

Town of Bayfield
Regular Town Board Meeting
September 21, 2010
1199 US Highway 160B Bayfield, CO 81122

Town Board Members Present: Rick Smith (Mayor), Tom Au (Mayor Pro-Tem), Dan Ford, Gabe Candelaria, Debbi Renfro, Justin Talbot, Ed Morlan

Staff Present: Justin Clifton (Town Manager), Dirk Nelson (Town Attorney), Marianne Jones (Town Clerk), Chris Choate (Marshal)

Media Present: Carole McWilliams (Pine River Times), Patrick Young (Durango Herald)

The meeting was called to order at 7:04 p.m.

Minutes: Gabe made a motion to approve the minutes from the August 17th, 2010 Regular Town Board Meeting as submitted. Dan seconded the motion. All were in favor except Tom, who abstained from the vote.

Public Input: Gerald Ludwig (9205 County Road 521) stated that drainage from the sewer plant is still surfacing in the Ludwig field. He asked what the Town's plan is to handle the drainage issue.

Justin Clifton answered that it's spring water that is surfacing. He explained that it's possible that the new basins that were put in near the Ludwig property are forcing the water to surface in different locations. The Town has consulted with the engineers and has determined that it's a difficult problem to resolve because the water is underground. There is no known way to stop, divert or channel the water as it is moving around underground. Therefore, the only option is to try to do something on the surface to get the water to flow back to the ditch or creating some sort of French drain system that would divert the water. Either of these solutions is going to involve a very substantial process. Town staff is unsure if they are going to be able to come up with a solution by the end of this year because it is such an involved issue. The Town will continue to work on it and hopes to have a solution as soon as possible.

Gerald stated that the groundwater wasn't flooding his fields before the sewer plant was built. He stated that the changes to the sewer plant caused this new problem on his property and he doesn't feel that he should have to fix it.

Rick stated that the Town will continue to try and come up with a resolution.

Action Agenda Item #1: Approval of the Bills

Tom made a motion to approve the bills dated 9/7/2010 as presented. Justin Talbot seconded the motion. All were in favor, motion passed unanimously.

Tom made a motion to approve the bills dated 9/17/2010. Gabe seconded the motion. All were in favor, motion passed unanimously.

Action Agenda Item #2: Town Updates

Gabe asked for an update on the Gem Village Lift Station.

Justin answered that the engineer went out on Friday. Public Works had already taken some measurements to determine pressure. They were trying to recreate the same results that Smith & Loveless claims to have observed. Smith & Loveless claims that there is a reduction in static pressure when the pumps are engaged. The Town staff has not been able to make that happen. Public Works & the engineers are scrutinizing how

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things were set up and took some more data. They plan to do another round of observation tomorrow. Staff has a draft letter from the engineer documenting their findings so far. All of the findings are within the parameters outlined by Smith & Loveless despite their claim that they aren't. The final test will be to test the amperage of the primary motors (the motors that are not on the VFD drive that are overamping). If the tests show they are working within normal operating conditions as outlined but the motor is still overamping then the Town will be able to prove that there is some other issue going on with the Lift Station. Justin explained that the staff is one day away from collecting all of the needed information and will then send a letter to Smith & Loveless. Things are more complicated because a definitive answer hasn't been reached yet but Justin feels that the staff is peeling away all of the random possibilities. The biggest discussion right now is concerning liability and the Town still needs to find out what commitment Smith & Loveless is going to make financially. However, that can't be determined until it is known who is liable for the current situation.

Gabe clarified that the Town will know more in a couple days what needs to be done and if any of the recommendations outlined in the letter from Smith & Loveless need to be addressed.

Justin Clifton answered that the staff is not seeing the data that would substantiate doing any of the recommendations in the letter. He expressed that the Town doesn't want to do anything that isn't going to make a difference. The staff is trying to get all of the information needed to come up with a good solution but the Town is reluctant to spend money on any of these additional improvements until Smith & Loveless says that the Town has to or until they say that they will pay for the improvements. Currently, the Town hasn't been reimbursed yet for the costs that have been incurred due to these failures in the Lift Station.

Action Agenda Item #3: Bean Ditch

Justin gave his staff report. He stated that Gerald Ludwig, representing a major rights water holder on the Bean Ditch, is again attempting to pipe the ditch through Joe Stephenson Park. This issue has come up a few times over the past 5+ years. Justin stated that the controversy started when the Town acquired the land for Joe Stephenson Park from the School District. As the land was developed into a park, Gerald Ludwig became increasingly concerned with water quality and potential liability by building a community amenity around the ditch. Building a bridge over the ditch was the exclamation point on the controversy and epitomizes the conflict between the ditch as an irrigation tool verses the ditch as a water feature for the community. He claims to have come to the Town prior to 2006 to ask the Town to either pipe the ditch or accept full liability if a child were to get hurt or drown in the ditch. The Town at that point refused to accept full liability; although the Town clearly shares liability by being a rights holder.

A few years ago Gerald returned to the Board because he thought he was able to secure the pipe materials for the ditch from the Tribe. At that time the Board was interested to revisit a compromise whereby the community could still enjoy the ditch but Gerald could protect his interest as a rights holder. Gerald refused and claimed that the time to negotiate those things had come and gone and he was going to pipe the ditch with or without the consent of the Town. He also said that if the Town wasn't going to help that he was going to bury the pipe without any grading or reseeding and leave the Town with an ugly mess. The Town's response was to refuse to help pipe the ditch.

