

**TOWN OF BAYFIELD
REGULAR BOARD MEETING
1199 HWY 160 B
BAYFIELD COLORADO 81122**

FEBRUARY 17, 2009 7 P.M.

Town Board Present: Mayor Rick Smith, Council Members Brett Clough, Justin Talbot, Tom Au, Dan Ford, Debbi Renfro. Robert Picolli asked to be excused.

Staff Present: Justin Clifton, Town Manager, Dirk Nelson, Town Attorney, Joe Crain, Planner, and Pat Anselmo, Town Clerk.

Media: Carole McWilliams, Pine River Times

The meeting was called to order by Mayor Rick Smith at 7:01 p.m. He opened the meeting for general public input. Rich Graeber, representing the Upper Pine Fire District addressed the Board. He announced the upcoming training seminar regarding emergency preparedness and risk management as it applies specifically to public safety. Rich said Gordan Graham, who will be the main speaker at the event, makes it simple for responders to understand what their responsibilities are and how to stay out of trouble. He is well known and well respected. The Fire District is inviting the Town Board, the School Board, and other key public officials to be at this training. Mr. Graham will discuss civil liability, along with other vital and timely elements of responsibility. He asked that the Board RSVP for the training session. There is no cost, but they need to plan for the number of expected participants. It will be held Tuesday, March 3 at the Senior Center. No other public comment was given. This portion of the meeting closed.

Action Agenda Item #1: Approval of Bills:

Dan Ford moved to approve payment of bills as presented. Brett Clough seconded. The vote was six in favor, motion carried. Tom Au abstained from voting on the approval of payment to his company.

Action Agenda Item # 2: Town Updates:

Sewer Plant: The lift station at Gem village will be completed about November of 2009. The new WWTP is to be up and running about a month prior to that.

Rick Smith commented on the Planning Commissions report submitted by Joan Hanna. Joe Crain substantiated that it does contain several errors.

Action Agenda Item # 3: Cable TV Franchise – Wayne Vestal:

Justin C. had invited Wayne Vestal to speak this evening regarding their proposed franchise agreement with the Town. Wayne explained that he is president of Rocky Mountain Cable. They are requesting a ten year renewal. Wayne said Dirk had modified

the agreement, inserting several paragraphs. Wayne added, their company cannot secure lending sources without the franchise agreement in place.

Rick asked if the Board had any questions. This led to discussions regarding services, additional channels, cable modems, high speed internet, etc. Wayne said, with their upgrade they could serve high depth channels. Rick let Wayne know that the Town contemplates several annexations of other properties, namely Homestead and Southviews. Wayne replied that he has no trouble with committing to including Mesquite, Homestead, and Dove Ranch in their service area. 'They will spend whatever is necessary to get more customers'. The draft ordinance submitted with the packet was structured similar to the previous one created by Dirk. Debbi spoke in favor of the termination clause. Justin C. suggested inclusion of a penalty clause. Wayne concluded his portion of the presentation saying 'Dish and Direct TV are our major competitors'. Dan asked Wayne why they have not yet serviced Dove Ranch. Wayne said they slipped up on this. They should have been much more responsive and provided the services upon initial demand.

Dirk asked for additional guidance tonight from the Board on whether to pursue the renewal of the franchise agreement or to act on it later. Justin C. commented 'we can move forward with the negotiations, addressing things such as a Public Access channel and timely payment from Rocky Mountain Cable. The Board was amenable to this.

Action Agenda Item # 4: Valcor Annexation Plat Extension:

Joe Crain addressed Council, saying this matter has been continued a number of times. It is currently set to expire March 3, 2009.

The water engineer has relayed that their firm has not received the information he needs to determine how much (water) Valcor owns and how much water will need to be transferred to the Town. Staff is recommending a sixty day extension, which moves the expiration date to May 3, 2009. Brett Clough read Bob Piccoli's notes on the subject. Bob sensed a possible lack of accountability on the part of the water engineer. 'They evidently do not consider this to be high priority and therefore are not spending sufficient time on it'. Bob continued, 'this continual postponing does not get us anywhere'. Rick said he supports the request for postponement this time, but will be hesitant to do so again. The Board is in agreement with allowing a thirty day extension. Brett Clough moved to allow the Valcor Annexation Plat extension for thirty days. Debbi seconded. The vote was six in favor. Motion carried.

