

**Town of Bayfield  
Planning Commission Minutes  
January 13, 2015  
1199 Bayfield Parkway, Bayfield, CO 81122**

**Planning Commissioners Present:** Joe Mozgai (Chairman), Troy McAllister (Vice Chairman), Dr. Rick Smith (Mayor), Isaac Fleener and Matt Nyberg (Trustee)

**Staff Present:** Chris La May (Town Manager), Amy Witte (Administrative Assistant)

**Media Present:** None

The meeting was called to order by Chairman Joe Mozgai at 7:03 p.m.

**Roll Call:** 5 present, 1 absent, 1 vacancy

**Pledge of Allegiance**

**Approval of Minutes:** Vice Chairman McAllister made a motion to approve the minutes of the November 11, 2014 meeting as presented. Commissioner Matt Nyberg seconded the motion. Motion passed unanimously.

**Public Input:** None

**Public Hearing – Ordinance 387- Detached Dwelling Units in the Town Center Zoning District**

Chairman Mozgai opened the public hearing.

Town Manager Chris La May presented the staff report regarding two different properties that have inquired about having a second unit on their lot. One of the properties is on North Street which is zoned Town Center (TC) and other is adjacent to Mill Street on South street and is zoned Single Family Residential (SFR) both properties are treated differently due to their zoning classifications. Different options were looked at, including changing the requirements for ADU's to allow that type of use in other zoning districts, as ADU's are only allowed in Single Family R10, R20 and R40 zones. Town Center (TC) zoning allows for duplex and multi-family but not a second detached single family home. An ordinance was prepared for allowance of two single family detached unit on one lot in Town Center zoning classification. The Town attorney was consulted and he suggested it was unorthodox being that it creates two separate units on one lot, which may create an issue for the owners when selling the property. It would need to be sold as one property not two. Town Manager Chris La May commented that there has only been two properties that have brought this to his attention and believes that the Planning Commission needs to support this globally or choose to handle each property on a case by case basis, and if that is the intention of the Commission, the properties could get their entitlements through variances. Town Center zoning could still be changed to allow for ADU's.

Chairman Mozgai asked for public comment, none was presented. Chairman Mozgai closed the public hearing.

**Action Agenda item #1:**

**Consideration of Ordinance 387, An Ordinance Amending Section of the Land Use Code of the Town of Bayfield to Allow for Detached Dwelling Units in the Town Center Zoning District**

Chairman Mozgai asked if there were two dwellings on one lot, could one unit be sold separately. Town Manager Chris La May stated that it would not be allowed unless under same ownership, similar to a duplex that includes two attached units with common ownership. La May shared with the Planning Commission that in his conversations with the Town Attorney, the attorney opined that the Town could make it possible through state enabling legislation, if we so choose. Mayor Smith wanted to clarify that the detached would be two separate dwellings not attached with two separate water and sewer taps, correct? Town Manager Chris La May stated that was correct. Mayor Smith continued to ask that with the ADU's did the board consider separate water and sewer taps. Town Manager Chris La May stated that no separate taps would be need with the ADU's. Mayor Smith stated that the intent was to have the property owner live in one of the units and that he can't support and administration of the units would cause too much headache.

Town Manager Chris La May stated that in his recommendation he would suggest forgoing the direction, but allow ADU's in Town Center (TC) zoning district. La May suggested that when the Town established the ADU requirements, no thought was given to mixed use zoning district, and the ADU's were applied only to residential, R10, R20, and R40. The Town Center zone may have some situations, with smaller lots, that have a garage to convert into living space. Allowing ADU's in Town Center may resolve one of the requests as the owner could occupy one unit. The South Street property has two separate units (with separate water & sewer taps) one that was formerly a commercial garage that they want to convert into living quarters. The size however is 1,000 sq. ft., but the limit on an ADU is 700 sq. ft. This could potentially be remedied through a variance process with the ADU regarding the ownership and square feet requirements. The owner also wanted the latitude to rent both units out in the future. Town Manager Chris La May stated that there would be two options, either a message back that the request is not desirable for the community or have them seek a variance from the ADU requirements. Both cases here are different and not easily resolved globally.

Commissioner Fleener questioned how the ownership would be enforced. Town Manager Chris La May stated that when the water and sewer accounts were changed the Town could inquire as to the ownership of the property. Commissioner Fleener then asked about the penalty if a violation were to occur. Town Manager Chris La May stated that they would lose the rights to have the ADU and could face penalty if not brought into compliance.

Chairman Mozgai asked which option the Town was looking at doing or questioned if it was a combination of options.