Nothing happened with this project until recently. Gerald contacted Justin again to investigate the possibility of the Town participating in piping the ditch. Justin met with a representative from Nature Resources Conservation Service (NRCS) and a representative from the Southern Ute Indian Tribe. Gerald is attempting to again secure pipe from the Tribe and is pursuing the NRCS for grant funding.

Justin explained that the previous position from the Board was not to support piping the ditch but not to strongly object. Justin thinks this was at least in part because of the way the conversation had progressed and the threatening tone.

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Justin stated that he is returning to the Board to inquire about whether or not the Town should support, oppose or remain neutral on this issue. It had been suggested in the past that Gerald "has the right" to pipe the ditch if he chooses. However, the Town holds significant water rights on the Bean Ditch. The ditch is unincorporated and there is no governing structure in place. Nevertheless, the Town has rights as a stakeholder and Justin doesn't feel that the Board should consider the Town's position subservient.

The Tribe is willing to participate because they would like to file for a diversion and bring Pine River water to a property south of the Ludwig's through the Bean.

The primary issues involved are:

- The ditch as a community amenity
- The investment made by the community in the bridge
- The rights of the stake holders including the Ludwig's, the Town and other land owners
- Water quality
- Liability
- Impact to the Park

The Town would actually benefit from piping the ditch to some extent. The Town pumps from the Bean to support the irrigation system in the Park. The Town often experiences problems with debris and silt that would be eliminated if the ditch were piped. However, Justin also has concerns about the political backlash from the community if the ditch were piped. A great number of people enjoy the surrounding of the ditch. Some people definitely take liberties that perhaps they shouldn't, but there is no doubt it is a highly valued amenity. Justin stated that he is also concerned about appropriate restoration of the park area around the ditch. He is not convinced that there isn't a way to address Gerald's concerns AND preserve the ditch as an amenity in the park.

Justin asked the Board for direction on the matter. He stated that if the Board is inclined to work cooperatively with the Ludwig's he will support their grant request and offer assistance. If the Board is inclined to object the Town can oppose the grant, which would certainly kill that opportunity.

Gabe asked if proper easements exist to pipe the ditch or if easement would have to be granted.

Justin Clifton answered that the previous discussions included a request to change the alignment of the ditch to make it straighter. Justin stated that he doesn't know if the Ludwig's still plan to do that or not. The easements are not documented currently but there are prescriptive easements in place so that maintenance of the ditch can take place.

Dirk clarified that there aren't any recorded easements; which is common for ditches. Historically, prescriptive easements exist for ditch maintenance. He explained that the burden to the Town could be decreased if it's piped but it's all based on perception and how the Board feels about losing the amenity of the ditch.

The floor was given to applicant.

Sterling Moss stated that he is District Conservationist with NRCS (National Resource Conservation Services) and the Ludwigs approached them several years ago about piping the Bean ditch. Southern Ute Tribe has tentatively agreed to provide the pipe for this project. He explained that NRCS could provide some cost sharing assistance and engineering assistance for this project if it is approved. It is in very preliminary stages right now because NRCS needs some assurance that the Town is not going to have any issues with the ditch company piping through a Town park. NRCS doesn't generally work on these types of projects but decided to take some initial steps to see if it is something that they are willing to pursue. If the Town is amenable they will come up with a plan, outline what is going to be done, document which party is going to be responsible for each part of the project, and show what the final product will look like.

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Ed commented that this has been going on for a long time. He expressed that it is an irrigation ditch and he does feel that it's the ditch companies right to pipe the ditch if needed. However, he does like the community amenity that the ditch offers. He asked if it would be possible to ditch the majority of the ditch but keep some open as a water feature through the park.

Sterling answered that anything is possible but NRCS doesn't generally do that type of work.

Phyllis Ludwig stated that when there are a lot of children playing in the ditch a lot of mud accumulates and water doesn't flow through properly. It ends up getting plugged and the ditch holders at the end of the line don't get the water they need for irrigating. She stated that is the reason the ditch company is instigating this request.

Debbi expressed that she thinks it would be extremely helpful to get information out to the residents so that they understand why it's being piped and why it's beneficial to do so.

Ed asked if it would possible to design a system that keeps part of the ditch open and pipes the remainder.

Sterling answered that it is possible to come up with some options.

Gabe asked what liability the Town takes on for the river amenity in Eagle Park.

Dirk answered that liability is based on doing something that shouldn't be done or not doing something that should be done. If there was a hazard and the Town didn't resolve it, there would be a liability issue. The Town currently has several water amenities such as the fishing area in Eagle, Roadside Park or the river front at the Senior Center. There are a lot of water areas in the Town for kids or residents to enjoy. The question about whether or not the Town has liability is if they didn't do something to prevent a possible hazard or if they did something that caused one.

Gabe clarified that based on that information the Town already has the potential for fairly large liability claims with the other water features.

Dirk responded that the liability of the ditch is probably less than some of the other features in Town.

