

**Town of Bayfield
Regular Board Meeting
Bayfield Town Hall
1199 Hwy 160 B
Bayfield, Colorado 81122**

September 16, 2008 7 P.M.

Town Board Present: Mayor Rick Smith, Russ Jones, Justin Talbot, Debbi Renfro, Bob Piccoli, Tom Au and Dan Ford.

Staff Present: Justin Clifton, Town Manager, Pat Anselmo, Town Clerk, Dirk Nelson, Town Attorney, Joe Crain, Town Planner, Jack McGroder, Management Intern. Marty Zwisler, Project Manager was also in attendance.

Planning Commission: Joannie Hanna, Chair
Press: Carole McWilliams, Pine River Times.

The Mayor called the meeting to order at 7:03 P.M.

The Mayor welcomed everyone, and made special mention to all who had made the new Town Hall a reality. He recognized past Board members who had the foresight to save money toward the effort. Carol Blatnick and Niel Hieb, both past Board members, were in attendance and were acknowledged for their efforts. Rick thanked staff, Marty Zwisler, Mark Beasley, (Beasley Designs), who now serves as IT manager for the Town. John Leonard, Durango Music, was on hand to assure the sound system was working properly.

The Mayor opened the meeting for public comment. He asked that comments be succinct and that those who wished to be heard identify themselves by name and address.

Carol Blatnick informed the audience that on October 1 the League of Women Voters will be using this facility for their promotions. She invited everyone to attend.

Action Agenda Item #1: Approval of Bills: Tom Au moved to approve payment of bills as submitted. Bob Piccoli seconded. The vote was seven in favor. Motion carried.

The Board asked that the Planning Commission Report be included on the agenda as Item # 1 A. Joan Hanna was asked to give the Board an update of the activities of the Planning Commission. She gave a short summation, and then asked if there were any questions from the Board. She had not prepared a written report for the packet. Items discussed by the Planning Commission last week were the Liddell easement vacation at 609 Magnolia Court in the Mesa Meadows Subdivision, Scott Trinklein/ Lynn Matievich request for a waiver of the Town's requirement that they place a natural gas connection to the lot line, and the discussion of issues attributed to Southviews request for annexation.

The Planning Commission continues debating various concerns, overall density, topography and drainage being the top contenders for attention. The Multifamily allocation and its location is also a major issue.

Action Agenda Item #2: Town Updates: The Mayor asked if there were any questions relating to the four items listed below this agenda item. Bob Piccoli asked if the restroom facility at Eagle Park is finished. Marty answered in the affirmative, it is both operational and open for public use.

The landscaping is almost complete.

Justin Talbot said it was his understanding that the water pipes running through David Blacks property were asbestos free. Justin C. answered that there were a lot of old water lines that were being replaced. It was in this replacement process that an asbestos pipe was disturbed. Once asbestos is turned up during excavation and in the soil, it is considered by the State to be contamination, according to current regulations. Enviro-Tech has not submitted their invoice for the work yet. The area disturbed was approximately 20 ft. x 20 ft. Justin was not quite sure of the depth, perhaps five to six feet.

Action Agenda #3: A. J. Liddell Easement Vacation @ 609 Magnolia Court – Mesa Meadows Subdivision – Lot # 53:

Joe Crain explained the situation to the Board. The property in question is in Mesa Meadows. The house is already there. Ron Saba had communicated that there was no (major) water line there. However, there is an eight inch water main running out of Clover Meadows into Mesa Meadows. Mr. Liddell was going to try to obtain a three foot easement from the owners of the property adjacent to his. The people that he had contacted did not reply to his letter. He said ‘evidently, they are not agreeable to granting the easement’. Mr. Liddell said initially the town signed off on the plans. He followed all required procedures in order to get a Certificate of Occupancy. He feels it was an oversight by both the Town and himself. The plans reflect a setback and a forty foot easement on the back. They do not show the easement on the side. The easement did not show on the plat when A. J. bought the house. He continued, ‘the Town told him that everything was o.k. He proceeded. Then he was told differently’.

Dan asked for further explanation. Justin C. replied the (main) water line is 8 to 10 feet away from the house.

