

**Town of Bayfield
Regular Town Board Meeting
June 21, 2016
1199 Bayfield Parkway, Bayfield CO 81122**

Town Board Members Present: Trustee Dallison, Trustee Davenport, Trustee Nyberg, Trustee Sanders

Town Board Members Absent: Trustee Nelson, Mayor Salka

Staff Present: Chris La May (Town Manager), Jeff Robbins (Town Attorney), Erin Dunavant (Finance Director), Ron Saba (Public Works Director)

Media Present: Carol McWilliams with the Pine River Times

The meeting was called to order @ approximately 7:00 p.m.

Approval of Minutes: Trustee Sanders made a motion to approve the minutes from June 7, 2016 as presented. Trustee Davenport seconded.

Roll call: 5 – 0

Motion passed unanimously.

Approval of Bills: Trustee Sanders made a motion to approve the bills dated June 8 through June 16, 2016 including the pay application for the Waterline Improvement Project. Trustee Davenport seconded.

Roll call: 5 – 0

Motion passed unanimously.

General Public Input: No comments.

Town Updates: No comments.

Public Hearing

1. Lot 8, Mountain View Subdivision (AKA 675 E. Colorado Drive)-Request For Change In Land Use To Busienss (B)

Trustee Davenport made a motion to continue item #1 from the Public Hearing and the Action Agenda to the meeting July 5,2016. Trustee Dallison seconded.

Roll call: 5 – 0

Motion passed unanimously.

Action Agenda Item #1: Consideration Of Approval Of Ordinance 399, An Ordinance Rezoning Certain Property Within The Town Of Bayfield To Business (B)

This item was continued to July 5, 2016.

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Public Hearing:

2. Request For Change In Land Use To R-10, Single Family Residential And Final Plat For 4BB Subdivision (AKA 512 & 518 Dove Ranch Road)

Town Manager La May stated that the applicant, 4BB Investments LLC, is requesting re-zone and further subdivision of two lots in the Dove Ranch Subdivision. Property is owned by Cheryl Sawyer Bauer and Christopher Fielding Bauer Revocable Trust. The vacant lots are currently zoned R-20, Single Family Residence, which allows for minimum lots of 20,000 sq. ft. The applicant requests rezone of the properties to R-10, single family residence, which allows for a minimum 10,000 sq. ft. lots. Applicant then proposed to subdivide each lot in half to create a total of four lots at approximately 10,000 sq. ft. each. The application for Rezone and Subdivision was filed May 18, 2016 and fees paid on June 13, 2016. The application for residential subdivision is being processed under a Small Subdivision, Short Procedure, in accordance with Section 3-5 of the Town of Bayfield Land Use Code. The resubdivision is less than one and a half acres with no alteration or change of any street or other public easement or right-of-way. Short procedure involves one hearing for the Preliminary Plan before the Planning Commission and if moved forward one hearing for a Final Plat before the Board of Trustees. Agency comments for Annexation and Subdivision were sent to referral agencies on May 18, 2016. Responses received are summarized as follows:

1) La Plata Electric Association

No objections to the project.

2) Upper Pine River Fire Protection District

No objections to the project.

3) Black Hills Energy

No comments received to date.

4) USA Communications

No comments received to date.

5) BP America

No comments received to date.

6) CenturyLink Communications

No comments received to date.

7) Town Engineer – Souder Miller & Associates

Stormwater impacts and drainage need to be evaluated based on potential increase in imperviousness and potential impacts to the Schroeder Ditch Company.

Water and sewer systems can support additional impacts. New tie-ins are necessary.

8) La Plata County - Engineering

No comment.

9) San Juan Basin Health

No comments received.

10) Bayfield Public Works

Will require two additional water and sewer taps, which will require street cut and excavation. Work shall be in accordance with Town standards and specifications.

Will need written authorization from Schroder Ditch Company allowing drainage to enter ditch.

May need updated drainage report with additional homes, with Town engineer approval.

11) Parks and Recreation Department

Land dedication or cash in-lieu for new subdivision.

12) Bayfield Marshal's Office

No issue.

13) Bayfield Building Official

No comment.

14) La Plata County – Planning

No comments received.

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15) Bayfield School District

No comments received.

16) Schroder Ditch Company

The Ditch Company has no objection to division of lots, but request no further construction occur in Dove Ranch Subdivision until storm drainage problem has been taken care of.

