



**AGENDA
TOWN OF SUPERIOR
BOARD OF TRUSTEES
FEBRUARY 28, 2011
7:00 PM
BOARD CHAMBERS, TOWN HALL**

- 1) Call to Order Regular Meeting of the Town of Superior Board of Trustees (7:00)
- 2) Calling of the Roll
- 3) Approval of Agenda
- 4) Reports, Questions & Issues (7:05)
 - A. Mayor and Board Members
 - B. Manager
 - C. Attorney
 - D. Clerk
- 5) Public comment on Consent Agenda and Non-Agenda Items (limit 5 min./person) (7:35)

<ol style="list-style-type: none">a) Speakers shall wait to be recognized by the Mayorb) speakers shall address the Town Board as a wholec) speakers shall provide their name and place of residence for the public recordd) speakers shall limit their comments to a maximum of five minutese) speakers shall refrain from personal attacksf) speakers shall provide ten copies of any exhibits to the Town Clerkg) the Mayor shall decide whether a response to the question or comment is appropriate; or may thank the speaker for their question or commenth) if a response is deemed appropriate, the Mayor may respond on behalf of the Town Board or refer the matter to the Town Manageri) if a response is to be made at a later time, the respondent (i.e. Mayor, Manager or staff) shall bring the matter back to the Town Board for closure

- 6) Presentations (none)
- 7) Consent Agenda (7:45)
 - A. Approval of the minutes of the February 14, 2011 Board of Trustees meeting
 - B. Acceptance of the minutes of the Historical Commission, the Open Space Advisory Committee and the Parks, Recreation, Open Space and Trails Advisory Committee meetings

C. Adoption of a Resolution approving an Agreement with Rock Creek Masters Homeowners Association for Facility Use

- Each year the Town enters into an agreement with the Rock Creek Master HOA. This effort provides selected programs and services for the entire community without unnecessary duplication. The Town has been working with the HOA to help continue to provide events for the community since the dissolution of the Metropolitan Districts in December of 2003.

8) Discussion and Adoption of a Resolution approving the Capital Improvement Projects working sheets (7:50)

- Approval of project sheets, which are intended to clarify the process the Town uses to approve significant public capital improvement projects

9) Preliminary Ordinance regulating Areas of State Interest and Activities of State Interest (8:20)

- An ordinance amending Article XXXIV of the Land Use Code regarding areas and activities of state interest within the Town. The ordinance provides guidelines and procedures for regulating these areas or activities.

10) Executive Session to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. §24-6-402(4)(e) regarding the Jefferson Parkway and property acquisition (8:40)

11) Adjourn the meeting

**TOWN OF SUPERIOR
BOARD OF TRUSTEES**

MINUTES OF FEBRUARY 14, 2011

The Board of Trustees for the Town of Superior, Colorado met in a regular meeting on February 14, 2011 at the Town Hall, 124 E. Coal Creek Drive, Superior, Colorado.

CALL MEETING TO ORDER

Mayor Andrew Muckle called the meetings to order at 7:03 p.m.

CALLING OF THE ROLL

Present: Mayor Andrew Muckle; Mayor Pro-tem Elia Gourgouris; Trustees Joe Cirelli, Chris Hanson, Sandy Pennington, Debra Williams; Interim Town Manager Matt Magley; Town Attorney Kendra Carberry; Town Clerk Phyllis Hardin. Absent: Trustee Lisa Skumatz.

APPROVAL OF AGENDA

Trustee Hanson requested Consent Agenda Item #7D (Adoption of a Resolution approving the Capital Improvement Projects working sheets) and Trustee Pennington requested Consent Agenda Item #7F (Adoption of a Resolution approving an Agreement with the Town Manager) be discussed after the approval of the Consent Agenda. Trustee Williams moved to approve the Agenda with those changes. Seconded by Trustee Gourgouris. Ayes – 6 (Cirelli, Gourgouris, Hanson, Muckle, Pennington, Williams). Absent – 1 (Skumatz). Motion carried.

REPORTS, QUESTIONS AND ISSUES

Mayor and Board Member's Reports – Trustee Hanson said he wanted to recognize a couple of Public Works Town Staff members – Mike Newberry and Sergey Mezentsev. On one of the coldest days of the winter they were working on the corner of Christenson and Andrew Drive struggling to get a piece of concrete replaced. They were there over two hours but worked to get the work finished.

- He attended the Governor's luncheon at which time there was a considerable amount of discussion on economic development. The main thing he came away with is in order to improve on economic development and retention the Town must first cut the red tape and second be known as a business friendly community. The Town's reputation is key and having positive relationships with developers and consultants is crucial.
- He attended two AMP (Adaptive Management Plan Development) meetings, which is an offshoot of the Rocky Flats Stewardship Council. The first one was on February 3, 2011 where the discussion was about triggers that would happen to close the flow-thru valves on the retention ponds as the water moves through. The water is tested to see if there is excessive water flow due to rain. This discussion was mainly for Woman Creek. The meeting on February 10, 2011 was kind of the same discussion but on Walnut Creek. They also talked about what kind of triggers would cause the valves to close.

- He attended a Rocky Flats Stewardship Council meeting on February 7, 2011. A new Board was elected and Bob Briggs, Westminster, is the chairman; Lisa Morzel, Boulder, is the vice-chair and Sherry Paiz, Northglenn, is the secretary-treasurer. They had a briefing on the status and monitoring levels of things like plutonium, uranium, etc. There was a brief discussion on the Jefferson Parkway. Arvada and Broomfield had concerns about the monitoring stations in the right-of-way but David Abelson mentioned that the Stewardship Council has traditionally taken a neutral position and doesn't want to get into the politics of the Parkway. There was further discussion regarding the 300' strip of land being purchased and how those funds are going to be used. In the future there will be additional briefing of the impact of the Parkway and the extent of the contamination from Rocky Flats. The next meetings are going to be April 4th and June 6, 2011.
- The Parks, Recreation, Open Space and Trails Advisory Committee started their door-to-door campaign. Jim Paine and Lloyd Linnell went door-to-door in Original Town this weekend and handed out flyers and talked with residents to let them know of the community event coming up on February 23rd.
- He met with Teddy Chavez and Mr. Chavez had some questions about the asphalt millings that were put on his driveway and the sidewalk areas in front of his house. Those millings are turning to mud. Mr. Chavez asked if that could be looked at and perhaps some changes could be made.
- He asked about the status of the alley-ways. Matt Magley said Kurt Kowar is going to schedule those neighborhood meetings but the schedule hasn't been set yet.
- There are some snowplowing issues. The sidewalks on Weldonda Way and Elmore Street were shoveled but the plows came by afterwards and built a 4' berm on the sidewalks. He said the same thing happened on Indiana Street. He wanted to make sure that doesn't happen again. Discussion.
- Mayor Muckle said he would be going to Washington, DC tomorrow for the US 36 Corridor lobbying trip. The latest he heard was that the House is potentially going to rescind \$9 million of the TIFIA (Transportation Infrastructure Finance and Innovation Act) so they are going to talk to the Legislators to make sure that doesn't happen, or see what can be done. Potentially CDOT (Colorado Department of Transportation) might back fill that but that wouldn't be the optimal strategy.
- He attended a Metro Mayors Caucus where they discussed FasTracks and the desire to have .4% tax increase.
- Trustee Williams reminded everyone that a Planning Commission meeting will be held on February 15, 2011 at 7:00 to discuss the history of the Jefferson Parkway.
- She attended a Jefferson Parkway Highway Authority Board meeting to further discuss and state Superior's position of opposing the current alignment and ask for it to be realigned further to the east and south of the Town's border - at the very least move the Indiana Interchange, which is currently about a half mile from State Highway 128, further south by a mile or two. Both ideas were met with opposition.
- She attended a DRCOG (Denver Regional Council of Governments) meeting at which time they discussed a transportation short-course. There are three courses in a series. This one was for the funding on the transportation system for the Denver metro region. The other courses are the Metro Vision and the future of the area aging agency. Discussion.

- She attended a Regional Economic Development working session with Governor Hickenlooper. She came away with the same things Trustee Hanson did. There were three important ones – one was to eliminate or expedite red tape for large and small businesses at the federal level as well as at the municipal level; two was to urbanize – such as create or revitalize market places that track live/work/play environment and three was to create a walk-able/bicycle/friendly environment. The idea was to find what Superior does best or what it is most successful at and celebrate in some form of identity marker, promotion or advertising.
- She also attended an Eldorado traffic intersection meeting with Kurt Kowar, Sandy Pennington, the School principal and BVSD's Superintendent of Operations, Joe Sleeper. The school has some work to do in regard to their parking lanes and on the flow of the parking. After spring break she thought they would look at making some kind of mock run of how they would change things for that parking lot, which will give them a better idea of what the Town needs to do as far as the intersection at Indiana and Mt. Sopris.
- Trustee Gourgouris said he thought Governor Hickenlooper's work session on economic development had a lot of great things which has been talked about already by other Board members. He personally found the Governor to be a very humble man. He asked to be called "John" and he listened to everyone who wanted to share their concerns and thoughts. Cutting the red tape and the balance of that and doing some form of regulation was important to him. He also talked about branding the State of Colorado. The State has natural beauty and natural resources and there hasn't been a very good job of branding. Discussion.
- He said the US 36 Interchange Committee met to discuss some of the options. They are trying to make progress with the City of Louisville as to what to do with the McCaslin Blvd and getting onto US 36.
- Trustee Pennington said the State of Colorado Economic Development meeting with Governor Hickenlooper was that his firm concept is that economic development starts locally so he assembled a panel of 10 or 12 local economic development coordinators or directors.
- When the Traffic and Safety Committee met with the principal of Eldorado K-8 and parents previously it was actually going to be a much higher cost alternative but because of the traffic studies that Alex Ariniello did and the dry runs that Mr. Kowar helped put in place, the Committee was able to identify that the problems thought existed didn't exist and other problems existed instead. Those now have a much lower cost solutions.
- She also attended the Jefferson Parkway meeting and obviously the net take-away was that the Town has a battle in front of us.
- She also attended the Historical Commission meeting.
- She and Matt Magley hosted a contingent of folks from the Louisville Library at Town Hall and they are finalizing the procedures to put into place for the drop-box.
- She has been reading about the contentious bike trail use in the City of Boulder City and Boulder County. She thinks it would be wise of the Board to take that into consideration prior to opening the Coalton Trailhead as that is such a beautiful trail for bikes. She thinks probably sooner rather than later there are going to be bike and hiker conflicts there. She would like to come up with some innovative solutions to how to accommodate both and keep everybody happy. Matt Magley said they would have to talk to Boulder County as it is Boulder County property. Discussion.

- She wanted to make sure that the March retreat be scheduled. Mr. Magley said in this week's Digest he would include some information about dates for future meetings. The City of Louisville wants to know if there is a date the Board could meet with their city council for dinner and have a general discussion. Trustee Pennington suggested the retreat be held on a Saturday. She also said she didn't know the procedure for finalizing the actually annual calendar. Sometimes there are conflicts around spring break and Christmas and she thought it might be wise to actually look at those and set meeting dates so people can plan their schedules.

Town Manager's Report – Matt Magley said the Superintendent for Boulder Valley School District has decided to resign but would stay on until the end of the year.

- Mr. Magley included information on the sales tax in the Weekly Digest. He said for the year 2010 the Town was up almost 7% from 2009.
- The lease with Key Equipment Finance for the two solar systems has been finalized
- The Town received information from Boulder County saying they are finalizing their report on the archeological site. The Town agreed to pay something to Boulder County and are now processing that invoice. They are supposed to send copies of that report. It was mentioned that there would be something for the Historical Commission that they could put in the Museum.
- The Rocky Mountain Fire Protection District is hoping the construction for Station 5 is finalized by the end of March.
- The February 28, 2011 meeting will include the Rock Creek Parkway underpass façade treatment. Kurt Kowar will have information on options to consider such as whether to do some type of public arts contest or program or to just blast it or do some upgrades, etc.

