

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

August 18, 2009 7 P.M.

Town Board Present:

Mayor Rick Smith, Justin Talbot, Dan Ford, Debbi Renfro and Tom Au.
Brett Clough was absent. Councilman Robert Piccoli was excused due to health problems.

Staff Present:

Justin Clifton, Town Manager, Dirk Nelson , Town Attorney,
Pat Anselmo, Town Clerk, and Joe Crain, Planner

Media:

Carole McWilliams, Pine River Times

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

Approval of Minutes:

Tom Au moved to approve the minutes of July 21, 2009 as written. Debbi Renfro seconded. The vote was five in favor. Motion carried.

Tom Au moved to approve the minutes of August 4, 2009 as written. Dan Ford seconded. The vote was five in favor. Motion carried.

General Public Input:

Mayor Smith opened the meeting for general public input. None was received.
This portion of the meeting closed.

Action Agenda:

Item # 1: Approval of Bills:

Tom Au moved to approve payment of bills as submitted through August 14, 2009.
Justin Talbot seconded. The vote was five in favor. Motion carried.

Item # 2: Town Updates:

Justin C. asked if there were any questions from the Board pertaining to the items listed under this portion of the agenda. Tom Au asked about progress on the RFP for the Gem Village lift station. Justin C. replied that the pre-bid meeting was today.

The Town will open the bids August 26.

Dan asked about the grant for the trail. Justin C. replied, 'It will get done this year, as well as the sidewalk'. He added that he would get a budget to the Board for this particular project.

The Town will set a date for a ribbon cutting ceremony to celebrate the opening of the new Waste Water Treatment Facility. Justin C. asked if the Board prefers this taking place on a regularly scheduled Board meeting day, or if they would prefer scheduling it on another evening. Justin C. thought it may be most convenient to schedule it for 5 p.m. some afternoon.

Dan asked about the budget process, 'how aggressive or conservative are we going to be?' Justin C. answered that he has already met with the department heads for their preliminary budget submittals. 'We will meet again by August 27. We are brainstorming, trying to cut expenses. When the excess costs are cut, we will have the ability to strategize more diligently'.

Another draft should be ready by September 29. This will be, most likely, the final draft for the Board to evaluate.

Justin T. asked about progress on building the metal storage shed. Justin C. replied there will be a pre-construction meeting tomorrow. They will discuss both bonding and budget. Some of the most recent changes increased the final cost. A majority of the increase in costs were due to the grading for elevation in preparation for the foundation work.

Justin T. also asked about the progress of the compliance statistics regarding sewer treatment at Gem Village. Justin C. said the BOD has dropped significantly. 'It looks (like it is) pretty much back in line. We are on schedule to start construction (of the lift station) the end of September'.

Tom asked about the training of staff which will enable them to run the new sewer plant. Ron said they have not been through the entire process, but they are moving right along. They turned sewer into the new plant last Thursday. He added, 'TSS made it, the BOD samples are good. It is progressing very good'.

Item # 3: Public Hearing: Special Events Liquor License – Chamber of Commerce:

The Chamber of Commerce has submitted a request for a Special Events Permit for the annual Dove Ranch Box Car Derby race, to be held on September 7, 2009 at the far east portion of the south alley way in the Dove Ranch Subdivision.

Mayor Smith opened the public hearing. Mack Coker said it was a good idea. 'Anything to generate income'. There were no further comments. The Public Hearing closed.

Justin Talbot moved to approve the request for a Special Events Permit for the Chamber of Commerce, to be held September 7, 2009 at the location reflected on the application. Dan Ford seconded. The vote was five in favor. Motion carried.

Item # 4: International Fire Code- Fire Flows:

Chief Richard Graeber, Upper Pine River Fire Protection District, was present. He commented that even though there has been a lot of progress made, it is evident that we still have a lot of work to do. Justin C. asked for additional clarification from the Board on their interpretation of the situation.

The Town Board adopted the International Fire Code in 2006. It was a contentious issue, with the argument being made that adoption of the IFC, introducing new codes and standards, might increase costs to the developer, which would impede growth, and as a result, would limit the generation of new tax dollars that could be used for updating the water system. At that time there was genuine concern about adopting the Fire Code. Ordinance 321 was written, according to Justin C., with a certain amount of ambiguity. It was passed January 2007 with the caveat that 'Appendix B through Appendix G of the Fire Code are included in the adoption of the Fire Code as non-binding reference guides only'. It did not mandate Fire flow at that time.

