

**TOWN OF BAYFIELD  
REGULAR TOWN BOARD MEETING  
1199 HWY 160 B  
BAYFIELD, COLORADO 81122**

**MARCH 17, 2009 7 P.M**

**Town Board Present:** Mayor Rick Smith, Council Members Justin Talbot, Debbi Renfro, Tom Au, Bob Piccoli, and Dan Ford.

**Staff Present:** Justin Clifton, Town Manager, Dirk Nelson, Town Attorney, Pat Anselmo, Town Clerk, Joe Crain, Planner and Ron Saba, Public Works.

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

**Approval of Minutes:** March 3, 2009: Tom Au asked that his comments on page six be changed to read ‘engineers name on them (striking ‘stamped’) and ‘plats must be signed, sealed, and dated or stamped ‘for preliminary review’. Dan Ford moved to approve the minutes of Bayfield Town Board meeting of March 3, 2009 as amended. Tom Au seconded. The vote was six in favor. Motion carried.

**General Public Input:** Mayor Smith opened the meeting for public input. David Black commented ‘the asbestos abatement work has been done, but the back fill is not as promised, the debris needs to be cleaned up’.

Trudy Kremer spoke on behalf of the Pine River Arena Association. They cannot get in to their loading chute because of the dirt that has been dumped in that area.

Public comment closed.

**Action Agenda Item #1: Approval of Bills:** Tom Au moved to approve the payment of bills as submitted. Justin Talbot seconded. The vote was six in favor. Motion carried.

**Action Agenda Item #2: Town Updates:** Mike Branch had requested he be placed on tonight’s agenda to go over the audit report. The Board allowed him to be heard first even though his position on the agenda was the last item under #2.

He commented he was pleasantly surprised with the outcome of the financials. He had been cautiously concerned, knowing the Town had undertaken three major construction projects in the past year in addition to taking on the Sanitation District. This was a huge accomplishment for a small town. He said experience has led him to believe that when most small towns tackle a project, they find they have over-spent before all was said and done. The Town of Bayfield handled it very well, receiving a little more in revenue than budgeted and spending a little less than the budgeted amounts. He said the financial condition of the Town is excellent.

He did voice one concern. He cautioned that the sewer fund may not be able to support itself (as an enterprise fund) and be able to meet the debt requirements if the rates are left the same. “If you can’t get any more grants to finish funding the project, you could be four to five hundred thousand dollars upside down’. He added, ‘the capital fund could

loan the money to the sewer fund, it won't be a crisis, but it will need a watchful eye, concentrating on covering costs with the amount of money available'.

The Board asked 'can we service the debt of the sewer plant without increasing rates?' He responded it might be possible, but probably not realistic.

Mike encouraged the Board, 'as you get time, look at the audit report. You should be able to understand the information presented there.'

Dan asked if Mike had addressed the letter he received from the State Auditor. Mike answered that he had.

Debbi remarked, she was glad to see depreciation being tracked.

**Town Updates: Action Agenda Item #2: continued:** Justin asked the Board for guidance, as to what extent they want to be involved in these various smaller projects. Tom commented, 'just put the documentation in with the packets, so we can track the status'. The progress reports will, for the most part, be single page, except for the Gem Village lift station. Dan suggested the Board set a ceiling on the dollar amount allowed to be spent without prior Board approval. Justin C. replied that, in essence, since the projects were approved during the budget process, the items listed under this agenda item have already been pre-approved. The Board said they would like to see the bids on the projects. Rick suggested 'unless it is a six figure project, let Justin proceed with them'. Bob Piccoli said he would like (the Board) to be involved in the updates. \$100,000 was set as a comfort level for the Board's involvement. Justin T. requested they be advised what projects are being done and when they were starting. Debbi cautioned 'just be sure that you go thru the same processes that other developers have to'.

The report on the water pump is in the packet. Ron Saba was present to answer any questions. The Board was satisfied with the written report.

**Action Agenda Item #3: Dove Ranch Unit 1, Phase 3 A Final Plat Extension:**

The staff is recommending approval of the request for a 180 day extension. This would move the deadline to September 20, 2009.

The Mayor asked why Brad is asking for the extension. Joe Crain explained, the Code requires that, once the Board approves a final plat, it must be recorded within 90 days. Joe felt the developers inability to start the project, as a result of the economic downtown, was the reason for the request.

Dan Ford moved to approve the final plat extension for Dove Ranch Unit 1, Phase 3 A for a period of 180 days. Tom Au seconded. During discussion, it was mentioned that this is the Phase that contains the (promised) park. Rick cautioned 'the Board would certainly like to see the park finished as was agreed to by Brad'.

Brad has not reached the calculated pre sales quota that would trigger substantiating spending the money on the park.

Rick repeated, 'the Board would really like to see the park completed'.

The vote was four in favor. Justin Talbot voted in opposition, and Debbi Renfro abstained from the vote. Motion carried.