PUBLIC COMMENT ON CONSENT AGENDA AND NON-AGENDA ITEMS **CONSENT AGENDA**

Gladys Forshee, 404 So. 3rd Avenue, Superior, said Original Town residents circulated a petition as they are not happy about the bike race on Coal Creek Drive. They want the Board to clearly understand they do not want Coal Creek Drive closed. They also want the bike race moved out of Original Town. Ms. Forshee commented that this is violating resident's rights by not allowing access to their property. She asked for a date as to when they would know that bike race is changed and moved off Coal Creek Drive. Mayor Muckle said he thought the alignment has been finalized so he doesn't think it would be changing. Ms. Forshee said she would then take that as an answer to the petition and tells her exactly what her next step needs to be.

Robert Momaerts, 1630 Egret Way, Superior, President of the Saddlebrooke at Rock Creek Homeowners, thanked the Board, OSAC (Open Space Advisory Committee) and PROSTAC (Parks, Recreation, Open Space and Trails Advisory Committee) for their time and attention on the presentation regarding Hodgson-Harris reservoir.

George Kupfner, 109 So. 4th Avenue, Superior, said the thought Mr. Hanson was on the right track by moving the agenda back one day to Wednesday instead of coming out late on Thursday. He suggested this a year and half ago to give people more time to digest what they have. He asked the Board to take Trustee Hanson suggestion into consideration.

Mr. Kupfner said he read an article in the newspaper that the Town's taxes were increased 6.9% from the year before which is about \$500,000. This is in reference to the sales tax from the stores in Town. He requested the Board use some of this money on the debt for Superior Metropolitan Districts #1, #2 and #3 and the Urban Renewal Authority, as well as for a \$10 million bond issue to buy open space. He thinks the Board should take into consideration to start paying the debt instead of doing other things with the money.

Mr. Kupfner also asked if the Board could take into consideration giving more information on the bills that are paid out from the Town. The Town of Erie publishes their bills once a month and gives an itemized list of what they pay. Trustee Pennington said that information is on the Town's website right now. Mr. Kupfner said he doesn't have a computer and can't get that information. Trustee Pennington said she would work with Mr. Kupfner and get him a hard copy of that information. Discussion.

Mr. Kupfner said he wasn't at the meeting when the bike race presentation was made but is disgusted if the Board is voting on it. Last year \$140,000 was lost so he suggested maybe each Board member put in \$20,000 out of their own checking accounts and if there is a revenue that comes off the bike race then they would get their money back but if there isn't then they would lose out. He doesn't think it is up to the taxpayers to pay for a bicycle race. Discussion.

Trustee Hanson said he agrees with the debt but he thought the Town is restricted where those bonds have certain dates and can't be called any sooner. Finance Director Paul Nilles said that was correct.

Trustee Pennington asked when the Board starts getting electronic packets would that make it any easier to turn them around by Wednesday and Mr. Magley said it is not so much the production of the packet but it is the work involved in getting all the information in the packet, such as finalizing agreements, making sure all the information is in the cover memo and everything is tied up and ready to go. The more it is pushed to get it out earlier the more likely it is to push items further out. Trustee Gourgouris said he thinks there is a fine balance between the two. He would rather have items on the agenda to actually move some business forward so Thursdays is the compromise. Discussion. Trustee Pennington asked with the electronic packet if it is possible to get part of the packet out on Wednesdays and part out on Thursday mornings. Mr. Magley said that could create problems. Trustee Williams said there were a couple of times when the packet was being sent out piece meal and it was a nightmare figuring out what came first, etc. It was very difficult to figure out. Discussion.

PRESENTATIONS

Proclamations for John Cracraft and Andrew Wing - Mayor Muckle said he enjoys recognizing all the volunteerism within the Town and we are lucky to have people willing to step up to the plate and make this Town a better place. Tonight there are proclamations for John Cracraft and Andrew Wing. He read the proclamations and then presented them to Mr. Cracraft and Mr. Wing.

CONSENT AGENDA

- Trustee Hanson moved to approve the Consent Agenda for the following items.
- Item #7A - Approval of the Board of Trustees minutes for the January 24, 2011 meeting and the January 31, 2011 and February 7, 2011 special meetings.
 - Item #7B – Acceptance of the minutes of the Historical Commission, the Open Space Advisory Committee and Parks, Recreation, Open Space and Trails Advisory Committee meetings
 - Item #7C – Approval of an Ordinance amending Chapter 6 of the Superior Municipal Code regarding Business Licenses and Regulations – Ordinance #O-2, Series 2011 AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR AMENDING CHAPTER 6 OF THE SUPERIOR MUNICIPAL CODE
 - Item #7E – Approval of the Advisory Committee work plans

Seconded by Trustee Williams. Trustee Gourgouris abstained on the vote for the January 24, 2011 minutes as he was not present for that meeting. Ayes – 6 (Cirelli, Gourgouris, Hanson, Muckle, Pennington, Williams). Absent – 1 (Skumatz). Motion carried.

Consent Agenda Item #7D (Adoption of a Resolution approving the Capital Improvement Projects working sheets) was discussed. Trustee Hanson said before he stated his comments he wondered if this should be tabled because at the last meeting where this was discussed Trustee Skumatz wasn't here and this is her project. Mr. Magley said he had emailed her the working sheets and asked if she wanted to get together to discuss them or go over them and he never got a reply. He didn't have an opportunity to ask her if she was okay with them or not. Trustee Hanson said he thought in all fairness this agenda item should be tabled and discuss it with Trustee Skumatz. Discussion.

Public comments were made by the following:
Gladys Forshee, 404 So. 3rd Avenue, Superior.

Consent Agenda Item #7F (Adoption of a Resolution approving an Agreement with the Town Manager) was discussed. Trustee Pennington said her reason for bringing this up is just for the interest of transparency. This is a transition in the Town. There hasn't been that many Town Manager's and she wanted to pull it off the Consent Agenda where sometimes it gets hidden and bring it to everyone's attention to say that the Board is officially making the transition to a new Town Manager. She also wanted to emphasis the Board took the process very seriously. Three executive sessions were devoted to it. There was a lot of give and take – both among the Board and between the Board and Mr. Magley. The agreement is available at Town Hall so anyone interested in the details can come and read them. Trustee Williams said the Board is very pleased and excited to have Matt Magley as the next Town Manager. Trustee Williams moved to approve Resolution #R-10, Series 2011 A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN EMPLOYEEMENT AGREEMENT WITH MATTHEW G. MAGLEY. Seconded by Trustee Gourgouris. Roll Call vote: Cirelli – aye, Gourgouris – aye, Hanson – aye; Muckle – aye; Pennington – aye; Williams – aye. Absent – 1 (Skumatz). Motion carried.

ADOPTION OF A RESOLUTION APPROVING AN INCENTIVE AGREEMENT FOR ROCK CREEK HOLDINGS, LLC

Matt Magley said this is an agreement between Rock Creek Holdings, LLC, also known as Resolute, and the Town for Town owned property of .93 acres located within Resolute's property. The Resolute property is located south of the Horizon's apartments, is bordered by Coalton Road to the south, the Flatirons Mall to the east, Tyler Drive to the west and the apartments to the north. This property is owned by the Town and was received at some point with the Rock Creek PUD (Planned Unit Development). It was at one time used as a Director's parcel for Superior Metropolitan District #1 which has now been moved to the round-about at the Superior Marketplace. It has always been envisioned to be part of this development in one way or another. This property will be used as part of an out parcel or retail lot for a potential hotel building. Resolute is working with a hotel developer to finalize an agreement for that lot. There is a reversion clause in the agreement which basically means that if Resolute fails to finalize their agreement with the hotel group, they have 12 months to find another user that is acceptable to the Town or pay the Town \$125,000 for the lot. If neither are exercised, the lot will revert back to the Town. Discussion.

Kris Barnes, Resolute, said they are almost at final contract with the hotel. Also, a company is looking for build-to-suit developer to possibly build them a 150,000 square foot office complex. There is activity but it is not at the pricing level that is ideal for them given what they brought this property for but it is good there is activity and it is promising.

Trustee Gourgouris moved to approve Resolution #R-11, Series 2011 A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN INCENTIVE AGREEMENT WITH ROCK CREEK HOLDINGS, LLC. Seconded by Trustee Williams. Ayes – 6 (Cirelli, Gourgouris, Hanson, Muckle, Pennington, Williams). Absent – 1 (Skumatz). Motion carried.

EXECUTIVE SESSION TO DETERMINE POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOP A STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCT NEGOTIATORS, PURSUANT TO C.R.S. §24-6-402(4)(e) REGARDING THE JEFFERSON PARKWAY

Trustee Williams moved to go into executive session. Seconded by Trustee Gourgouris. Ayes – 6 (Cirelli, Gourgouris, Hanson, Muckle, Pennington, Williams). Absent – 1 (Skumatz). Motion carried. An Executive Session was held. Trustee Hanson moved to come out of the executive session. Seconded by Trustee Cirelli. Ayes – 6 (Cirelli, Gourgouris, Hanson, Muckle, Pennington, Williams). Absent – 1 (Skumatz). Motion carried.

ADJOURNMENT

Mayor Muckle adjourned the meeting.

READ AND APPROVED this _____ day of _____, 2011.

Andrew Muckle, Mayor

ATTEST:

Phyllis L. Hardin, Town Clerk/Treasurer

DRAFT

#7B

**Town of Superior
Historical Commission Meeting
Notes
February 11, 2011**

Members of the Commission in attendance: Larry Dorsey (Chair), Bob Morgan, Denzil Acklin, Karen Waligorski, Wally Waligorski, Mary Cartwright, David Cartwright.

Others in attendance: Gail Larsen Khasawneh, Allyn Jarrett, Marianne Chavez, Sharon Asti-Caranci, Ted Asti, Gerald Zancanelli, Gary Moschetti, Sandy Pennington (Town Board Member), Patrick Hammer (staff), Martin Toth (staff).

Discussion items:

1. The Commission celebrated Ted Asti's birthday, with family members attending the meeting and graciously providing refreshments for the Commission.
2. The Commission debriefed items from last month: the February 5 Museum open hours and the County Preservation Forum on January 29.
3. Cataloging of the Museum collection continues as volunteers are available.
4. The Conda mine car sign was incorrectly manufactured; a replacement is in production but has not yet arrived.
5. The Eagle Scout project to create a historical video about Superior – Derek Aiello will schedule interviews soon and will set-up a time to review historic photos.
6. Curtains for the Museum's pantry and closet will be finished soon.
7. Staff plans to replace the grill on the BBQ pit at Asti Park in the few days.
8. The next ANFRM meeting will be February 21.
9. The Commission is scheduled to have a work day at the Museum on February 18, starting at 10:00 a.m.
10. Staff and Larry will work together to develop narrative for an interpretive sign in South Original Town describing Superior's railroad history.
11. The Commission's Spring Program will be held April 14, and include a presentation by Gordon Page of the Spirit of Flight Museum in Erie. Several Commission members plan to visit the Museum after today's meeting.
12. The Commission plans to host a spring walking tour on May 7.
13. The Commission discussed their interest in seeing interpretive signs installed at the Industrial Mine camp site and how this might be pursued with Boulder County.
14. The Commission discussed potentially moving a piece of historic concrete to Asti Park from the vacant lot at 3rd and Maple.
15. The Commission discussed their interest in seeing descriptive plaques affixed to the historic farm equipment at Grasso Park. This could be an item for this Spring/Summer.

16. The Commission discussed who would be available to staff the March 5 Museum open hours.

#7B

Town of Superior OSAC Meeting Notes February 9, 2011

Members of the Committee in attendance: Dana D'Souza, Margaret Parish, John Nibarger, Jim Paine, Lloyd Linnell, Tom Pratt, Bob McCool, Debra Williams, English Hopkins.

