

January 8, 2008

SPECIAL COUNCIL MEETING

The City Council of the City of Fort Morgan, Colorado, met this day in the Council Chambers of City Hall. The Honorable Mayor Jack L. Darnell called the special meeting to order at 6:00 p.m.

The Pledge of Allegiance was given.

Roll Call: Present: Honorable Mayor Jack L. Darnell
Councilmember Terry McAlister
Councilmember James A. Powers
Councilmember Terri P. Schafer
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

Absent: Councilmember Anita Baltazar

The meeting was also attended by City Manager Michael Nagy, City Attorney Jeffrey Wells, Police Chief Keith Kuretich, City Treasurer Pixie Jones, Utility Directors Gary Dreessen and Bob Weimer and City Clerk Andrea Strand.

Councilmember Simmons offered a motion to approve the January 2, 2008, minutes as presented. Her motion was seconded by Councilmember McAlister and duly carried.

Mayor Darnell adjourned the meeting at 6:02 p.m.

2008 ORGANIZATIONAL MEETING

OATH OF OFFICE TO MAYOR

Municipal Judge Charles M. Hobbs, administered the Oath of Office to Mayor Jack L. Darnell; whose term will expire in 2010.

OATH OF OFFICE TO COUNCILMEMBERS

Municipal Judge Charles M. Hobbs administered the Oath of Office for Councilmembers whose term will expire in 2012:

Councilmember Ward 1 – Terry L. McAlister
Councilmember Ward 2 – Terri P. Schafer
Councilmember Ward 3 – Sharol Lynn Deal

Roll Call: Present: Honorable Mayor Jack L. Darnell

Councilmember Sharol Lyn Deal
Councilmember Terry McAlister
Councilmember James A. Powers
Councilmember Terri P. Schafer
Councilmember Ron Shaver
Councilmember Alberta M. Simmons

COMMENTS FROM THE MAYOR

Mayor Darnell welcomed the new Council. The Mayor reminded everyone of the retreat on Saturday, January 12. He stated that the City Attorney would review the Council Rules of Procedure and of duties and responsibilities of staff as outlined in *Charter* revision. He also stated that communication will be discussed and a retreat will be held on March 8 to set the goals for the City Manager. He encouraged input from citizens before the March 8 retreat concerning the \$4.1 million in reserves. He commented that these retreats will set the direction for the next two years.

RESOLUTION TO CONFIRM APPOINTMENTS TO THE VARIOUS POSITIONS

APPOINTMENT OF CITY MANAGER

Councilmember Schafer stated that before the oaths of office are administered, the Council has not addressed the issue of a contract for the City Manager Michael Nagy. She stated that City Manager Michael Nagy's contract expires tonight and she wondered if he could be sworn in or if the matter should be discussed at a later date. Attorney Wells added that the matter of his contract has not been properly noticed and cannot be discussed tonight. City Manager Nagy stated that he had been notified of the termination in the contract ten days ago by the City Attorney Wells and he said he had no trouble delaying it beyond tonight. He stated it suits him fine to take the agreement up at a later time. The Mayor stated for clarification that there was no contract between the City of Fort Morgan and City Manager Michael Nagy. Mr. Nagy agreed that he did not have a contract. This matter will be discussed and scheduled for a future City Council meeting.

Mayor Darnell administered the oath of office of City Manager to Michael A. Nagy.

APPOINTMENT OF ACTING CITY MANAGER

Mayor Darnell stated that the new *Charter* provides for appointment of an Acting City Manager. Attorney Wells read ARTICLE V, SEC 2. Acting City Manager. The Council shall designate a qualified person to serve as acting city manager during the manager's absence or disability, or during times when the position is vacant. He provided Council the option to appoint this position tonight or consider it at a later time. He did emphasize that a qualified individual should be named. City Manager Michael Nagy recommended Police Chief Keith Kuretich be considered.

Councilmember McAlister offered a motion to appoint Keith Kuretich as the Acting City Manager. His motion was seconded by Councilmember Schafer and duly carried.

Mayor Darnell administered the oath of office of Acting City Manager to Keith Kuretich.

Councilmember Simmons offered a Resolution for City Council appointment of positions. Her motion was seconded by Councilmember Powers and duly carried.

