

Pagosa Daily Post

The Problem with a Ten Year Lease, Part One

Bill Hudson | 10/9/08

In preparation for Tuesday's Town Council discussion of a proposed lease of geothermal water to the Springs Resort, I spent a few hours researching and writing my Tuesday editorial, posing a simple question: How much is geothermal water worth? My very amateur calculations came up with a suggested street value of the 210 million gallons the Springs Resort wants to lease from the Town's two geothermal wells: \$14 million, based simply on what it would cost to re-create that amount of heated water — using state of the art technology and natural gas as a heat source.

When I attended the actual Town Council meeting later that evening, I had a chance to hear several other valuations of the proposed lease.

I heard Council members defend the basic concept of the lease: committing the lion's share of the Town's geothermal water rights to the Springs Resort, for ten years or longer, in order to encourage the resort to proceed with a planned expansion of its popular, and attractive, lodging and bathing complex.

I also heard members of the audience urge the Council to reconsider certain aspects of the lease — including the amount of water being committed to one single Pagosa business, and the lack of a clear 'off-ramp' to allow the Town to terminate the lease if needed.

The Council and the audience were in basic agreement on one point: that the Town's geothermal water rights — 450 GPM to be used for "municipal use associated with geothermal heating" — could be a potent source of economic well-being in the Town's future. The Council, as a whole, seemed to feel confident that the Springs Resort can single-handedly provide that economic benefit. The audience, as a whole, seemed to feel that a long-term lease of 400 GPM to a single business entity — out of a total water right of 450 GPM — was imprudent.

Councilor Mark Weiler made the case for valuing the Town's geothermal water in terms of the community-wide benefits he sees coming from an expanded Springs Resort. Weiler is President of Parelli Natural Horsemanship, a Pagosa-based business which itself has expanded greatly over the past ten years. Weiler noted that the Durango non-profit Region 9 Economic Development had conducted a study on behalf of Parelli, analyzing the community benefits of that company's expansion. Weiler said he took those figures and calculated the economic benefits of the Springs Resort expansion — the plans for which have already been studied and approved by the Town Council.

"One thing that I think would help us a great deal would be to have Region 9 prepare an economic impact statement, as to what the value of the [Springs Resort] development would be to the town, on an annual basis... what the sales tax generation would be... instead of just somebody's opinion. I suspect that the economic impact of a fully built out Springs Resort would be somewhere in the neighborhood of \$150 million.

"With \$150 million in economic impact, the sales tax revenue generated by that would be somewhere in the neighborhood of \$9 million. I believe the current sales tax revenues to the Town, today, is about \$3 million.

"If, as a Town Council member, I can agree to lease [geothermal] water to generate a sales tax increase of \$9 million, that is in my opinion the highest and best use of the water. We shouldn't focus on the [per gallon] value of the water, we should focus on the value the water brings to the whole community.

Weiler referred to some attachments to the lease — which were unfortunately not attached to the packets distributed to the media or to the Town Manager, Tamra Allen, nor, apparently, to Weiler’s copy.

“I believe that the attachments, that are not attached to this lease, stipulate that they actually have to build it, in order to use the water. It’s not in the attachments — the attachments are blank — but that’s part of the discussion process.”

The situation facing the Town Council is not a simple one. As Mayor Ross Aragon phrased it later in the meeting, “You’re damned if you do, you’re damned if you don’t.” The community’s construction and real estate industries — which were thriving just a few years earlier — have come to a comparative standstill, and the proposed \$250 million Springs Resort expansion is one of very few commercial projects in the planning stages.

The Springs Resort expansion would be based largely upon tourism, of course. And the key element of the resort’s popularity is, of course, the “naturally therapeutic” bathing pools — pools filled with Pagosa’s famous mineral rich geothermal water, cooled down from its original 145 degrees to a safe and pleasant soaking temperature of around 100 degrees. The resort now has 17 operational pools and is in the process of building five more.

Across the street from the Springs Resort is the Spa Motel — sometimes known as the Spa at Pagosa Springs. That smaller complex, owned by the Giordano family, makes use of geothermal water from two wells to fill an outdoor swimming pool, one exterior soaking pool and two enclosed bath houses — one for men and one for women.

At the Springs Resort, we find an outdoor swimming pool in addition to the 17 existing outdoor soaking pools — which feature a range of temperatures, views and pool sizes. A couple of those pools feature tiny waterfalls. The water in the Springs Resort pools, from what I can tell, comes from two sources: a small water right drawn from the Great Pagosa Hot Springs itself, and the Town’s geothermal wells on the other side of the San Juan River.