Others on attendance:

Citizens: Robert Mommaerts, Susan Bauer, Dick Mann, Sheron Tedeschi

Staff in attendance: Alan McBeath, Martin Toth.

Public Comment:

1. Saddlebrook residents reviewed information regarding the history of Hodgson-Harris Reservoir.

Agenda Items:

1. Discussion – Hodgson-Harris Reservoir and Zaharias Property. Bob McCool reviewed a draft presentation on the Hodgson-Harris Reservoir and Zaharias Property that is scheduled to be presented to the Town Board at their February 14 work session. The Committee discussed several points and edited the presentation, which includes the history, benefits to the community, and possible future uses in the area of the reservoir and Zaharias property.
2. Discussion – Leadership Elections. John Nibarger reviewed the Chair's responsibilities and the opportunity that an annual election by the Committee of a Chair would provide for different members to facilitate and lead the Committee if there is interest among members. The Committee unanimously elected Dana D'Souza as Chair and Margaret Parish as Vice-Chair.
3. Review – Open Space Fund Financial Outlook. End of year finance details are not yet available, so this item will be on the March agenda.
4. Updates:
 - a. Coalton Trail – Boulder County has substantially completed the project with the exception of a limited amount of seeding and hydro-mulching that was delayed due to weather conditions.
 - b. Coalton Trailhead – Restoring public access to the trailhead facility was delayed a short time due to snow. Installation of car stops and removal of debris in the parking area is now completed and the lot is open. Signage, restroom construction, and fencing installation is underway.

#7B

**Town of Superior
PROSTAC Meeting
Notes
February 16, 2011**

Members of the Committee in attendance: Jim Paine (Chair), Nathan Ruff, Daryl McCool, Aaron Atwell, Lars Morales, Lloyd Linnell, Greg Tan, John Nibarger. Quorum present.

Others in attendance:

Citizens: Martin Benz, Kevin Colon, Sam Benz, Andy Wing.

Town Board Liaison: Chris Hanson.

Consultants: Lee McCormack of Lee Likes Bikes.

Staff: Alan McBeath, Martin Toth.

Discussion items:

1. Discussion – 3 Parks/Community Park East Volunteer Project Schedule and Outreach. Consulting designer Lee McCormack briefly reviewed the bicycle skills course design. The Committee, citizens and staff reviewed the sequence of work components and labor needs to complete the bike facility:
 - a. Grading will be completed over the next week.
 - b. Eagle Scout candidate Martin Benz will set fence posts around the dog park facility March 5 (March 12 is back-up date for weather).
 - c. Dirt placement with heavy equipment by March 11.
 - d. Handwork of bicycle facility features by community volunteers the weekend of March 12-13.
 - e. Continue handwork with community volunteers from Cool River Church during the week of March 14.
 - f. Complete handwork “Community Dig Days” the weekend of March 19-20 and host celebration of the completion of the facility.

Aaron Atwell will serve as point-person to contact area bicycle groups and potential sponsors to solicit volunteers and donations, working with Andy Wing and staff.

2. Discussion – Planning and public outreach for February 23 Community Meeting regarding the future of Town 9 Park. The meeting will begin at 6:30, will be videotaped, and there will be a children’s activity hosted in the conference room next to the Board Room. The Committee reviewed, amended and unanimously voted for a PROSTAC Goal Statement for the Town 9 Park Process:
 - a. PROSTAC, consistent with its 2011 Board-approved Work Plan, is committed to bringing to the Board of Trustees options and recommendations for further development of Town Nine Park that will result in a high quality neighborhood park, consistent with the quality and service level of neighborhood parks throughout the Town of Superior, and consistent with the Town’s Comprehensive Plan and the PROST Master Plan. PROSTAC will seek the highest possible

degree of consensus among residents of the neighborhoods of Original Town and Sagamore, and is committed to extensive community outreach to do so. PROSTAC's goal is a timeline that will see a substantially completed Town Nine Park within 2 to 3 years, with initial options, recommendations, and rough budget estimates presented to the Board in the 1st half of 2011.

3. The Committee reviewed tasks from the 2011 Work Plan, discussed process options to complete these tasks, and discussed governance structure of the Committee.
4. Updates:
 - a. Hodgson Harris Reservoir – OSAC presented information to the Town Board at their February 14 meeting; Boulder County will host at Town Hall on February 23 at Superior Town Hall at 3:30 p.m. a meeting of the Hodgson Harris Reservoir Working Group.
 - b. Coalton Trail – the trail is substantially complete.
 - c. Coalton Trailhead – the parking lot is complete, fence installation work is the next large task; landscape contract work will be advertised in the next few weeks.



ITEM NO. 7C

INFORMATION FOR MEETING OF THE SUPERIOR BOARD OF TRUSTEES

AGENDA ITEM NAME: Resolution -- Approving Agreement / Rock Creek Master Homeowners Association

MEETING DATE: February 28, 2011

PRESENTED BY: Martin Toth, PROS Director

PRESENTED FOR: Action

BACKGROUND:

The Town enters into partnership agreements annually with community and non-profit groups to facilitate a program or service not otherwise provided by the Town. These agreements typically provide a reduced facility use fee that deviates from the Town's pyramid pricing policy.

One of the groups the Town enters into a partnership agreement with each year is the Rock Creek Master Homeowners Association. This effort provides programs and services for the entire community without unnecessary duplication. The Town has coordinated with the HOA to continue to provide events for the community since the dissolution of Metropolitan Districts #2 and #3 in December of 2003.

The HOA will offer this year a Spring Fling & Easter Egg Hunt, three Movie Nights, and an Oktoberfest event.

The agreement calls for the Town to provide:

- Use of Town facilities at no charge for Spring Fling & Easter Egg Hunt (Purple Park), 3 movie nights (Community Park), and Oktoberfest (Purple Park).
- One staff member and an ATV to assist with set-up and tear-down for one hour before and one hour after Spring Fling & Easter Egg Hunt and Oktoberfest.
- Portable toilet facilities for Oktoberfest.

The agreement calls for the HOA to:

- Open all events to any Town resident.
- Comply with all rules and regulations of the Town.
- Coordinate marketing.

PROS:

- These events provide additional activities for the residents of Superior without duplication of services.
- Events promote a sense of community.
- Partnership costs are minimal.

CONS:

- None

BUDGET IMPLICATIONS:

- Additional expenses for portable toilet and staffing is approximately \$400.

MOTION:

Move to approve the Agreement with the Rock Creek Master Homeowners Association.

ATTACHMENTS:

- Resolution
- Agreement

TOWN OF SUPERIOR

RESOLUTION NO. R-12
SERIES 2011

A RESOLUTION OF THE BOARD OF TRUSTEES OF
THE TOWN OF SUPERIOR APPROVING AN
AGREEMENT WITH THE ROCK CREEK MASTER
HOMEOWNERS ASSOCIATION FOR USE OF TOWN
PARKS AND FACILITIES

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR, COLORADO, as follows:

Section 1. The Agreement between the Town of Superior
and the Rock Creek Master Homeowners Association, Inc. for use
of Town Parks and Facilities, in substantially the same form
as attached hereto, is hereby approved subject to final
approval by Town Attorney.

ADOPTED this 28th day of February, 2011.

Andrew Muckle, Mayor

ATTEST:

Phyllis L. Hardin, Town Clerk-Treasurer

AGREEMENT FOR USE OF TOWN PARK FACILITIES

THIS AGREEMENT is effective this 28th day of February, 2011 (the "Effective Date") between the Town of Superior, 124 East Coal Creek Drive, Superior, Colorado 80027, a Colorado municipal corporation (the "Town") and the Rock Creek Master Homeowners Association, Inc., a Colorado non-profit corporation, 1400 Main Street, Suite 201B, Louisville, Colorado 80027 (the "HOA") (collectively the "Parties").

WHEREAS, the HOA hosts social events for its members and Town residents;

WHEREAS, the Town administers Town Parks and Swimming Pools located in the Town of Superior (the "Facilities"); and

WHEREAS, the Town wishes to support the HOA and provide it with access to Town Park Facilities for its activities.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Use of Facilities. Provided that the HOA complies with the terms of this Agreement, the HOA shall have access to the Facilities for the events listed on the schedule attached hereto as **Exhibit A** and incorporated herein by this reference ("Events") at no charge.

2. Term of Agreement. Unless sooner terminated as provided herein, the term of this Agreement shall be from the Effective Date through December 31, 2011.

3. Termination. Either party may terminate this Agreement at any time, for any reason, by providing thirty (30) days advance written notice to the other party.

4. Event Marketing. In consideration for the use of the Facilities at no cost, all Events shall be open to any Town resident, and shall be marketed by the HOA to all Town residents as follows:

a. Each Event shall be advertised on at least six (6) signs placed throughout the Town in compliance with all applicable provisions of the Town's Land Use Code and provide poster(s) and or flyers to the Town's two outdoor pools to include the information of who, what, when and where the events will be held.

b. Each sign shall include the name of the Event, the date, time and location of the Event, and a statement that the Event is open to all Town residents.

c. The signs shall be erected at least seven (7) days prior to each Event and shall be removed within two (2) days following each Event.

d. Each event shall be advertised on the Town Hall electronic messaging sign at least seven (7) day prior to each Event.

e. The HOA shall cause a notice of each Event to be placed in its newsletter at least seven (7) days prior to each Event, which notice shall include a statement that the Event is open to all Town residents.

f. The HOA shall prepare and submit to the Town a timely notice of each Event to be placed in the Town's newsletter, which notice shall include a statement that the Event is open to all Town residents.

5. Deposit. The HOA shall provide to the Town, upon execution of this Agreement, a security deposit in the amount of two hundred dollars (\$200.00). Such deposit shall be applied to any damage or cleaning charges incurred by the Town as a result of any misuse, damage or failure to clean the Facilities caused by the HOA or any of its employees, agents, representatives or invitees. If the deposit is applied to damage or cleaning charges at any time during the term of this Agreement, the HOA shall replenish the deposit within ten (10) days of written notice by the Town. Failure to replenish the deposit shall constitute a breach of this Agreement. The security deposit can be carried over year to year and applied to the next year's agreement, in the event an agreement is reached, and replenished as need be.

6. HOA's responsibilities.

a. At least fourteen (14) days prior to each Event, the HOA shall provide the Town with written confirmation of the Event, a layout and a certification that all necessary permits, personnel, equipment and approvals have been obtained by the HOA.

b. The HOA shall clean all areas used or occupied by the HOA each time the Facilities are used, including, but not limited to, cleaning of grounds and trash removal.

c. The HOA shall comply with all rules and regulations of the Town regarding the Facilities as well as other applicable regulations, including, but not limited to, obtaining a license to provide alcoholic beverages and providing a traffic plan.

d. The HOA shall, at its sole cost and expense, repair any damage to the Facilities or equipment which occurs as a result of the HOA's activities.

7. Town's responsibilities.

a. The Town shall provide portable toilet facilities for 1 event; Oktoberfest. The Town will provide two (2) portable toilets for the Oktoberfest.

b. The Town shall provide one staff person and one ATV to assist in set-up and tear-down, for a maximum of one (1) hour before each event and one (1) hour after each event.

c. The Town shall pre-program the lights for the east field to come on at the set time after the movie ends and go off at the set time after clean up is completed for each movie night. The set times will be determined by the HOA and the Town one week previous to the dates for each movie night.

8. Indemnification. The HOA agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement or the Scope of Services if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the HOA or any officer, employee, representative, or agent of the HOA, or which arise out of any worker's compensation claim of any employee of the HOA.

9. Insurance.

a. The HOA shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the HOA pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

b. The HOA shall procure or cause to be procured and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease – policy limit, and one million dollars (\$1,000,000) disease – each employee.

