

MINUTES
TOWN COUNCIL OF THE TOWN OF CASTLE VALLEY
Thursday, November 10, 2005
Castle Valley Community Center

CALL TO ORDER: Meeting called to order at 6:34 PM.

Council Members Present: Bruce Keeler, Bob Lippman, Darr Hatch, Robert Ryan.

Absent: Jerry Bidinger

Others Present: Ron Drake, Dave Erley, Damian Bollermann, Ron Mengel, Pam Hackley, Vickie Kress, Cris Coffey, Corey Greaves.

Clerk/Recorder: Rebecca Martin

- 1. Approval of Minutes of prior Town Council meeting 10-13-05.** Placed on next month's agenda.
- 2. Approval of Minutes of Special Town Council Election Canvass Meeting 10-06-05. (tabled)**
Bob moved, and Darr seconded the motion, to take this item off the table. No discussion.
Robert moved, and Bob seconded the motion, to accept the minutes as presented. Motion passed unanimously.

3. OPEN PUBLIC COMMENT PERIOD.

David Erley reported that the board of directors of Utah Open Lands (UOL) did not find compelling evidence of the need to amend the easement with Department of Wildlife Resources (DWR) to allow drilling for a monitoring well on site #11, on the Upper 80 road. The current easement does not allow well drilling. **Dave will talk to Janae (Wallace) and Mike (Lowe) to get some compelling evidence to present to the UOL board,** but there is no guarantee that that well site can be drilled. Bruce asked if that well site in our road easement. UOL had pictures clearly showing the proposed site and still responded in the negative. Janae and/or Mike may be approached to make a presentation to UOL in SLC. Well # 11 is now a lower priority, and (the well on Lot 78) is next on the list. Well #3 is now last on the list, and pending review. Bob announced that a site map is available showing the proposed well sites at the front of the room. **Dave needs a copy of the map.**

Corey reported that a hot shot crew is coming back to CV (Nov. 12-13) to finish cleaning up the brush clearing work at the Knowles property.

COMMITTEE REPORTS

4. Water Working Group

The next objective is to look over drainage study issues. The WWG has not met since before last meeting. There was discussion around what changes may need to be made after the new TC takes office. If more than TC members attend, it will become a special meeting of the Town Council, advertised in advance, with official minutes taken, etc. Bruce is interested in coming onto the WWG as a citizen, after his Mayoral term is up.

5. Water Department Report

One permit application was filed for Lot 208.

Bob had a discussion with Mark Page wherein it was indicated to the Town, for the first time, that the State is deliberately holding back the processing of pending water permit agreements and well applications as of this year. There are around six or seven presently held up. **Wording was added to the letter accompanying the application for Lot 208 reminds them that there are legal implications and requesting an official, written answer on the status of those.**

Damian asked whether there was any further indication about the reasoning behind holding the permits. Page told Bob “the water right is questionable.” Bob made clear that it is our impression, including from our attorney, that the State Engineer’s office has no discretion and must treat water applications and water rights as valid until they may be proven otherwise through adjudication, which has not occurred yet. Mark agreed. Bob pushed further. Mark said “you’ll have to take it up in SLC”, and indicated that he is not going to take action until that letter goes out (to CV). **Bob commented it is time to start circulating information about the delay**, which should trigger some action because they have to act within the six month waiting period.

Re: the monitoring wells. Tracy (Balsley) is still on the first well. He hit some difficult rock and broke a casing. Mike (Lowe) was insistent on this first well, which was for water classification, saying to drill until we hit either bedrock or water. Discussion ensued about the potential that this may affect how many wells can be drilled on the limited budget. There is no agreement for the State to fund the difference. The last wells, in the lower end of the valley are expected to be shallower. Mike Lowe and the Town are working together on various aspects of the project; Mike is the project manager. The Town got the funding. The wells will belong to the Town.

David commented that Mike Lowe has brought the Town a significant amount of money over time. This current well will bring in missing data needed for the watershed studies from that specific area. This well went to around 220 feet.