RESOLUTION No. 08-01-01

CITY COUNCIL APPOINTMENT OF POSITIONS

WHEREAS, Article IV, Section 4 (d)(6) of the *Charter* of the City of Fort Morgan empowers the City Council to appoint a City Manager, a City Attorney, a Municipal Judge and Deputy Municipal Judge and in addition to these appointed officials the Volunteer Fire Chief.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO that the following persons be appointed to the various positions as set forth in the City *Charter*.

City Manager	Michael A. Nagy
City Attorney	Jeffrey A. Wells
Fire Chief	W. Bradley Parker
Municipal Judge	Charles M. Hobbs
Deputy Municipal Judge	Dennis L. Brandenburg

FURTHERMORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO that Keith Kuretich is appointed to serve as acting City Manager during the manager's absence, disability or during times when the position is vacant.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 8th day of January, 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers, Schafer, Shaver and Simmons

Nays: None.

Absent /Abstain: None.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Jack L. Darnell
Mayor

ATTEST:

/s/ Andrea J. Strand
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

ss. CERTIFICATE

I, Andrea J. Strand, City Clerk for the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council of Fort Morgan, Colorado, and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and have affixed the seal of the City of Fort Morgan this 8th day of January, 2008.

/s/ Andrea J. Strand, City Clerk

COMMENTS FROM THE CITY MANAGER

Michael Nagy stated: “In this business, I have come to know that I will never stop learning. Not that I should ever want to, that is.

“In this business, the only constant is change. And, in this business, it is where ordinary people can come together, to speak, to make choices and, at times, to make extraordinary change, whether to be as is, or sometimes, to go with a new system.

“People last week in Iowa came out to speak and make choices. Today, people in New Hampshire are doing so as well. And two months ago, people here in Fort Morgan came out and spoke and made choices too.

“A choice of system. This is what has changed. Yet, as I said here, honored and humbled to be a part of this change, and honored with a new appointment the fundamentals of myself and what is important here has not changed.

“The fundamentals of the mission at hand, the doing of the public’s business, with vision, fore-sight, principled steadiness, and, open inclusion and conversation, as much as possible.

“The mission of fairly and evenly dealing with people on whole and one to one, as each day best allows.

“The mission of stewarding public dollars, toward best destinations, and investments, for today, tomorrow, and generation next.

“The mission of rating a genuine and best foot forward, the mission of mailing sensible and well displayed decision for the whole of the town, from corner to corner and more.

“The mission of inspiring and helping all to understand the potential of themselves and of the community on whole. The mission of taking and making both easy and tough steps ahead.

“To walk in this capacity is indeed a fine honor. This is a prized mission to fulfill and give back to the public the most for their resources, as those resources come together in the seat of local government.

“I do not offer and do not want to offer perfection. This is not for me, nor would it be me. But, I do offer belief in the value of perfection towards this mission. Each and every day can be better. In the role of City Manger, I find enthusiasm and thrill. In delivering the best, and fairest, possible in casting a widest net of understanding, and in achieving the most that can be expected. For and with a stake in this City and its future. I thank the Council and the public for their support. And, the staff for being and doing their best.

“Here’s to tomorrow and a good year ahead.”

COUNCIL REPRESENTATIVES ON VARIOUS BOARDS AND COMMITTEES

Mayor Darnell presented the following listing of Council representatives on the various Board and Committees.

BOARD OR COMMITTEE	2008-2009
Airport	McAlister
CML Policy Review	Powers
Fire Pension	Darnell
Fort Morgan Ditch Co	Shaver
Golf Course Advisory	Schafer

Library Board	Simmons
MCEDC	Schafer
Museum/Heritage	Powers
Planning Commission	Darnell/Deal
Progressive 15	Darnell
Recreation Advisory	Powers
Senior Center	Simmons/Deal
Tree & Parks Advisory	Deal
Water Advisory	Shaver

Councilmember Simmons reminded all advisory boards and committees to provide their agendas and minutes to the City Clerk.

OPEN MEETINGS LAW – POSTING OF NOTICES

Clerk Strand presented information concerning Open Meetings Law pursuant to C.R.S. 24-6-402(2)(c). Councilmember Simmons offered a motion designating 110 Main Street as the public place for the posting of notices for the City of Fort Morgan in 2008. Her motion was seconded by Councilmember Powers and duly carried.