Mayor Smith stated that he agreed with staff recommendation and would not support option three a detached dwelling in Town Center (TC) zoning.

Mayor Smith motioned to approve Ordinance 387, an Ordinance amending Section of the Land Use Code to allow for Detached Dwelling Units in the Town Center Zoning District. Commissioner Nyberg seconded the motion.

All members present denied approval of Ordinance 387.

Town Manager Chris La May asked for direction from the Commission for the future. La May stated that he understood the position of the Planning Commission to allow ADU's in Town Center zoning classification, possibly Mill Street zoning classification as well, and that for these two properties they could seek a variance for their intended purpose.

### **Action Agenda Item #2:**

#### **Discussion - Quasi-Judicial Actions, Due Process in Land Use Hearings, Ex-Parte Communications, and Conflicts of Interest**

Town Manager La May stated that the discussion of the role of the planning commission is a continuation from last month and is based on information from the memo included in the packet labeled Due Process in Land use Hearings. Planning Commissioners are appointed, whereas Board members are elected and deal more with legislative acts in addition to quasi-judicial acts. Planning Commissioners see more quasi-judicial decisions as they pertain to property. The previous discussion would be considered more of a legislative or policy making process. Specific cases would be considered a quasi-judicial decision where you are acting as the "judge and jury". There is proper protocol for people when a judicial action is being made, such as due process.

Town Manager Chris La May stated that with a quasi-judicial decision (for instance) on a Land Use application, the decision needs to be treated on the facts that are presented before you, including the staff report, public comment and any discussion at the meeting. Based on the information presented you are asked to make a judicial decision. This doesn't include any "ex parte" contact with the applicant. The applicant can sit down with staff, but as a 'decision maker' you are not supposed to have any discussion with an applicant without the presence of rest of the planning commissioners. That way no one is coming into the hearing with extra knowledge of the situation. Once an application has been received a planning commissioner shouldn't have any further communication with the applicant as it pertains to the application.

Mayor Smith commented that it was a good rule of thumb to refer the applicant to staff, notify staff of the referral and then staff can guide you further. Chairman Mozgai asked what would happen if a neighbor meets me at the mailbox, knows my position on the planning commission and asks questions about building a garage, what do I do? Town Manager Chris La May said that ultimately if the decision will be related to a decision that you will have a part in, and if it's a building permit for a garage, that would be handled administratively and not through the planning commission.

Commissioner Fleener asked about his role as a broker selling a lot and he could potentially be asked if the lot could be subdivided, what would his role be? Town Manager Chris La May continued that in a case like that he would want to sit in on the conversation with staff and the potential buyer, which gets into an area of conflicts of interest. When the application comes before the planning commission, he would disclose that he being the broker in the sale has a financial interest and would need to recuse himself, at which point he would leave the room all together. If it came to the point of a court action, if he chose to sit in the audience instead of leaving the room completely, then he could have unduly influenced the decision by making simple gestures.

Town Manager Chris La May continued to explain the elements that are present in a hearing are to have fundamental fairness and is the reason for the procedures. For instance, with regard to public comment, limiting everyone to three minutes so that everyone is treated the same. Proper notification of the public hearing in the newspaper in advance of consideration. Establishing a level of formality by hearing the staff report, hearing from the applicant, questions from the board, and taking public comment. Once completed the Commission makes the decision on the due process requirements. Also advantages to have facts of findings for the decision based on the evidence presented, so that there is a clear record of what the final outcome was and that the decision was impartial.

The memo also talks about Ex Parte, which was discussed already but gives some guidance if you are contacted. As for conflicts of interest, if you believe there may be a conflict of interest or have questions regarding a conflict of interest you would reach out to staff for guidance and possibly consult with the Town Attorney. If gain financially from the outcome then it would be considered a conflict of interest. If there is no financial gain, as a planning commission member you can sit and listen and always recuse yourself from the decision. With a land use application for a major subdivision where the town may require road, water, water rights and sewer improvements that are entitled, you have more latitude to ask questions when the subdivision is in sketch plan stage verses the final plat stage.

### **New/Unfinished Business**

Chairman Mozgai asked if there was any new or unfinished business. Town Manager Chris La May stated there may be a major application coming in within the next two or three months and needs to know if anyone will be going out of town and not present so that the project isn't held up waiting for a decision in case a quorum couldn't be met.

Chairman Mozgai stated that there is still one spot to be filled on the Commission.

### **Adjournment**

Vice Chairman McAllister made a motion to adjourn the meeting. The motion passed unanimously. Meeting was adjourned at 7:50 p.m.

**Approved:**

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Joe Mozgai, Chairman

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Amy Witte, Administrative Assistant