

**Town of Bayfield
Planning Commission Meeting
March 10th, 2009
1199 US Highway 160B Bayfield, CO 81122**

Planning Commissioners Present: Bob McGraw (Chairman), Ed Morlan (Vice-Chair), Rick Smith (Mayor), Brett Clough (Town Board Member), Joan Hanna, Michelle Nelson, Pat Heyman

Staff Present: Justin Clifton (Town Manager), Joe Crain (Town Planner), Marianne Jones (Deputy Town Clerk)

Media Present: Carole McWilliams – Pine River Times

The meeting was called to order @ 7:02 p.m.

Minutes: Joan made a motion to approve the minutes from the February 10th, 2009 Planning Commission Meeting as submitted. Rick seconded the motion. All were in favor except Brett, who abstained from the voting.

Public Comment: None was offered so it was immediately closed.

Action Agenda Item #1: Discussion Regarding Access To Land Locked Parcels

Joe gave his staff report. He explained that Commissioner Morlan requested that staff prepare information on “access to land locked parcels”. A parcel that is landlocked can enter the judicial process to gain access to a public road way. When this occurs the person whose land is landlocked would have to pay the property owner where access is ordered by the court. As a matter of practice, if a situation occurs where a proposed development comes to a local government for a greater use of the property and it is learned that there is an adjacent parcel that is currently landlocked, it is common for the governing jurisdiction to request an access easement through the property being considered for development.

Joe explained that some would call this practice a “taking”, but it is a common land use planning practice to require the access/utility easement if a subdivision is proposed and the property that is adjacent to the development is landlocked.

Ed asked if this practice is required by law.

Joe answered that it is not required by law but it is common practice.

Ed asked what the homeowner’s responsibility is for finding an access. He wanted to know if the homeowner’s are responsible for pursuing other access avenues that do not require “taking” of property.

Joe answered that the precedent has always been that the responsibility ultimately falls to whoever decides to develop first. There can be a lot of burdens associated with the benefit of developing and when an adjacent property decides to develop around a landlocked piece of property it is the governing bodies responsibility to address the issue and resolve the problem.

Rick stated that he feels that it’s the Town’s responsibility to make sure that landlocked parcels have the possibility to develop. He feels that it’s the most logical thing for the Town to do from a planning stand point. He said that it’s unfortunate that there are pockets in Bayfield that development has happened all the way around causing the last parcel to develop to have the biggest problem gaining access.

Justin explained that it’s difficult to make assumptions about a development that hasn’t occurred. The Town can only review what has been presented and attempt to make the best decision on the project without hindering any future developments that might occur.

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**Action Agenda Item #2: Public Hearing: Bay Heights Re-Subdivision Lot 119
Applicant: Eli Max, Inc (David Black – Principal)
606 Buck Highway
Sec 11, T 34 N, R 7 W, NMPM Parcel # 5677-123-08-019**

Ed stated that his wife is the chairman of the Bayfield Early Education Program (BEEP) Board. He asked the Planning Commission & the staff if they felt he should recuse himself from the voting on this item.

Michelle also disclosed that she is the parent of a preschooler who attends BEEP.

The Planning Commission decided that neither Ed nor Michelle needed to recuse themselves from the voting on this item.

Joe gave his staff report. He explained that the previous approval for this 2.02 acre property consisted of six lots. Since that time the approval of the Final Plat has been continued by the Town Board. Owners of the property, Eli-Max Inc., represented by partner David Black have been approached by the non-profit education group BEEP to purchase a portion of the property to build a preschool on the site. The owner of the property tentatively agreed to a sale given the two lot proposed subdivision is approved.

The new subdivision proposal would create two lots, Lot 119A which will be .916 acres and Lot 119B which will be 1.142 acres. Lot 119B is the proposed location for the preschool. Both lots have access to all utilities. Access to Lot 119A is from the Buck Highway while access to lot 119B will be from Fox Farm Circle.