Notice of Planning Commission and Board of Trustee Public Hearings were jointly published in the Pine River Times in the May 27, June 3, June 10, and June 17, 2016. The Town received copies of certified mail receipts from the applicant for notification to property owners within 200 feet of the property. The application appears to be in conformance with the Town's Comprehensive Plan. The location of structures on lots will need to comply with the density and dimensional requirements of the Town Land Use Code for the R-10 Single Family residential Zoning District. Final Plat submittal requirements have been deemed met. The existing two lots are currently served by the Town water services. The two new lots will need services brought from main water line. The existing two lots are currently served by the Town sewer services. The two new lots will need services brought from main sewer line. Staff recommends a note on the plat that tie-in to water and sewer services shall be at sole expense of property owner. The additional lots will likely increase the imperviousness of the site with rooftop, patio, driveway, etc. The initial developer of Dove Ranch never fully completed the drainage system in Dove Ranch. Drainage currently flows into Schroder Ditch, which creates issues for the Schroder Ditch Company. Section 6-3(5), Storm Drainage System Irrigation ditches, of the Town Code provides: "Irrigation ditches must be improved or continued, as they exist. Provision must be made for adequate easements for maintenance. If the ditch company approves, irrigation ditches may carry storm water." Staff recommends Applicant be required to create a stormwater management and mitigation plan and that Applicant obtain written acceptance from the Schroder Ditch Company that the plan is acceptable to the Schroder Ditch Company. Following the public hearing, the Planning Commission motioned to recommend approval of the 4BB Subdivision and R-10 Single Family Residential Zoning for Lots 3A, 3B, 4A, 4B of the 4BB Subdivision to the Board of Trustees with the five conditions in the staff recommendation. The motion failed on a 1-3 vote. One commissioner cited concerns about changing the density from that originally agreed to in the initial development. Two commissioners expressed concern about the stormwater issues related to the Schroder Ditch. The Planning Commission motioned to move the project forward to the Board with agreement that the applicant meet with the Schroder Ditch Company. Motion was never voted on. After significant discussion, the Planning Commission then motioned to recommend denial of the 4BB Subdivision and R-10 Single Family Residential Zoning due to issue with the Schroder Ditch that need to be resolved and also concerns of changing subdivision that was originally platted with half acre lots. The motion failed on a 2 - 2 vote. Because of the split vote, it was discussed that the Planning Commission would not make a recommendation to the Board. In its consideration of the application, the Town Board shall determine if the plat is in proper form, if the arrangement of the development proposed for the property being subdivided is consistent with land use district regulations, and if the subdivision complies with the provisions of the Code. The Town Board will also determine if all required dedications, such as water rights, public rights of way, and open space have been completed or will be completed by the approval of the final plat. Following the public hearing the Town Board shall by motion either approve, conditionally approve or deny the project and shall include the conditions of conditional approval or the reasons for denial. The Town Board's approval shall authorize the Mayor and Town representatives to sign the final plat. Staff recommends approval of Ordinance 400, An Ordinance Rezoning Certain Property with the Town of Bayfield to Single Family (R-10). Staff Recommend approval of the 4BB Subdivision – Final Plat with the following conditions:

- 1) Property owner pay \$2,270 as cash in-lieu of dedicated water rights before plat is recorded.
- 2) Property owner pay \$1,552 as cash in-lieu of parkland dedication before plat is recorded.
- 3) Plat shall include note that property owner shall install a separate water and separate sewer service line to each lot at owner's expense in accordance with Town Infrastructure Design Standards and Construction Specification including any necessary street cuts and compaction.
- 4) The Plat shall contain a note that the Schroder Ditch Company accepts and approves the Stormwater Management and Mitigation Plan dated _____, 2016 with signature block for Ditch Company President.

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Mr. Eric Nelson stated, that in his opinion, the two large lots are a little more than what people are wanting to manage. By dividing the two lots into a total of four lots they would be creating two new buildable lots for the Town of Bayfield. He also stated that he recognizes that the addition of two new lots would create more stormwater drainage. Mr. Nelson offered a possible solution of installing small detention ponds on each lot, to help with the stormwater drainage. Mr. Nelson also stated that since these lots would not require new infrastructure, he feels that this would be beneficial to the Town.

Mrs. Peggy Whiteman, 517 Dove Ranch Road, stated that she was not infavor of subdividing the two lots. She does not see the advantage of having four homes instead of two across from her residence.

Mr. Jim Griffin, 915 Wilmer Drive, stated that when the Dove Ranch Subdivision was in the process of being approved, density was a major issue. A compromise was reached stating that the lots in the Dove Ranch Subdivision that bordered the Wilmer Farms Subdivision would be ½ acre lots and would create a transition to smaller lots. Mr. Griffin stated that he is asking the Board to deny this request and uphold the agreement that was made 10 plus years ago.

Mr. Isaac Fleener, 506 Dove Ranch Road, stated that he lives on the lot to the west of the lots being discussed. He does not believe that splitting the two lots into four will have a negative effect on the subdivision. Mr. Fleener provided the Board with some written comments, from some of neighbors, in favor of the subdivision of lots.

