

**Minutes of the July 14, 2005
Meeting of the Town Council of the Town of Castle Valley**

Call to Order: Mayor Keeler called the meeting to order at 6:40 PM

Board Members present: Bruce Keeler, Darr Hatch, Bob Lippman, Jerome Bidinger, Robert Ryan.

Others present: Damian Bollermann, Ron Mengel, Jennifer Mengel, Jack Campbell

Minutes taken by: Rebecca Martin

- 1. The minutes of June 9, 2005 Town Council meeting stand as presented.**
- 2. The minutes of the June 27, 2005 Special Town Council meeting on the budget were amended as follows. Under agenda item number 3, after “Approve the transfer of \$93,295”, add “...and \$40,000 for a Total of \$133,295.”** This total is reflected in the year end document that was notarized and sent to the State Auditor.

Jerry moved and Bob seconded the motion to approve minutes as amended. Motion passed unanimously.

Committee Reports

3. Water Working Group: No new report.

4. Water Department Report:

Water agent, Catherine Howells, has received lots of phone calls wanting clarification and settling people down (refers to a July 7, front page article in the Times Independent on CV water issues – copy included with these minutes)

Catherine provided a status report and an issues report (included with minutes). She suggested going over the issues in an executive session, either at this Council meeting or the next. **The Council agreed to look over the issues report and meet with Catherine to discuss issues.** Bob thanked Catherine for putting together these reports.

Catherine offered her resignation from the Water Agent position, as of August 30, 2005, saying that “it is time to go on and do other things.” Bruce commented that he is sorry to receive her resignation right now and thanked her for her work over all of these years and her valuable service to the community.

Damian asked for a current update on water rights. Catherine deferred the question to Bruce. He commented that the Town is in the process of trying to acquire water rights and that when something is secured, the Town will let people know.

Cris Coffey asked if the article was accurate. Bruce said that the article was largely accurate, but contained inaccuracies. Bruce says some of the numbers are wrong, and that it was inaccurate to indicate that Town Attorney, Jerry Kinghorn, and State Engineer, Mark Page were at the (Spanish Valley Water District?) meeting when they were not, and that the statements attributed to them were unfamiliar. He posits that (the author) must have interviewed them to have gotten those statements. He reiterated that the issue is a paper water issue, not a wet water issue, and that it is not a simple issue.

Jennifer Mengel said she got the impression that the article implied that water rights that came from the town and are developed and registered at the county, but not at the state, are secure. Bruce said that that statement by Mark Page was new information. He commented that a lot of supposition is occurring, and that different perspectives produce different dates. We do know that, in 1979, the developer should have filed a certificate of non-use, but that action was not taken. We do not know how the adjudication will be applied, or what timeframe may be protected. The Town assumes that everything up to 1993 is protected because of the window of the adjudication, but acknowledges that this is also supposition.

Bruce said if you don't have your own water user claim and your well was put in after 1993 then according to this article, Mark Page said that anyone who has wells as of right now, is secure. The Town has not received any information officially, except that there was a window prior to around 1980.

Jennifer said that Mark Page is quoted, in the article, as saying that appropriations for this area are not closed. Bruce clarified that the individual water right referred to is for “culinary” /”domestic” and is a relatively low amount of water. Jennifer commented that her concern is to discover what obligation the Town is under to inform the citizens whose water rights are dependant on the Town about when certain

actions would have to be taken, before the adjudication is finished, giving property owners enough lead time to act in their own interest. Bruce said that the Town has made information public when information was available by having the attorney hold a public meeting, etc., but there is nothing certain to say right now.

Ron asked whether Mark Page has made a statement after the article came out. Bruce had asked Jerry Kinghorn to check on what Mark Page meant by his statements in the article, but Mark Page hasn't responded to anyone.

The Town has been waiting months for a letter from Mark Page "that is expected to tell us where we are at." This letter is said to be undergoing strong scrutiny, and is expected to arrive soon providing something on which the Town could base statements.

Jennifer reiterated that she feels that it is up to the property owners to be assertive rather than to sit back on these issues, and that they need information from the Town. Bruce said the Town cannot give information out at this time because it is not certain information. The timeframe that the adjudication covers has never been applied, nor is it clear what help may be offered to the Town in our situation.