DISCUSSION CONCERNING *THE FORT MORGAN TIMES’* OPEN RECORDS REQUEST

Attorney Wells read the following statement:

- “1. I want to take a few minutes to summarize the Open Records issue that the City is working with the Fort Morgan Times to resolve.
- “2. The Fort Morgan Times has published a very good article which explains the positions of both parties.
- “3. As was stated by the paper we do disagree on the classification of the records. However, the real issue in these circumstances is the fact that the records had been destroyed pursuant to the policy before *The Fort Morgan Times’* request.
- “4. The Newspaper has filed another open records request for additional information on the City’s policies, which I have included in City Council’s Table File. I plan to work with other appropriate staff to address this request as required under the Colorado Open Records Act.
- “5. The Newspaper does ask important questions to which I am sure Council and the public would like answers.

- a. First, why did the City file a declaratory judgment action in Morgan District Court on Friday when it had not yet issued its response to the paper? Reported 8:55 a.m., should have been reported as 8:55 p.m. The answer is simple. At that point, even though the records had been destroyed according to policy, the issue raised by the Newspaper's request would not likely be resolved without a Court's interpretation. Prior to filing the lawsuit I had spoken with the Newspaper and its attorney, and they made it very clear that they believed the Newspaper was entitled to the records. When I personally delivered the denial to the newspaper on Monday I was not given a chance to explain why the City made this determination, instead I was told, "We will resolve this issue in Court." The City's declaratory judgment action is not seeking money damages from the Newspaper, it is only requesting that the Court look at the Statute and provide an interpretation for the City and the Newspaper. If we can work reasonably and address the issues, then the Court will not need to be involved.
- b. Second, the Newspaper insinuates that the City requested an extension of time to respond so that it could file a lawsuit against the paper. The fact is that the Newspaper offered the extension of time which then we accepted. The issues related to these records are very complex, and I appreciated the Newspaper's consideration in offering additional time to consider those issues.
- c. Finally, I would like to offer a different perspective on the information requested by the Newspaper. The City agrees that the public should be informed about how individual council members do their job. However, when it comes to personnel matters, the employee also has rights of privacy. Mr. Nagy requested his review be done in private. The City Council, and as I imagine all employers, would not open their personal notes regarding their evaluation of an employee."

STATEMENT FROM THE MAYOR

The Council discussed their concerns of spending tax payer dollars for this lawsuit, as well as asked for clarification from the City Attorney concerning personnel records which Attorney Wells answered. Councilmember Powers asked for clarification that the rating for City Manager Nagy's was disclosed to the public as Council was obligated to do. Attorney Wells agreed, yes it was.

Councilmember Powers offer a Resolution to authorize the City Attorney to file a declaratory judgment action with the Morgan County District Court and to proceed with

the necessary legal action. His motion was seconded by Councilmember Shaver and duly carried.

RESOLUTION No. 08-01-02

AUTHORIZING THE CITY ATTORNEY TO FILE A DECLARATORY JUDGMENT ACTION WITH THE MORGAN COUNTY DISTRICT COURT AND PROCEED WITH THE NECESSARY LEGAL ACTION

WHEREAS, Sec. 2(B), Article I, of the *Charter* provides that “[T]he City shall have power to sue and defend”; and,

WHEREAS, the Council has found that a Declaratory Judgment Action seeking a judicial determination of the City’s rights and obligations under the Colorado Open Records Act is necessary to protect the citizens and taxpayers of the City of Fort Morgan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

SEC. 1: The Council hereby authorizes the City Attorney to file and represent the City in any Declaratory Judgment Action or other litigation necessary to resolve the dispute in the Morgan County District Court.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 8TH day of January, 2008, the vote upon roll call being as follows:

Ayes: Mayor Darnell; Councilmembers Deal, McAlister, Powers Schafer, Shaver, Simmons

Nays: None.

Absent /Abstain: None.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

By: /s/ Jack Darnell
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

ss.

CERTIFICATE

I, Andrea Strand, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 8th day of January, 2008.

/s/ Andrea J. Strand

Mayor Darnell adjourned the January 8, 2008, meeting at 6:45 p.m.

/s/ Jack L. Darnell
Mayor

/s/ Andrea J. Strand
City Clerk