Mr. Thomas Purcell, stated that if these lots sell, as is, there is no mitigation plan for drainage. Approval of the subdivision of lots would at least guarantee some form of stormwater mitigation for the four lots.

The Public Hearing was closed

Action Agenda Item #2: Consideration Of Ordinance 400, An Ordinance Rezoning Certain Property With The Town Of Bayfield To Single Family (R10)

Town Manager La May stated Action Agenda Item #2 and #3 are connected. If the Board is inclined to approved Item #2 then Item #3 would need to be approved, as well.

Attorney Jeff Robbins stated he would like to direct the Board to page six of the staff report. This is the criteria that you are to judge the rezoning. You are required to make findings consistent with all six of those questions. Tonights public testimony has brought the question of compatibility and adverse impacts.

Trustee Dallison asked if there was documentation of the agreement that Mr. Griffin discussed.

Attorney Jeff Robbins stated that it would be his speculation that the Town had this discussion and negotiation to make sure that the development overall was compatible. The zoning would have been done first to establish what the development was going to look like.

Trustee Davenport stated that, in keeping with the original plan for this development, it may not be a good idea to change the plat. On the flip side, she can see the benefit of subdividing the lots.

Trustee Nyberg asked where the Town currently stands with the drainage issues in Dove Ranch.

Attorney Jeff Robbins stated that what we tried to do with this subdivision request was parcel out the overall drainage issues that remain in Dove Ranch, that we are still working on. Attorney Robbins explained, to the Board, the drainage issues of Dove Ranch. You can not ask new developers to fix the overall problems, you can only ask that they be responsible for their issues with drainage.

Trustee Sanders asked if there is documentation from the original development.

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Town Manager La May stated that there is probably minutes from the discussions during the development of Dove Ranch. However, we do have a process that allows someone to request a subdivision and rezoning of property.

Mrs. Phyllis Ludwig, 9205 CR 501, representing the Schroder Ditch, stated that she has spoke with Mr. Nelson and she has replied to the Town's Agency Request. The Ditch Company has no problem with the subdivision of the lots. The Ditch Company's main concern is the additional drainage and contaminants into the Schroder Ditch. She does feel that the Town is working to resolve these issues.

Trustee Sanders made a motion to approve Ordinance 400, an ordinance rezoning certain property with the Town of Bayfield to Single Family (R10). Trustee Davenport seconded.

Roll call: 1 – 4 (Trustees Davenport, Nyberg, Polites and Sanders voted against)

Motion failed.

Action Agenda Item #3: Consideration Of Approval Of Final Plat – 4BB Subdivision

This item was cancelled from the agenda.

Action Agenda Item #4: Discussion And Possible Action – Fox Farm Planned Unit Development Deed Restrictions

Town Manager La May stated that Ashli Hammer, 605 Tugwell Lane (Lot 8A, Fox Farm PUD), has requested time before the Board of Trustees to discuss removing or amending the deed restrictions on her home in the Fox Farm Development. On March 3, 2006, the Final Plat for Fox Farm Village PUD was recorded and included fifty (50) multi-family units and seven (7) single family lots - three (3) existing. The Final Plat included a Plat note: "Lots 1A through 50A are deemed "Affordable" lots and shall be plat restricted for fifty (50) years meeting federal guidelines for income affordability. This restriction shall automatically be extended for an additional fifty (50) year period to expire November 30, 2105." The Fox Farm Village PUD was intended to be an affordable housing development in perpetuity. Restrictions place on the deed (Deed Restrictions) are a common mechanism used to ensure that the units are not initially purchased under affordable guidelines and then turned around and sold for profit. The Deed Restrictions in essence create a secondary market for home ownership based on the restrictions. Special Restrictions for the Occupancy and Resale of Lots 1A through 50A at Fox Farm Village, were recorded March 30, 2006. This document identifies the intent of the developer, La Plata County Community Development Corporation (CDC), to restrict the lots with occupancy and resale conditions to establish affordable housing for full time working low and moderate income residents in the county, who would occupy lots as primary residence and not for unauthorized rental or speculation. Additionally, the intent was to transfer the restrictions to the "Builders" (i.e. Colorado Housing, Inc., Habitat for Humanity, and Housing Solutions) and subsequent "Qualified Buyer". "Qualified Buyer" is defined as person or persons constituting a household with combined annual income not exceeding 120% Average Median Income (AMI), (based on calculations provided by the US Department of Housing and Urban Development (HUD)), at time of purchase of lot. The Special Restrictions are for the benefit of and enforceable by the CDC and the Builders. On July 17, 2007, the Board of Trustees was asked to consider removal of plat restrictions for USDA Rural Development financed properties. Colorado Housing Inc. was prepared to finance ten units at Fox Farm, but USDA would not finance unless there was a waiver of deed restrictions in the event of foreclosure. The Board of Trustees voted in favor of removing the restrictions in order for the USDA to finance the units. The document in the July 17, 2007 board packet waived the deed restrictions in the event of foreclosure, but not in the event of resale. Ms. Hammer indicates that CHI informed her that all

