

Boulder Town Council Special Executive Meeting  
February 27, 2024 4:00 PM  
Meeting Minutes

Town Council Members present or on Zoom- Mayor Judy Drain, Josh Ellis, Ray Gardner, Gladys LeFevre, John Veranth

Town staff present or on Zoom- Town Clerk Jessica LeFevre, Commissioner Nancy Tosta, Commissioner Darrell Fuller, Commissioner Colleen Thompson, Transcriptionist Heidi Sola

**Pledge of Allegiance** The Pledge of Allegiance was recited.

**Google Drive Tutorial** Clerk LeFevre began the Google Drive tutorial. She started at Google.com and showed where in the top right corner to click on the nine dots to bring up the drop bar. From that drop bar you select the Drive icon to take you to the Drive. Clerk LeFevre explained how her home screen would look differently from everyone else's because each person used their own personal email and only had access to certain folders that had been shared with them.

Clerk LeFevre explained the options attached to each file and how to star files in order to bring attention to them for review. She stated that everyone would be getting their own email addresses in the future and it would make the drive a lot easier.

Clerk LeFevre explained that the documents on the drive were live and she asked Councilmember Ellis to open the same document as her to demonstrate what that meant and how they could both be editing documents in real time in different locations. She stated they needed to be careful though because this could violate the Public Meetings act and they could not have three people in a document chatting.

Clerk LeFevre explained that the draft meeting minutes went into their own folders and that the Planning Commission and Town Council had their own separate folders. She had Councilmember Ellis demonstrate how to make comments and edits on the minutes and explained the process they would go through for suggesting edits to the draft minutes. Councilmember Ellis explained how to tag emails in comments in order to alert individuals via email that an edit has been made within a document so they can be made aware they need to review the comment.

Clerk LeFevre stated the time frames for the minutes and explained that the transcriptionist would upload the draft minutes on the 15<sup>th</sup> day following the meeting and the members had until the Friday before the next meeting to suggest edits for approval in order to streamline that process.

Transcriptionist Heidi Sola described her note taking process and that it would not be an issue going forward because a process and procedure had been established.

Clerk LeFevre showed an example email of a tagged comment on a suggested edit.

There was discussion about putting timestamps into the meeting. Transcriptionist Heidi Sola explained that that was possible but the town would have to pay her twice as much because she would have to listen through the audio of the meeting on top of attending the meetings.

John Veranth stated he thought the Friday deadline was something they could aspire to but suggested that as soon as people had documents available to make them available on the drive.

A five minute break was taken.

Meeting restarted at 5:12

**Water Contract Discussion** Mayor Drain stated she hoped this was going to be simpler than it was probably going to be and that she had some information to provide. She wanted Clerk LeFevre to address ISO and Fire Chief Johnson to speak on behalf of the fire department.

Mayor Drain stated she and Clerk LeFevre wanted to talk to Camille and see if Boulder Farmstead Water was locked into anything concrete and Camille had told them that she wanted a contract. Mayor Drain stated that Randy had called her after the big snow regarding shoveling around the hydrants and she asked him if he could take care of it until this meeting was had. He stated he would not do it and Mayor Drain stated that she thought Randy would not have anything to do with the maintenance.

Mayor Drain stated she wanted Fire Chief Johnson to speak and then go over the contract and decide and discuss what they were going to do and what that looked like what the town would be doing with maintenance, which needed to be defined, which looked like it would include mowing and plowing around the hydrants.

Clerk LeFevre stated that the water company was created in 1984 and that was when the town entered into the 1984 contract. She stated one of the biggest things was on page two which stated the town would take on the upkeep of hydrants and replacement of equipment. In 2018 there had been a conversation brought up by the fire department about the ISO rating and there had been some changes made with every intention of being put into place but in the minutes it read that they had gotten to that point where the 2018 contract needed to be signed but it never got to that point so the 1984 contract was still active.

Clerk LeFevre stated that they had had the 2018 contract looked over by the attorney but the biggest thing was the maintenance of fire hydrants. In the 1984 contract the upkeep was left to the Town and in the 2018 contract the term 'maintenance' was used but it was not defined very well because it could cover maintenance, repair, and testing.

She stated it was unfair to assume what maintenance meant and they needed to clarify what that meant. She wanted to provide them with this background from the two contacts and where they were at for moving forward.

Councilmember Ellis thanked them for the background and stated that there were definitions for what this entails in standards.