Ron emphasized, a main water line needs at least a 30 foot easement. If the Town has to repair a water line, they must do what they must do. Landscaping, trees, lawn, may get damaged, even destroyed in the process.

Bob Piccoli sought confirmation, ‘the developer had to put in the water line’. Joe Crain replied ‘yes, they did. It (main water line) normally does not get situated between two lots. When the subdivision plat was filed, the developer should have been held up’.

Joe added his agreement with Ron’s specification; a major line needs a 30’ easement, no exceptions.

Justin T. asked ‘who does the locates for the Town? Justin C. replied, whoever is on staff.

Dirk interjected, a line locate would not disclose any easement.

Justin T. recounted, a major line coming through two lots was not caught by the engineer, Joe Crain or Ron Saba.

Debbi Renfro asked if the original recorded plat had the easement.

Staff replied it did.

Joe Crain said staff recommends the easement vacation not be allowed.

Russ Jones moved to grant the easement vacation, but just for that portion which encroaches on the easement.

Justin C. said staff can secure the necessary signatures on the plat revision.

Dirk mentioned that the vacation plat has been signed by all entities.

Justin T. seconded the motion.

Rick asked Dirk for his recommendation. Dirk re-affirmed, the entities signed a plat that will be changed. The Town needs to get a new plat, get everyone to sign it, and then record it. This will be the appropriate process.

He added, 'you can't change a plat after it is signed off. The motion implies a new plat'. The vote was seven in favor, motion carried.

Action Agenda Item # 4: Scott Trinklein/ Lynn Matievich, T&M Minor Subdivision, Request for Waiver – Requirement For Natural Gas Connection:

Joe Crain recapped prior action of the Board pertaining to the situation. The Town approved a minor subdivision for Scott Trinklein several months ago. The stipulations of this sub-division approval required running natural gas to the property line. Scott and Lynn are now requesting a waiver of the stipulation, saying it would be costly and unnecessary, as they do not intend to use natural gas. Joe Crain addressed the Board, saying 'if this waiver is approved, it would set a dangerous precedent. Staff recommends denying the request.

If, however, the waiver is granted, the approval must list a 'findings of fact (in order to avoid setting a precedent), which includes the following:

- 1) Size: the area in this subdivision is only two lots, there are several smaller areas within the Town that are not served by natural gas,
- 2) Cost: It would require Trinkleins to tear up a paved surface to install a natural gas line,
- 3) The applicant is willing to record a document indicating there is no natural gas to the lot. The recordation would also reflect the stipulation that future owners would hold the Town harmless based on this action.
- 4) The current franchise with the gas company does not require everyone to hook up.

Justin C. said much of this predicament is based upon the definition of utilities. A gas line is a normal expectation of 'utility', more so than cable. The Code intended that gas lines be constructed.

Scott Trinklein spoke. He concurred that, between his letter and the statement of facts, everything has been brought forth. He cited the 'changing face of energy, and the size of the subdivision' are the substance of his stance.

Rick Smith explained why he cast a dissenting vote when the Planning Commission dealt with this issue. He (Rick) uses solar, but he also uses gas and electricity. In the Code it does not distinguish between the use of one form of heating or another. The utility needs

to be run to the property line. Gas is a utility. If the home owner does not want to use it, that is their prerogative. However, the availability of natural gas is a given.

Dan Ford stated that, in the Planning Commissions comments it reflects that there are homes that do not have natural gas. There have been, in the past, subdivisions allowed without natural gas. Natural gas cannot be compared with high speed internet or cable TV.

Justin T. asked Scott if there would be any further subdivision on this parcel. Scott responded that there are so many easements throughout the property that the Town would probably never allow future development. Russ said natural gas should be run to the lot line. The availability of gas makes the lot more valuable.

Dan asked if placing a gas line was required initially when Scott came in for subdivision. Joe Crain replied, 'yes. Scott, since that time, has decided to ask for a waiver'.

Justin C. said it all comes back to the interpretation of the policy that is already in place. It is difficult for the Town when there are exceptions to the rules. Tom said the easement is already there for a line to be built. Russ said, 'let's cut to the chase, it is all about money and who is going to be paying'. Scott replied, 'no, it is the principle of the thing'.

Justin T. asked what the Code says.