Justin Clifton mentioned that the Town processed an insurance claim for a resident that fell off a broken piece of curb and twisted his ankle. The Town can't make sure that every curb or sidewalk is perfect throughout Town. It's just based on a person's personal sense of responsibility.

Gabe commented that the other area of concern is mud in the ditch. He thinks that there are other ways of eliminating the mud issue without piping the ditch. He asked if it would be possible to deal with it in another way rather than piping it. If this is possible, this would eliminate the problem but still leave the water feature in the park.

Justin Talbot stated that the Town is a large stakeholder in the Bean but the fact of the matter is that the ditch company wants to pipe the ditch.

Justin Clifton responded that the ditch is unincorporated. Formal organization of the water rights holder hasn't been done to incorporate it. Currently the right frame work of the ditch is that the water right holders are the owners and have the right to make the decision regarding what happens with the ditch.

Phyllis commented that shareholders have signed a petition for piping the ditch.

Justin Talbot asked how much water the Town has in the ditch.

Gerald answered that the Town has ½ a foot of 4 feet.

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Tom asked how much water the Tribe is trying to get.

Gerald answered that they are trying to get between ½ a foot and a foot.

Justin Talbot stated that he would like to see a visual of what the finished product would look like.

Justin Clifton responded that the grant will be one large project so the staff needs some direction from the Board about whether or not they like the idea of moving forward with piping. He thinks that he might be able to get some real conceptual drawings of what it would look like but most of the project would be determined by the engineering. If it gets to that point, that would mean that the grant has already been processed and they have already moved forward.

Justin Talbot stated that he would still like to see some examples that the Board could look at and make a decision.

Tom stated that he thinks it's a good idea to work with the Ludwig's and get this issue taken care of as easily as possible. He said that he is okay with trying to incorporate a water feature but he wanted it reiterated that the Town's number one priority needs to be to make sure that there is enough water to water the balls fields.

Ed agreed that watering done has to be a priority but he would still like to work towards keeping some sort of water feature in the park if possible.

Dan commented that the ditch was here first and that they have the right to pipe the ditch because the water is needed for commercial & agricultural use. He thinks that need preempts the need for a water feature in the park. His feeling is if it doesn't cost the Town anything, then the Board should allow them to pipe it.

Gabe agreed.

Rick summarized that he thinks the staff should work with the Ludwig's and NRCS to come up with some details on the project. He said that if it's possible to do something to keep a water feature in the plan that would be great but he thinks the project needs to be completed regardless of whether or not a water feature can be salvaged.

Justin Clifton said that he will look and see if there is something that the Town can do by changing the diversion point to create some sort of channel. He explained that he would focus on creating some sort of amenity with the water using the Town's water rights. He explained that the water would flow through some sort of swale feature to get the water to the ball fields to water them. It wouldn't ever have to be shut off because that's the way it would get to the fields. He thinks it's definitely possible to do this and he will work with the engineers to bring back some sort of picture.

The Board agreed.

Action Agenda Item #4: Discussion of Sewer Bill Freeze Idea

Justin gave his staff report. He stated that Bob Wennerstron, owner of Bayfield Laundry recently approached him to see if there was any possible relief from his sewer bill. When he took over as owner of the Laundromat he made operational changes and appliance upgrades that reduced his water consumption. Based on his average water consumption he is only using 3 or 4 of the 7 ERT's (Equivalent Resident Tap) that were purchased for the business. Town policies allow a customer to relinquish ERT's but there is no way to "freeze" them when they are not used. Water accounts can be frozen and billed at ½ the rate. However, when this

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happens the water meter is shut off so no water can be used. Bob does not want to relinquish the ERT's because he is unsure if he will need them in the future.

Justin asked for some direction from the Board on this item. He explained that he understands why someone would want to pursue this idea. Spending money on "unused" ERTs appears to be a waste. However, there are many reasons why things are set up this way including:

- Speculation: The Town doesn't want to incentivize people buying ERTs before they need to use them. People would do this to avoid paying higher costs in the future.
- Administrative burden: Because the Town can't "turn the sewer off" staff would need to continuously monitor business that "froze" ERTs for their water use. In addition, staff would need to make lots of decision on how, when, and why to offer the reduced rates.
- Rates: Right now Town rates are set based on the assumption that each ERT has a monthly bill associated with it. If multiple ERTs were able to be "frozen" it might change the revenue picture enough that the Town would have to reevaluate the rates.
- Cost: At this point the costs to maintain the system do not really change as flows adjust. Every line still needs to be cleaned and the sewer plant still needs to run. Reducing revenues would not correlate to an equal reduction in cost.
- Capacity: An ERT is really a capacity item. Residents buy the number of ERTs needed as an "up to" amount.
- Relinquishment: The reason relinquishing ERTs works is because that ERT is taken off the books and does not come back until someone buys it. Once it's paid for, the Town commits to provide the service and that capacity is spoken for. The freezing and unfreezing of ERTs would make things more confusing.
- Volatility: The adjustment of the ERT monthly bill would create an additional unknown that would make it slightly harder to project revenues and plan expenses.