He stated that the fire department had initiated the idea of hiring the water company to take on these tasks in 2018 after the ISO inspection but they had not done adequate homework on the issue and the 2018 contract had been ill-defined. He commented that no matter what more specifics needed to be put into this

This came about because the town had gotten an ISO inspection after Katie Coleman had initiated the process when she was fire chief in 2010 and they were classified as a class 6 when that was done and were still considered a class 6.

Councilmember Ellis showed the ISO scale and explained how the ISO class was determined. He stated if they did a town overlay of who fell into what class then most would not qualify and it mainly benefitted commercial properties according to the ISO auditor.

Councilmember LeFevre stated that she was required to have sprinklers per the building code and thought that that probably had a lot of influence on new buildings and wondered how relevant some of these class determinations were.

Councilmember Ellis felt they scored a lot better with the new water system and showed the Town's scores for each of the classifications and explained some of the scores that had been received. He explained there was a divergence score which he did not know how it was calculated and that it was theoretically possible for the town to put time and money into increasing the ISO score but it was also possible even if they did that then they could potentially remain in the class 6.

He and Fire Chief Johnson thought it was a big ask for the volunteer department and the Water Department to do the flow testing and inspections and the conclusion was that class 6 was great for the area and trying to do better might be too big of an ask

Councilmember Ellis said that in 2018 the idea was to have the Water company invoice the town for this work even though the contract had never been signed and so the Town had paid for at least one year of record keeping on hydrant inspections.

His understanding was that the auditor reached out to the water company but the water company did not respond and so historically from the Fire Department perspective the water company billed them for something and when the records were requested they were not able to provide documentation so this was a concern moving forward with them because it required a significant amount of work on their part.

Since the water company sent a letter terminating the contract that had never been signed, that was why the town was back to the 1984 agreement. There were NFA requirements for what a hydrant looked like they needed to include in the contract.

Councilmember Ellis pulled up a manual from the American Water Works Association which the ISO audit referenced for maintenance that said the maintenance defaulted to the Water Company as the owner of the infrastructure much like Garkane did not charge the city to work on their own poles.

Councilmember Ellis read from the manual. He stated the current contract stated that the Town would upkeep it but the default position was that as the owners of the infrastructure it was their responsibility to maintain it. He said it got interesting when you got into snow issues and that different places had different standards for that. He stated there were different definitions of maintenance and he showed the document that ISO wanted to see for every hydrant every year. There was a technical standard of reference to maintenance in ISO that needed to be addressed in the contract.

The Fire Department had no concern or issues with the physical maintenance in town as far as their ability to provide water in case of an emergency and there was not a problem that needed to be solved there.

Mayor Drain clarified that they needed to decide whether or not they needed to address improving the ISO score and it seemed like it affected the commercial entities more than anything else.

Fire Chief Johnson and Councilmember LeFevre stated they did not think the return on the money they would have to put into improving the ISO would benefit enough of the commercial entities.

Fire Chief Johnson stated it was still the Water Company's responsibility to do what Councilmember Ellis had just said to a certain amount of hydrants but the town still needed the paperwork to report to the state. He commented something had been submitted in 2016 to the ISO auditor about hydrant tests and he was trying to figure out if that was the water company's responsibility to a point.

Councilmember Ellis stated that the operating standard required them to maintain hydrants every year and do flow testing every ten years which meant they would get ISO credit if there was a record kept of this.

Fire Chief Johnson commented that what they were talking about was going a step further to put someone in charge and pay someone to make sure someone physically makes sure that all of the hydrants are clear from snow and debris. Fire Chief Johnson wanted as a fire department to know that they were working and that they could find them and access them in case of a fire. He thought it sounded like the Water company had no interest in doing this and if they were they would come up with a number to pay the water company to do this and if they did not then they could take this on as a town but the only problem with that was during snow the Water company had tractors and the

town did not. As a fire department they just wanted to know that that was being done so if there was a fire in the middle of winter that they could get to it. Fire Chief Johnson commented that it was possible for him to take the time in the summer and the winter, if required, to clear it if that was part of his job as the town maintenance employee.

Councilmember LeFevre was concerned with liability if the town was in charge and they damaged the hydrant. Fire Chief Johnson stated the water company would have to come out and fix it and the town's insurance would probably cover it if it was a town employee who had incurred the damage. Councilmember Gardner thought it could be a bigger issue if someone hit a fire hydrant in their car and flooded someone's basement. Fire Chief Johnson stated that was why at the beginning they wanted the water company to have this job because they had the equipment and it made sense.