(The Mengels) commented that people are ready for more information, and that after so much time, the Kinghorn public meeting, and the article in the paper, it is worrisome that the issues continue to be handled in executive session. Discussion ensued as to whether there was, actually, information that the Town has not shared. Bruce said that the Town's attorney councils the town to handle adjudication issues in executive session because there are legal matters involved. He added that there are unknown pitfalls, unclear issues, and that a need for caution exists. He reiterated that the Town has given out all of the concrete information available at this time, and that any new information in the newspaper article was new to the Town as well as the public.

Bruce noted that handouts on water issues are available at the Castle Valley Library. He said it is not appropriate for the Town to give out information that will raise or dash hopes with no backing for it. He noted that any resolution to current issues is going at a snail's pace, e.g., it will take until 2007 or 2008 for the filing of the book that starts the official legal process. This allows the Town time to get things in order before the actual adjudication.

Bob Lippman commented that the article takes the public by surprise. The article neglects to include the context that the state engineer is required to treat all water claims as valid until adjudication. The article makes it sound like we do not have water rights. He notes that the Town has a position on this, legal arguments about this, and options under discussion. He noted that getting information through an article like this is less optimal than getting more technical information from the Town Council. **Bob asserted the need for the Town Council to be briefed on a regular basis by the Attorney, who is our advocate, so they can field inquiries and issues such as those included in this article.**

Jerry Bidinger said there are statutes of limitations with respect to forfeiture of water rights that have never before been litigated, i.e., the timeframe in which an objection can be raised about the legitimacy of water rights has never been interpreted. The Town has no real information about what is going on at the State Attorney General's Office or the Division of Water Rights. They don't talk to Kinghorn, nor do they give him information as to the subject matter of meetings relating to Castle Valley, nor do they invite him to meetings as he requests, nor does he see presumed memos, etc. Jerry said it is his opinion, based on quotes from Mark Page and discussions over time, that there may be some effort on the part of people in the state to come to a point where they can preserve Castle Valley's water rights. He said it may behoove Castle Valley not to "chisel its positions in stone" or "set its feet in concrete", i.e., we may want to respond different ways depending on how things unfold. He said that without knowing more, it would be dangerous to take a position. Rather, the Town wants the State to clarify its position.

Ron commented that, in the past, the town has discouraged people developing their own water rights separate from the Town saying the rights are secured by the town, etc., but now this appears to be false. He noted that he is depending on the town for services. He says there are avenues available for individuals to secure water rights, and he would hope that the town would give people enough information and lead time if they should take action themselves. (The Mengels) want to know when or if the town will tell people to go and get their own water right.

Bruce said that if the Council thinks it is dubious that water rights will be secured, they are going to let everyone know. He said that that time has not arrived yet, but rather that the (adjudication) process has not yet begun, and that the Town has to get responses from all sorts of State agencies who don't want to give responses in uncharted areas. Bruce said he is currently very optimistic about a solution to the paper water rights issue. He said that the Town is not saying that our water rights are forfeit at this point, but rather that it seems likely that at some point down the road some rights will be forfeit. He said that Town's position has to be that it will acquire water rights and the Town cannot turn away from this issue, but must follow it through.

Bruce noted that this is not an issue of the Town losing people's water rights. Even if an individual had developed their own water right, the right could still be forfeit if it was based on the original ranch rights. Thus if someone developed their own water, and it was forfeit, the difference would be that the individual would then have to be on their own going into the adjudication, and would not have the municipality to gather a large amount of water to be sure all of the needs would be covered, possibly without purchasing another water right.

Jerry commented that the only thing he feels he hasn't made public is speculation on legal theories that the State Attorney General's Office might be discussing. One reason for this is that it's all innuendo, and may be only partially true. The other reason is to avoid "shooting us in the foot", i.e., if they are working on theories that could help us, he said he would hate to give power to the enemy of the beneficial theory.

Jerry and Bruce both commented that they believe that "the Page letter" will be another juncture for making information public. The content of this letter is expected to answer questions for Castle Valley, so its contents will be shared, another meeting held or the item place on the agenda, etc., to inform people of the current state of our water rights as outlined in the letter.

Jerry added that one thing that was said at the water board meeting was that Mark Page was not at the meeting because the letter was not done. Dale (Pierson), the head of the water board, said his impression was that the letter would be signed by Mark Page's boss or somebody in Salt Lake.