Dirk said, 'you will be setting a precedent if you allow a waiver'.

The SIA agreement should address this.

Debbi said the Town needs to decide what 'utilities' includes.

Justin T. moved to approve the waiver of the requirement for placement of a natural gas line, with the inclusion of the findings of fact as given previously and that the applicant will create, at their expense, a document to be filed with the County Clerk that holds the Town harmless and informs any future buyer that no natural gas is provided to the property. Dan Ford seconded, reconfirming that stipulations of the waiver include the 'findings of facts'.

The vote was four in favor, with Russ Jones, Rick Smith, and Bob Piccoli opposed.

Motion carried.

Action Agenda Item # 5: Extension of Final Plat Approval- Dove Ranch Unit 1 Phase 3 A Plat Extension:

Dove Ranch is requesting an extension for the above listed item. Staff recommends allowing an extension for 180 days, which would move the deadline to March 20, 2009. Russ said this extension process has already been discussed. The Board suggested the fee schedule be re-visited.

Bob Piccoli asked Bradley why he was asking for this extension. Brad said the market is flat; there is no one to sell the property to. This is a 29 lot phase; there is no market for anything now. He (Brad) wants to get the park done, it will be bring people into the development. He is also working toward a neighborhood storage facility.

Dan Ford moved to follow staffs recommendation and approve the extension of final plat approval for 180 days. Bob seconded. Russ queried, 'why should we extend it if the market is not promising?'

The vote five in favor, with Rick Smith and Russ Jones opposed. Motion carried.

Action Agenda Item # 6: Sunrise Update and Discussion:

The Mayor cautioned that this is not a public hearing. It is a public discussion. Justin included documentation in the packet that reflected a summation of communications back and forth between the Town's attorney and theirs. The Town is going forward into getting bids to complete work on the ditch. The cost may come in under the original estimate. Sunrise has offered \$40,000, 'take it or leave it' to settle. Their communication was 'if it is not enough, tough!' Justin's restive response, 'this has taken at least 2 ½ years of serious negotiation'.

Dirk said 'there is very little to add to what has already been said'. The parties agreed to hire Goff to get an independent estimate on what it would cost to fix the ditch. We are focusing on fixing the ditch but also need to build the retaining wall. This would run about \$71,000. The Town (if they accept the \$40,000) would eat the additional \$31,000. They (Sunrise) said they had bids for doing a retaining wall for less than what Goff said it would run. However, Dirk has not seen the paperwork.

Justin C. continued, 'there is no reason to try and continue negotiations'. Dirk confirmed that the Surety is insuring the developers (financial) responsibility to do this work. They are watching the development unfold.

The Surety perhaps has encouraged the developer to try harder to bring this situation to a workable close.

Landscaping remains an unresolved issue. Attorney's fees have not been reimbursed to the Town.

Right now, the crucial issue is the ditch. The performance bond was held because of the inadequacy of the irrigation system.

The Mayor invited public input:

Brett Dody, 93 Pebble Drive, Durango, (associated with Sunrise Villas): He said 'they have taken great strides to make this development perfect. He just doesn't understand the inability to resolve the situation. The issues are very important to him. They are trying to keep the costs of the development down'.

Douglas Reynolds, Attorney for Sunrise Estates Homeowners: They (HOA) are in agreement with Bayfield's Town attorney. They are certain the problems are not construction related. Studies show the problems were a result of faulty engineering and design. They (Sunrise Developers) are daring the Town to pursue them in court. Douglas emphatically stressed 'Do not accept the settlement proposal'.

Cindy Smart, 1330 Kremer Drive, Bayfield: Complaints were made (by the Homeowners Association) in 2004 and 2005, they have had problems from the start. They (Sunrise Developers) never procured proper engineering. They (the homeowners) do not want this to happen to any one who buys a lot in Bayfield. It is financially stressing. The Town has been given a list of all the unresolved concerns.

Rick Loether, 1338 Kremer Drive, Bayfield, Colorado:
2/3 of the drainage ditch is in BP's easement. BP made it plain that they would not cover costs, or withstand responsibility for damages. The BP easement is 16 feet. They mandated that nothing can exist in their easement. He encourages litigation on the part of the Town to get the entire bond.