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deed restrictions had been lifted and she moved forward with purchase of 605 Tugwell Lane. Ms. Hammer had property under contract and when the deed restrictions were discovered, the buyers did not meet the income qualifications and sale fell through. Ms. Hammer is requesting that the Board of Trustees consider removing or amending restrictions on her home. More specifically, if the Board is not willing to consider outright lifting of the deed restrictions, then amending the restrictions to lift the income guidelines and adjust the rental guidelines allowing for in home occupancy three of the last five years. The removal of deed restrictions is a significant action. The development was subsidized with low interest loans and grants with explanation to the funding agencies that the project was for affordable housing. The intent of the deed restrictions is to ensure that there is housing available for those making less than 120% of the area median income. While the circumstances surrounding this particular unit are unfortunate, there is no clear documentation that the deed restrictions were ever fully lifted. That information should be in title work and is not. There might be an opportunity to slightly amend restrictions on the property to loosen some of the rental requirements, but the income qualification is really the requirement that distinguishes these units from market rate units.

Town Attorney Jeff Robbins stated that given the applicant is not here, he would suggest the Board not take any action on this item tonight. The deed restrictions were requested by the applicant and are on the plat. They are specific covenants running with the land relative to this property. These restrictions were not the Town's desire. They were requested by the applicant and the Town accommodated. Removing these deed restrictions is a monumental task. The plat and the covenants would need to be amended. We may also run a foul with monies that the Town received for water and sewer taps for this development. The Town used public dollars from grants to development lots for low income individuals. Once that money was used, the Town has to be sure that it is continued to be used in the same manner. Removing those deed restrictions could jeopardize the Town's relationship with those public dollars that were received. The properties title work show these deed restrictions and the buyers should be aware that they exist.

Trustee Davenport stated that she believes there has been some misunderstanding in communication. The Regional Housing Alliance monitors those deed restrictions and has been in contact with several homeowners in the subdivision.

Town Manager La May introduced Mrs. Ashi Harmer, who just arrived at the meeting.

Mrs. Harmer explained to the Board why she believes the deed restrictions have been lifted and how they are affecting the sale of her home on Tugwell Lane.

Town Attorney Jeff Robbins explained to Mrs. Harmer, as he did to the Board earlier, that this is not any easy task that she is asking for. He also explained that the title work that she has referenced does indeed have the restrictions listed in the correct place. Attorney Robbins then stated that he has advised the Board not to take any action on this matter tonight.

After much discussion the Board agreed to table this matter and have Town Manager La May and Attorney Jeff Robbins check into this further.

Action Agenda Item #5: Consideration Of Employee Compensatory Time And Holiday Accruals

Town Manager La May stated that we have some employee accruals that have been on the Town books for quite some time. Staff believes that it would behoove us to get these off of the books sooner rather than later. Annual salary increases cause the Town's obligation to get larger. A staff report was included in tonight's packet, outlining the employees and the amount of the obligations. While this was not budgeted for in 2016 the intent is to use some of the fund balance from the General Fund to vacate these accruals.

Trustee Nyberg asked if this was going to be a problem that we run into again.

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Town Manager La May explained that Public Works Director Saba is now an exempt employee and not eligible for compensatory time. Also, The Town now pays it's Law Enforcement Officers for their Holiday Time instead of banking the hours.

Trustee Polites made a motion to approve payout of compensatory time for Public Works Director, Ron Saba and accrued Holiday Time for Investigator Chris Choate. Trustee Sanders seconded.

Roll call: 5 – 0

Motion passed unanimously.

Action Agenda Item #6: Board Reports (SWCCOG, LPCEA, RHA, SWTPR, Region 9, Other)

Town Manager La May stated that SWCCOG will meet July 8th.

Town Manager La May stated that LPCEA will meet next Tuesday.

Town Manager La May stated that an update on the RHA meeting was included in tonights packet.

Town Manager La May stated that SWTPR will meet again in August or September.

Trustee Sanders stated that Region 9 will meet next month.

Trustee Nyberg stated that the Planning Commission discussed the drainage issues in Dove Ranch and the subdivision of the lots that was presented tonight.

Action Agenda Item #7: Unfinished Business

Town Manager La May stated that Mayor Salka is at the CML Conference and that he would be leaving for the conference tomorrow.

Town Manager reminded everyone of the Block Party on Mill Street, June 23rd.

Meeting was adjourned at 8:35 pm.