Ron Mengel suggested that if we run out of money, the project manager should be able to request a change notice to get additional funds for further wells and suggested **talking with Mike Lowe to see if there is a discretionary fund or negotiating point where more funds could be made available to cover the cost difference. Bruce said the Town will follow this suggestion** as there is concern about the water-or-bedrock mandate. Bruce explained that the primary purpose for this CIB grant to dig these wells is to get the EPA aquifer classification. The Department of Environmental Quality needs the information, and it may give us better grounds for aquifer protection. The second purpose, important to the Valley, is to get this set of wells for monitoring. One mid-valley well is next, and is expected to be around 80 feet deep. Bruce said that we could end up with fewer wells than hoped for, but still have enough to give a good picture of the health of the aquifer.

Regular wells cannot be used for monitoring because monitoring wells have to remain unused for testing. Shallow wells go only into the top of the aquifer to look for nitrate-like contaminants which stay on top until they reach a critical mass and sink or go into solution. Shallow wells give us the tracers to indicate pollutants.

The Town will ask whether there is a minimum number of wells needed to get the DEQ designation.

The State said to wait on the road work in preparation for certain originally proposed wells.

Vicky asked who the Town project manager for this project is. Bob has been doing a lot of the work. Bruce is still the project manager. Bob and Jerry comprise an appointed interim committee that is fulfilling the duties of the Town Water Agent, which job description is under re-definition. They are handling on-the-ground work. Methodology decisions are being made in SLC.

6. Road Department

Damian reported on a busy month with a lot of backhoe work. The road crew has been re-building drainages and fixing roads with attempts made to look forward and minimize future flood damage.

There is a new resident grader operator, Joe Corey, which will help when Mark (Webster) is away. Darr’ has been hauling boulders, using them as reinforcement for areas that are washed out regularly. They are cleaning out a major arroyo on Miller and using the boulders on ditches that need them.

Pam asked whether re-seeding is being considered following road work on the corner of Holyoak and CV Drive. **Damian agreed, saying sand drop seed would be good before snow. High Desert Gardens and Mary Reese, with a CU permit for Rees Native Gardens, were identified as seed sources.**

7. Planning & Zoning Commission

Rebecca reported that the P&Z met (Nov.9). They are asking the TC to inform them of the expiration dates for the terms of their commissions. **Two commission members will be leaving the Commission. A third Commissioner has not been able to attend any meetings, and a review is needed by the Council of that position. Presuming that three people leave the P&Z, the TC must appoint at least one person before the January meeting to make it possible to have a quorum.** No resignations have been received in writing, but will be forthcoming if the terms are not expiring in January in any case. Bruce noted that the TC cannot advertise the openings unless they have resignations in writing.

Two hearings are pending for the January P&Z meeting, on the proposed updates to the Deer Fencing Ordinance and on the proposed Fuel Storage/Aquifer Protection Ordinance.

8. Fire Wise Report

Ron reported that he has posted notice on the controlled burn planned pending good weather at Knowles'. If there is time, they may move to two other greenbelt properties.

Corey reported that the Fire Department will be monitoring a burn on a private property.

Ron explained that the burn season is closed, and the Fire Department can help with special requests. If you request it and the EPA standard is right, you can get a permit.

Damian asked for clarification on what would be happening in the greenbelt. Ron said these are private properties: the Heddens' and the Jorgens'.

9. Building Department Report

Ron offered a letter of resignation, effective at the end of the month. (letter included) Bruce said he is sorry to see him go and that Ron has done a superb job with building permits and his work is greatly appreciated. Ron said it has been a pleasure to help people in realizing their dreams. He is willing to train the incoming person. **This vacancy will have to be advertised.**

Ron submitted a written report (report included) He said he has been receiving a lot of inquiries indicating a building boon, but he anticipates a drop-off in building due to the well permit situation. He sees a trend of upgrading.

10. POA Board

Dave Erley reported that the POA will send a letter to the ownership at the beginning of the year telling them what category their water right are in and what they may want to do in relation to the State vis a vis their water rights. The intention is not to include advice, but rather information on who to get in touch with to take care of their water.