Action Agenda Item #5: Byrd Property- Tap Agreement:

Acknowledging there had been several problems with this issue in the past, Justin C. now recommends the Town honor the agreement which was previously offered. Mr. Byrd had spoken with Tom Au when this matter first developed.

Justin C. said Mr. Byrd and Brett Boyer had a hand shake deal, agreeing to give Mr. Byrd two taps in trade for the dedication of an easement for the Town. Mr. Byrd refused to sign the initial agreement drawn by Mr. Boyer. Justin C. said Mr. Byrd has now been talking with him in order for them to proceed with the development. Justin C. did not specify an amount of easement, only that Mr. Byrd will have to provide the easement to the Town if he wants to annex. The easement needs to be sufficient for development to

progress. Mr. Byrd previously submitted a master plan that had these easements on it. Justin C. has not shown Mr. Byrd a draft of the agreement.

Dan Ford said he has problems with this certain deal, relaying 'the taps should have to be used within his (Byrds) property'.

Justin C. agreed with Dan, saying he would recommend not allowing any taps to be transferred (now or in the future) at all. Dan asked if the Town would be setting a precedent if they meet Mr. Byrds demands. Justin C. responded, 'there would never be a relocation of the tap. They can use it anywhere in the Bayfield service area, but it would, from then on, never be transferred'. Dan restated, 'we are allowing an individual to invest (meaning it may be sold in the future for a profit) in water taps'. He firmly believes the tap should be tied to the property and believes that Mr. Boyer tried to get that to occur.

Dan said that was the reason Mr. Byrd never signed the original agreement.

Rick commented that, in fairness regarding the matter and to move the development process forward, he is not opposed to following the Towns standard procedure.

Justin C. re-affirmed that Brett (Boyer) felt strongly about the taps going with the property. 'If we allow this agreement to happen, it would be a concession on the part of the Town'.

Brad Elder spoke on behalf of Mr. Byrd. 'He thought he should get the taps. Gwen (Mr. Byrds daughter) lives outside the service area now. He wants Gwen to be able to use the tap'. Brad conceded, 'the tap ordinance specifies that the tap goes with the property'. Brad then qualified his statement, saying 'Mr. Boyer did not know that a residential tap is a ¾ inch tap'.

Brett Clough asked what ramifications could occur if the Town did not honor the agreement. Justin C. commented, the Town can hold its ground and say they can annex if they follow the set of rules. He added, honoring the agreement would provide a way for annexation to flow. Dirk gave a bit of history on the situation, 'at the time Mr. Boyer and Mr. Byrd were negotiating this, Mr. Byrd was not interested in being a part of the development back then. Now, he is.'

Brett Clough said the Town should not be doing things that are the exception to the rule. Rick agreed, saying 'this is why we have ordinances. However, in this case,' Rick commented, 'in this *one* case, I think the Town should fulfill the agreement'. Dan suggested the Town give him a tap credit on the day the agreement is signed.

Action Agenda Item # 6: Public Hearing: Homestead Trails Annexation & PUD

Zoning: Se ¼ SW ¼ Sec 15 T 34 N, R 7 W 240 + Acres:

Applicant Jack McCarthy and Grant Richards:

Ann Cristenson, Grant Richards, Jack McCarthy, Mike Russell, and others representing Homestead were in attendance.

Ann Christensen, a member of the Homestead Development group, gave a comprehensive power point presentation.

DHM Design and Landscaping is the consultant team. The development will, at build out, cover 240 acres, more or less. They plan a total of 397 homes over a twenty year period.

Andrew Klotz, RPI Consulting, gave his report, which he said has not changed since they submitted the annexation impact report. He took the conservative approach when contemplating the fiscal workability of the intended development. He added, 'it looks as

if it will work for the town because this type of construction has positive economic impacts’.

He discussed at length what it would cost the Town to be involved, based on amounts calculated using 22 units being built each year. Homestead would devote about six acres for commercial development.