Joe explained that this is a simple minor subdivision creating two lots from one. The only outstanding issue for the Planning Commission and Town Board to consider is the requirement to place a 60 foot easement on the east side of Lot 119B. The previously approved final plat for this property carried a requirement for this easement. The easement would allow access to the land-locked parcel to the north since it currently does not have an access. It is normal planning practice to require these types of easements when subdividing occurs. In this case both the Planning Commission & Town Board required that the easement be created as a condition of approval of the final plat. Staff continues to recommend that this condition be required on this plat.

Joe went through all of the referral comments that were received for the project. (Full detail on this information is documented in the staff report from Joe Crain dated March 6th, 2009)

Staff Recommendations:

Staff would recommend that the Planning Commission recommend approval of the re-subdivision of Lot 119 of the Bay Heights Subdivision with the following conditions.

1. That all concerns of the Town Engineer be addressed prior to final plat recording.
2. That all easements be shown on the final plat prior to recordation, including the Town's new water line easement on the most southerly side of proposed Lot 119B.
3. That all easement dedication language be placed on the final plat prior to final plat recordation.
4. That appropriate water rights dedications be made as determined by the Town's water engineer.
5. That a \$ 779.00 park impact fee be paid prior to final plat recordation.
6. That a \$ 755.00 Mars/Buck Highway fee be paid prior to recordation.
7. That a 60 foot access easement be placed on the east side of Lot 119B in order to serve a land-locked property to the north
8. That the ditches on the property be piped.
9. That an SIA be developed for piping of the ditches and proper surety posted to guarantee completion. (This is the only public improvement necessary).

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Ed asked if the 60' easement to the land-locked parcel is shown on the plat that was presented to the Planning Commission.

Joe answered that there are several easements that are not shown on the plat.

Brett asked why the property would be charged a park impact fee if it is going to be zoned community service.

Joe responded that it actually would not apply so it could be taken off the staff recommendation.

Rick asked if it would be appropriate to leave the recommendation until the rezoning occurs (since the property will remain residential until the rezoning is approved) and then waive the fee at that time.

Joe answered that would be the most appropriate step to take.

Pat asked who would be responsible for the Mars/Buck Highway fee and paying for the ditch piping.

Joe answered that these items would be paid by the developer.

It was asked what the Mars/Buck Highway fee is & why it is being assessed on this property.

Joe answered that there needs to be improvements made to the Mars/Buck Highway intersection. The Town Board implemented this fee to help offset some of the improvement costs. Mesa Meadows & Fox Farm have already contributed funds to this effort.

The floor was given to the applicant, David Black.

David stated he was going through the staff recommendations to address the comments.

#1, #2, & #3: David said that he has brought a new map that shows the requested easements (excluding the 60' easement to the land-locked property). He did not put an easement on the side in between his property and the property owned by Ron Broadhead. The easement has been added through Lot 119A & B for the Town waterline but there is some verbiage that still needs to be added to meet the recommendations made by staff.

#4: David said that he doesn't know how many water rights are available but he is willing to split it up accordingly between the two lots & dedicate the necessary amount for the Town to turn into municipal water.

#5: David stated that he feels the same way as Brett. This fee shouldn't apply once the property is rezoned as community service.

#6: David asked that the \$755.00 Mars/Buck Highway fee be waived as a sign of support for the preschool.

#7: David said that he will address this item in further detail later in the presentation.

#8: David explained that he intends to pipe the ditch along the property line so that it will connect with the pipe at Fox Farm Circle.

#9: David said that he is agreeable to an SIA but it hasn't been formally drafted or approved yet.

Ed asked about the previous subdivision that has not been recorded.

Joe explained that David brought in a 6 lot subdivision of this parcel of land. It was given final plat approval but has not been recorded due to the economic state. The Town Board has been giving final plat extensions on this project.

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To address the issue of the 60' easement David stated that there is another access to the landlocked McCoy property that could be used as access. In 1978 the Bay Heights Subdivision went through the Town Board process & access to the McCoy property was discussed at that time. It was decided that the property would be accessed off of Mesa Avenue. David showed two Mesa Subdivision plat maps that were recorded to address access to the McCoy property.