2. Commercial general liability insurance with minimum combined single limits of six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall be endorsed to include the Town and the Town's officers, employees, and consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

c. Any insurance carried by the Town, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by the HOA. The HOA shall be solely responsible for any deductible losses under any policy.

d. The HOA shall provide to the Town a certificate of insurance, completed by the HOA's insurer, as evidence that policies providing the required coverages, conditions, and

minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

11. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

12. Integration. This Agreement and any attached exhibits constitute the entire Agreement between the HOA and the Town, superseding all prior oral or written communications.

13. Third Parties. There are no intended third-party beneficiaries to this Agreement.

14. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to:

The Town: Director of Parks, Recreation and Open Space
Town of Superior
127 East Coal Creek Drive
Superior, Colorado 80027

HOA: Rock Creek Masters Homeowners Association, Inc.
1400 Main Street, Suite 201 B
Louisville, Colorado 80027

15. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

16. Modification. This Agreement may only be modified upon written agreement of the Parties.

17. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

18. Governmental Immunity. The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers or employees.

EXHIBIT A
SCHEDULE OF EVENTS
2011

April 16 th , 1 to 3 pm - Spring Fling & Easter Egg Hunt (Weather make-up date – April 23 rd , 1 to 3 pm)	Purple Park
June 3 rd , 5 to 12 pm – Movie Night (East Softball Field)	Community Park
July 8 th , 5 to 12 pm – Movie Night (East Softball Field)	Community Park
August 5 th , 5 to 12 pm – Movie Night (East Softball Field)	Community Park
October 8 th , 1 to 4 pm – Oktoberfest	Purple Park



ITEM NO. 8

INFORMATION FOR MEETING OF THE SUPERIOR BOARD OF TRUSTEES

AGENDA ITEM NAME: Resolution - CIP Project Tracking Sheets

MEETING DATE: February 28, 2011

PRESENTED BY: Matt Magley, Town Manager

PRESENTED FOR: Approval

BACKGROUND:

This item was tabled at the February 14th meeting to allow Trustee Skumatz to be included in the discussion. Members of the Board having been working on a form that is intended to clarify the process the Town uses to approve significant public capital improvement projects. The approval process for developments and other private land items are currently covered under Chapter 16 of the Superior Municipal Code.

Trustee Skumatz previously distributed a form to the Board at the October 11, 2010 work session. The Town Board and staff discussed the form and the Board directed staff to develop a form that incorporated the ideas by Trustee Skumatz, as well as forms staff was currently using. Town Staff presented the capital improvement project tracking sheets at the January 8, 2011 work session meeting and the Town Board provided additional direction to Town Staff on the sheets.

Each project has its' own tracking sheet. There are a total of seven projects. Each sheet is designed to give a project overview; schedule of approvals and public meetings for Town advisory commissions/committees and the Town Board; budget status; and project contractors and managers. These sheets will be updated monthly and can be revised throughout the year as is needed to provide additional information regarding each project.

RECOMMENDED ACTION: Approve the public capital improvement project tracking sheets.

PROS:

- Provides more information on significant 2011 capital improvement projects in regards to public process, schedule, status, and budget
- More transparent to the Board and public on project approval process
- Will provide updates to the Town Board
- Will be posted on the website for public viewing

CONS:

- None

ALTERNATIVES CONSIDERED:

- Make no changes

MOTION: Move to adopt a Resolution Approving the public capital improvement project tracking sheets.

ATTACHMENTS:

- Resolution
- 2011 capital improvement project tracking sheets

TOWN OF SUPERIOR
RESOLUTION #R-____
SERIES 2011

A RESOLUTION OF THE BOARD OF TRUSTEES
OF THE TOWN OF SUPERIOR APPROVING THE
CAPITAL IMPROVEMENT PROJECT (CIP)
APPROVAL PROCESS

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
TRUSTEES OF THE TOWN OF SUPERIOR, that

Section 1. The Capital Improvement Project (CIP)
approval process is approved in substantially the same
forms as attached.

ADOPTED this 28th day of February, 2011.

Andrew Muckle, Mayor

ATTEST:

Phyllis L. Hardin, Town Clerk-Treasurer

2011 CIP Implementation Schedule

Public Works/Utilities

Project

Rock Creek Parkway Underpass-PED Trail improvements

PROJECT DESCRIPTION

This project provides for completion of rehabilitation efforts to the Rock Creek Parkway Underpass adjacent to Community Park. Phase I improvements in progress for 2010 sealed existing joints to eliminate water infiltration onto the existing concrete trail. Phase 2 will provide funding to install a new matching stone veneer along the underpass tunnel sides, repaint the top a neutral color, and replace corroded electrical conduits and lighting. Two additional options will be discussed of equal or lesser value. Public art or painting in lieu of veneer.

PROJECT SCHEDULE	PROSTAC	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	1st Quarter	3/1/2011	2/28/2011	
Project Review/Public Notice	N/A	2nd Quarter	2nd Quarter	
2nd Project Review/Public Notice - as needed	N/A	N/A	N/A	
Bid Opening for Contractors	N/A	2nd Quarter	2nd Quarter	
Contract Approval	N/A	3rd Quarter	3rd Quarter	
Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	
Current Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	

PROJECT BUDGET

Budget Approved by Town Board	\$	35,000
Project Expense to date		-
Variance	\$	35,000

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

Kur Kowar

NOTES

2011 CIP Implementation Schedule

Public Works/Utilities

Project

Marshall Triple Left

PROJECT DESCRIPTION

This project includes the modification of the McCaslin Blvd. and Marshall Rd. intersection to provide for a Triple Left Turn configuration from Eastbound Marshall Rd. to Northbound McCaslin Blvd.. This project is anticipated to reduce traffic queuing up Marshall Rd. at peak travel periods and increase safety by providing dedicated turn lanes for Northbound and US 36 destination travelers.

PROJECT SCHEDULE	Transportation & Safety Committee	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Worksession	N/A	N/A	3/14/2011	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	1st Quarter	1st Quarter	1st Quarter	
Project Review/Public Notice	N/A	2nd Quarter	2nd Quarter	
2nd Project Review/Public Notice - as needed	N/A	2nd Quarter	2nd Quarter	
Bid Opening for Contractors	N/A	2nd Quarter	2nd Quarter	
Contract Approval	N/A	2nd Quarter	2nd Quarter	
Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	
Current Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	

PROJECT BUDGET

Budget Approved by Town Board	\$	100,000
Project Expense to date		-
Variance	\$	100,000

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

Kurt Kowar

NOTES

2011 CIP Implementation Schedule

Parks and Recreation

Project

Trail Improvements

PROJECT DESCRIPTION

Rehab social trails and BMX area north of Williams Field at the creek; Engineer and provide for pedestrian bridge at McCaslin and Coal Creek Trail, link Singletree to Coal Creek via rail bed and McCaslin; Add soft trail along Sagamore north and west boundaries;

PROJECT SCHEDULE	PROSTAC/OSAC	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	2nd Quarter	N/A	2nd Quarter	
Project Review/Public Notice	2nd quarter	N/A	N/A	
2nd Project Review/Public Notice - as needed	N/A	N/A	N/A	
Bid Opening for Contractors	N/A	N/A	2nd Quarter	
Contract Approval	N/A	N/A	3rd Quarter	
Projected Construction Completion Date	3rd Quarter	3rd Quarter	3rd Quarter	
Current Projected Construction Completion Date	3rd Quarter	3rd Quarter	3rd Quarter	

PROJECT BUDGET

Budget Approved by Town Board	\$	170,000
Project Expense to date		-
Variance	\$	170,000

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

NOTES

2011 CIP Implementation Schedule

Administration

Project

Wind Turbine

PROJECT DESCRIPTION

his project consists of a 2- MW commercial wind turbine, which is estimated to generate 2.9 million kWh annually. Although a specific siting decision has not been made, options include partnerships with the Navajo Tribal Utility Authority (NTUA), which is building a wind turbine farm in Arizona, and NREL. The electricity generated by this one turbine will offset electricity for Town operations. The wind turbine will offset 82% of the Town's electricity consumption; and with other green initiatives already completed, the Town have reached its goal of being energy neutral, through the use of renewable energy.

PROJECT SCHEDULE	RCAC	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Worksession	N/A	N/A	2nd Quarter	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	N/A	N/A	N/A	
Project Review/Public Notice	2nd Quarter	N/A	2nd Quarter	
2nd Project Review/Public Notice - as needed	N/A	N/A	2nd Quarter	
Bid Opening for Contractors	N/A	3rd Quarter	3rd Quarter	
Contract Approval	N/A	3rd Quarter	3rd Quarter	
Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	
Current Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	

PROJECT BUDGET

Budget Approved by Town Board	\$ 3,500,000
Project Expense to date	-
Variance	<u>\$ 3,500,000</u>

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

Matt Magley/Jay Wolffarth

NOTES

2011 CIP Implementation Schedule

Public Works/Utilities

Project

Town wide Lane & Signal Reduction Analysis

PROJECT DESCRIPTION

This project provides for assessment of roadway capacities and identification of opportunities to replace a signal with a roundabout and replace asphalt lanes with wider medians. A new 3" overlay every 15 years for primary and secondary arterials calculates to approximately \$2,800 per year per acre without inclusion of interim maintenance or annual snow plowing costs. Irrigated turf areas presently cost the Town approximately \$800 per year per acre. An assessment will be made with recommendations as to what areas might be candidates for transformation from asphalt to turf.

PROJECT SCHEDULE	Transportation & Safety Committee	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Worksession	N/A	N/A	1st Quarter	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	2nd Quarter	2nd Quarter	2nd Quarter	
Project Review/Public Notice	N/A	3rd Quarter	3rd Quarter	
2nd Project Review/Public Notice - as needed	N/A	3rd Quarter	3rd Quarter	
Bid Opening for Contractors	N/A	N/A	N/A	
Contract Approval	N/A	N/A	N/A	
Projected Construction Completion Date	N/A	N/A	N/A	
Current Projected Construction Completion Date	N/A	N/A	N/A	

PROJECT BUDGET

Budget Approved by Town Board	\$	15,000
Project Expense to date		-
Variance	\$	<u>15,000</u>

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

Kurt Kowar

NOTES

2011 CIP Implementation Schedule

Public Works/Utilities

Project

Coal Creek Basin Improvements

PROJECT DESCRIPTION

The 2010 Urban Drainage Flood Control District (UDFCD) and The Town undertook a joint project to study current Federal Emergency Management Agency (FEMA) and 2006 Kiowa Master Plan floodplain discrepancies. The study, currently underway will provide design recommendations for minimizing floodplain impacts to properties adjacent to Coal Creek upstream of McCaslin Boulevard. Proposed funding levels would contribute to a 50% project match of any UDFCD funding levels.

PROJECT SCHEDULE	Committee	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	N/A	1st Quarter	1st Quarter	
Project Review/Public Notice	N/A	2nd Quarter	2nd Quarter	
2nd Project Review/Public Notice - as needed	N/A	3rd Quarter	3rd Quarter	
Bid Opening for Contractors	N/A	TBD	TBD	
Contract Approval	N/A	TBD	TBD	
Projected Construction Completion Date	N/A	TBD	TBD	
Current Projected Construction Completion Date	N/A	TBD	TBD	

PROJECT BUDGET

Budget Approved by Town Board	\$	200,000
Project Expense to date		-
Variance	\$	200,000

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

Kurt Kowar

NOTES

This project is dependent upon UDFCD. A draft alternatives analysis was completed in 2010 is currently under review by Town Staff and UDFCD Staff. Additional meetings are anticipated to be held with UDFCD and the Public to determine the best course of action related to any Coal Creek Basin Improvements.