He explained the term ‘leakage rate’ which is the amount of money spent outside of the town. He added, this development would add to the probability of a new grocery store being planned for Bayfield. Homestead, he said, will support 30,000 sq ft of commercial development. This translates into creation of 114 jobs, 70 of which would be construction jobs.

There are multiplier affects on each dollar invested. This annexation and its contents would require a (town of Bayfield) staff increase of four people. Keep in mind this is over a twenty year period.

He summarized his presentation with ‘the Homestead annexation is basically a breakeven for the Town of Bayfield. School enrollment would increase by 274 students, with \$333,000 revenues ear-marked for capital for the Schools (based on the current \$794 per household the school instituted).

Brad Elder spoke. ‘The bottom line is that the development will work, based on commercial and homeowner expenditure patterns’. That was the extent of Brad’s comments.

Rick opened the meeting for comments.

Dan Ford voiced his concern that the park is not centrally located, and that it is located right next to the highway. He felt there was not as much danger of the kids getting onto the highway, but he is very concerned about the traffic getting to the populace at the park. ‘There is a high concern about drug related incidents when there is easy access to kids’.

Debbi thinks that having a park along the highway is an asset. She remarked that the park would provide a buffer zone between road traffic and residential areas.

Rick asked if there were any other comments. LPEA has submitted comments about easements they want dedicated. He said these comments are not appropriate at annexation time. Dirk concurred, Rick was correct. This is not the appropriate time for these comments to be considered.

The Town needs to know if the Board wants to go ahead with the annexation process.

Rick opened the Public Hearing portion of this item. No one had any comments.

Rick closed the public hearing.

Rick then turned the discussion back to the Board, saying ‘Lets talk logistics.

We are not going to make any final approval because we do not have all the pieces of the puzzle. We need an annexation agreement, and an annexation ordinance. Currently Dirk has the drafts only.’ Justin C. said ‘this will be open ended.....we will continue to make progress, but setting a deadline is not a probable expectation. The annexation will not be complete until the annexation agreement and plat are recorded. The approval will be step by step. Dirk will have plenty of time to review the documentation and the community will have ample opportunity for input in the future’. Dan moved to move forward with this annexation as presented, utilizing the terms as presented thus far. Brett Clough seconded. The vote was six in favor. Motion carried.

A short recess was called at 8:55 p.m.

Meeting reconvened at 9:06

**Action Agenda Item # 7: Public Hearing: Preliminary Plat
Mesquite Phase Of The Southviews Subdivision, Applicant: Real Estate Ventures II,
LLC., (Brad Elder, Principal)**

Joe Crain addressed the Board. The area under consideration lies just southeast of the Bayfield municipal water tank site. The proposal is in compliance with the 2008 amended Bayfield Comprehensive Plan- East Area.

Joe cautioned, the sketch plan that was originally submitted, has changed. The four single family lots have been taken away, Brad put a detention pond there. The town engineer had extensive comments including but not limited to street design, horizontal and vertical alignment on Mesquite / Southviews Boulevard, and lack of drainage provisions for storm water. On February 10, 2009 the Planning Commission recommended approval, voting five in favor, two opposed, (Rick Smith, Justin Talbot) contingent upon meeting the eight conditions contained in staffs report.

Staff recommended approval of the Eight lot Mesquite Phase 1 of the Southviews subdivision Preliminary Plat subject to the nine conditions as outlined on Mr. Crains memo to the Board, dated February 16.

During the Planning Commission meeting, Brad asked for a variance to the requirement that a paved secondary access be in place. He wants to put in a gravel road that connects with Dove Ranch Road. It was a controversial subject, Rick Smith and Justin Talbot did not vote for it.

Joe did leave BP's comments on the dais earlier today along with what requirements are mandated when you submit a preliminary plat.

Tom Au posed an obvious 'where is the plat that we are supposed to be approving? There is not one thing in the packet tonight that comes close to a preliminary plat.'

Brad replied that he only wants input on his *plan*, he is requesting approval of the preliminary *plan*. 'It is a conceptual sketch plan, in order for them to get their grants. Opportunity Builders needs to solidify a plan in order for them to develop a plat around the plan. They need this data to take their proposal to CHFA. If they are not successful, the subdivision will not happen.'

