kleinman and Watson

Public Safety – Trustees Goold and Stewart

Previously appointed –

Personnel – Trustees Goold and Kleinman

Finance – Trustees Bradford and Stewart

Mayor Schwieterman reminded the Board that the Commercial Marijuana ordinance draft needs to begin soon for the November election. Trustee Watson asked if an ordinance had to be drafted prior to the election. Mayor Schwieterman stated yes, the ordinance needs to be drafted prior to the election.

Public Works: Director Loberg reported the rain has slowed down momentum on some projects underway. Trustee King asked when the Apple Valley Park basketball court was going to be completed. Director Loberg states the basketball court will be the last item completed at the park because it is currently being used to store items to protect the grass.

Police Report: Chief Leon stated the police department has leads on the Library burglary and auto theft. Serious crimes have dropped, but minor calls are up. The police department has offered fewer services recently because of the time required for the investigation the department being short staffed. Chief Leon recognized an officer involved incident. On May 3, 2014 at 9:27 pm an ambulance was paged to respond to an apartment building regarding a woman in labor. At 9:31 pm an officer was notified of the situation and arrived on scene at 9:32 pm. At 9:38 pm the officer, Neil Ferguson, reported to dispatch that he had delivered a baby boy. The ambulance arrived at 9:40 pm and transported a healthy mother and child to the hospital. Chief Leon stated it was a pretty awesome call for the police department. Trustee Bradford asked Chief Leon to convey the Boards gratitude for his service. Chief Leon jokingly added that Officer Ferguson would be receiving a write-up for practicing medicine without a license.

Committee/Meeting Reports:

Finance: Trustee Stewart reported that the finance committee met with Town Auditor Pete Blair to go over the 2013 audit report. Mr. Blair will make a formal presentation at the next Board meeting. The finance committee meets weekly to review Town transactions. Finance officer Cindy Jones is doing a terrific job keeping the finance committee aware of all financial aspects of Town business.

Personnel: Nothing to report.

Minutes:

Corrections noted. Trustee Kleinman moved to accept the minutes of April 22, 2014 as amended. Trustee Stewart seconded, and the motion passed unanimously.

Disbursements:

Trustee Stewart moved to pay the bills through May 13, 2014. Trustee Bradford seconded and the motion passed unanimously.

10:26 p.m. Meeting adjourned.

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Town Deputy Clerk, Corinne Ferguson

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Mayor, Neal Schwieterman