2011 CIP Implementation Schedule

Public Works/Utilities

Project

South Original Town Drainage Evaluation

PROJECT DESCRIPTION

This Board requested project is currently unbudgeted however an initial allowance of \$10,000 has been created with CH2MHill, the Coal Creek Basin UDFCD Consultant, to provide additional analysis of the drainage basin. The results of this additional analysis in conjunction with neighborhood meetings will result in a recommendation to the Board regarding options for future improvements if needed. It would currently be anticipated to incorporate any improvements into the 2011 Street Improvements Program. The ultimate budget is yet TBD.

PROJECT SCHEDULE	Committee	Planning Commission	Town Board	Date Completed
Project Schedule Review & Approved	N/A	N/A	2/28/2011	
Apply for Grants	N/A	N/A	N/A	
Approval of Design Contract - as needed	N/A	N/A	N/A	
Concept Design Review - as needed	N/A	1st Quarter	1st Quarter	
Project Review/Public Notice	N/A	2nd Quarter	2nd Quarter	
2nd Project Review/Public Notice w/Neighborhood Meeting	N/A	2nd Quarter	2nd Quarter	
Bid Opening for Contractors	N/A	3rd Quarter	3rd Quarter	
Contract Approval	N/A	3rd Quarter	3rd Quarter	
Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	
Current Projected Construction Completion Date	N/A	4th Quarter	4th Quarter	

PROJECT BUDGET

Budget Approved by Town Board	\$	10,000
Project Expense to date		-
Variance	\$	10,000

THIRD PARTY CONTRACT MANAGER

PROJECT MANAGER

Kurt Kowar

NOTES



ITEM NO. 9

INFORMATION FOR MEETING OF THE SUPERIOR BOARD OF TRUSTEES

AGENDA ITEM NAME: Ordinance – Amending Chapter 16 of the Superior Municipal Code / Land Use Code

MEETING DATE: February 28, 2011

PRESENTED BY: Matt Magley, Town Manager
Kendra Carberry, Town Attorney

PRESENTED FOR: First Reading

BACKGROUND:

The Town Attorney has prepared the attached ordinance, which amends Article XXXIV of the Land Use Code regarding areas and activities of state interest within the Town. The ordinance provides guidelines and procedures for regulating these areas or activities, which are currently not found in Article XXXIV. Areas and activities of state interest may include: planning, design, expansion or construction of a highway or interchange; mineral resource areas (mining); natural hazard areas; areas that have a significant impact upon historical, natural or archaeological resources; areas around key facilities that may have a material effect on the community.

This ordinance provides additional protections, guidelines, and procedures for the Town related to impacts from developments for mining or transportation improvements, as well as other developments that may have an impact on the Town and are areas of state interest. These procedures include requiring a permit, preapplication conference with staff, formal application, and a public hearing to review the application. The application requires detailed information related to the proposed development be provided to the Town including: written confirmation of compliance with state statutes, confirmation of mineral interests, environmental and wildlife impact analysis, and transportation impacts, as well as others. The ordinance requires that applications be referred to the appropriate agencies for review including: State Engineer, CDOT, State Dept. of Health, DRCOG, and the Division of Wildlife. The ordinance also provides the option for the Board to require an applicant to provide to the Town a guarantee of financial security in the

amount the Board feels is appropriate, which would be in the form of a letter of credit or other financial guarantee.

RECOMMENDED ACTION: To approve the first reading of the ordinance; and schedule the second reading and final approval for March 28th.

PROS:

- Provide protections for the Town related to areas and activities of state interest
- Provides guidelines for the Town and applicants related to areas and activities of state interest

CONS:

- None

ALTERNATIVES CONSIDERED:

- Make no changes

COMMISSION/COMMITTEE RECOMMENDATION: This is scheduled for review by the Planning Commission at their March 15th meeting.

MOTION: Move to approve the first reading of an Ordinance amending Chapter 16 of the Municipal Code.

ATTACHMENTS:

- Ordinance

TOWN OF SUPERIOR
ORDINANCE NO. O-____
SERIES 2011

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE
TOWN OF SUPERIOR ENACTING REGULATIONS
PERTAINING TO AREAS AND ACTIVITIES OF STATE
INTEREST WITHIN THE TOWN

WHEREAS, Article 65.1 of Title 24, C.R.S. grants the Board of Trustees the authority to identify, designate and regulate areas or activities of state interest located within the Town;

WHEREAS, Article XXXV of Chapter 16 of the Superior Municipal Code, in accordance with Article 65.1 of Title 24, C.R.S., provides for, among other areas, the designation of mineral resource areas as an area of state interest; and

WHEREAS, the Board of Trustees is desirous to enact regulations for such areas and activities of state interest.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO:

Section 1. Article XXXIV of Chapter 16 of the Superior Municipal Code is hereby amended by the addition of the following new sections:

Sec. 16-34-20. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Alternative mode of transportation means any mode of transportation other than a single occupancy vehicle.

Arterial highway means any limited-access highway which is part of the federal-aid interstate system or any limited access highway constructed under the supervision of the Colorado Department of Transportation, including any substantial modification or expansion thereof that involves a site selection or corridor location process.

Collector highway means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers, recreation areas or industrial centers that is constructed under guidelines and standards established by, or under the supervision of, the Colorado Department of Transportation, including any substantial modification or expansion thereof that involves a site selection or corridor location process. *Collector highway* does not include a Town street or

local service road or a county road designed for local service and constructed under the supervision of a local government.

Constructed under guidelines and standards established by or constructed under the supervision of the Colorado Department of Transportation includes without limitation any of the following forms of participation by the Colorado Department of Transportation:

a. The Colorado Department of Transportation, or any entity formed directly or indirectly by it or the Colorado Transportation Commission, or formed by contract or agreement with it or the Colorado Transportation Commission (including, without limitation, any enterprise formed under Article 4 of Title 43, C.R.S., as amended, or nonprofit entity formed by such enterprise), and:

1. Is an applicant;

2. Sells, leases, loans, donates, grants, conveys, assigns, transfers or otherwise provides any real or personal property or interests therein used or to be used in the proposed construction, modification or expansion of the arterial highway, interchange or collector highway, including transfer or assignment of any contract to the applicant that may have been awarded for the proposed construction, modification or expansion of the arterial highway, interchange or collector highway;

3. Delegates authority to the applicant or is a signatory to any intergovernmental agreement or other form of contract, agreement, conveyance, delegation or authorization required for the applicant to construct, modify or expand the arterial highway, interchange or collector highway; or

4. Performs or funds any planning, design, study, construction, supervision or maintenance functions associated with all or any portion of the construction, modification or expansion of the arterial highway, interchange or collector highway.

b. A state highway access permit from the Colorado Department of Transportation is necessary for access from the proposed construction, modification or expansion of the arterial highway, interchange or collector highway to a state highway either within or outside the Town.

Corridor means an area, measured both horizontally and vertically, within which highway facilities may be located and which the applicant proposes to recommend to the Federal Highway Administration or

Colorado Department of Transportation for approval under the corridor location phase of highway development.

Impact area means that area within the corporate limits of the Town which is served or potentially could be served by the highway facility, or which would be impacted in other ways, direct, indirect or cumulative, by the location of an arterial highway, interchange or collector highway.

Interchange means the intersection of two (2) or more highways, roads or streets, at least one (1) of which is an arterial highway. At such intersection, there must be direct access to and from the arterial highway.

Limited-access highway means a highway which gives preference to through traffic by providing access connection with selected roads only. A highway may be considered a *limited-access highway* even though it has some crossings at grade and private driveway connections.

Locate is synonymous with *select a site* for or *site selection* of an arterial highway, interchange or collector highway.

Rapid transit means the element of a mass transit system involving a mechanical conveyance on an exclusive land or guide way constructed solely for that purpose.

Site selection means the determination of a specific corridor or facility location which is made at the end of the corridor location studies in which:

- a. Construction of an arterial highway, interchange or collector highway is proposed.
- b. Expansion or modification of an existing arterial highway, interchange or collector highway is proposed that would result in: an increase in highway capacity by at least one (1) lane through widening or alternative lane configurations, or an equivalent increase in capacity produced by access controls, technological or other types of highway improvements; or the elimination of direct, at-grade, access from a public road or street within the Town to such existing arterial or collector highway.
- c. Expansion or modification of an existing highway is proposed which would result in a change in classification to *collector highway* or *arterial highway* as defined in this Article.

Sec. 16-34-30. Permit required.

A permit is required to engage in development within an area of state interest or conduct an activity of state interest in the Town.

Sec. 16-34-40. Preapplication conference.

(a) A preapplication conference shall be held between the applicant and the Town Manager. The conference is intended to provide an understanding of the applicable review procedures, requirements and standards, and provide information pertinent to the application and the geographical area affected by the application.

(b) The applicant shall bring a conceptual site plan to the conference.

(c) The Town Manager may invite any other Town staff to the conference as the Town Manager finds appropriate.

(d) Comments made by Town staff during the preapplication conference are preliminary in nature and should not be relied upon by the applicant. Formal comments cannot be made by Town staff until after the application is submitted.

Sec. 16-34-50. Application.

(a) A permit application shall be filed with the Town Clerk, accompanied by an application fee established by Resolution of the Board of Trustees.

(b) For an application to be considered complete the application shall include and cover the entire development as presently contemplated and reasonably foreseeable for the subject property or activity for a period of not less than five (5) years following the date of the application. The purpose of this requirement is to assure that the application is reviewed in a rational context of reasonably foreseeable development for the property, to avoid piecemeal analysis of applications and to allow for a comprehensive consideration of the cumulative impacts of development under these regulations.

(c) The signature on an application evidences the applicant's approval of and concurrence with all statements and commitments contained in the application.

(d) The application shall provide a written description of the development or activity, including any capital improvements plan, facilities plan or other planning document which the applicant has prepared for its use, covering at a minimum a period of five (5) years from the date of the application.

(e) If the application anticipates new surface development, it shall include written certification of compliance with Article 65.5, Title 24, C.R.S., that requires examination of the public records to determine the existence and identity of owners and lessees of severed mineral interests in the property covered by the application. The application shall inform the Town of the results of such examination. If such examination reveals the existence of any such owners or lessees, the application shall include a complete list of the names and addresses of such persons and describe the severed mineral interests owned or leased by each. In accordance with Subsection 16-34-80(c) below, public hearing on the application will not be held unless the applicant furnishes the Town with signed certification confirming that the applicant has, at least thirty (30) days prior to the

public hearing, transmitted to the Town and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, C.R.S., as amended.

(f) The applicant shall furnish a detailed description of the need for the proposed development or activity, including but not limited to:

(1) The present and projected population of the area to be served;

(2) The predominant types of users or communities to be served by the proposal;

(3) The percentage of the design capacity at which the current system is now operating; and

(4) The relationship of the proposal to the applicant's long-range planning and capital improvements programs, including specific reference to the plans required to be submitted pursuant to Subsection 16-34-20(d) above and Paragraph (a)(3) of this Section.

(g) The applicant shall prepare and submit a complete environmental impact analysis of the proposed development or activity, including all of the documents and information set forth below:

(1) Land use.

a. Specify whether the proposal conforms to the Town's planning policies and master plans.

b. Detail the agricultural productivity capability of the land affected by the proposal (SCS classification).

c. Specify how the proposed development will utilize existing easements or rights-of-way for any associated transmission, distribution or collector networks.

d. Specify any additional rights-of-way or easements for new or expanded transportation facilities.