Joe Crain commented, he was very disappointed with what materials the town had received from Brad. He (Brad) filed this as a preliminary plat. Joe added, 'there are no easements on lot lines, did you have engineer prepare this?' Mr. Crain said he does not believe that Brad did.

Rick commented that, at the last Planning Commission meeting, Brad requested approval of his preliminary plat. Brads documentation was not complete then, it is not complete now. 'Obviously, it was not complete as presented'. Rick continued, 'if it does not meet the code, we cannot proceed'. Dirk added, 'you cannot approve a preliminary plat tonight, you do not have the documents that make up a preliminary plat'.

Rick admonished Brad, 'this was listed as one thing, was presented as another. This agenda item will not be acted upon tonight'.

Brad went ahead to explain his conceptual plans. He asked for direction from the Board and staff on drainage. He said he would not proceed without a sufficient number of pre-sales agreements.

Dan asked if Mesquite lines up with Ed Morlan's property adjustment. Brad replied that it did not.

Brad plans on taking drainage into the S.E. corridor. He is trying to develop a scheme for drainage. Brad continued, saying the DWR makes recommendations based on false assumptions regarding historic drainage.

Debbi requested that Brad 'takes as much water away from Tamarack as possible'. She added, 'you did a great job in Dove Ranch!'

Justin said, if it is the Boards decision, we would take it to the DWR. Dirk said Brad must have evidence that the water is draining somewhere other than what the DWR says.

Debbi said 'we are not diverting water'. Brad, 'in interest of health and safety, they would like to move the flow from the historic route'.

Rick opened the meeting for public comment. Myron Lizer, 1206 W Mesquite, asked to be heard. He addressed Brad saying he would like to see full pavement off of Mesquite. Myron said Mesquite currently has no traffic to speak of. Brad replied that Mesquite will all be paved. However, he does not want construction traffic to run on pavement. As utilities services are installed, they would have to tear up the pavement. It is more logical to build an all weather road, for the present time, until the preliminary work is finished. By the way, Brad said, there is also the expense to be considered. He wants to do this in incremental steps. Mrs. Lizer said that an all weather road will change it from a cul de sac to a throughway. She is concerned about safety for the children.

Brad realizes there will be more traffic. But, he added, once Southviews Boulevard is completed, it will provide the main line for traffic.

Dave Gore, 9 Willow Rd in Durango, said he has been doing research, 'this project will supply a very huge demand for affordable housing'.

Public comment closed.

Rick spoke to Brad, 'you have total control of your property. But, the Town should hold you accountable for a paved city road, no matter where it flows. The guy that develops first builds the roads. You will run utilities, it will be Jack Roes responsibility to hook up'.

Brad summarized, 'there are extenuating circumstances. This is a rare opportunity to get this sort of housing development with units that rent for \$400, \$500 dollars a month.

Justin C. cautioned that the Town needs to be talking to Brent (Souder) about this. The Roe property was not designed, it was too steep within 100 ft of the intersection. It is not necessarily unworkable, but it will be the finish grade that will be the challenge. They may need to reconstruct the road to meet the grade.

Justin C. re-affirmed that the Planning Commission approved the variance, but they made stipulations that need to be worked out, including maintenance. Debbi commented, '10% grade is going to be 'interesting'.

Rick asked the Board if they had any further comments. Debbi asked, 'do you need to provide covenants every single time?' Joe answered, that is what your code specifies.

Rick once again told Brad, 'we cannot approve a plat, we do not have the documents'.

Brad asked that the Board make 'just a motion to proceed with what he has presented, to create a preliminary plat'.

Rick asked Dirk, 'can we continue this?' Both Dirk and Justin C. suggested the Board deny approval, it doesn't meet sufficiency requirements. Rick finalized the matter succinctly, 'from our perspective, we will follow Dirk and Justin recommendations'.

Rick directed Brad to follow all of the town engineer's recommendations. Dirk added, staff will want to make sure that there will be another public hearing and sufficient notice again.