11. Landscaping Committee

Bruce commented that the weed pile from the Community Lot still needs to be burned. The fire department can stand by on such a burn.

Early in the spring, the committee will move forward with both irrigation and further planting.

12. Solid Waste District Report

Bruce reported that overhead was cut way back and required closure funds couldn't be set aside during those times when mineral lease monies were low. Now with funds increasing, the Solid Waste is requesting \$100,000 in mineral lease funds from the County. The road may continue to be a mud bog. There is a \$60,000 perimeter fence project to fence around half of the Klondike Bluffs site which is partly for the safety of recreational ATV riders.

Bruce's term on the Solid Waste Board is up at the end of this year. This vacancy will have to be advertised.

OLD BUSINESS

13. Water Rights update.

Bruce reported that the Town is trying to get some movement from the Division of Water Rights now. The water agent position has had to remain in limbo. The Town approached the State with the idea

of acquiring a bulk water right if the current rights are removed through adjudication. Another potential is for individual lot owners who got their water from the Town to get water individually, as a discretionary use of the culinary right, through the Division of Water Rights in Price. The Town Attorney says under a special citation/use, they have the right to give out up to 6.5 or 10 acres per owner. The shortcoming is that you must prove up water every five years instead of every 25 years. It is also very hard to carry out any water conservation measures in severe drought when all wells are privately held. It does not leave the town with a municipal right for use in fire suppression, municipality needs, etc. Ron said the town should hold rights because they have more clout. There may be other solutions also. It does look like everybody is covered in these various scenarios.

Ron and Jennifer Mengel submitted a letter asking for the town to reinstate water rights for their lot. Bruce commented that the town may have to relinquish the current system for distributing water before Price can issue more water rights to individuals. Ron said they would be using their lot to test whether this is a viable option and if successful their work can be used by other property owners. (letter included)

Bob acknowledged awareness, on the part of the Town, of the need for documentation right now so the paper trail will support the needs of the town. Damian noted that a lot of the lack of documentation is apparently on the part of the state.

14. Hunting Update.

Signs and hunter notifications were up for this season. Bruce got a couple of reports, but no deer gutted in yards, or shots fired past homes, or hunters crossing yards. The snow hadn't driven the deer down, so it was hard to tell. **Signs must go up for next year saying no off-road driving. Joe Nicholson hoped to have more private property owners putting signs up.**

Discussion ensued about whether signs should stay up all year. They can withstand the weather, but are unsightly and possibly confusing. Damian will go up and remove the no parking and primitive weapons signs and store them in the Town shed. The orange no trespass signs are easy to take down after hunting season by cutting the wire, but this is up to the owners of the private property.

Bob reported there was a larger game warden presence, and only a few recorded parking violations. Bob reported to the RAC board via Joe Nicholson as follows: some off-road violations were observed, some improper parking at top of CV Drive, a buck pursued by someone who jumped out a vehicle and went up Holyoak Lane, and a request to stop allowing shotguns because it violates the ethics of the primitive weapons category. The report expressed thanks to the RAC board and Joe Nicholson for their cooperation this year.

There was a proposal before the RAC board to extend the hunt for the region, from 5 days to 9. Laura Kamala read the letter from Bob Lippman into the record, which requested that the Board reject the hunt period increase because it would take two weekends of CV time and conflict. The RAC Board did finally reject the proposal.

Laura commented to Dave that the shotgun issue can't be changed without a lot of public support. There is only a 6-10 day window between when the hunt ends and the RAC board meeting. Someone would have to go to the meeting, and there may have to be a petition drive. Safety issue observations, such as when Greg Nunn was nearly knocked out of a tree due to the multiple firing capabilities of shotguns in the primitive zone, are good support. The DWR feels that the 600 feet rule provides enough protection.

The plan for next year includes more posting, earlier, and continued monitoring. There must also be preparation for a presentation to the RAC board in Green River, which immediately follows the hunt.

Dave said thank you for the work towards improvement.