The water coming from the Town’s wells is sometimes referred to as “waste water” because during the colder months of the year it first runs through the Town’s municipal heating system. The Springs Resort currently leases 200 GPM of the Town’s “waste water.”

The resort’s previous developers, Bill Dawson and Matt Mees, apparently purchased other geothermal water rights near the resort during the early phases of their own expansion process — during the years when the Springs Resort, then known as the Spring Inn, sported just two tiny fiberglass hot tubs full of geothermal water. As far as I can tell, those other water rights have never been developed. The Springs Resort now belongs to the Whittington family, and it is that family which is proposing the \$250 million expansion.

The Town of Pagosa Springs began developing a municipal geothermal heating system in the early 80s, and won the rights to 450 GPM — about 210 million gallons annually — to provide heat to downtown businesses, homes and schools. That system has considerable potential for expansion, according to discussions I’ve had at Town Hall — which means considerable potential for reducing the town’s carbon footprint. But whether the Town can find funds to expand and improve the system’s infrastructure is questionable, even though climate change and global warming have become important parts of the worldwide energy debate.

Whether or not the Town ever expands its own geothermal system, the water is available for various ‘recycled’

uses after running through the Town's heat exchangers — including use in bathing pools at the Springs Resort or elsewhere. The state of Colorado, however, apparently does not allow a business to file for water rights on “waste water” — even though the Springs Resort has done exactly that: filed for water rights on the Town's water. According to the discussion at Tuesday's meeting, the Council and Town staff want the resort to drop that water rights filing immediately.

So here is a quick summary of the situation in which the Springs Resort finds itself. The Town has 450 GPM of geothermal water which the Springs Resort can convert into profits even after the Town has finished using it. That amount of geothermal “waste water” put to profitable use would easily justify continued expansion of the Springs Resort — but the resort cannot seem to get permanent rights to the “waste water.”

The Town Charter specifically prohibits the Town Council from signing a lease that extends for more than ten years. This Charter provision is, of course, aimed at preventing one particular elected Town Council from making very-long-term decisions about Town-owned resources. So the longest lease permitted is ten years.

If you want to invest \$250 million in a tourist attraction, you want to make very sure that you have secure access to the mineral-rich geothermal water that supports that tourist attraction. The last thing you would want is another tourist-related business springing up — say, at the site of the current County Courthouse, or on the acres of downtown commercial property currently owned by developer David Brown just footsteps away from the Town's geothermal wells — and outbidding you for the hot water you depend upon.

It's a big problem. So, what does the Town Council plan to do about it?

The Problem with a Ten Year Lease, Part Two

Bill Hudson | 10/10/08

“I'm in favor of making full use of the water rights that the Town owns, and doing joint ventures or leasing them — or however you want to do that with private enterprise. I think that's the best way to get the best return on our money off the use of those water rights. But I think it's been disingenuous of you guys to say, ‘We're going to take this much of these water rights, and lease them to one single property owner in the community — with no timeline that dictates when they have to use them, or how they are going to put them to beneficial use, for the benefit of our community.’”

Local developer J.R. Ford was standing at the microphone at Tuesday's Town Council meeting. We were just starting the public comment portion of the Council's lengthy discussion on a proposal from the Springs Resort — to lease 400 GPM. about 210 million gallons per year, from the Town's geothermal wells.

Ford was bringing up a key point that the Council had not yet discussed — but a point they would discuss at length, later in the meeting: Whether to tie the lease of geothermal water to development requirements.

Ford continued. “We want people to use those water rights. We want to encourage development. But I'd rather see you guys come up with a formula, where anybody who has property in the community — most likely it would be [the resort property] because that's where it's easiest to use it — but where anybody in the community could use those water right as long as they met certain stipulations. Then, if anyone wants to look for ways to develop a piece of property, they will stimulate the growth in our downtown.

“If you give all these water rights to one organization, and then you put no time line on when they will make use of those water rights, so they will become a beneficial use and generate tax income, I don't think you've

done anything for the community. I think you'd be taking a great asset — probably the best single asset this community has — and you've tied it down to one group.

“We've already seen what happens when the community starts tying itself to one group. Things go wrong; people leave the community, and things don't happen.”

Ford didn't clarify whom, exactly, he meant by the “one group” to whom the “community” had tied itself. I am guessing he was referring to developer David Brown, who began a campaign back in 2004 to “revitalize” Pagosa's downtown. Brown had organized a private planning organization — the Community Vision Council (CVC) — and had made friends with Mayor Ross Aragon and other key leaders.