Justin explained that he did tell Bob all of these things. However, Bob mentioned that there are other places that do offer a discount for ERTs "not in use." He also mentioned there is probably a compromise whereby some administrative fee on each ERT is still paid. Although this would address some concerns, overall such a policy is worth maybe \$20-\$30 per ERT per month (\$240 or \$360 per year). Justin stated that he is not sure the benefit to the customer outweighs the burden to the Town. However, Justin said that he does feel there is a way to do this if the Board decides to pursue it.

The floor was given to the applicant.

Bob Wennerstrom stated that when the laundry mat was built and the ERT's were determined it was based on the number of washers in the building. He doesn't feel this was an accurate way to make that determination. 50% of the washers have been replaced so that they are much more efficient and they use 1/3 of the water as the previous washers. He has also reset all of the washers so that they only rinse once instead of twice. He feels that his impact to the system is considerably less than when it was built. Based on water usage he is only using approximately 3-4 of his purchased ERT's. However, he feels that it possible to do additional improvements on that piece of property so he doesn't want to relinquish the excess taps because if he did and then developed in the future he would have to re-purchase the taps at a higher tap fee rate. Therefore, he would like to request that the Board grant a "reserve fee" for unused taps. This means paying a lower amount with the understanding that the sewer isn't being used but it's still available for future growth or use. He explained that when he was on the Ignacio Sanitation Board they had a "ready to serve" fee for unused taps. He explained that this would significantly reduce his sewer fees and could help the business keeps its doors open. He also thinks it would be more fair since the business isn't actually using the full 7 ERT's.

Gabe asked if Ignacio still has the ready reserve fee.

Dirk answered that Ignacio no longer has a ready reserve fee.

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Bob stated that he checked Durango and they base their sewer bill on the amount of water used.

Gabe asked if the Town still bills sewer if the water is shut off.

Justin Clifton answered that the Town does still charge even if water is shut off.

Gabe asked what the Town Code states regarding sewer.

Justin answered that the policies states that a monthly fee will be charged on each tap regardless of whether or not it's used.

Gabe stated that the policy is in place for a reason.

Ed asked if the Town refunds money if someone relinquishes their taps.

Justin answered that no refunds are given in the event of a relinquishment.

Rick clarified that Bob is requesting a waiver from an existing policy.

Tom stated that he likes the idea because it would allow a business to continue during tough economic times.

Justin Clifton explained that he was actually bringing it in front of the Board to see if they would like to reconsider the Town policy. It wouldn't be just a waiver for this particular resident; it would be to change the policy for any sewer customer.

Gabe mentioned that if the Town decides to change this policy it will apply to a lot of big users such as the School District that closes down in the summertime or the RV Park when it isn't in peak season. He stated that there's a policy in place for a reason and if it changes to accommodate these types of situations it could cause major problems in the future.

Bob mentioned that if he relinquishes some of the taps the Town won't receive any of the monthly funds. He also stated that he won't do any new additional development on the property.

Rick stated that he thinks it would be best if a motion was made on this matter.

Gabe made a motion to leave the existing policy in place because it's in the best interest of the Town and its residents and allow the applicant the ability to make the decision to either relinquish or keep his ERT's based on the current policy to the best interest of his business. Ed seconded the motion. All were in favor except Tom, who was opposed.

Action Agenda Item #5: Airport Commission Presentation

Justin stated that Marcel Theberge, Chair of the Airport Commission & Ron Dent, the Director of Aviation would like to give a short presentation regarding the improvements to the La Plata County Airport.

Marcel Theberge (Chairman of the Airport Commission) stated that they are taking the airport show on the road because there have been so many improvements recently. Marcel also recognized Dirk Nelson as another airport commissioner.

The floor was given to Ron Dent.

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Ron Dent (Director of Aviation) gave a power point presentation regarding improvements to the airport. *(A copy of this presentation is included in the official Town Board Minute Book & Packet Book).*

Dan stated that he feels a great source of pride to have a first class airport in the in the area. He asked who all the people are parking in the parking lot. He asked if people are using it for long term parking.

Ron answered that there are some long-term parkers in the lot and the airport is trying to discourage that. However, 47% of the people who fly begin their trip from Durango so it's not really visitors that are using the facility; it's local people. They have had to add overflow parking lots to accommodate the parking needs. Ron explained that an inventory is done everyday of the lot and they keep track of the vehicles in the parking lot at all times. They also track how many people are from out of state. They have also purchased a golf cart to shuttle people from the over-flow parking to the terminal.

Action Agenda Item #6: Whitewater Park Proposal

Justin gave his staff report. He stated that he & Scott Key were approached by a man named Jim Hughes about possibly building a white water park in the Pine River near Eagle Park and Joe Stephenson Park. The park would primarily be used by kayakers. Because the Pine River has controlled release, it would be a viable place to build a park and would offer more consistent recreational opportunities for longer than the park near Santa Rita Park in Durango.

The Park could consist of carefully placed rocks that would create "waves" for kayakers and other boaters to practice. There are very few public properties along the Pine so the "put in" and "take out" would likely have to be Eagle Park and Joe Stephenson Park.

There are many questions about doing something like this including:

- How would it be paid for?
- How would it be maintained?
- Is it compatible with other uses?
- What about parking?