Ed disclosed that he was on the Planning Commission at the time the Mesa plats were discussed. He explained that the property was discussed and it was decided that it was an issue that needed to be resolved.

David stated that he doesn't feel that it is his responsibility to add additional access to this land-locked parcel when the property already has access via Mesa Avenue. He feels that the Town is overstepping their bounds by requesting the 60' easement and he does not think that he would be willing to sign the plat if he is required to put in this easement.

The item was then opened for public comment.

Harry Baxstrom (634 County Road 501) stated that he is Ms. Lavenia McCoy's son-in law and is representing her interests. He explained that Mrs. McCoy is not asking for an easement through David Black's property. He also expressed that the owners of this property (Mrs. McCoy's grandchildren) have not requested an easement through the Black property.

Harry also stated that the Lateral B & Schroeder Ditch is having a lot of problems. The pipe has caved in along a portion of the ditch. Harry said that they are looking for some kind of an agreement stating that the developer accepts some responsibility for the newly piped portion of the ditch for a certain amount of time on behalf of the Lateral B/Schroeder Ditch.

Harry also commented that he would like assurance from whoever takes over ownership of the property that they will replace or repair any damage that occurs to the fence on the property line. The owners run cows on this property and it is crucial that the fences are not damaged or torn down.

It was explained that state school licensing requirements would require fencing of the entire school property.

Justin explained that the Town is just trying to be cognizant of possible changes or ownership on this land-locked property. He realizes that this is a family matter right now but that parcel needs an access. For the Town to allow this adjacent property to develop without requiring the needed access leaves vulnerability for the property owners, whoever that may be; either now or in the future.

Harry said that he doesn't think that Mrs. McCoy would have a problem granting a family easement through her larger parcel to the second lot so that the parcel will have the needed access.

Justin responded that this would be a good solution but the Town needs to make sure that easement is in place before allowing this plat to be finalized.

Carol Blatnick (323 Pearl Street) stated that she is the Director of the Pre-School. She explained that this is a small parcel for a school & putting a 60' easement on the property takes up nearly ¼ of the property. The pre-school needs a minimum of half an acre in order to have the size of playground that they need. Also the 60' easement is a big financial loss. The easement would devalue the property by approximately \$50,000.00. She said that the pre-school has been searching for a location for their property for three years and requested that the easement not be required.

David Black commented that he appreciates what Harry said regarding the access through the larger parcel. However; he expressed frustration that Harry didn't come forward sooner with this offer.

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Chris Oshea-Heydinger (807 Saguaro) stated that she is a BEEP Board Member and feels that requiring that the McCoy easement be in place before allowing finalization of the plat could really hold up the entire process.

No more public input was offered so it was closed.

Joan commented that it really isn't the Planning Commission's prerogative to waive the Mars/Buck Highway fee. She thinks that the Planning Commission should just make their recommendation to the Board including the fee and let them decide if they want to waive it or not.

Ed made a motion to remove recommendation #7 regarding the 60' easement.

Joan seconded the motion.

Ed commented that he feels that the easement issue has been resolved. He thinks that the staff has done their due diligence to provide access to this parcel but doesn't think that this development should be contingent upon solidifying this easement. He thinks that the requirement should be removed since an agreement has been reached and the property now has access from the other McCoy property.

Rick asked what will happen if the grandchildren decide to sell that lot in the future. Harry commented that the access grant would apply only to the McCoy children. The Town has to be prudent not to cause a potential future issue by not requiring the necessary access & following through that it has been completed.

Ed responded that he feels that the family has some responsibility. The family knows that the problem exists and he doesn't think that the Town should baby sit the property.

Joan expressed that she wants to see a remedy to the problem. An easement document is pretty easy and she thinks that it would be a quick thing to get the easement done.

Ed stated that he still doesn't think it's fair that this project be held up for the processing of the easement paperwork.