The CVC — working without any public discussion process — then developed planning documents and proposed land use guidelines for downtown Pagosa. Around the same time, Brown had purchased numerous downtown properties at reportedly inflated prices, demolished several familiar older (though also generally ‘run-down’) buildings, upgraded certain older buildings and landscaping — and pushed the Town for higher development standards and better planning.

While Brown apparently waited patiently for the Town to create a community-approved Downtown Master Plan, his properties remained generally vacant, and the economic vitality of downtown — hit by higher rental rates and vacant storefronts — declined noticeably. Brown was, however, unable to purchase a key property that was a cornerstone of his downtown development plan. That property — the County Courthouse — eluded his grasp when the Board of County Commissioners turned down his offer on the historic downtown property, built in 1928. Had brown been able to secure the Courthouse site, he would have owned two city blocks of property adjacent to the Town's geothermal wells.

This past summer, Brown announced he had put his elegant ranch on the West Fork of the San Juans up for sale and, with his family, was leaving Pagosa Springs. Brown's downtown properties continue to remain mainly unoccupied — reportedly due to high rental rates — and the three large vacant lots he created downtown have remained undeveloped.

Ford continued: “And the second disingenuous thing I read in that article, is when the developers said, ‘Hey, we have to have this lease, so we can go out and get investors.’ Well, I have put together deals, I've had to get investors, and what you do is stipulate things into your agreement that are benchmarks that you're going to have to reach — and when you reach those benchmarks, they loan you more money. And anyone who wants to use these water rights — the Springs or whoever — all they have to do is write that into their agreements, meet those benchmarks, come back to you and renegotiate those deals, and continue with the project.”

“I think its wrong for the community to give that much of an asset to one group — and I think it's totally wrong to do it without some kind of a time line.”

Several other members of the community stood up and echoed Ford's sentiments. Former Town Manager Mark Garcia, whom I'd not seen in Town Hall since his resignation in April, brought up another possible use of the Town's water rights — possibly drawn from his own earlier experiences as the manager of the municipal geothermal heating system.

“I think it's premature to try and establish a value on the geothermal water rights. I think the current lease [giving the Springs Resort 200 GPM of geothermal ‘waste water’] expires in 2015 — and I think it's too early to determine what the value will be in 2015, considering the energy crisis that we're in, and considering changing technologies — there may be a lot more money at the end of that lease. It's premature to determine

what those values are.”

Apparently, some of the Town Council agreed with Ford’s comments about the need for benchmarks and a time line.

“In previous discussions we’ve had, there was — and this was a concern expressed by our attorney, Bob Cole — that they get water as they build, as they develop. And I don’t see that written in the lease,” noted Councilor Stan Holt. “I’d like to see that included — that they have to show some progress and not tie up the water resource while there’s no development for 20 years. Like what J.R. was talking about.”

It appeared, from comments by Holt as well as interim Town Manager Tamra Allen and Council Mark Weiler, that performance benchmarks had, in fact, been previously included in the lease — but for some reason had disappeared from the version presented on Tuesday.

“And I understand,” Holt continued, “that the Springs Resort will be required to install water meters on their pipes, so we’ll be able to see how much water they are taking.”

Although the Springs Resort has been drawing geothermal water from the Town’s geothermal wells since 1995 — and also from the Great Pagosa Hot Springs mother spring, under their own water right — the resort has never installed meters on any of its intake pipes to track how much water it has been drawing. District Water Commissioner Pete Casper had verified for me last week that the Springs Resort has been directed to install meters as part of its current expansion work on its new 29 room hotel and its five new bathing pools nearby.

A bit later in the meeting, Ford expanded on his suggestions to the Council:

“I agree with Councilor Weiler, the value of this water is in the sales tax revenue. But the way I read this agreement, you are binding yourself — you’re going to have to have a very good reason to get out of this lease for every ten years... and there’s also language in there that allows the [Town Charter] to be changed, so they can renegotiate the length of their lease.

“If you really want true development in the community, then you will make it truly competitive to get those water rights. If you really care about sales tax, you’ll make this competitive; if you’re not concerned about sales tax, if you’re just trying to help one project, then give the water to the Springs. But if you give yourself a year to look at some proposals — when this Springs lease doesn’t even take effect for three years — you might see some Mr. Browns come back to the table.”