Councilmember LeFevre asked at what point did they determine the snow needed to be removed and thought that that would be something the fire department would have to determine. Fire Chief Johnson thought it should either be on the water company or the town and that employees would be obligated to maintain the hydrants during snow. Clerk LeFevre commented that when the County plowed they were not concerned about covering a hydrant with snow and that was something that needed to be considered.

Councilmember Gardner thought it would make sense for the Water Company to maintain their own equipment which meant they would have to add that labor to their payroll which could lead to another water rate increase. Councilmember Ellis thought if equipment was going to be used next to a hydrant then the water company should handle that but if there was manual landscaping that needed to be addressed then the Town could handle it.

Clerk LeFevre asked Councilmember Gardner if he thought at his house his hydrant had received enough snow to plow. Councilmember Gardner replied that this year had not been a problem but in previous years it had been an issue.

Councilmember Ellis stated it would be a problem to show up to a hydrant that had snow plowed on top of it but they could probably handle fallen snow. He stated when they arrived to a fire they either had the opportunity to save a house or it was already completely gone.

Mayor Drain suggested they hire a couple people from the fire department for winter maintenance. Fire Chief Johnson stated this was definitely a possibility. Clerk LeFevre stated that

Councilmember Gardner asked if there were flags for the hydrants in the snow and clarified that finding the hydrants wasn't the issue, it was getting to the hydrant itself to connect to. Fire Chief Johnson confirmed.

Councilmember Veranth thought it was important to bring up an equity issue that had been brought up by the Water Department and that was that the people that had wells were provided with fire protection but not contributing to the cost of fire safety. He

commented on the fire hydrant across from Deputy Clerk Allen and stated that it had been plowed over and stated that it had hardened up and this was a big concern.

Councilmember LeFevre was still concerned about liability issues and asked if they wanted to contract with the water company to keep the hydrants clear and bill the town at an hourly rate. She was very concerned about liability.

Clerk Lefevre stated it was easy to say the town would give them a task and pay for it and it be that cut and dry and that one of the biggest entities in town is on a well and does not pay to be a part of the system. She stated as of right now the town does not pay the Water Company to put out fires and the water company has been working with the town and they eat that money every single time and so in this relationship they needed to grasp the whole picture.

Mayor Drain stated they had to come up with some sort of plan to present. She asked Councilmember Ellis what the problems in the contract were. He replied there was a lack of specificity. Mayor Drain wanted to go over the contract one paragraph at a time to see what they agreed with and what they needed to address because everything they wanted or needed needed to go into this contract.

Clerk LeFevre asked if the Town wanted to enter into a contract with the Water Company at all because if they didn't then they didn't need to go through the contract. Councilmember LeFevre commented if they did not have a contract then they would not have fire protection. Councilmember Ellis clarified that they still had the 1984 contract because it had not been canceled.

Councilmember Gardner asked if the water company managed and maintained their system to include the hydrants and to make it more equitable for those on a well to implement a surcharge and get billed separately from the water company to provide that service.

John Veranth asked if anyone wanted to update the 1984 contract. Councilmember Ellis was not opposed to updating the contract, Mayor Drain stated they needed to have a contract to protect the town.

Mayor Drain started going through the contract that had already been analyzed by the attorney paragraph by paragraph. Suggested edits were made in the Google Drive document as the contract was read through and discussed.

Clerk LeFevre commented on the automatic renewal clause and stated that they needed to address how they wanted to handle that process. Councilmember Ellis was concerned about not having a contract at all and would rather have an outdated contract. Lacy pointed out that this contract locked in rate raises for five years and if they went year to year then that gave the water company the opportunity to raise rates every year. Councilmember Ellis just didn't want the auto renewal to end so that they did not find themselves without a contract. John agreed.

Councilmember Gardner continued reading the contract. Councilmember LeFevre read the next page. 3.5 was put in by the attorney at Randy's request and there was discussion about the clarity of the language. Councilmember LeFevre continued to read through page 3. Suggestions and edits were made on 4.2. John stated 4.3 gave the Water Company incredible authority over the town and there was discussion about how to modify this clause to prevent that kind of control. Councilmember Ellis commented there was state law that governed this that stated the water company had to work with the government authority about placement of hydrants. John stated they had an ordinance that required a hydrant a certain amount of feet from a subdivision and the Water Company cannot prevent the town from putting in hydrants where necessary and advisable by the town. There was discussion between Councilmember Ellis and John about what wording to use instead and John commented that this item would have to go back to the lawyers on both sides. Councilmember Gardner commented that the Water Company had the power to limit development based on water hookups and hydrants. John was concerned about the Town signing a contract that unilaterally gave the water company the decision about whether or not a fire hydrant could be put in somewhere. Mayor Drain suggested sending this paragraph back to the lawyer for review with the suggested comments.