There are also a host of potential benefits including:

- New recreational opportunities for area residents
- Continuing to make the Pine River more of a commodity
- Attracting recreationalists from other communities
- Economic development
- Creating a potential "anchor" for connecting Joe Stephenson and Eagle Parks with an underpass

Justin explained that there are too many "what ifs" to make a recommendation on pursuing this idea. Justin explained that he would like to form a committee that would include any interested Board members, Scott Key, Jim Hughes or other proponents of the idea and general community members. The purpose of the committee would be to identify and answer the critical questions and make a recommendation to the Board for action.

The floor was given to the applicant.

Jim Hughes stated that he is coming to the Board to explore the options to possibly build a whitewater park in Bayfield. He feels that it would provide a unique opportunity to use non-consumptive irrigation water and he thinks it will be a very good attraction for the Town.

Dan asked if this has been done before. He expressed concerns about property rights along the river edge.

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Jim answered that the Town owns the river banks between Eagle & Joe Stephenson Parks. He doesn't feel that would be a hurdle. He also explained that it would not change the amount of water that is flowing; it would just be altered slightly.

Justin Clifton commented that the Town did something similar in Eagle Park with the Fishing is Fun area. There will be environmental items done to make sure the park isn't disruptive and this sort of work can actually enhance the eco-system & habitat of the area. Normally this type of improvement would most likely be strategically placed rocks in the water to create the wanted effect.

Gabe asked if the Tribe or Pine River Irrigation District is on board with this proposed project.

Justin Clifton answered that he hasn't gotten anyone involved yet. Staff brought this to the Board to get their thoughts on the matter and to create a committee. It will be up to the committee to get in contact with the entities that need to be involved.

Tom mentioned that he doesn't think the Town owns both sides of the river. He thinks that the Town might have to include some other properties. He stated that it would be a good idea to check into that first before moving forward too much.

Ed commented that it's not a very long distance between Eagle & Joe Stephenson Park. He mentioned that it might be better to start further up stream if possible.

Justin Talbot said that he likes the idea. He has spoken to Jim previously but agrees that there are a lot of questions that need to be answered before moving forward.

Rick directed staff to commission a sub-committee to sort out the ownership issue, meet with the Tribe & PRID and come back to the Board with a more formal plan.

Justin Clifton asked if any of the Town Board members were willing to serve on the committee.

Gabe & Debbi said that they will serve and Justin Talbot said that he will help when he has time.

Action Agenda Item #7: BEEP Agreement For CDBG Sponsor

Justin gave his staff report. He stated that the Town Board decided months ago to be a sponsor for Bayfield Early Education Program (BEEP) to acquire a CDBG (Colorado Development Block Grant) grant. CDBG grants are not available to for profits, which is why BEEP needed a local government sponsor. Contract documents are currently being executed. The last item needed to cover is an agreement between BEEP and the Town that makes clear that BEEP is responsible to the appropriate administration of the grant and needs to accept all liability in the event they fail to do so.

Justin presented a draft agreement like the one used for the Colorado Housing Inc/ CDBG agreement. It is a fairly simple agreement and protects the Town from anything that could happen if they don't successfully administer the grant.

Gabe made a motion to approve the BEEP agreement for CDBG sponsor. Tom seconded the motion. All were in favor except Ed, who abstained from the vote due to a conflict.

Action Agenda Item #8: CDBG Grant For The Regional Housing Alliance (RHA)

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Justin gave his staff report. He stated that the Town is currently administering two CDBG grants; one for Colorado Housing Inc and one for BEEP. The RHA would like Bayfield to sponsor a small CDBG grant for capacity related studies. Administering the grants has been relatively easy; especially the smaller ones. The Town has good boilerplate agreements for making sure the agency sponsored will do all the actual work so Bayfield is really just a signatory and fiscal pass-through. Helping the RHA is also a good way to leverage the funds provided to the organization as they either keep the Town's contributions lower or add value to the contributions made.

Justin explained that the grant will be used for.

- Information sharing to promote low cost housing
- Policy support for equitable smart growth policies
- Housing fund development programs
- New homes fund

The total grant is \$47,000 and will be spent over a period of a few months after contract award. Despite the fact that the work is fairly limited, the Town has built in a \$2,500 administrative fee to be paid to the Town to offset any costs for staff time.

Ed made a motion to sponsor the RHA for a small CDBG grant for capacity related studies. Gabe seconded the motion. All were in favor, motion passed unanimously.

Action Agenda Item #9: Town Hall Refinancing

Justin gave his staff report. He stated that Dan Ford prompted him to inquire about the possibility of refinancing the Town Hall debt. Justin expressed that he was somewhat skeptical of the possibility knowing that Wells Fargo was the only entity to respond to the RFP for the lease purchase arrangement. Justin pestered Wells Fargo for more than a month to finally get a response out of them but in the end they did agree that the market supported refinance of our debt. Justin expressed that even though this is an attractive item, he still thinks that early payoff should be considered if the Town is allowed to spend CDOT proceeds on such an item. There are good reasons to support refinance opposed to early payoff; primarily to keep cash "just in case." However, if amendment 61 passes in November the implication could be the loss of more than \$200,000.00 annually forever. If the Town is able to pay-off the Town Hall debt to avoid this possibility it would be well worth it.