(2) Water resources.

a. Indicate any flood hazard area associated with the proposal. Documentation of historical flooding activity on the parcel where the activity or development will be located, and on other property affected by the activity or development, should be included. Detail potential, adverse impacts related to the associated flood hazard area.

b. Map and describe all surface waters, including applicable state water quality standards, to be affected by the project.

c. Describe the immediate and long-term impact and net effects that the activity would have on the quantity and quality of surface water under both average and worst-case conditions.

d. Map and describe all groundwater, including any aquifers. Describe the impacts and net effect of the activity on groundwater. At a minimum, the description should include: seasonal water levels in each subdivision of the aquifer affected by the activity; artesian pressure in aquifers; groundwater flow directions and levels; existing aquifer recharge rates and methodology used to calculate recharge to the aquifer from any recharge sources; for aquifers to be used as part of a water storage system, methodology and results of tests used to determine the ability of the aquifer to impound groundwater and aquifer storage capacity; seepage losses expected at any subsurface dam and at stream-aquifer interfaces, and methodology used to calculate seepage losses in the affected streams, including description and location of measuring devices; existing groundwater quality and classification; location of all water wells and their uses.

e. Describe the impacts and net effect of the activity on wetlands and riparian areas, including: map and describe wetlands and riparian areas to be affected by the activity, including a description of each type of wetlands, species composition and biomass; describe the source of water interacting with the surface systems to create each wetland (*i.e.*, sideslope runoff, over-bank flooding, groundwater seepage);

f. Map and describe terrestrial and aquatic animals, including the status and relative importance of game and nongame wildlife, livestock and other animals; a description of stream flows and lake levels needed to protect the aquatic environment; and a description of threatened or endangered animal species and their habitat.

(3) Wildlife.

a. Map and describe critical wildlife habitat and livestock range to be affected by the activity, including migration routes, calving areas, summer and winter range and spawning beds.

b. Describe the impacts and net effect that the activity could have on terrestrial and aquatic animals, habitat and food chain.

c. Map and describe terrestrial and aquatic plant life, type and density, and threatened and endangered plant species and habitat.

d. Describe the impacts and net effect that the activity would have on terrestrial and aquatic plant life.

(4) Air quality.

a. Detail how many average daily trips will be generated by the proposal.

b. Explain any other adverse impacts on air quality anticipated from the proposal.

c. Describe how any state or federal air quality standards will be impacted and if the proposed transportation facility has been included in the region's air quality models to verify conformity with the air quality plan.

d. Describe the air sheds to be affected by the activity, including the seasonal pattern of air circulation and microclimates.

e. Describe the impacts and net effect that the activity would have on air quality during both construction and operation under both average and worst-case conditions.

(5) Significant environmentally sensitive factors. Identify and locate on a map of appropriate scale the juxtaposition of any of the following features present in the proposed development or activity and its environs, and detail the potential impact of the proposal upon each feature:

a. Potential natural hazards.

b. Public outdoor recreation and open space areas.

c. Unique areas of geologic, historic and archeological importance.

(6) Visual aesthetics and nuisance factors.

a. Identify view sheds, scenic vistas, unique landscapes or land formations.

b. Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution or obnoxious odors which may stem from the proposal.

c. Identify and describe any structures, excavations and embankments that will be visible as a result of this project.

(7) Transportation impacts. Describe what impacts the proposal will have upon transportation patterns in the Town intended to be served or affected by the proposal through the submittal of a traffic impact analysis of the proposed transportation facilities. The traffic impact analysis should include but not be limited to the following:

a. Identify the facilities required to support the existing and future land uses being served by the proposed transportation facility.

b. Furnish the traffic model data verifying consistency with the most current Denver Regional Board of Governments (DRCOG) regional plan, the Colorado Department of Transportation (CDOT) Statewide Transportation Improvement Program (STIP) and the DRCOG Transportation Improvement Program (TIP).

c. Provide the existing and proposed traffic volume impacts to the adjacent road system, including local roads.

d. Provide the existing and future level of service (LOS) and capacity of the transportation facilities before and after the proposed transportation project is completed.

e. Provide all transportation access information as required by the most current edition of the CDOT State Highway Access Code.

f. Submit of a benefit/cost analysis of the proposed transportation improvements and identify the distribution of the burden of the cost for the proposed improvements to the project, as well as the adjacent state or local road system.

(8) Less damaging alternatives. If the Town Manager determines that the nature or extent of the proposal involves the potential for significant damage to cultural or historic resources or for significant environmental damage and warrants examination of one (1) or more specific, less environmentally damaging alternatives, or appropriate mitigation, the Town Manager may request that the Board require the applicant to evaluate and present information on such alternatives or mitigation as part of the application. Required information on alternatives or mitigation measures may include, but shall not be limited to, information on the environmental impacts or adverse impacts upon historic or cultural resources, and cost effectiveness of the alternative or mitigation measure in relationship to the proposal presented.

(h) Professional qualifications. The following shall require professional assistance:

(1) Improvement plans and reports for water supply, drainage, utilities, soils, grading, roads, structures, transportation modeling, transportation planning, transit planning, air quality planning or modeling, floods and floodplains and other civil engineering work shall be certified by a registered Colorado Professional Engineer, or other qualified professional engineer exempted from licensing requirements by state statute.

(2) Documents containing land survey descriptions shall be certified by a registered Colorado Professional Land Surveyor or other qualified professional surveyor exempted from licensing requirements by state statute.

(3) Geology reports shall be prepared by a member of the American Institute of Professional Geologists, a member of the Association of Engineering Geologists, an individual registered as a geologist by a state or other qualified professional geologist exempted from licensing requirements by state statute.

Sec. 16-34-60. Referrals.

(a) Referral of applications. When an application meeting the requirements of Section 16-34-50 above is filed with the Town, relevant portions of the application materials as determined by the Town Manager shall be referred to the agencies listed below. Based on the specifics of the application, the Town Manager may waive referrals that are not necessary to a complete review of the application.

(1) The State Engineer shall review the application to ensure conformity with all applicable regulations of the Colorado Division of Water Resources and for comment on applicable water rights administration and determination concerns.

(2) The Colorado and County Health Departments shall review the application for conformity with all applicable state and county health-related regulations.

(3) The Colorado Geological Survey may evaluate those geologic factors which would have a significant impact on the proposed use of the land.

(4) CDOT shall review the application for conformity to the State Highway Access Code, STIP and the regulations relative to the administration of state and federal transportation systems.

(5) DRCOG shall review the proposed transportation facility and provide information relative to the impacts to the region's Five-Year Program and the 2020 Transportation Improvement Program (TIP).

(6) The Colorado Division of Wildlife and the Colorado Natural Areas Board shall review all applications in areas affecting natural resources of statewide importance.

(7) The Public Works Department shall review all engineering aspects of the proposal, including referral responses and other relevant evidence, and shall transmit findings and preliminary recommendations to the Town Manager.

(8) The Town Manager shall review the application for open space and environmental impacts.

(9) The Town Manager shall evaluate the application for conformance with the Comprehensive Plan, these regulations, sound planning and comments from the referral agencies and individuals.

(10) The Public Works Department and the Colorado Water Conservation Board shall review the application for flood hazard impacts.

(b) Notice of filing. On or before the date on which the first referral made pursuant to Subsection (a) above is sent, notice of the filing of the application and of its availability for inspection and copying by the public shall be posted at Town Hall, posted on any website maintained by the Town and posted on any local access cable television channel operated by a Town-franchised cable television franchisee. Such notice shall include the name of the proposal, the general location of property affected by the proposal, the proposed uses and impacts of the proposal and any other information deemed appropriate by the Town Manager.

(c) Referral responses. Referral responses shall be filed with the Town Manager within twenty (20) days after referral. Failure of any referral agency to respond within the above-mentioned time period will be regarded as a response with no conflict.

(d) Post-referral action. If referral comments received by the Town require response from the applicant, the following actions shall occur:

(1) The Town Manager shall send the relevant comments from referral agencies to the applicant as soon as possible following receipt thereof.

(2) Within fourteen (14) days after transmittal of those comments, or by a later date specified by the Town Manager, the applicant shall respond in writing to those issues raised during the referral process that are identified by the Town Manager for applicant response.

a. Such response shall be considered an amendment to the application, and shall be made part of the application to be used as a basis for a final recommendation by the Town Manager.

b. If the Town Manager finds that this new information results in a substantial change in the proposal, the Town Manager may re-refer the amended application and supporting materials to the referral agencies. The processing schedule will be amended accordingly.

c. If the applicant is unable to supply responses within the fourteen (14) days allowed, then the applicant may request, in writing, a delay in processing the application for up to ninety (90) days.

d. If the applicant fails to supply satisfactory responses within the specified time, the Town Manager may either base the

Town Manager's recommendation on review of the file as it exists, or reject the application as a result of the failure to provide information necessary to its proper review.

(e) The Town Manager shall transmit the referral comments and the applicant's responses to the Board for its consideration at the public hearing.

Sec. 16-34-70. Notice of hearing.

(a) Not later than thirty (30) days after receipt of a completed application for a permit, the Town Clerk shall set and publish notice of a date, time and place for a hearing before the Board on said application. Such notice shall be published once in a newspaper of general circulation in the Town, not less than thirty (30) nor more than sixty (60) days before the date set for hearing. Said notice shall also be mailed to the applicant, posted at Town Hall and posted on any website maintained by the Town.

(b) Notwithstanding any other provision of this Article, the applicant shall be solely responsible for complying with any applicable requirements of Article 65.5 of Title 24, C.R.S.. Therefore, if the application is one (1) for surface development which requires compliance with Article 65.5 of Title 24, C.R.S., as amended, and if the applicant has certified as part of its application submittal that mineral estate owners or lessees owning less than full fee title in the property which is the subject of the application exist, the public hearing on the application before the Board shall not be held unless the applicant provides signed certification confirming that the applicant has, at least thirty (30) days prior to the public hearing, transmitted to the Town and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, C.R.S.

(c) If the applicant has failed to provide notice of the public hearing on its application as required by Article 65.5 of Title 24, C.R.S., as amended, at least thirty (30) days prior to the public hearing, the Board may continue, reschedule or vacate the public hearing to allow proper notice to be provided under Article 65.5 of Title 24, C.R.S.

Sec. 16-34-80. Hearing.

(a) General provisions.

(1) If the Board finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Board may deny the application or it may continue the hearing until the additional information has been received. No such continuance may exceed sixty (60) days unless agreed to by the applicant.

(2) The Board may approve an application for a permit to engage in development in an area of state interest or for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of this Article governing such area or activity. If the proposed development does not comply with such provisions, the permit

shall be denied. The Board may impose reasonable conditions and requirements upon the permit.

(3) The Board shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved. Final action approving or denying a permit application shall be by resolution stating the Board's reasons for its decision and its findings and conclusions.

(b) Approval criteria. The Board shall approve an application that complies with this Article and meets the following requirements:

(1) The applicant has obtained or will obtain all property rights, permits and approvals necessary for the proposal, including surface, mineral and water rights.

(2) The applicant has the necessary expertise and financial capability to develop and operate the proposal consistent with all requirements and conditions.

(3) Adequate water supplies are available for the proposal.

(4) The proposal will not cause unreasonable loss of significant agricultural lands as identified in the Comprehensive Plan, or identifiable on or near the site.