Brett commented that there have been a lot of these little things that weren't addressed in the past and they have come back to cause problems. He thinks the time for verbal agreements is past and that the Town needs to follow-through on items so that they get done properly. He feels that it's the Town duty to require that the easement be completed before finalizing the plat.

Ed withdrew his motion. Joan seconded the withdrawal.

Ed made a motion to recommend approval of the re-subdivision of Lot 119 in the Bay Heights Subdivision into two lots subject to staff recommendations 1 – 9 with an alteration to recommendation #7 stating that documentation must be received showing adequate access to the property on the north side of Lot 119B before plat recordation. Rick seconded the motion.

Rick commented that the piping of the ditch will be covered under warranty for a certain period of time. The fence issue will need to be managed property owner to property owner because the Town does not get involved in fence disputes.

Michelle asked if the ditch would be piped on both Lot A & B.

It was determined that the pipe will only be piped on Lot B.

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Ed made an amendment to the motion requesting that recommendation #8 be modified to state that the ditch will be piped on Lot 119B only instead of on both lots. Rick seconded the amendment.

All were in favor, motion passed unanimously.

**Action Agenda Item #3: Public Hearing: Request For Rezoning of Lot 119
Rezoning From Multi-Family to Community Service
Applicant: Eli Max, Inc (David Black – Principal)
606 Buck Highway
Sec 11, T 34 N, R 7 W, NMPM Parcel # 5677-123-08-019**

Joe gave his staff report. He said that there is a tremendous need for a pre-school in the Bayfield area. The school currently serves 96 students and has 6 full time staff and 7 part time staff. The proposed location of the pre-school is located next to Fox Farm Planned Unit Development which will have younger families with children. That part of Fox Farm Circle that will provide access to the lot is a 36 foot wide roadway. The design of the access is to enter and leave in a one-way pattern. This makes for a more efficient pattern of dropping off children. There are 36 parking spaces in the parking lot (The Town code only requires one for every teacher). There is a 20 foot utility easement on the south side of the property that carries a new water line to Mill Street as well as a Pressure Reducing Valve (PRV). Some of the parking area overlaps into this easement. The owners of the property should be aware that if the Town must dig to the line for repair and rip out part of the asphalt, the owner of the property is responsible for the replacement of the asphalt.

Traffic circulation to access this site passes through the congested intersection where Mars, Mustang, Mesa, and Fox Farm Circle meet. However; with the circulation path accessing Fox Farm Circle then into a 36 space parking lot with one way traffic, ingress and egress will flow more easily. It would appear that with the ½ day students the peak traffic period will be at noon since the morning class is leaving and the afternoon class is arriving. At this hour of the day these intersections are relatively unused.

Staff Recommendations:

The Staff recommends that the Town Board approve the rezoning request from Multi-Family (MF) to Community Service (CS) land use classification for Lot 119B, Bay Heights Subdivision & forward that recommendation to the Town Board.

Joe also recommended that the park impact fee be deleted from the conditions on the plat for the re-subdivision of Lot 119, Bay Heights Subdivision.

The floor was given to the applicant, David Black.

David stated that he feels that this property meets the land use zoning requirements outlined in the Bayfield Land Use Code for change of use and asked for approval of the rezoning.

The item was opened for public comment. None was offered; it was immediately closed.

Rick made a motion to recommend approval of the rezoning request for Lot 119B in the Bay View Heights Subdivision from Multi-Family to Community Service with a stipulation that the park fee required in the original approval be waived since that fee does not apply to this type of zoning classification. Brett seconded the motion. All were in favor, motion passed unanimously.

Acton Agenda Item #4: New/Unfinished Business

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Joan stated that this will be her last meeting as a Planning Commissioner. She is resigning her position on the Board.

Rick commended Joan for her years of service on the Planning Commission Board.

David Black also commended & thanked Joan for serving in this position and encouraged civic minded people in the audience to apply for the position.

The meeting was adjourned at 8:23 p.m.

Approved:

Bob McGraw
Chairman

Marianne Jones
Deputy Town Clerk