Councilmember LeFevre continued reading the contract. 4.4 required an annual report on Jan 1 but Randy requested changing that date to April 1 because that was when he had to submit all of his state reports. Councilmember Gardner asked what this annual report entailed. It was decided to eliminate 4.4 entirely from the contract.

Councilmember LeFevre continued reading the contract. Mayor Drain commented on 5.1 and stated this was what they really needed to decide on. There was general agreement that the Town wanted the Water Company to take on the responsibility of maintenance in exchange for a fee but they needed to determine what that fee would be. Clerk LeFevre stated that when she had last spoken to Randy he had told her that it would be \$150/hydrant which was an unrealistic number for Boulder to afford. Councilmember Ellis stated that that figure was provided under the scope of provided ISO paperwork for each hydrant. Clerk LeFevre stated the town needed to define what they wanted the maintenance provided by the Water Company to be. Councilmember Ellis changed the wording from maintenance to 'brush and snow removal'. John clarified that there was a difference between standard hydrant maintenance on the hydrant itself and the clearing of the area for access to the hydrant. Clerk LeFevre stated they needed to determine the difference between what the water company was required to maintain per state code for themselves and what the town was technically responsible for and what they would need to pay hourly for that additional maintenance. Councilmember Ellis suggested just kicking items 5.1 and 5.2 back to the water company to see what they were willing to do for the Town.

A 5 minute break was taken.

Councilmember LeFevre clarified that 5.1 and 5.2 would be sent back to the water company. Councilmember Ellis confirmed and commented that they should let the water company make an offer.

Councilmember LeFevre continued reading the contract. Councilmember Ellis started reading at section 6. At the beginning of section 7 Clerk LeFevre stated that when they had initially received the contract it had been written by the Water Company's attorney and it was clear because the water company was very protected and the town was not and so the wording this section was added by the attorney to provide the town some sort of protection and if they wanted to alter the language they could. John commented that it was important the town run the wording in section 6 by the town's insurance provider to ensure that the town would in fact be insured for the obligations they were incurring and that the wording was appropriate for the insurance company. There was a discussion about insurance and liability.

Councilmember Ellis finished reading the contract.

Mayor Drain stated they would put this all together. Clerk LeFevre clarified whether they should send this to the attorney for review of the changes made or if they should just send it off to the water company. Mayor Drain commented that they had made some substantial edits and that they should send it back to the attorney. Clerk LeFevre stated she would contact the Town's insurance company about the wording in sections 6 and 7.

Mayor Drain stated the town had invoices for the three previous years for \$3600 each that they needed to address. Clerk LeFevre stated that legally the Town was not required to pay because the 2018 contract was never signed and needed to know how the town wanted to proceed and stated that these invoices were for the maintenance performed. Mayor Drain stated she wanted to be fair but they needed to stay within the confines of what the budget allowed. Councilmember Ellis 7:21 his take on the back invoices was that the intent of the agreement was for the maintenance and the physical record of that and neither he nor Fire Chief Johnson were interested in paying for a service that was not provided. He thought they should go back to the Water Company and state that the invoice was for a service that was not provided however they had cleared a lot of snow the previous year and Councilmember Ellis suggested a new invoice be resubmitted for the service of clearing snow that was performed.

Councilmember Ellis stated the Water Company was in a bad position regarding the past invoices because there was no contract.

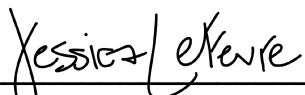
Clerk LeFevre commented that in the past couple of weeks she had had a couple questions about RSTRs and threw as someone asking for a second RSTR and stated that the town ordinances surrounding RSTRs were pretty rough and did not spell out a lot of things and it currently required obtaining a CUP that was good for one year but gave no direction as to what to do after that year. She stated that this ordinance had been approved in May of 2019 and there were a lot of things happening with RSTRs



that needed to be addressed. There was discussion about RSTRs and it was decided to put this item on a future agenda.

Mayor Drain moved to adjourn the meeting.

Date Minutes Approved: April 4, 2024

  
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Jessica LeFevre, Town Clerk