15. Discussion & possible action re: Water Agent Position. (tabled)

Bruce asked if anyone wanted to un-table this to push the issue of hiring a new water agent. Dave said it seems good to have things handled by Councilpersons with legalities up in the air. Damian asked if going forward with the hiring could show better maintenance of the town water structures. Bruce said that until there is a better idea of whether the Town will have to go after new water rights, i.e., until there is something to administrate, it makes sense to keep the costs to a minimum. He said Bob and Jerry are doing a conscientious and commendable job in the interim of doing the part of a department head.

16. Discussion & possible action re: Employee Policy (tabled).

Pending receipt of an electronic copy of the Service District Employee Policy, this item remained tabled. **Bruce will get the electronic copy to the Town this week.**

Bruce suggested scheduling a workshop to work on this, perhaps at the time of the canvass.

Damian asked whether this document would outline the legal prohibition against holding an administrative position and an elected position simultaneously. Bruce said that language will probably be included in the document although it is a very general set of policies. Bob noted that the Town received advice came from the State for that specific issue apart from this policy document.

The date for the Election Canvass will be Tuesday, Nov. 22, at 10:00AM, at the community building. This allows maximum time for outstanding absentee ballots to arrive in time to be opened at the canvass.

17. Pending Complaints update.

Lot 100: This complaint is currently with the attorney.

Lot 386: This complaint is pending a written withdrawal of the complaint..

NEW BUSINESS

18. Discussion and possible action re: Road Supervisor Position.

Damian is the mayor elect and can not supervise himself as the head of a department, so he has tendered his resignation as of Dec. 31, 2005. Bruce thanked Damian for the great job he has done in the capacity of Road Supervisor. Bruce and Darr and Damian agreed it had been great working with one another.

This vacancy will have to be advertised.

19. Discussion and possible action re: Creating a Plan for the Capital Projects Fund.

This item will be handled at a meeting when Jerry is present. The task is to look at the money in the Capital Projects Fund and determine what is or is not already earmarked for specific projects, and to outline a basic plan with a general timeline that shows how everything is earmarked. **Darr moved, and Robert seconded the motion, to table this item. Motion passed unanimously.** This item will be put on the next agenda.

20. Discussion and possible action re: Administrative Process for Complaint Resolution & Ordinance Enforcement.

Bruce explained that, in the past, the complaint process was that a signed complaint is received by the TC and then forwarded to the P&Z for verification of alleged zoning violations. The chair of the P&Z typically does a drive by, without going onto anyone's private property, and sends an assessment/recommendation back to the TC. The procedure, set up ten years ago, is contained in Resolution 96-3.

Bob noted that discussion about Ordinance Enforcement has come up recently in two complaints, at the POA meeting, and at the candidates' forums. The questions raised are about the power, meaning and significance of our ordinances. Enforcement would have to be fair, reasonable and not arbitrary.

Resolution 96-3 acknowledges the property owner's right to privacy, and also the need for a

designated official and/or P&Z liaison to enter onto private property, and a court order sought if inspection is denied. Bruce noted that inspections have been done in the past. The Resolution states that the TC must then give written notice, and request that the situation be rectified within 21 days, and may only be extended if due diligence has been shown. Bob noted that no other enforcement is listed in the Resolution after the letter has been sent

Bob proposed that a complaint resolution committee be established to work with residents who receive (violation) notices and to offer any/all assistance when a violation is on the table. The board would include a TC member, a P&Z member, and possibly the building inspector. Bob proposed a series of discussions outlining short and long term (complaint resolution and ordinance enforcement) processes. The TC would outline tasks and timelines for the board, e.g., investigation, taking pictures, visiting property, sending letter, reporting to the TC, etc. The legal process must be set up for the Town and P&Z, e.g., forwarding information to the attorney and tax assessor, filing liens for abatement costs, attorney fees, etc. Research is needed to find State guidelines about realistic windows. Bob noted that this should all be in place before a legal challenge to the right to enforce is waged.