The timing and context of the quotes in the article remain unknown.

Damian noted that there is a six month window for pending applications for rights (well permits). He asks if there is a known window for the letter? None is known.

Jack Campbell raised the question whether there will be a time when the POA should send out a letter on water rights issues. He acknowledged that phrasing such a letter to avoid "dropping a match in the cheat grass" would be very challenging, so he won't attempt it until the time is right. He asked whether anything merits a mailing sooner than the September annual POA letter? **With nothing definitive to say, the answer is "no". However, "the Page letter" is expected to bring in a definitive answer on some things, e.g. that we will have to find a replacement water right, or we are secure, or well permits will/will not be given out, etc., then the Town will alert Jack ASAP to prepare a POA mailing.** Jerry said a POA mailing should refer people to the website, the T.I. article, Ron Drake's column, etc.

Bruce explained that he has begun to suspect, based on what he has been hearing from different sources, that the letter may say that, until Castle Valley's rights are deemed forfeit through adjudication, they are good, people may continue using water, and the water agent may continue to issue well permits. He also suspects the letter will say that anyone who currently "has a straw in" will keep their water rights, and that anyone who does not is included in the group for whom the Town must seek a replacement water right. The article's quote from Mark Page supports this line of assumption. He said that talking about any of these scenarios is hard because we have no concrete evidence to say they are anything more than possibilities.

Bob said that the current problem is not in articulating solutions, but rather to have an accurate description of what the problem actually is. The article doesn't characterize the current issue.

Bruce noted that the Town's website is the place where current information is posted. Currently, the Kinghorn transcript is there. **Jerry suggested that the website be updated to include the water history, the letter to the realtors, the Kinghorn transcript, and the letter to Catherine saying she may continue to give out well permits. If necessary, more voluminous attachments can be made available in the Castle Valley Library and referred to on the website. The website address is castlevalleyutah.com The Minutes from Town Council meetings, which typically may include**

information on water issues, will also be posted with a one month lag time before each set of minutes is approved at the next month's meeting.

Ron commented that he believes people become suspicious if they are not receiving a definitive statement to update them on important issues on a monthly basis.

Catherine suggests that the Council look at the "issues" section of her report and let her know if they would like her to work on any of the issues in the next month. The Council will connect with her when they have looked over her issues report.

5. Road Department

Damian Bollermann reported that they have done some major improvements to Upper Pace & Upper Pope, and some minor widening on Meadow Lane. This work completes the spending from the Fiscal Year (2005) road improvements budget.

Mark has been out doing annual culvert maintenance so that they don't plug up.

There is lot of vegetation this year. Tom Henry will mow along the road sides for firebreak purposes and to improve the look.

Ron Mengel asked whether the improvements are bringing the roads up to fire and safety standards, i.e., to create 20' wide roadways. Damian said that it would be impossible to widen up to 20', especially in the upper areas, without a lot of money. He said that he has widened these upper roads surfaces to as wide as possible without removing trees and bringing in a bulldozer.

Ron said he had requested a couple of feet of further width 3 to 4 month ago, and now wanted to know what the progress has been towards meeting the 20' width standard set out in HB 146. He said these standards have always been the requirement. Ron had presented these standards to the Town at that time, saying that the State may be looking more closely to see if Towns are complying.

Damian suggested finding out what the penalties may/may not be for non-compliance. Ron interpreted this to mean that the Town's position was not to come into compliance. Bruce commented that these are new standards, and that typically there would be some time allowed for existing conditions to be improved to meet new standards. Some standards may not be applied to existing roads, but only to new subdivisions, or perhaps not applied at all to small, rural, towns.

Damian said he widened Meadow Lane, using backhoe and blade work, as much as possible without blasting. There is a steep drop on one side, and safety is an issue. It is possible that the Town may not be able to come into compliance on some of the roads.

Jerry is not in support of asking about penalties, but rather that the town will comply as much as is reasonable. **He feels the Town needs some written record, rather than a verbal record, about steps taken and where the town stands with regard to the standards to serve as a defense against law suits. He suggests that the document should include information about our ability to comply, our current status on improvement efforts, lists of obstacles, budget information, and a plan in place to take steps toward compliance.** Jerry indicated that the Town should avoid being liable if someone sues because their house burns down claiming the fire department could not reach their house because the road was too narrow.