Justin C. commented that the 'ambiguity is exacerbated in Resolution # 207. The Town has not adopted the part of the Code that includes fire flow. How do you meet a non-requirement?'

A lengthy discussion followed. Justin C. cautioned the Board, he does not want the solution to be an 'all or nothing'. The Town needs to have more clarity. He handed out charts for fire flows to the audience and the Board.

He explained, 'in places where we don't meet fire flow, we may be able to take alternative action, place cisterns, require sprinklers, etc. The costs vs. function are not compatible. He addressed the fire hydrant log which had been submitted by Ron.

The Town has hydrants that are capable of producing above 1500 gallons per minute. The limitation of the water system itself is a huge function of the equation. If Elston's were to loop into the high school line, they would have 1100 gallons per minute.

The Business Park has a six inch line. Infrastructure should never have been built with a six inch line. Because of the economy, it is doubtful whether the Town can get the infrastructure in place that would accommodate adequate fire flow.

We have come to an impasse. Staff needs direction on what is enforceable under the current Code.

Justin C. asked Ron Saba to voice his thoughts and perhaps add insight to the situation.

Dan Ford commented that the six inch line was probably done to keep the cost to the developers low. He added, 'we have a SIA with Elstons. It would not be wise to pin this on them. If we need to do something, it should be on the Town's dime'.

This is a Catch 22 situation. If you increase the cost to the developer, you may price yourself out of a market that is viable to them. If you do not increase the cost to the developer, the infrastructure may not be adequately funded.

It comes down to cost vs public safety. Down Town (Bayfield) has always been insufficient as far as fire flows.

Ron continued, 'of course there is a lot of catching up from the past. The David Black line has improved the feed (pressure) for Down Town. There is approximately 8000 feet of asbestos (water line) currently in the town. It will all need to be replaced at some future time. The cost to replace it all within a year or two would be prohibitive.

The Business Park has a six inch line feeding it. However, after 15 minutes, you will lose the flow.

When Homestead comes in, they will absolutely have to supply the fire flow line size. We have a huge deficiency currently, from Mountain View, all the way down the street to the bank. The six inch line does not have a chance to meet compliance.

The main source (for pressure) is the tanks'. He is replacing hydrants, but he cannot do it all at once. They definitely need to come up with a formula to solve the problem.

The Board had no questions for Ron.

Chief Graeber was given the floor. He discussed a model flow chart. These flows are out of a single hydrant, not out of a water main. His comment was 'I apply the Code to 'intent', not the 'letter'.

He said they have the opportunity to work this out in a reasonable fashion. He quoted Appendix B-103. He addressed the different Types (based on building materials) for fire resistance, Type 1, Type 2, up to Type 5.

'If you can't come up with flow, perhaps you can require sprinklers. 1500 G.P.M. is the minimum requirement allowed for a commercial building'.

Rich continued, 'plans for the Elston project have changed substantially since the original was submitted. It initially presented 11,800 square feet for storage buildings. Now it is several buildings. You should fully embrace the fire flow issue. It is time for the Board to decide how they are going to handle the problem. The standard is 8 inch for residential, 10 inch for commercial. A loop system is the answer'. He strongly cautioned the Town to avoid another Elston project, adding it would be a travesty to not address the problem before the homes are built.

Rich said he was the fire code authority for the Town, with authority to enforce the Code. He applies it when each subdivision plan comes in for approval by the Fire District. He believes the developer should be on tap to pay the bill. Sprinkler systems cut fire flow requirements by 50%. The Town does not have the infrastructure in place that enables the fire department to do their job.

The 501 Café requires 1780 G.P.M. fire flow. The High School is only at 1300 G.P.M. He admonished the Town Board to refrain from any consideration of large developments without adequate infrastructure in place.

Justin T. asked about liability on the part of the Town.

Dirk answered, there is no building on the Elston property now. He continued, the adopted Code provides for flexibility. This is a grey area. There is always a potential for liability. Justin C. added, it depends on the interpretation of the existing Code.

Another lengthy discussion ensued, should the infrastructure be financed with debt or be provided on a 'pay as you go' with developers footing the bill. The Town will be hard pressed to meet any additional debt.

Rick gave a summation: 'we need to deal with 1) the process 2) future development and 3) the immediate problem, (the Elston development)'.

We need to talk about the process first. We need to take Elston out of the equation.

Justin C. suggested the Town could tighten up fire flow requirements during development. He asked to have Chief Graeber come to the Board at a future date and give input on what requirements will be required by the Fire District for developers. The Board could then include these base requirements in the S.I.A.