Holt was, however, hesitant to consider making the leased water available to other possible bidders, as Ford had suggested.

“I’m trying to look at both sides. The Springs Resort has already come forth with a plan — and the Town has approved that plan. Now, are we going to say, let’s take a year or two to look at other options? He may walk away from the plan.”

This was about the time in the meeting — after an hour of public input and Council discussion — that the Mayor began to vent his frustration.

The Problem with a Ten Year Lease, Part Three

After about an hour of Town Council discussion and public testimony last Tuesday about the proposed lease of 400 GPM from the Town's two geothermal wells — by my calculations, that's about 210 million gallons a year, for an apparent lease payment of \$12,000 a year — Mayor Ross Aragon finally spoke up, with an obvious air of frustration.

Judging from the several dozen Town meetings I've attended over the past four years, I'd suggest that Pagosa's long-time mayor often reserves his personal opinion on matters before the Council — he generally concentrates on running an efficient public meeting, and lets the other six Council members argue and discuss. On the other hand, I have heard that Aragon does a good deal of organizing behind the scenes.

When Aragon does choose to speak his mind at a Council meeting, however, it's not unusual for him to reprimand the public for not appreciating his hard work, or for questioning the wisdom of the Council's decisions. Such was the general thrust of Aragon's comments at last Tuesday's meeting, in response to numerous public comments about the proposed geothermal water lease.

“It's so easy to point fingers, it's so easy to second guess and do the Monday morning quarterbacking.

“I just want to point out that, if we have done anything illegal, please — take us to court. I contacted our attorney today, and we have done nothing illegal. That's according to our attorney. We have done nothing illegal and that's the bottom line.

“It's so easy to sit there and be judgmental. My emphasis, from the get go, has been to try and provide economic stability for our community. If we don't have development, we die — honest to God, we will die. What's happening on Wall Street can happen here. We have to be sensitive, as elected officials, to the global scenario. We have to be concerned about what's happening here in our town. And it's going to reach us. I'm not lobbying for anyone, I'm just making a statement.

“My perspective is, we need development. We cannot feed off each other forever. And that's what we do, a lot of times, if we don't have development. We have to have something going on.

“And if I alienate people, I just trying to do the best I can for our town. Kill me if you want to, I don't care. But I have to do what I think is right.

“Whenever you have a \$250 million development [like the proposed Springs Resort expansion] you have to be out of your mind not to — you have to listen to that. And we have listened to that.

“But the bottom line is, we haven't done anything illegal. If we are harming anyone in any way, tell us.”

In fact, Aragon and the Council had heard, just minutes earlier, from Marsha Preuit, the owner of the Spa Motel, about possible harm to her water rights from the proposed lease. The Spa Motel, which has been making use of the geothermal aquifer since the 1920s, sits directly across the street from the Springs Resort — which began making use of geothermal baths in the early 1990s. But unlike the resort, which has expanded significantly over the past 20 years — and as noted by Aragon, has a \$250 million expansion plan on the books — the family-owned Spa Motel has made only modest upgrades to their facilities since the early 90s.

Preuit had addressed the Council earlier this year, when a previous version of the Springs Resort geothermal lease was up for public comment. At that July meeting, she had questioned the wisdom of doubling the Town's

geothermal output from a limited resource like the Great Pagosa Springs aquifer — and she referred to that earlier testimony at last Tuesday's meeting.

“This is my second time to address you with my concerns. And I have more concerns, and I have expressed them to a few of you on the Town Council.

“I’m concerned about the filings by the Springs Resort on the waste water, which as I understand it, is contrary to the Town’s Home Rule Charter. In your Town Charter, it says that if they file [on a Town-owned resource] then the lease with them is null and void.

“That was four months ago?”

Preuit was presumably referring to the last line of Section 10.4 of the Town Charter, the section entitled “Water and Geothermal Water Rights and Control of Water Reserved to Town”:

C) No franchise, right, or privilege shall be granted affecting the use of water, geothermal water or water rights belonging to the Town, or affecting its water systems, without retaining ownership of such property in the Town. No such franchise right or privilege shall allow or create an encumbrance on such property in favor of a third party, or be for a term exceeding ten (10) years. Any such franchise, right, or privilege shall terminate automatically if necessary to preserve or maintain the property or right or the Town’s ownership.

The Springs Resort — formerly the Spring Inn — has twice filed with the District Water Court to claim rights to the Town’s geothermal waste water. The first filing happened in 1995 and resulted in a law suit involving the Spa Motel, the Spring Inn and the Town, which stretched out over many years. That lawsuit was finally settled when the Town agreed to lease no more than 200 GPM to the Springs Resort, for a period of 10 years.