He explained that the Town's current interest rate is 4.55%. Wells Fargo will execute an amendment to the agreement to reduce this rate to 3.5%.

The Town currently owes about \$1,659,397 of the original \$2.2 million.
The annual payments (at 4.55%) are currently \$282,201.31
The revised payments (at 3.5%) would be \$233,240.10
With 8 payments left to make (including 2010) the Town would save \$391,689.68 by refinancing.

If the Town paid off the debt this year the savings would be \$597,721.09
The difference between payoff and refinance is \$206,031.41

Justin expressed that if the Board decides to refinance it would be best to get started as quickly as possible. If the Board is interested in early payoff, then the Board will have to wait and see if it's possible to make a deal with CDOT first. Justin is not sure if the Town will have until December 31, 2010 to payoff the debt and avoid being subject to the provisions of Amendment 61 if passed. If that is the case the Town could wait to see if the ballot measures pass. However, he feels that the opportunity to refinance at this rate won't last forever so the Board may need to move fast. However, he doesn't think it's a good idea to refinance if the Board is leaning

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towards paying off early because it will cost \$5,000-\$10,000 to get the necessary credit check and bond opinion for the refinance.

Dan expressed that he is concerned that rates are going to up and it's a question of when that is going to happen. He thinks that if the Town delays it is going to cost a lot of money. He is also worried about paying off early. He thinks it might be better to refinance at 3.5% and sit on the CDOT money for awhile before paying it off to make sure that the Town's finances are solid. He also mentioned that the CDOT requirements that are listed in the current agreement don't allow for the money to be used for this type of expenditure. He stated that he would like to see the Town refinance the loan and then possibly make a determination at a later date if pay-off is an option.

Gabe stated that he agrees. He said that there is a large debt for the sewer plant and the Town hall. The refinance could potentially cost \$15,000.00 to process but it would save \$35,000.00 the first year and \$50,000.00 for each consecutive year so he thinks it is a good way to balance the books over the next few years. He also expressed that it would be a good idea to get it done quickly because interest rates are definitely going to go up.

Tom stated that he thinks it's a good idea to refinance.

Ed asked if there are any prepayment penalties

Justin answered that there's not as long as it's paid in full.

Ed concurred that it is a good idea.

Rick expressed that he likes the idea of refinancing but he wants the ability to pay it off early if possible.

Dan cautioned that the Board should really think about paying it off early because it might be better to keep the money in the bank just in case.

Tom mentioned that if Amendment 61 passes in November the Town will need to get rid of debt in a hurry because of the implication of the amendment.

Gabe made a motion for Justin to look into refinancing the Town Hall Debt before the November elections. Dan seconded the motion but added that the re-financing is with Wells Fargo bank and the refinance amount will be according to their agreement which states that they will lower the interest rate 4.5% to 3.5%. Gabe approved the addition.

All were in favor, motion passed unanimously.

Action Agenda Item #10: Resolution #249

Justin gave his staff report. He stated that it's close to election time and most local governments have passed resolutions opposing the 3 ballot questions this November. He explained that this appears to be fairly non-partisan, with opposition coming from the La Plata County Democrats and Republicans and many traditionally liberal and conservative groups.

He stated that he feels the Board has received enough information about these ballot questions and has heard about their implications.

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Justin stated that Resolution #249 opposes the three ballot questions. He stated that these are the major implications of the questions.

- Amendment 61 restricts financing to 10 years. This means taxes that service debt will need to be higher in order to make the payments.
- Amendment 61 would require the Town to lower taxes after paying off debt.
- Amendment 60 raises fees by making water and sewer funds pay property tax.
- Proposition 101 would make it nearly impossible to have good schools, which is a key factor in business location.
- Amendment 60 would let people who own property here but may never have lived here vote on issues that impact the whole community.
- Proposition 101 lowers vehicle registration to 1918 levels and will deprive the Town of money needed to maintain roads.

He also stated that Proposition 101 appears to be polling favorably which could be very bad for the Town if it passes.

Tom stated that he isn't for any of these ballot measures but he doesn't think it's appropriate for the Town Board to implement a resolution approving or disapproving the ballot questions.

Ed made a motion to pass Resolution #249 opposing Proposition 101, Amendment 60 & Amendment 61 and urging voters to vote against all three ballot measures. Debbi seconded the motion.

Dan concurred that he doesn't think it's the Town's place to tell the voters how they should vote. He explained that he will not be voting for them but he expressed that any taxing entity in Colorado is not going to be in favor of these measures and he doesn't think that the Board needs to tell people that the Town isn't in favor of them. He also thinks it's an insult to the taxpayer to tell them how the Board thinks they should vote. They should be allowed to make up their own mind.

Gabe also agreed that it is not the place of the Town to take this position on these matters. He stated that he will also vote against passing this resolution because he doesn't think the Town should make a wide statement for the taxpayers because it isn't the Board's job to guide the press.

Justin Talbot stated that he is also against passing the Resolution.

Ed stated that he is going to vote for the Resolution because he feels that that it's the responsibility of the Town Board to look at the environment around the Town. He feels that these tax measures are knee-jerk in many ways and they will cripple the way government is done if they are passed. He feels it is appropriate to vote for this resolution and he will support it.