When the 501 Café wanted to annex, their only motivation was that the Town had simpler requirements than those imposed by the County. The County did not have a fire code.

Tom Au recounted what Rich had said, the Town needs to have fire flow available to build. Justin T. agreed, the requirements need to be black and white to avoid liability on the part of the Town.

Justin C. cautioned, 'It says you need fire flow, but it doesn't say what the fire flow is'

Rich Graeber replied, the standards are set. No rational man would build a 6000 square foot building with only 600 G.P.M. for fire flow.

The Mayor concurred, 'we need to move forward, proceed. How do we deal with the issue at hand?'

The Town has the ability and the willingness to be flexible and work with the fire chief in attaining the standards. The Board asked that Chief Graeber provide a set of minimum standards, and let Justin C. proceed forward.

Rick expounded, 'lets not repeat the sins of the forefathers. Look at Appendix B. If necessary, put it in to the Code. If it is made a part of the Code, it would be black and white, the developer will know what he is expected to provide, i.e., what the costs will be for him to build. We should not turn away from the issue because of budget constraints. The six inch line was not a decision made by anyone in this room. We just need to find a way to overcome decisions that were made by our predecessors who were evidently provided with inadequate or incomplete information.

Dirk re-affirmed, the SIA is in place to make the subdivision work.

The buildings were not included in the SIA. The infrastructure was approved without the buildings in the equation. You are subject to any requirements put in place at the time of development.

Rick countered, concerning all future development, we need to carefully assess the adoption of Appendix B in the Code.

Ron interjected, 'and have our Planning Department apply it to those developers! We *can* do this in the future.

Dan asked if the Town needs another ordinance that includes the appendix.

Dirk once again warned the Board, 'you would want to look at the appendix *very carefully*.

Rich said he would be willing to come back to the Board with recommendations.

He would need a few weeks to do this. He did say, at the very least, there needs to be 1000 G.P.M. fire flow for residences.

Dan said he would like to rescind Ordinance 321 and adopt one that includes Appendix B. He also asked that a plan be put in place for staff to deal with future issues (do loops).

Dirk forewarned, you cannot ask prior developers for financial help on future infrastructure.

Dirk added, when you receive a set of plans, you need to have land use codes in place for the buildings being planned. He suggested the Board allow Rich Graeber to come back with detailed fire flow requirements for the Board to review. Dirk counseled, don't vote on this issue tonight.

Tom strongly urged the Town to get the length of (water) pipe out from under the bike path.

Ron re-affirmed, Homestead will be required to make the loop when they come in (are annexed). The new design and construction standards will prevent these oversights in the future.

Rick asked that the Town invite Chief Graeber to come back, perhaps in September, and have standards ready for review. Justin C. suggested he bring in some hypothetical situations for discussion. With this information Justin C. and Ron will have a better understanding before they can move on these issues as well.

Jeff Dyer, Board member of the Upper Pine River Fire Protection District, said he was impressed with the ideas and attitudes that were expressed tonight.

Debbi advised, looping needs to be required in all new developments. This fact should be included in the new design standards being formulated.

A short recess was called at 9 p.m.

The meeting reconvened at 9:05 p.m.

Item # 5: Covenant Check List:

Justin Talbot brought this issue to the forefront during the last Board meeting on August 3, 2009. The theory following the thought was to have a list of main points that are contained within the covenants for the HOA of new subdivisions. In the past, a developer usually has had control over the standards set forth in the covenants for a new subdivision until 51% of the lots are privately owned. Within this time frame, some developers have allegedly attempted to change the original covenants to fit their desired situation. Staff could easily make this a check list a requirement, pre-requisite to approval of the subdivision, which would be mailed to all adjacent landowners.

Local governments generally do not get involved in the drafting and enforcement of covenants for HOAs. These are a contract between the buyer and the seller. Joe Crain reviewed some of the options.

Joe asked the Board if it was their intent to have the builders come back to the Board with these issues.

Dirk strongly advised the Board, do not get involved with any aspect of the HOA covenants, or their enforcement. He said Option 2 or 3 might be acceptable. They would make it difficult for the developer to change plans way past the time when a person has purchased a lot. He is definitely against Option 1.

Justin C. commented, you could tweak the land use code to allow only certain types of homes, i. e., modulars that meet standards of stick built, which are allowed by the State.

Dirk counseled, you would be opening a can of worms. You would need additional staff to watch over this process.