Justin T. said he would like to see a paved surface. Debbi asked what the minimum width would be. Staff answered 'twenty feet driving surface'. Brett Clough likes the land use proposal. Rick commented, 'do it right the first time'. Tom Au said the concept is good. He can see both sides of the pavement issue. Dan concurred he also liked the land use. However, he wants pavement, agreeing with Justin T. Brad will explore the options. Rick asked Brad to bring back a completed plat with all necessary documents. When that happens, the Town will notice it again.

Action Agenda Item # 8: Water Billing Policy Discussion:

Justin C. commented this item includes a handful of policies. Because of the late hour, he suggested the Board table this for a time.

It might be prudent to wait until the Town does the spring newsletter. The resolution has already been passed which says that the rates will go into affect with the next billing cycle. Justin C. recommended the rate increase be held off until the newsletter. The process of sending utility bills to the renters is an issue that needs to be addressed.

Justin C. said 'let's do the changes all in one fell swoop'. Rick replied, no, do the rate increase as reflected in the resolution. The Board agreed with the Mayor.

Action Agenda Item # 9: Souder Miller Rates:

Justin C. commented to the Board, if you think this needs serious discussion, it might be wise to discuss it at a future time. Rick recommended that Justin C. bring this up at another meeting, and keep the status quo on rates payable to them.

Action Agenda Item # 10: Set Board Retreat:

Justin C. suggested the Board set the last weekend in March, which falls on Saturday the 28th. Brett Clough replied, this is spring break.

Justin C. explained, this will be a working retreat. It establishes the vision for the coming year. It will take one day, all day, with a working lunch. Justin's evaluation is due in April.

Rick suggested they plan the retreat some time in April. Justin C. will take a look at the calendar.

The City of Durango wants to get together with Bayfield's Board. Rick asked if there could be time in March for this. He suggested the 23rd or the 24th.

They settled on March 9.

Action Agenda Item # 11: New/ Unfinished Business:

Tom asked if staff has a Planning Commission assignment with Brett Clough on it. Dan asked if staff could re-do the assignment sheet, placing Brett on it.

Tom commented 'we need to change our engineering review policy. With four pages of comments, we are doing the engineering!' Justin C. agreed.

Justin T. asked if all the easements to the new WWTP are wrapped up. Justin C. replied they are not. Dirk said the Town has filed a condemnation, it is still in process. Mr.

Candalaria spoke directly to Brett Clough (prior to this meeting) stating he is ready to go to court. He is frustrated. Justin C. said he has talked to him a lot. The first contracts did not reflect the actual delineation of property lines. Dirk added, the Town discovered they did not have clear title to the land on East Street. That was an unpleasant surprise. This is not a clear cut process. The things that have come to the forefront have been unforeseen. It remains in the judges hands. Brett Clough asked about the subcontractors damages to private property when snow plowing occurred. He said Mr. Saba has not resolved any of this.

Action Agenda Item # 12: Executive Session: (C.R.S. Sec 24-6-402-(4) (e) Sunrise Estates:

Tom Au moved to go into Executive Session, citing C.R.S. Sec 24-6-402 (4) (e) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations, and or instructing negotiators. Debbi seconded. The vote was six in favor. Motion carried.

The Board moved into Executive Session at 10:45 p.m.
The regular meeting reconvened. No formal action was taken on Agenda Item #12.

_____ moved to go into Executive Session, citing C.R.S. Sec 24-6-402-(4) (b) Gem Village Improvements.

_____ seconded. The vote was six in favor. Motion carried.

The Board moved into Executive Session.

The regular meeting reconvened. No formal action was taken on Action Agenda Item # 13.

_____ moved to go into Executive Session, citing C.R.S. Sec 24-6-402 (4) (e) Consent Order

_____ seconded. The vote was six in favor. Motion carried.

The Board moved into Executive session to discuss the Consent Order.

The regular meeting reconvened.

_____ moved to agree with the consent order.

_____ seconded.

_____ The vote was six in favor. Motion carried.

_____ moved to go into Executive Session, citing C.R.S. Sec 24-6-402 (4) (f) Personnel Matters

_____ seconded. The vote was six in favor. Motion carried.

The Board moved into Executive Session.

The regular meeting reconvened. No formal action was taken on Action Agenda Item # 15.

Motion to adjourn.