Debbi agreed with Ed and expressed that she is also in favor of passing the resolution. She stated that that the people look to the Town Board to have done their research on matters and give an educated description of how they will affect the Town. She said that she has done a lot of time researching these and she thinks that the people who voted for her would appreciate her giving an opinion and explaining how detrimental these measures will be for the Town. She explained that her biggest concern is that these measures will take away some of the things that the local people have already voted for.

Rick agreed that the Town should make a political stance because the Board was entrusted to take a stance when matters affect the Town's ability to do business. He expressed that growth would be practically impossible because of the major restrictions these measures will place on local government. He stated that he will vote in favor of the resolution and he is definitely not in favor of these ballot items.

Gabe rebutted that he feels that Board would be taking a stance in not passing the resolution. The stance would be that it is not the appropriate place to make this sort of recommendation.

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Justin Talbot commented that he is not going to vote for the amendments but he doesn't think its right to take away their legal right to express their opinion.

Tom expressed that people need to do their own research on these matters and that the Town Board shouldn't treat them like sheep and tell them how to vote.

Ed called to question.

Ed, Debbi, & Rick vote in favor of the motion. Gabe, Tom, Dan & Justin Talbot voted in opposition. Motion failed.

Action Agenda Item #11: CDOT 160B Agreement

Justin gave his staff report. He said that the Town has finally received the long awaited draft contract to assume ownership of Highway 160B. He stated that while he is happy to finally get a draft agreement, he is not happy with the content of the agreement.

Justin stated that he has three general problems with the grant:

1. The premise behind this program is that the road no longer acts as a highway yet there are all kinds of references that it be treated more like a highway then a Town street.
2. CDOT is trying to restrict the use of the \$6.8 million to maintenance of 160B only.
3. CDOT wants to maintain substantial oversight control of a road that the Town will own.

He referenced the following section of the document:

The second "whereas" and section 3(2) both refer to statue 43-2-106(1)(a) which requires the payment to the Town to be put into a special fund to be used only for transportation related expenditures for the abandoned highway.

- The statute that is referenced applies only to applications made after August 2009. The Town's application was made in May 2009. The Town should not be subject to this provision.
- This restriction would not allow the Town payoff the Town Hall debt or use funds for other needed road improvements.

The forth "whereas-C" and section 3(E) make reference to the EIS for the western intersection of 160B.

- The Town may want to make a reference of the Town's current attempts to amend the EIS.

The forth "whereas-E" and section 3(E) make a reference to performing intersection improvements in accordance with the EIS.

- Not only is this another reference to the CDOT EIS but it seems to imply the Town would be responsible for the costs.

Section 3-F (2) forces the Town to adhere to outdoor signage regulations that apply to highways

- This is either a highway or a Town street; CDOT needs to pick one. If it's a highway, keep it. If it's a Town street, CDOT should not have any jurisdiction.

Section 8 refers to open ended maintenance requirements.

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- This is either a highway or a Town street; CDOT needs to pick one. If it's a highway, keep it. If it's a Town street, CDOT should not have any jurisdiction.

Justin asked for direction from the Board to address these items and to negotiate all terms of the contract until such time as staff feels there is a presentable draft for the Board to consider.

Tom stated that he feels that Justin is on the right track and he thinks that staff should continue to renegotiate the terms of the contract.

Rick thinks that the Public Works Department is efficient enough to determine when maintenance needs to be done. The State has requested that Bayfield take over this road as a Town street and they are paying the Town to take it. He doesn't feel that the State should be allowed to maintain any type of control after the transaction occurs. Rick stated that Justin should get out the boxing gloves and continue to renegotiate the contract.

Gabe asked if CDOT needs the road to maintain fluid travel through this area.

Dirk answered that in order for CDOT to grant a road to a municipality they have to prove that it is no longer needed for fluid travel. That is part of the state statute.

Gabe asked what their purpose is in presenting a contract with this type of language.

Justin Clifton responded that he thinks they are trying to retain as much control gain as much possible. He thinks they are trying to relieve some of the burden but still retain some of the benefits because it's in their best interest to do so. However, it is not in the best interest of the Town to allow it.

Dan mentioned that he understands where CDOT is coming from with this proposal because if the Town doesn't maintain Highway 160B it will put more stress on Highway 160. The Town came up with a number based on how much it will cost to fix the bridges and do the needed maintenance on the road. He understands that CDOT feels that the money needs to be used on the items outlined in the cost negotiations.

Dirk stated that there is some statutory language that states that the money has to be used for transportation purposes. Arguably that could mean the money could be used for any roads within the Town that are used for transportation purposes. Dirk explained that there will be some statutory strings but he doesn't feel there needs to be as many as CDOT has currently inserted in the contract.

Rick commented that he doesn't have a problem with CDOT saying it has to be used as a Town street and the Town has to maintain it. He can live with those terms but he doesn't think the Town should be told how access is controlled or how the money is spent. He thinks that's going too far.

Gabe mentioned that CDOT is giving the Town a certain dollar amount with the assumption that the twin bridges are going to be replaced and the Town does not do that work as agreed then CDOT has been led astray to what is actually going to be done.

Debbi commented that she feels as long as the Town maintains the road then CDOT shouldn't have the ability to dictate how the money is spent.