(5) The proposal will not significantly degrade or pose a significant hazard to any aspect of the environment, including environmental resources and open space areas as identified in the Comprehensive Plan, and other features or elements that are deemed to be significant components of the natural environment worthy of preservation, considering the following:

a. Air quality. The proposal will not significantly deteriorate air quality, considering the following:

1. Changes to seasonal ambient air quality;
2. Changes in visibility and microclimates; and
3. Applicable air quality standards.

b. Visual quality. The proposal will not significantly degrade visual quality, considering the following:

1. Visual changes to groundcover and vegetation, waterfalls and streams or other natural features;
2. Interference with view sheds and scenic vistas;
3. Changes in appearances of forest canopies;
4. Changes in landscape character types or unique land formations; and

5. Compatibility of building and structure design and materials with surrounding land uses.

c. Surface water quality. The proposal will not significantly degrade surface water quality, considering the following:

1. Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;

2. Applicable narrative and numeric water quality standards;

3. Increases in point and nonpoint source pollution loads;

4. Increase in erosion;

5. Increases in sediment loading to water bodies;

6. Changes in stream channel or shoreline stability;

7. Changes in stormwater runoff flows;

8. Changes in trophic status or in eutrophication rates in lakes and reservoirs;

9. Changes in the capacity or functioning of streams, lakes or reservoirs;

10. Changes in flushing flows; and

11. Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.

d. Groundwater quality. The proposal will not significantly degrade groundwater quality, considering the following:

1. Changes in aquifer recharge rates, levels and aquifer capacity, including seepage losses through aquifer boundaries and at aquifer-stream interfaces;

2. Changes in capacity and function of wells within the impact area; and

3. Changes in quality of well water within the impact area.

e. Wetlands and riparian areas. The proposal will not significantly degrade the quality of wetlands and riparian areas, considering the following:

1. Changes in the structure and function of wetlands;
2. Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas;
3. Changes to aerial extent of wetlands;
4. Changes in species' characteristics and diversity;
5. Transition from wetland to upland species; and
6. Changes in function and aerial extent of floodplains.

f. Terrestrial and aquatic animal life. The proposal will not significantly degrade the quality of terrestrial and aquatic animal life, considering the following:

1. Changes that result in loss of oxygen for aquatic life;
2. Changes in flushing flows;
3. Changes in species composition or density;
4. Changes in number of threatened or endangered species;
5. Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes or any other habitat features necessary for the protection and propagation of any terrestrial animals;
6. Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species; and
7. Changes to the aquatic and terrestrial food webs.

g. Terrestrial and aquatic plant life. The proposal will not significantly degrade the quality of terrestrial and aquatic plant life, considering the following:

1. Changes to habitat of threatened or endangered plant species;

2. Changes to the structure and function of vegetation, including species composition, diversity, biomass and productivity;

3. Changes in advancement or succession of desirable and less desirable species, including noxious weeds; and

4. Changes in threatened or endangered species.

h. Soils and geologic conditions. The proposal will not significantly degrade soils and geologic conditions, considering the following:

1. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential and flood hazard areas;

2. Changes to stream sedimentation, geomorphology and channel stability;

3. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs;

4. Changes to avalanche areas, mudflows and debris fans, and other unstable and potentially unstable slopes; and

5. Exacerbation of seismic concerns and subsidence.

6. The proposal will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.

7. The proposal will not cause unreasonable loss or impairment of significant cultural resources, including but not necessarily limited to historic resources or sites and archaeological artifacts or sites.

8. The proposal or its associated transmission collector or distribution system will not create blight or cause other nuisance factors such as excessive noise or obnoxious odors.

9. The proposal will not be subject to significant risk from floods, fires, earthquakes or other disasters or natural hazards.

10. The proposal or its associated transmission collector or distribution system will not create an undue financial burden on existing or future residents of the Town.

11. The proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.

12. The planning, design and operation of the proposal will reflect appropriate principles of resource conservation, energy efficiency and recycling or reuse.

13. For those applications for which the Town Manager has required information on the environmental impacts and costs of alternatives, the proposal represents the least damaging alternative of reasonable cost among the alternatives analyzed.

14. The proposal is in accordance with the Comprehensive Plan, zoning and any other applicable land use designations and requirements, and any applicable intergovernmental agreement affecting land use and development.

Sec. 16-34-90. Issuance of permit.

(a) The permit shall set forth in detail any and all conditions imposed upon the development by the Board to eliminate, minimize or mitigate adverse effects and impacts of such development.

(b) The Board may establish and set forth in the permit the time or times within which substantial development activity subject to the permit must commence, or within which specified and defined substantial progress with a designated activity must occur.

(c) The applicant shall record a certified copy of the permit with the County Clerk and Recorder.

Sec. 16-34-100. Financial security.

(a) As a condition of issuing any permit, the Board may, in its discretion, require the applicant to file a guarantee of financial security deemed adequate by the Board and payable to the Town.

(b) The purpose of such financial guarantee shall be to assure that the permittee shall faithfully perform all requirements of the permit and any conditions imposed by the Board.

(c) The amount of such financial guarantee shall be established by the Board upon consideration of the following criteria:

(1) The estimated cost of returning the site of the permitted development or activity to its original condition or to a condition acceptable to the Town for the matter of state interest for which the permit is being granted;

(2) The estimated cost of completing the permitted development or activity; and

(3) The estimated cost of complying with all requirements of the permit.

(d) The financial guarantee may be in the form of an irrevocable letter of credit or escrow of either cash or corporate or municipal bonds rated at least "AA" by Standard and Poor's or an equivalent rating by Moody's, with such escrow agreement as is acceptable to the Town Attorney, subject to the following terms and conditions:

(1) The Board may require that a cash deposit in an amount up to ten percent (10%) percent of the financial guarantee be provided to the Town, to be placed in a separate interest-bearing account.

(2) The irrevocable letter of credit or escrow shall provide a financial guarantee that the permittee will fulfill all obligations under the terms of the permit. Letters of credit shall have an expiration date no sooner than six (6) months following the scheduled completion of the permitted development.

(3) The surety issuing an irrevocable letter of credit shall maintain an office or corresponding bank within seventy-five (75) miles of the Town and shall have a current rating of 125 or better from IDS Financial Services, Inc., or otherwise be approved by the Town Manager.

(4) The permittee shall not have greater than a ten percent (10%) ownership or managerial control over the surety issuing any financial guarantee.

(5) The permittee may request, and the Town shall grant, reductions in the financial guarantee for development constructed and initially accepted by the Town; provided, however, that sufficient security remains to ensure completion of all remaining obligations.

(e) The financial guarantee may be released only when:

(1) The permit has been surrendered to the Board before commencement of any physical activity on the site of the permitted development or activity;

(2) The development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Board in accordance with standards adopted by the Board for the matter of state interest for which the permit is being granted;

(3) The project has been satisfactorily completed; or

(4) Applicable guaranteed conditions have been satisfied.

(f) The financial guarantee may be cancelled by a surety only upon receipt of the Town's written consent, which consent may be granted only when such cancellation will not compromise the purposes of the security.

Sec. 16-34-110. Enforcement; penalties; remedies.

(a) Unlawful acts. It is unlawful for any person to engage in or undertake any development in an area designated pursuant to this Article or to conduct an activity regulated by this Article without a permit issued pursuant to the Article, to fail or refuse to comply with permit requirements, or to act outside the authority of the permit. A separate violation shall be deemed to occur on each day that violation occurs or continues.

(b) Civil damages. In addition to and without waiving any other available remedy, the Town may recover civil damages from any person liable to the Town for a violation of this Article or any other unlawful act or omission. Such damages shall include the Town's actual costs of discovering, investigating, curing, mitigating and repairing the consequences of such violation.

(c) Injunctive relief. In addition to and without waiving any other available remedy, the Town may obtain injunctive relief from or cure any act or omission which violates this Article or any permit issued pursuant hereto or which otherwise jeopardizes the property or health of any person, including the Town.

(d) Cumulative remedies. The remedies available to the Town shall be deemed cumulative, and the utilization by the Town of any single remedy or combination thereof shall not preclude the Town from utilizing any other remedy or combination thereof.

(e) Revocation or suspension of permit. In addition to and without waiving any other available remedy, the Town shall have and may exercise the right to suspend or revoke any permit issued pursuant to this Article when any violation of this Article or the terms or conditions of such permit occurs or continues, including without limitation the failure of the permittee to proceed with development in a designated area or with a designated activity within the times specified in the permit, in accordance with the following:

(1) Immediate suspension or revocation. The Town Manager may immediately suspend a permit when such suspension is necessary to stop or prevent an actual or threatened imminent endangerment to the health or welfare of any person or to the environment, or interference with or damage to Town facilities. The permittee shall have the right to a prompt hearing following such termination or suspension as provided below.

(2) Notice and opportunity for hearing. If the Town elects to exercise its right to suspend or revoke a permit issued pursuant to this Article, the Town Manager shall notify the permittee in writing of the following, by mail or by personal delivery: the alleged violation; that the

permit will be suspended or revoked on account of such violation on a date not less than thirty (30) days from the date of the notice unless the stated violation is sooner cured; that he or she has the right to a hearing before the Board, at which he or she may be heard concerning the alleged violation; and that, if he or she desires a hearing, he or she must request the same in writing before the suspension or revocation date specified in the notice. Delivering or mailing the notice to the address given for the permittee on the permit shall constitute delivery thereof to the owner. If the permittee does not cure the stated violation or request a hearing within the time provided, the Town shall forthwith order the permit suspended or revoked, as appropriate. If the permittee makes a timely request for a hearing, the Board shall promptly schedule and hold such hearing. The Board shall issue a written findings and order stating the reasons supporting its decision.

(3) Revocation. A permit shall be revoked and not merely suspended if the violation is of such a nature that it or its adverse effects cannot be cured or reasonably mitigated, or if the permit was suspended at least two (2) times within the preceding five (5) years as a consequence of the acts or omissions of the same permittee. Any permit revoked pursuant to this Section may not be reinstated.

(4) Reinstatement. A suspension shall be rescinded by the Town upon a determination that the violation forming the basis for such suspension has been cured and that no further or other nonconforming conditions or uses by the permittee are evident. The Town shall not reinstate a permit until the person requesting reinstatement has paid the full amount of any applicable charges and any amounts expended by the Town to cure the violation or enforce the terms of this Article or the permit.

Sec. 16-34-120. Cure of violations.

(a) Order. If the Town determines that the holder of any permit issued pursuant to this Article is using or developing property or is conducting an activity subject to the permit in a way that is not in conformity with this Article or with the terms or conditions of the permit, it may give written notice thereof to the permit holder. Such notice shall specify the nonconformity, direct the permittee at its cost to perform specified curative work and specify the period of time determined by the Town to be reasonably necessary for completion of the curative work.

(b) Costs. If the permittee fails within the specified time following such notice to cure the nonconformity stated therein, the Town may, in addition to and without waiving any other remedy, perform the work and charge the permittee for its actual costs incurred in connection therewith. The costs shall be a perpetual lien against any property subject to the permit until paid in full.

Sec. 16-34-130. Interpretation.

(a) Nothing in this Article shall be construed as exempting an applicant under this Article from any other applicable law or requirements of the Town. No permit issued under this Article shall be considered a representation by the Town, its staff members or consultants or the Board that the proposed construction, modification or expansion complies generally with such federal, state or local guidelines and regulations, nor shall such approval otherwise give rise to any claim against the Town, its staff members or consultants or the Board related to the failure of an applicant to comply therewith.

(b) To the extent that the requirements of these regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

Sec. 16-34-140. Highways and interchanges.

(a) With regard to the site selection and construction of arterial highways, interchanges and collector highways, the purpose of this Article is to:

(1) Facilitate the local administration of site selection of arterial highways, interchanges and collector highways by establishing requirements that must be met before a site may be selected;

(2) Ensure that site selection of arterial highways, interchanges and collector highways occurs so that community land use, economic development and traffic needs are met, property values are preserved, desirable community patterns are not disrupted, historic, natural and archeological values are preserved and such site selection conforms to the Comprehensive Plan, as well as regional and state master plans;

(3) Ensure that community traffic capacity, flow and safety needs are met;

(4) Provide for the continuation of desirable local and regional community patterns in the face of regional development pressures;

(5) Discourage expansion of demand for government services beyond the reasonable capacity of the community or region to provide such services;

(6) Prevent direct conflicts with local, regional and state master plans;

(7) Ensure that highway development is compatible with surrounding land uses;

(8) Encourage the coordination of highway planning with the Comprehensive Plan and avoid highway construction which divides existing communities;

(9) Discourage traffic hazards and congestion;

(10) Ensure that traffic noise and air and water pollution remain at acceptable levels;

(11) Protect property values; and

(12) Protect scenic, recreational, natural, historic and archaeological resources, including the mountain backdrop and historic districts in and around the Town.