Bob will create a draft of an interim process and also wants to see involvement rather than to impose a process. He noted that people have been expressing, at community meetings, the need to address this, i.e., to either have enforcement or remove ordinances. **The draft will go on an agenda and be open for public comment. Bob will create a memo asking Kinghorn if this should be a Resolution or and Ordinance.**

21. Discussion and possible action re: Forest Planning and Willow Basin Fuel Reduction Project.

The Forest Service (USFS) held a meeting in Castle Valley today (11/10/05) on a planned burn in the CV watershed. The fuels reduction plan was discussed in the morning and the group toured the targeted areas in Willow Basin in the afternoon. USFS seemed willing to take comments. After the drive-around, the general feeling was good about the plan.

Pam commented on Ron Mengel's point that air quality issues specific to CV would have to be addressed. Bob explained that Willow Basin residents received notification a month ago with no notice to CV or to the CV Fire District at all. He drafted a letter on behalf of the Town highlighting procedural issues, e.g., that the Town needed to be perceived as a stakeholder, asking about the level of review, the sole source aquifer designation and other State protections, and asking for a presentation and extended comment period/hearing in CV. The notice period was extended because of a lawsuit in California, and approximately 12 days remain in which to comment. The Town can now register more detailed comments including concerns re: air quality, run-off, wildlife, habitat, aquifer, mechanized equipment, and the actual need for this type of project. The Town can take a position, such as requesting EPA involvement, or just register concerns.

Bob wrote a letter and made phone calls to the EPA asking them to respond about the legal significance of our sole source aquifer designation. Questions include: How are reviews triggered? What level of review is required? Are reviews mandatory or discretionary? He has requested guidelines and an outline of the decision making process from EPA. **The USFS did agree, today, to contact the EPA directly about these questions. The Town did request the EPA response to the USFS in writing.** Bruce remembered, from the EPA discussions around sole source designation that **such federal projects may not require higher levels of review, but that the Town can request specific reviews.**

The site tour raised other pending issues about an antennae planned on Andy Mesa, i.e., whether it is this a single use tower for emergency response, or can be used for cell phones, commercial use, etc.

Dave Erley noted that if people have specific areas of concern, this is the time to let USFS know. Bruce added, e.g., areas with a lot of springs, special habitat, etc.

Dave expressed thanks to Bob and the Town for pursuing this, saying the meeting was valuable for the community, and this is a good opportunity for citizens to understand what the USFS is doing.

Dialogue is valuable, as is further understanding of the devastations of fire and creation of flooding, the impacts of treatment vs. doing nothing, and our inclusion in the larger Moab Face project. Wildfire is an issue that the Town will want to address.

Damian asked whether the USFS has now fulfilled its obligations to the public or are they still using the categorical exclusion? Bob explained that they are still using the exclusion, but that it can be *appealed* if comments are put in within the window. USFS is not yet required to do an environmental assessment (EA), yet is now in compliance with the court decision.

He timeframe for the burn is next spring. We can request for them to extend the deadline for accepting comment, but legally they don't have to. The EPA may affect that.

22. Discussion and possible action re: Castle Valley Mineral Exploration.

Bob stated definitively that there is no current proposal for mineral exploration. Bob attended a radiation control board hearing, last week, regarding Japan exporting (nuclear waste) to the US for processing at White Mesa. The questions again are Castle Valley's stakeholder status, inclusion in the process, and the level of review required. Castle Valley is situated along the transport routes for the coming uranium boom. Concerns included significant cumulative, unplanned impacts on roads, water, air and human health. The Atlas tailings have not yet been dealt with. In the 1980s, seismic crews did geophysical work in CV, including the use of explosives and helicopters, both of which raised concerns. There were unofficial reports of wells that silted in and had changes in water levels.

Bob requested that letters be written to the county requesting meetings with agencies involved with mineral development, so CV can be better informed. One question for CV is whether we can protect ourselves from seismic exploration within a certain area around our wells. Exploration is happening now in La Sal. The 1872 mining law doesn't require much review.