Gabe asked if there is a maintenance budget for Highway 160B.

Justin Clifton answered that the staff has a conceptual plan currently. He stated that the first thing the Town has to do is make sure that it's not taking on something that it cannot maintain in perpetuity. However, it's always based on conditions and things happen and decisions have to be made. He explained that he doesn't think this Board should encumber future Boards with something that doesn't fit the circumstances and reality of the future.

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The road is a mess now which is why they want the Town to take it over so it should be up to the Town to make the best determinations on how it is going to be maintained.

Ed agreed that understands why CDOT would have concerns about the Town spending the money on other things but he still thinks the Town should continue negotiations on the contract. He asked if the Town is going to have access to Hwy 160 from Hwy 160B.

Justin answered that CDOT will still maintain jurisdiction over how the Town gets on and off of Hwy 160. There will continue to be stipulations with access to 160. However, the Town will gain control of access with the properties located on Hwy 160B which is one of the main draws with taking over the road.

Gabe made a motion to direct the staff to continue negotiations with CDOT based on the directions outlined in the memo that was included in the packet. Tom seconded the motion. All were in favor, motion passed unanimously.

Action Agenda Item #12: Southwest Colorado Broadband (SWCBB) Letter Of Support

Justin gave his staff report. He stated that staff previously brought in a request from a local start-up company (SWCBB) applying for a large grant to extend fiber in the Southwest. The Board at that time decided against issuing a letter of support. The COG also denied a letter of support based on numerous factors but primarily based on the fact that SWCBB could not come up with agreements with the local providers such as Brainstorm and Fastrack and could not offer any price guarantees.

Recently SWCBB re-engaged the COG and asked if they could again get a letter of support if they offered to provide guarantees on pricing and could get memorandums of understanding with Brainstorm and Fastrack. SWCBB did enter into an MOU with the COG and has reached agreements with Fastrack and Brainstorm. For this reason, the COG decided to issue a letter of support. They also requested individual governments to reconsider issuing a letter of support. The Mayor, in his role as Vice Chair of the COG asked that this item be put on the agenda for consideration.

Justin asked for the Board to consider the draft agreements included in the packet and the letter of support from the COG to determine if they are willing to issue a similar letter.

Rick brought back to the COG by the Governor. The Governor facilitated a meeting between the County, SWCBB, Brainstorm, & Fastrack in order to iron out their differences. Once the major players came to an agreement the COG agreed to issue a letter of support and then sent out requests to the jurisdictions to reconsider the possibility of issuing a letter of support as well.

Justin Talbot made a motion to approve the letter of support for Southwest Colorado Broadband. Debbi seconded the motion.

Justin stated that he was against it initially but he has read through the Memo of Understanding and likes the fact they are going to provide service to the un-served areas and they are not going to overbuild or duplicate infrastructure that is already in place. He was very concerned that this company was going to put fiber in the ground where it already existed. However, they have now stated that they will be using the wire that is already available and won't be doing any duplication and they have done the proper negotiations with the other players in the area.

Rick answered that that was a major concession that they made at those meetings. They agreed to partner instead of compete with them.

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Debbi asked for details on the current projects.

Rick answered that there is a project to create an internal fiber ring to Town. The Town will be able to save money by connecting its buildings to each other. Too capitalize the investment; there will be extra fiber that Fastrack, SWCBB or Brainstorm can use to services business & residents. The providers will come in and service the people using that internal ring. Another project is the Eagle Net project. It is \$134 million dollar project to help schools. Their mission is to tie together all of the schools. They want to work with all of the major players to leverage what they already have and be able to hook up all of the schools together.

Debbi asked about the project manager that was being hired and which part of the project he will be overseeing.

Rick answered that the project manager has been hired and he will be overseeing the local fiber ring portion of the project.

All were in favor, motion passed unanimously.

Action Agenda Item #13: New/Unfinished Business

Justin Clifton mentioned that there are three meetings coming up:

5:00 p.m. on September 23rd @ the Palace Restaurant in Durango – Reception with Susan Kirkpatrick with DOLA. (Department of Local Affairs)

12:00 p.m. on September 24th @ the Senior Center - Volunteer Recognition Event

October 4th in Ignacio - CML Conference

Justin asked for a head count for each of the events.

Rick and Ed stated that they would attend the DOLA Reception.

Tom and Gabe stated that they would try to attend the Senior Center Event.

Rick, Ed, Debbi, Justin Talbot, Dan & Gabe stated that they would attend the CML conference in Ignacio.

Gabe asked about the parking issue on Mill Street. He has received complaints from the owner of Wagging Tails Dog Grooming.

Justin stated that the Mill Street is a public street and nobody has any rights to the parking spaces. It has become such an issue recently that it may be necessary to make everyone take down the signs they have trying to designate parking spaces for the businesses because of the issues that have continued to arise.

Debbi asked about the status on the Sunrise project.

Justin Clifton answered that the Request for Proposals was issued and it will be closing in a couple of weeks.

The meeting was adjourned @ 9:52 p.m.

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Minutes were approved as submitted on October 5th, 2010

Approved:

Rick K. Smith
Mayor

Marianne Jones
Town Clerk