Ron warned that he is documenting the passing on of information from the Fire District to the Town "about the dangers that (the Town) has", which he said is the Fire District's obligation, so that the Fire District is protected from potential liability in the future. He asserted that the Town is now liable.

Ron said that the Road Committee, which was working on the proposal to create a plan related to these standards, must meet to further the work. He said that all road work needs to be recorded in writing to protect the Town against lawsuits. Discussion ensued about the existing Drainage Study, outlining extensive work to be done, the costs, and whether to try to do that work, not to do it, or to do something else that somehow addresses the issues.

Jerry proposed creating documentation including a copy of the drainage study, a road department statement about the standards, an annual update document, a log of efforts with regard to the standards.

6. Planning & Zoning Commission.

Rebecca reported on behalf of the Planning and Zoning Commission that they did not meet due to lack of quorum, and so are planning a special meeting in the next two weeks to handle items on the agenda

Progress has been made in outlining the steps in the Conditional Use and Business License process. This is in draft form and will be passed to the Town Council when the P&Z has reviewed it. A master list of all conditions on record is being compiled. Inconsistencies over time are showing up so they are working on that.

An early draft of the Fuel Storage Ordinance relating to aquifer protection was brought to the Town Council (draft included) for information only, no action required.

7. Firewise and Fire Department Report

Firewise: Dave Vaughn is getting more people asking for help. More people will need to be turning in hours. Private property work may be able to continue in the fall. Feedback is very encouraging.

Fire Department: very dry conditions have raised concerns about the need for cheat grass mowing. Jack's lot is exemplary. A lot of mowing still needs to be done. Ron said the BLM continues to be worried. He notes that the fire danger is posted as "extreme" at the gate.

Recent training helped in the recent fire in Castleton. The fire department's response was deemed "impressive". The (shed) was lost, but the adjacent (house) was saved. People enjoyed a few laughs about the "WWII trucks". A new truck is expected from Canada by around December.

Ron hopes that people are vigilant and will talk to their neighbors (about the fire danger). Forms for registering fire prevention work are out by the mailboxes.

The fire department is eager to get going with irrigation. Damian stubbed in a 1-inch pipe, and a box may be in this week

8. Building Department Report

Ron submitted a written report. He has had a conversation with Richard (Schwartz) about someone's request to build "a bunch of horse shelters". Richard clarified that they do need to get a building permit, but one building permit can cover six horse shelters, and there can be no objection if it's not commercial.

9. POA Board: No report.

10. Grand County Recreational Services Board: No report.

11. Landscaping Committee:

Efforts are underway to install the control box and irrigation lines, which is the basis for the sprinkling system. Bruce commented that "110 degree weather is not prime for planting" so they are not hurrying forward.

Nephi Williams and the scouts have done a great job removing all of the tumbleweeds. They continue birthing the sidewalks to avoid possible ankle injuries. Bruce said they are looking forward to installing picnic tables and more plants.

12. Solid Waste District Report: Nothing to report.

Old Business

13. Discussion and possible action re: Appointments to Board of Adjustments. Mark Webster has requested to be on the Board of Adjustments. Susan Ulery will remain on the Board. No answers have been received from other older members whether they wish to remain on the Board. **Jennifer Mengel volunteered to be placed on the Board of Adjustments. Bruce agreed that that would be excellent, and said he would get back to her as to the length of her term.**

14. Discussion and possible action re: adopting the proposed Annexation Policy Plan.

Some people who have received the Town's letter about the Plan are getting back to the Town saying they are not interested in annexing, although no action was necessary and no intention to Annex exists.

Bob expressed concern about the map attached to the Plan, i.e., whether the map needs to be topographic, whether the boundaries are arbitrary, or what would happen if property lines change? Discussion ensued. Catherine said the attached map is not the original map, and that the original map called out individual properties to be included in the Plan, and this map goes much further. Jerry asked whether a more inclusive map creates a difficulty for the Town. Bruce noted that only "contiguous" land

is eligible for annexation. Nothing further away could be annexed unless the Town first annexed the land in between, making the more distant land contiguous.