(b) In addition to all other requirements of this Article, an application for a permit to locate or engage in the site selection of an arterial highway, interchange or collector highway shall include the following:

(1) A list of all reasonable alternative corridor locations for the proposed arterial highway, interchange or collector highway.

(2) For the proposed and each alternative corridor location considered, including the no-action alternative, the information specified below:

a. A location map showing the corridor and general area.

b. A corridor location proposal, study or other documentation which includes: type, scale and appearance of the improvement; cost estimate, including mitigation costs; and approximate timetable for construction and right-of-way acquisition.

c. Demographic information in the impact area and within the Town, including: current population and density; total employment, occupation types and major employer locations; average family income; and population projections in five-year increments over the next twenty (20) years.

d. The need for the proposed arterial highway, interchange or collector highway.

e. Major traffic generators in the impact area and the Town.

f. The planned level of service in relationship to projected user demand within the Town.

g. A map and description of existing land use in the impact area within the Town in relationship to the existing circulation system and the proposed arterial highway, interchange or collector highway.

h. A map of the impact area within the Town showing planned, proposed or expected land use at each year of population projection, with and without the proposal.

i. The approximate number of users of the proposed corridor or interchange location in terms of existing Town residents, new Town residents and non-Town residents.

j. Plans for promoting the use of alternative modes of transportation.

k. Anticipated noise levels, including noise levels expressed through eight-hour and twenty-four-hour equivalent sound level metrics, as well as single-event noise metrics, and a description of noise abatement measures that are proposed for each alternative, including for each alternative the estimated construction costs and costs of operations and maintenance, decibel reduction effectiveness and height, length and material type for barriers.

l. The local air quality impacts of the proposed arterial highway, interchange or collector highway, including attainment of federal and state ambient air quality standards and risks to human health and the environment posed by air pollutants, including but not limited to nitrogen oxides (NO_x), ozone, PM-10, benzene, 1,3-butadiene and other fuel combustion by-products.

m. The impacts of the proposal on accessibility to and from existing public facilities, commercial and industrial facilities and residential areas within the Town.

n. Health and safety hazards, including exposure to hazardous materials, which may result from locating the proposed arterial highway, interchange or collector highway.

o. How the proposed arterial highway, interchange or collector highway and its impacts will conform to the Comprehensive Plan goals, objectives and policies, and any applicable state or regional plans, goals, objectives and policies.

p. The development potential that would result in the impact area and within the Town with and without the completion of the proposal, measured in terms of land values, land availability, land use controls, vacancy rates, tax revenues and public expenditures, along with indices of accessibility to school/education, utility service, other public and quasi-public services, local and regional amenities and employment opportunities, and the increased demand that the potential development described above will place on the following public services within the Town: other roadways, mass transit, trails, bike paths and other transportation, housing, employment, schools, commercial services, health services, police and fire protection, solid waste disposal, water supply systems, wastewater collection and disposal systems, storm water collection and release systems, power, communications, parks, open space and recreation, other public and quasi-public utilities and other planned public services.

q. The costs and benefits to the Town resulting from the land use commitment necessitated or facilitated by the proposed arterial highway, interchange or collector highway compared to alternative projected land uses in terms of land suitability, transportation, community services, utilities and revenues.

r. Alternatives which may be utilized by the Town in planning for and controlling adjacent land use.

s. Impacts of the proposal on water quality and water resources, including effects on floodplains and wetland values and functions.

t. Impacts of the proposal on historic properties and districts or other historic resources in the Town.

u. Impacts of the proposal, including without limitation impacts on property values and other economic indicators, on sensitive, key commercial tourist or visitor areas or districts within the Town and the region.

v. Impacts of the proposal on wildlife and fisheries, sensitive, endangered or threatened species and scenic parks, recreational, archeological, paleontological or other natural resources, including but not limited to the mountain backdrop.

w. Impacts of the proposal on the character of nearby neighborhoods, as well as the impacts of increased division or separation of neighborhoods caused by the proposal.

x. All feasible alternatives for mitigating adverse effects of the proposal, including but not limited to effects on the level of public services, access to public services, division of existing communities, water quality, air quality, noise levels and scenic, historic, recreational, archeological or natural resources, including without limitation:

1. Alternative locations, configurations and access for the highway or interchange, including but not limited to grade-separated interchanges and complete or partial construction below grade with cover and landscaping suitable for recreational use or for construction of Town streets, bike paths or pedestrian walkways;

2. Alternative pavement types;

3. Alternative highway maintenance and snow removal methods;

4. Sound walls and other sound-mitigating structures, such as transparent noise barriers and berms;

5. Landscaping;
 6. Speed limits and speed control devices;
 7. Limits on the use of compression brakes;
- and
8. Wildlife crossings and pedestrian bridges.

(c) The Board shall approve an application for a permit to locate an arterial highway, interchange or collector highway in the Town only if the proposal complies with this Article and other applicable law and regulations, and meets all the following requirements:

(1) The proposed arterial highway, interchange or collector highway will be located so that community traffic needs are met.

(2) The proposed arterial highway or interchange or collector highway will be located only in a corridor for which a clear and reasonable local and regional need for such highway facilities has been demonstrated.

(3) Reasonable alternative modes of transportation will be incorporated into the highway proposal.

(4) Desirable local and regional community land use patterns will not be disrupted by the proposal.

(5) The proposal will not impede the delivery of essential community services and goods.

(6) The proposal will not isolate community neighborhoods from and, where practicable, will enhance access from community neighborhoods to, public facilities, including the downtown area, schools, hospitals, mass transit, pedestrian walkways and bikeways, recreational areas and open spaces.

(7) The proposal will not restrict access via other roadways, mass transit facilities, pedestrian walkways and bikeways to the downtown area, local commercial services, business and employment centers and public facilities, including schools, hospitals, recreational areas and open spaces.

(8) The proposal will not create safety hazards to motorists, pedestrians or bicyclists by causing or contributing to overuse, improper use or congestion, or cause unnecessary diversion of regional traffic onto other Town roadways or inappropriate or inadequate connections to pedestrian and bicycle routes.

(9) The proposal does not directly conflict with applicable local, regional and state master plans, including but not limited to transportation plans.

(10) The proposal will be located and implemented in accordance with the Comprehensive Plan.

(11) The proposal will not contribute to the expansion of demand for public services beyond the reasonable capacity of the Town or the region to provide such services.

(12) The proposal will not contribute to the expansion of regional or local demand for public utilities beyond the reasonable capacity of the utility companies or authorities to provide such services.

(13) The site selection adheres to the plan, process, procedure and requirements of the State and the Federal Highway Administration, and such construction, expansion or modification will be included in the then-current Denver Metropolitan Regional Transportation Plan.

(14) The benefits to the Town of the proposal, including expected development in the regional and local impact areas, will outweigh the social, fiscal and environmental impact and the loss of any scenic, historic, archeological or natural resources or agricultural lands rendered unavailable as a result of the location of the proposed construction, expansion or modification of the arterial highway, interchange or collector highway.

(15) The proposal will not increase water pollution levels in violation of applicable federal, state and local water quality control standards and will result in no net loss of wetland values and functions.

(16) The maximum anticipated use over the next twenty (20) years of the arterial highway, interchange or collector highway will not increase air pollution levels beyond applicable federal or state ambient air standards or to levels that pose unacceptable risks to human health and the environment, and will conform to the vehicle emissions budget of the State Implementation Plan.

(17) Noise levels will not exceed fifty-five (55) decibels as measured by a twenty-four-hour Equivalent Sound Level metric at the property line of any residence, school, church or other noise-sensitive location nearest to the proposed arterial highway, interchange or collector highway, unless the Board determines that meeting such sound level is infeasible, that all feasible avoidance or mitigation measures will be incorporated, and the public benefit of any new or modified arterial highway, interchange or collector highway necessitates the proposed construction, expansion or modification of the arterial highway, interchange or collector highway.

(18) The proposal will not result in the destruction, impairment or significant alteration of historic properties or districts within the Town and will not impair the function or historic integrity of an historic resource of statewide importance.

(19) The proposal will not result in the destruction, impairment or significant alteration of sensitive, key commercial, tourist or visitor areas or districts within the Town.

(20) The proposal will not contribute to a negative economic impact to commercial, tourist or visitor areas or districts within the Town.

(21) The proposal will not significantly or unnecessarily detract from the mountain backdrop or other significant scenic resources within the Town or the region.

(22) The proposal will be designed to avoid or minimize visual impacts, including views of the highway or interchange from residential areas and designated historic districts in the Town, and to blend into the surroundings, yet will allow the Town to be seen from the highway. Interchanges will be attractively landscaped and will identify major gateways to the Town consistent with the Comprehensive Plan.

(23) If the proposal includes the imposition of tolls, any existing state roads which have historically provided free access within the Town limits will continue to provide free and nontolled access.

(24) The proposal will not result in a design speed greater than fifty-five (55) miles per hour, unless the Board finds that achieving such design speed is infeasible and all feasible mitigation of the adverse effects of higher speeds (including, without limitation, noise levels, air quality and safety) will be incorporated.

Sec. 16-34-150. Mineral resource areas.

(a) The purpose of the regulations contained in this Article with regard to the mineral resource area is to:

- (1) Ensure compatibility between mineral-extraction operations, and surrounding land uses;
- (2) Protect and enhance the quality of life in the Town;
- (3) Protect environmentally and visually sensitive areas from the negative impacts of mineral extraction;
- (4) Ensure development of a transportation system adequate to support mining-related traffic;
- (5) Protect and preserve important historic and archaeological resources;
- (6) Safeguard the Town's air and water quality;
- (7) Address the potential negative visual impact of mining operations; and
- (8) Provide for appropriate end use of mining sites.

(b) In addition to all other requirements of this Article, an application for a permit to extract minerals within the mineral resource area shall include the following:

- (1) Aerial photographs that reasonably portray the current condition of the area affected by the permit application.
- (2) List of the owners of mineral rights that will be affected.
- (3) Type and location of mineral resources on and/or under the property.
- (4) Analysis of the commercial feasibility of extracting the mineral resource.
- (5) Evidence that the mineral extraction will be of greater economic value than other types of development.
- (6) Map or maps portraying the geologic conditions of the area with specific attention to the designated mineral resource deposit. If appropriate or needed, subsurface geologic cross sections shall also be utilized to portray the geologic conditions at depth. If possible, the geologic maps shall be at the same scale and in the same format as the development plan maps.

(c) The Board shall approve an application for a permit to extract minerals within the mineral resource area only if the proposed extraction complies with this Article, other relevant federal, state and local guidelines and regulations, and meets all the following requirements and criteria:

- (1) Development of the mineral resource area will be compatible with surrounding land uses;
- (2) The positive impacts of development outweigh the negative impacts;
- (3) Access is provided over haul routes with adequate capacity, design, and maintenance levels;
- (4) Significant wildlife habitat is protected;
- (5) Historical and archaeological resources are identified and protected;
- (6) Monitoring and mitigation are adequate to protect the Town's air quality;
- (7) Erosion control, wetland protection, and other necessary water quality control safeguards are provided to ensure the area's water quality;
- (8) Noise monitoring and noise abatement programs are sufficient to protect sensitive uses and areas from noise pollution;

(9) The blasting plan provides the surrounding area thorough protection from noise and blasting;

(10) Open space, parks, and recreation areas are protected from the potential negative impacts of mining, and open space, and recreational values are considered in the end-use plan;

(11) Visual impact is thoroughly analyzed and the duration, extent, and the exposure of project visibility are reasonable;

(12) Project phasing results in reasonable intermediate site restoration;

(13) End uses are compatible with surrounding areas, and with the Comprehensive Plan; and

(14) Development of the resource will not cause significant danger to the public health and safety.

Section 2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

Section 3. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this
_____ day of _____, 2011.

Andrew Muckle, Mayor

ATTEST:

Phyllis L. Hardin, Town Clerk-Treasurer