Justin T. doesn't want a developer to be allowed to start with one kind of home, and then change to a different sort of development.

Dirk responded, you need to be concerned about recognizing the different set of phases.

Debbi commented that when the Glen started, it was going to have landscaping taken care of. The dues in the Glen were \$100 per month. The people who purchased the lots wanted to have no yard maintenance required of them. The development discovered they could not sell lots with the \$100 per month stipulation. She agreed that any kind of changes proposed by the developer should be noticed to surrounding owners.

Dirk re-enforced, 'the Town can't be involved in the HOA covenants, the enforcements, the changes. He added 'no one, or at least very few people, will read 70 pages of covenants.

We could require that the developer notify surrounding property owners.

We can't be involved in the approval of the covenants.

Dirk went on record 'I recommend that you stay out of this. You do not want to go there. A checklist required up front is ok, but beyond that, don't get involved'.

Option #3 does require a code change.

Dirk continued, 'if you are involved with how the houses look, what construction materials will be allowed, you will need a design review Board to do this. You are adding a level of bureaucracy here'.

Joe reminded the Board, the Glen could not contain apartment complexes. It was set aside as 'site specific' design.

Dirk advised, if you own next to the subdivision, you have no input. Only the people in the subdivision have a voice when there are covenants.

A covenant is a contract, when you buy the property, you are bound to abide with the stipulations in those covenants.

Justin T. is very concerned about the Artistic Homes being allowed to go up by them and build \$250,000 homes. He contends it destroys the value of the higher end lots and homes.

Dirk suggested, you may want to look at a percentage of surrounding homeowners to have a vote when changes are anticipated by the developers. The Town would not be involved, it would be the surrounding homeowners.

Rick asked that Justin C. comes back with some options on what the Town can and can't do.

Justin C. suggested the Town provide a level of protection from more egregious changes.

Dirk responded, your changes in covenants could require a certain percentage of agreement from surrounding property owners.

Justin C. is to come back with options for the Board.

Dan suggested that people with CO's should have more oomph than owners of vacant lots.

Item # 6: Souder Miller & Associates- Rates:

Souder Miller & Associates have asked for a rate increase. This is being requested at the same time the Town is looking at hiring an in-house engineer. Based on this, it would not be feasible to go out to bid. Brent Adams proposed that his rate be allowed to increase from \$90 to \$106 per hour.

Dan moved to allow \$95 per hour for services rendered by Brent Adams, Souder Miller and Associates for town engineer. Justin T. seconded. During discussion, it was made clear that this rate is for Brent Adams only. Rick espoused the fact that there are a lot of people who are looking for work right now.

The vote was one in favor, Dan Ford and four opposing votes were cast by Justin Talbot, Debbi Renfro, Mayor Rick Smith, and Tom Au. Motion failed. Staff was instructed to let Brent Adams know the Town can't afford the increase.

Item # 7: Executive Session: C. R. S. 24-6-402 (4) (e):

Dirk explained, this agenda item was set for the purpose of discussing the Sunrise situation. They have asked for a meeting. Dirk did not know if the Board would like to go into Executive Session to discuss the situation. The Town has not met with them yet. The Board decided not to call an Executive Session, but rather to have staff get more pertinent information before they entertain any formal action.

Item # 8: New and Unfinished Business:

Justin C. said he had no items at this time.

Dan asked about requirements for the 501 Café, and all the people who want to hook on to the sewer. They do not know what it will cost them to hook on. If Mr. Hardy was considering hooking up, with the costs to be paid by one person, it won't work. If there are four or five involved in the cost-sharing, it may be financially possible to make it work. He mentioned giving a credit for up front participants as opposed to charging those who get the benefits on down the line.

Tom revisited his earlier comment, 'you don't want a water line under the bike path!' Justin C. responded, there were some compelling reasons for placement of the water line under the path.

The request for the subdivision came in before the placement of the trail was proposed.

Justin T. asked when the ballfield work is going out to bid. Justin C. replied there is a Prebid meeting tomorrow.

Justin C. will give another update to the Board on the bid process. It closes around Aug 26.

Rick asked if the business at the pawn shop had two business licenses, one for the pawn shop and one for the counter top business. Justin C. said we can certainly look into it.

The Mayor has received complaints about the properties across from Brendas Cafe. He asked about the possibility of cutting weeds around the Chamber of Commerce building.

Justin C. commented, we do not have the manpower. They are very involved in the sewer treatment facility training.

Motion to adjourn 10 p.m.

Approved as corrected, September 1, 2009