There is a bill before congress now to end the moratorium on patenting of mines and mill sites. Public land could end up in private hands through the patenting of potential mining sites. In the mid-80s, someone attempted to patent a mine site near Round Mountain by bulldozing trenches and claiming he had a method for extracting gold using cyanide in our watershed.

Pam expressed support for the council pursuing proactive information gathering to protect the Valley. **She suggested that the Town determine who owns the underground mineral rights within the watershed.** Bob noted that the Conoco well in the mid-80s is another example of oil and gas exploration that can happen here.

Dave noted that some towns have acted proactively to protect themselves in the coal bed/methane boom in WY, and perhaps CV could learn something from those efforts. He expressed support for CV protective actions.

Bob said the Watershed (Protection) Ordinance does require multi-agency reviews for exploration in our watershed. The monitoring wells may help for quick diagnostics. **The Town Council asked the WWG to look into it.** Bob said it may already be on their list generally.

Background: uranium is back up to \$30/lb., where it was in the late 80s, and promoters are working with the (Bush) administration for an "international nuclear renaissance" which includes subsidies for uranium work. Damian noted that uranium deposits are primarily in Morrison formation, which is exposed nearby, and uranium was hauled right down through CV in those days, and also brought in past Cisco.

Bob moved, and Robert seconded the motion, to table this item. Motion passed unanimously.

23. COMMUNICATIONS AND PETITIONS: Rebecca will remove this agenda item as wording is redundant.

24. COMMENTS BY COUNCIL MEMBERS. None.

25. COMMUNICATIONS TO/FROM THE TOWN.

Bruce acknowledged the letter from Ron & Jennifer about requesting TC to take action on water rights.

Two notices were received on upcoming workshops, the golf tournament, and the UT Water Summit.

Catherine Howells submitted a request for a public apology from Bruce. Bruce read her letter aloud. Bruce said he has not blamed Catherine Howells for any of the problems the Town has been encountering with the (monitoring wells) project. He apologized if any of the comments he has made about the project have been translated to her that way.

He went on to say that the project was delivered to the Town in an entirely different format than what the Town is now dealing with, making it difficult for the Town to come up with the many small details for which the Town has become responsible. Any comments he made were in frustration with not knowing how the project was put together. He noted that the Town has had to discover that it was responsible for large portions of the management of the process. This was first brought to the Town entirely to be conducted by Mike Lowe and UT Water Resources. Catherine was to be an employee working directly for Mike Lowe, with no Town involvement and with no cost to the Town. Since then, the Town has turned out to be responsible for the hiring of people doing septic survey work, and also required to hire the well driller. A lot of the parameters of the project were not known by the Town until we were well into it, which has caused a difficult situation at times. Bruce apologized to Catherine if people have misconstrued his comments, and said it has been a frustrating project to step in the middle of and try to take over.

Bob noted that there was also a misunderstanding about the well permits. Bruce said the Town was under the impression that Mike Lowe was getting the well permits, but nothing was filed and there were no start cards. Mike Lowe was under the impression that the rights of entry were all lined up with private property owners, but these were not set up. Private owners on the list were unaware of any discussions about having a monitoring well drilled on their lots. Bruce said the Council was in favor of the project as it was presented, and might remember that the project was going to provide these great wells and the Town had nothing to do, however that is not how things have worked out. Bob noted that the Town is now having to pay the cost of the drillers bond. Bruce said a number of such issues have turned up.

Dave expressed appreciation to Darr, Robert and Bruce for their service to the Town.

26. TREASURER'S REPORT.

Rebecca prepared an addendum to the List of Bills that came from Barbara Hicks office because a new person had just begun handling the CV books, and payroll was not included on the list. This memo indicated **the need to transfer funds (from the PTIF to the checking account) to cover this month's bills as well. Robert will handle that transfer on Monday.**

27. PAYMENT OF BILLS.

Robert moved, and Darr seconded the motion, to pay the bills. Motion passed unanimously.

28. Executive Session. None needed.

ADJOURNMENT.

Bob moved, Robert seconded the motion, to adjourn the meeting. Meeting adjourned at 9:09 PM.