

**BOARD OF TRUSTEES  
CITY OF CREEDE, COLORADO – A TOWN  
December 7, 2009**

**SPECIAL MEETING**

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in a special session in the Creede Town Hall at the hour of 5:33 p.m. There being present at the call of the roll the following persons:

PRESENT:           John Mattingly, Evelyn Gant, Debbie Wylesky, Larry Lewis, Joe Keller, Rex Shepperd, Dana Brink

Mayor Shepperd, presiding, declared a quorum present:  
Those members of staff also present were as follows:

Pamela Wilson, City Clerk/Treasurer  
Clyde Dooley, City Manager  
Benjamin Gibbons, City Attorney  
Ruth M. Acheson, Municipal Judge

**HEARINGS**

**A HEARING TO DETERMINE IF LEGAL CAUSE EXISTS TO REMOVE JOHN MATTINGLY FROM THE POSITION OF TRUSTEE OF THE CITY OF CREEDE**

This meeting is for the purpose of a Hearing pursuant to §31-4-307, C.R.S., to determine if cause exists to remove John Mattingly from the office of Trustee of the City of Creede.

Mr. Mattingly requested in writing, on November 14, 2009, that this hearing is held.

Ruth Acheson has been appointed by the Board of Trustees to serve as a Hearing Officer, with the duties of swearing in witnesses and maintaining protocol during the hearing.

The specific charge against John Mattingly is that he was not registered to vote in the City of Creede on April 14, 2009, the day he was sworn into the office of Trustee of the Town Board. It is alleged that not being registered to vote in Creede made him not qualified to hold the office of Trustee in accordance with the requirements set forth in the Creede Municipal Code Sec. 2-2-20 and the Colorado Municipal Election Code of 1965 Sec. 31-10-301, C.R.S.

Eryn K. Follman, Clerk and Recorder for Mineral County, testified that she is the official election officer for the County and maintains the voter registration roles of persons registered to vote in the County and the City of Creede. Ms. Follman further testified that she provide a copy of the certified voter registration role to Ms. Wilson in the normal course of her duties and that Mr. Mattingly was not registered to vote in the City of Creede until November 4, 2009 and although he declared his residency began in Creede in October 2007, he had registered to vote in Boulder County on October 3, 2008.

Pamela J. Wilson, the Creede Municipal Clerk, testified that as the duly authorized election official for the City of Creede, she has determined that one of the requirements to be elected or appointed to the position of Trustee is that the person seeking the office is a registered voter in the City of Creede.

Wilson also testified that she reviewed the voter registration roles in preparation for the April 2010 municipal election and determined that Mr. Mattingly was not registered to vote in the City of Creede on April 14, 2009, and in fact did not register to vote in the City of Creede until November 4, 2009. Mr. Mattingly was therefore not eligible to be appointed to the office of Trustee on April 14, 2009.

Wilson testified that the announcement of the vacancy for the position of Trustee and request for letters of interest, both published in the Mineral County Miner and posted in the City's official posting locations, contained the requirement that the applicants must be qualified registered voters in the City of Creede. These announcements are contained in the official records of the City.

Mr. John Mattingly testified that he understood the requirements to be appointed to the office of Trustee to be that he resided in Creede for twelve months prior to the appointment and that he was a qualified voter in the State of Colorado. He further testified that his interpretation of qualified voter was that he was registered to vote in the State.

Mattingly further testified that he did not read Sec. 2-2-20 of the Creede Municipal Code nor Sec. 31-10-301, C.R.S. prior to applying for the Office of Trustee. He stated that he relied on the due diligence of the City and Board of Trustees to determine if he was qualified for the appointment.

Mr. Mattingly contended that he did not believe that being a registered voter in the City of Creede added any special value to his ability and skills in serving as Trustee. Mattingly did not contest that he was not registered to vote in the City of Creede at the time of his appointment as Trustee, nor did he offer any contravening evidence.

In clarifying testimony given by both Ms. Follman and Mr. Mattingly regarding his voter registration in Boulder versus his residency, Acheson asked Mattingly if he didn't have to declare Boulder as his primary residence. Mattingly argued that a person can have multiple residences. Acheson agreed with that statement; however, she added that statute is very clear that you have to claim as your primary residence where you register to vote. Mattingly said he was unaware of that requirement. Acheson said she will look up the statute she is referring to and make it available to him.

Acheson declared the Hearing closed after all parties had the opportunity to offer evidence and solicit testimony. After having heard the evidence, Trustee Lewis moved and Trustee Keller seconded that John Mattingly should be removed as Trustee due to the fact that he was not qualified to be appointed to the office on April 14, 2009. His non-qualification was based on the determination that he was not registered to vote in the City of Creede at that time, and that such registration was one of the requirements to hold the office, as required under the opinion of the municipal election official, the requirements set forth in Sec. 2-2-20 of the Creede Municipal Code, and Sec. 31-10-301, C.R.S., of the Colorado Municipal Election Code of 1965. By roll call vote, the following Trustees voted in favor of the motion: Gant; Wylesky; Lewis; Keller; and Brink. The vote was unanimous. Mayor Shepperd declared the motion carried.

Trustee Brink moved and Trustee Lewis seconded to declare a vacancy on the Board and to solicit letters of intent. The vote was unanimous. Mayor Shepperd declared the motion carried.

#### ADJOURN

There being no further business to come before the Board of Trustees at this time, Trustee Keller moved and Trustee Lewis seconded that the meeting be adjourned at 6:30 p.m. The vote was unanimous. Mayor Shepperd declared the motion carried.

Respectfully submitted:

/s/ Pamela J. Wilson  
Pamela J. Wilson, City Clerk/Treasurer