(One might wonder whether that lease runs counter, in another sense, to the Charter’s legal language: “No such franchise right or privilege shall allow or create an encumbrance on such property in favor of a third party...” But that is possibly another discussion.)

The Springs Resort recently filed once again for the Town’s geothermal waste water, while in the midst of new negotiations to expand the lease to 400 GPM.

Besides the fact that the state of Colorado reportedly has no laws allowing claims to be filed on waste water, the resort’s filing has been interpreted by the Town as violating Section 10.4: “Any franchise, right or privilege shall terminate automatically if necessary to preserve or maintain the property or right of the Town’s ownership.” The Town supposedly ordered the Spring Resort to drop its waste water filing back in June, but as of last Tuesday’s meeting, the filing was apparently still active — to judge by Council and audience comments.

“Why have a Charter is you aren’t going to abide by it?” Preuit asked the Council rhetorically. “We made a settlement with the Town, allowing you to lease 200 GPM during the heating season — that’s generally from September through May. I realize that your attorney has told you the heating season is year round. Well, common sense tells you it’s not; there’s not a single building up there on Main Street using the geothermal heat during the summer. I have a problem with that. We signed that agreement in good faith, for 200 GPM during the heating season. If an agreement with the Town means nothing, then I don’t understand why we spent all that money to get an agreement. And now you are talking about 400 GPM?”

Preuit’s comments do raise the question of legality — not only with the proposed 400 GPM lease, but also with the current lease — regardless of the Mayor’s assertion that the Town has “done nothing illegal.” Similar

questions were raised in a letter to the Town from newly appointed Division 7 Water Commissioner Pete Kasper, written on May 13, 2008.

That letter states in part: “The Town was granted a water right for [wells] PS-3 and PS-5 for municipal heating from a geothermal resource as defined in SB 481, adopted in 1981. The State does not allow any water right holder to waste water. In the May 19, 1987 judgment and decree issued to the Town for PS-3 and PS-5, this is stated very clearly in item #17, which states, ‘The Town of Pagosa Springs shall operate its wells... to avoid waste of the geothermal resource.’ Therefore, it is the opinion of this office the Town should not be operating wells PS-3 or PS-5 unless it is producing geothermal heat with its heat exchanger.”

The Mayor is correct in one sense, however. If you think the Town is doing something illegal, the only way to finally resolve it is in a court of law. Without a judge’s ruling, any discussion is simply one lawyer’s opinion against another’s — or one Town Councilor’s opinion against another’s.

Except that the Town Council seems to be of one opinion: in favor of expanding its lease of geothermal water to the Springs Resort. There are seemingly just a few details that need to be addressed.

The Problem with a Ten Year Lease, Part Four

Bill Hudson | 10/14/08

As noted yesterday, the Pagosa Springs Town Council appeared to be of one opinion concerning the basic concept of the geothermal lease with the Springs Resort. Over and over during Tuesday’s meeting, the audience was reminded by Council members that the Springs Resort has already-approved plans to expand its resort over the next ten or twenty years, to the tune of a promised \$250 million worth of new facilities, hotel rooms, commercial sites and timeshare living spaces.

That expansion is based on one simple attraction: geothermal “healing water”. With its own current water rights from the Great Pagosa Hot Spring, plus its current 200 GPM lease from the Town, the resort is serving about 50 rooms worth of guests. The proposed resort expansion shows about 310 additional rooms to be added to the inventory — a six fold increase in rooms, and presumably a need for six times as much hot, "healing" mineral water flowing through the resort.

There was at least one thing that the Council did not like about the lease proposed last Tuesday, however: The amount of water to be leased was not connected to requirements of actual development. This was a point brought up by audience member J.R. Ford, and echoed by Councilors Mark Weiler and Stan Holt. *Continued...*



Developer J.R. Ford, right, addresses the Town Council on Tuesday — suggesting changes to a proposed lease of geothermal water to the Springs Resort. Ford's suggestions were echoed by other members of the public and by some Councilors.

“We’ve been giving this lease a lot of thought for a year now,” said Council Holt. “This isn’t something that just popped up. It’s been on our table, and been in our thoughts and our minds for a long time. We’re at the point where we have to have a motion and do something. We’ve talked it and talked it, and we’re still talking it.