Jerry moved, and Bob seconded the motion, to add the words “which is a part of this ordinance” to the end of section A.1.

Bob asked whether Utah Code includes a section on Appeals.

Bob asked whether definitions should be added. Sentence 2 refers to State definitions, so this was deemed sufficient. **Jerry moved and seconded the motion to add the wording “this annexation policy plan incorporates all of the criteria required and suggested by Sections 10-2-401.5 et seq., Utah Code Annotated.”**

Bob notes that the State statute requiring the Town to have an Annexation Policy says the law requires a specific list of things, and he is not sure that the Policy Plan as developed fulfills the requirements of that statute.

Bruce requested to have Jerry and Bob rework the policy details in order to bring it back to the council for adoption.

Catherine requested that the Council be sure not to ever promise water as part of an annexation.

Darr moved to table the Annexation Policy Plan. Robert seconded. Motion passed unanimously. This Ordinance will be placed on the Town Council agenda for August.

New Business

15. Discussion and possible actions re: 2005 Municipal Elections.

Three seats are open: one Mayor and two Council Members. Office hours will have to be covered from 9:00 AM and 1:00 PM, August 7, 8, and 9. **Jerry delegated Rebecca to find someone to cover those office hours in her absence.**

Bruce Keeler noted officially that he is not running for Mayor again in the upcoming Municipal election in November.

Communications and Petitions

16. Comments by Council Members.

Bob saw, on the internet, discussions about a biodiesel station possibly opening in Moab and requesting letters of support. He suggested that the Town write a letter of support. Damian noted that the cost differential now favors biodiesel more than when this was discussed in years back, but that there is no way to use it unless they could transport it out here. Nonetheless, expressed support for the idea. **The Town will write a letter of support.**

Bob asked whether there has been a response to the letter sent to SITLA about the Castle Creek pipeline? There has been no response. Some follow-up is going to be necessary.

17. Communications to/from the Town.

Daystar Academy and Colin Freyer/Red River Ranch both sent letters declining to request annexation. Rebecca has been in further communication with these two, and a third, respondents to clarify and follow up on any issues.

Ron Mengel commented that he felt he might have been neglecting to ask if there are any communications from the Town to the fire district. He wanted to apologize if he should have been doing so.

18. Open Public Comment Period.

Jack commented that he is pleased to hear that Tom Henry will mow the sides of the roads. People agreed that ten feet can make a big difference for a fire break. Damian commented that the biggest problems have been getting someone to do the mowing and also obstructions. **Damian requests that people call him if they are aware of obstructions alongside the roads that could damage a mower.**

19. Treasurer’s Report

Actions taken at the July 27th Special budget meeting were enacted immediately afterwards. All changes in PTIF accounts were made before the end of the fiscal year. A Profit and Loss detail for FY 2005 is forthcoming. A report will be in to the State auditor for them to work on no later than September.

Money will be transferred into the checking account from the general fund PTIF to cover current bills. There are sufficient funds, around \$81,000, in the PTIF general fund. Approximately \$2,000 per month comes in in sales tax revenue, based on what is typical from past years. Two B&C road fund amounts are also expected, around \$4,500. Expenses are around \$10,000 per month. Property taxes will then come in in December. Bruce noted that this will allow the budget to work without borrowing money, which many municipalities have to do.

20. Payment of Bills.

It was noted that the reports had some columns truncated so that they were hard to read, and that the list of bills required some interpretation to be able to tell which bills had already been paid and which were still outstanding.

Jerry reminded Bruce and Rebecca to double check the MBA payment to be sure all of the steps in the payment went through.

Jerry moved and Darr seconded the motion to pay the bills from July first through (July 14), subject to the transfer of funds from the PTIF account to the checking account. Motion passed unanimously.

21. Executive Session. None.

Adjournment: A motion was made to adjourn, and was passed unanimously. Meeting adjourned at 8:40 PM.

Supporting documents:

- T.I article July 7, 2005
- Water Agent status report
- Water Agent issues report
- Draft of Fuel Storage/Aquifer Protection Ordinance
- Building Department report
- Letter from 7th Day Academy
- Letter from Red Cliffs Lodge
- List of Bills

ATTEST:

APPROVED:

REBECCA MARTIN, CLERK/RECORDER

BRUCE KEELER, MAYOR