Derrick Martin, 1302 Kremer, Bayfield, Colorado:
The time has come. The developer has not been held accountable. We (homeowners) are not asking for anything more, we just want things to be done right.

John Ralph, 6 Arrowhead, Durango, Colorado:

It is not just a ditch problem. There are a lot of problems that have been 'put off and put off'. All the problems need to be addressed while we have the surety in place. No more comments were received. The Mayor closed public comment. The Mayor asked for a motion for Executive Session. Russ Jones moved to go into Executive Session, citing C. R. S. Section 24-6- 402 (4) (e), matters subject to negotiations. Tom Au seconded. The Board asked that Justin C. and Dirk be invited into the Executive Session later on. The vote was seven in favor. Motion carried. A short break was called 8:45 p.m.

The Board called Justin C. and Dirk into the session at 9:45 p.m.
Executive Session ended at 10:25 P.M.

The regular session reconvened,
Dan Ford moved to direct staff to procure bids for work ascertained as necessary for fixing Sunrise Estates issues. The bids will be ready for review at the next regular meeting (October 7, 2008). Tom Au seconded. The vote was seven in favor. Motion carried.

Action Agenda Item # 8: Discussion regarding Letter From Bayfield Early Learning Program:

Justin C. received a letter from Carol Blatnick, Director of Bayfield Early Learning Program, which relays their interest in a parcel of land owned by the Town. BEEP is looking for a new home because their current lease will expire May 2009. Carol asked if the Town would entertain the idea of selling, gifting, etc. this property to their organization. She said the Town does not have a need for it. She added, the public works director sees no need for it, and has relayed to her that 'we don't have any particular use for the property now'.

Staff is asking for direction. There is a reservoir on the large parcel. The plan to consolidate would make it a rectangular parcel. This parcel is where the old water tank sits. Tom mentioned potential access problems. He said it would be problematic, to say the least. The ditch presents a problem, as do grading and wetlands.

Justin said the first question is 'do you want to get rid of the property? A big issue is dealing with the current owner of adjacent properties that have major issues with re-arranging the perimeters of the land'. Justin repeated once again, 'do you want to negotiate on the property?'

Carol said their lease is up in June, she is looking for \$300,000. The land could be included in their cost share. Eric Spady and Garry Hillyer were present. They concurred, 'It is paramount that they procure property'. They have been working on this since 2006. The limitation on buildable property is extreme.

Tom Au asked if the Town wanted to speak to the Tones about the land.

Rick questioned the Board, 'are you inclined to help BEEP with this piece of property?'
Staff was directed to research the matter.

Action Agenda Item # 9: Discussion Regarding Water Pressure:

Justin presented information for the Board pursuant to this matter in the packets this evening. If there are questions, he can come back with answers. Russ surmised this would be good material to incorporate in future water rate discussions.

Action Agenda Item # 10: Work Session Agenda:

Justin explained that the Board needs to talk about plat extension processes. In order to do this, they need to start with annexation and master planning.

He asked if the Board was O. K. with the agenda as presented. The work session will be next Tuesday, September 23, 2008 from 5 p.m. to 9 p.m.

Action Agenda Item # 11: New/ Unfinished Business:

Tom reminded staff, the fence is still up on the Mesa Meadows easement. It needs to be moved. Justin said this work can't take place until the streets are finished. Justin wants to get existing work done before taking on other expenses.

The pond on the south east corner of Mesa Meadows is now a retention pond. It is not releasing (water) at all. The drain pipes must be plugged. It is supposed to release water when a certain level is reached.

Russ wants to discuss rental of the new council meeting room. Justin replied, 'we definitely need to encourage responsibility'. Debbi wondered about the possibility of requiring a damage deposit of some sort.

Russ wants to protect *all* the tax payers and their investments.

Bob Piccoli's chair is broken.

Steamworks submitted their annual Liquor license for 442 Wolverine, Bayfield. The Marshal has not been contacted to ascertain if there were concerns about the renewal.

Tom moved to approve the annual renewal for Steamworks Brewing contingent upon Jim Harrington's review and sanction. Russ seconded. The vote was seven in favor. The renewal will be submitted to Harrington prior to completion.

Motion to adjourn 10:55 p.m.