“Mr. Mayor, I make a motion that we continue this discussion until our mid-month meeting, so [interim Town Manager Tamra Allen] can contact [Town Attorney Bob Cole] and get these changes made, including the addition in the lease that the water [increase] is staggered as they develop. Get that back into the lease, and get these other little things that [Councilor Shari Pierce] is concerned about. Get that cleaned up and then let’s take another look at it, at our mid-month meeting.”

The “other little things” brought up by Councilor Pierce included concerns that the lease allowed the Springs resort to renegotiate its lease every year — meaning that each year could mean another brand new ten-year term, the maximum term allowed by the Town Charter. Pierce was also concerned that the Springs Resort was still proceeding with its water rights filing on the Town’s waste water, despite specific demands by the Town that the filings be dropped.

Pierce continued: “Then the lease says, under permits, it says ‘The Corporation shall deliver any treated portion of the 400 GPM after use into the river.’ I’m wondering what ‘treated’ means, and are they allowed to put that in the river? Then it goes on to say that any untreated portion would be put back into the Great Spring — but in the Beagles' letter from 2000, it says that putting the water back into the Great Spring is, quote, ‘not believed to be a beneficial use of the geothermal water.’ So I don’t know if they can put it back into the Great Spring. I’d like to clarify that before we go through with any lease.”

According to the Springs Resort’s pool designer, Matt Mees, the resort has for many years been putting water, from its current 200 GPM geothermal lease, back into the Great Spring — presumably to keep the water from

visibly dropping below historic levels. The resort has no meters on its current water pipes, so no one knows exactly how much water has been dumped back into the Great Spring.

As the Tuesday lease discussions wound to a close, Councilor Jerry Jackson took the opportunity to criticize the public participants.

“I think any organization or any group... I think we’d like to occasionally hear that we are doing a good job. We’ve worked on this for a long time, and this is not untypical — that we work on something for a long time, and then in the ninth inning, everybody comes in and says, ‘Well, you need to be looking at this...’”

“It just would help us out an awful lot if you guys would come in during the first go-round and help us out. And somewhere in there, tell us we’re doing a good job. We’d appreciate it. We’re doing the best we can.”

Jackson’s comments were, in this case, somewhat disingenuous, however. Almost all of the lease negotiations on the Springs Resort issue have, in fact, happened behind closed doors, thanks to several Executive Sessions called by the Council since April.

That in itself is an interesting story.

Executive Sessions are a mechanism allowed by Colorado state “sunshine laws” to allow a public body to meet privately, out of public view, for two basic privacy purposes: to allow the body to discuss personnel issues, and to allow the body to privately formulate negotiating positions related to property purchases, sales and leases.

According to the published Town Council minutes from 2006 and 2007, the Pagosa Springs Town Council did not once convene an Executive Session — not even during two separate discussions of employees Joe Lister and Tamra Allen — during all of 2006 and 2007.

Following the election of Councilors Jerry Jackson and Shari Pierce last April, however, the Council began, somewhat suddenly, scheduling almost regular Executive Sessions — a total of nine such sessions since the election — including four Executive Sessions dealing with the Springs Resort expansion. It is my understanding that the current version of the lease discussed last Tuesday resulted from decisions made during an Executive Session held on September 26. Obviously, Jackson’s comments — criticizing the public for stepping up to the plate “in the ninth inning” — are at least a bit unfair, considering that — even at last Tuesday’s meeting — the public was not shown a full version of the lease.

Even more startling, however, is the fact that Springs Resort representatives have been invited to participate in at least two Executive Sessions dealing with the Springs Resort expansion.

The Colorado state statutes outlining the proper use of the Executive Session by a government body are clear about their intention to assure that government meetings remain open to the public whenever possible. Here is Section 2:

(2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.

CRS states that a public body “may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters...” and then lists

CRS also gives a clear indication of why a public body might use an Executive Session to discuss a proposed property lease or sale:

“(1) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers.”

In other words, it's perfectly proper for our Councilors to meet privately — in order to discuss their negotiating strategy and in order to give Pagosa citizens the best possible bargaining position in a lease negotiation.

In that light, some may question whether the presence of Spring Resort representatives at two Executive Sessions may possibly have compromised the Town's ability to privately develop a negotiating strategy or bargaining advantage with respect to the proposed lease of 400 GPM of highly valuable mineral-rich geothermal water. Rather, such an arrangement could conceivably have given the Springs Resort inside information about the Town's position — and an unfair bargaining advantage.

But perhaps the Council thought it more important to accommodate to a successful local business than to assure the bargaining position of Town citizens?