**Action Agenda Item #4: Sufficiency Hearing & Setting of Public Hearing:  
Annexation Petition, Applicant Scott Eastwood, 871 County Road 501, Sec. 2. T  
34N, R 7 W, NMPM Parcel # 5677-024-00-004:**

Joe Crain addressed the Board. It is required that the Board determines the sufficiency of the property concerned. Dirk Nelson and Joe Crain both feel the property meets the sufficiency criteria. The next matter is to set a public hearing for the annexation petition. Tom Au moved to set a public hearing for the Scott Eastwood annexation petition for May 5, 2009 contingent upon the property meeting the sufficiency criteria, and, that the petition itself is sufficient as presented. Bob Piccoli seconded. Dan Ford asked that he be allowed to abstain from the vote, citing possible financial interest. The vote was five in favor, one abstention, Dan Ford. Motion carried.

**Action Agenda Item # 5: 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:**

Joe Crain addressed the Board. He said the previous request for subdivision of this property was for six lots. The recordation of the final plat was never completed. David has been approached by BEEP to purchase the property to build a pre-school. The new subdivision would allow 2 lots, Lot 119 A, with access from the Buck Highway, and Lot 119 B, with access from Fox Farm Circle. The existing easement was included in the packet.

Utility easements need to be reflected on the plat, with appropriate conditions and uses. The Town's Building Official will want to review this. Schroeder (Ditch Company) will want all ditches piped. The Planning Commission voted to recommend approval subject to nine conditions, with an alteration to Paragraph #7 stating that documentation must be received showing adequate access to the property north of Lot 110 B prior to plat recordation, and that Paragraph #8 be modified to say that the ditches on Lot 119 B will be piped. Their vote was unanimous.

Staff recommends approval, with eight stipulations as listed in Joe Crain's report (in the packet). A Bayfield Pre-School Water Demand spreadsheet was submitted by Wright Water Engineers and placed on the dais earlier this evening.

A copy of the Subdivision Improvements Agreement, Bay Heights Subdivision Re-subdivision of Lot 119 (submitted by David Black, dba Eli Max LLC) was placed on the dais tonight as well.

David was given the floor. He reviewed, verbally, the staff's recommendations.

Regarding water rights dedication, David said that these were already dedicated to the Town when Bay Heights was done. He is asking that fees all be waived. His comment was 'in order for the school to happen, he is offering to sell his property for a big reduction of what he had intended'.

Regarding the ditches and the SIA, even though Eli-Max LLC will be financially responsible, the BEEP Board will be financing the cost of the pipe.

He addressed the easements. He said he was 'irritated. Town staff insisted that the 60 foot easement be placed on the plat when he went through the six lot process'. He would like the Board to reconsider the fees. He asked the Board to approve the re-subdivision. He added, he is not making any money on the deal.

Bob Piccoli asked for re-assurance that Lot 119 A will have no further subdivisions.

David responded, they have no plans to sub-divide further. This is because of an inaccessibility to gain more sewer line.

The appropriate utility easements have been there all along according to David.

Tom questioned the ditch easement. "It needs to be reflected on the plat. There are no dedications for a ditch easement on the plat".

At this time the Mayor opened the Public Hearing portion of the meeting. No comments were received. He then closed the Public Hearing.

Consideration: Debbi asked "if the zoning gets changed (to community service) the park fees will go away?" Joe confirmed, "yes that is the intent".

The Mars/Buck Highway fee was implemented at the inception of Fox Farm. The anticipated construction has not proceeded. The Board decided to impose an impact fee to fund this intersection when it happened.

Debbi asked Carol Blatnick if the contract reflects an agreement to hold BEEP responsible for the (cost of the) pipe. Carol responded, "yes, they have already agreed on it. Carol said the school will also be required to have fencing all the way around. They need to keep deer out.

Dan said he did not feel comfortable making an agreement with David until the contract is finalized with BEEP. David ensured the Board that he would be agreeable to conditions being placed in his SIA, by the Board, listing any pre-requisites of the agreement being finalized, the most substantial being a finalized contract between BEEP and Eli Max.

Joe Crain explained that, because this is a minor subdivision, this is the only time you (the Board) will see it.

Tom Au said he has a huge concern about the (ditch) easement not being on the plat. They need to be properly dedicated. David promises they will.

Tom confirmed, "the title work is where the easements appear". He was not willing to concede on this issue.

The Mayor said, "once again, we have (un-reviewed by the Board) documentation being submitted by a developer at the eleventh hour asking for approval".

He is not in favor of approving any process that has not been thoroughly reviewed by the Board.

Justin T. moved to approve the re-subdivision of Bay Heights Lot 119 for final plat contingent upon meeting the eight stipulations presented by staff, except that the Board waive the fee listed as Mars/Buck Highway, (stipulation #6) as well as show support in waiving the water rights, and, on the condition that all proper dedications be in place on the plat, at the time the sale of the property to BEEP is finalized.. Debbi seconded. Dan asked to abstain from the vote. Justin C. said "be aware that there is no contract in place". Based on that, there are no obligations which would inure to BEEP. You will be waiving fees that David would (normally) be required to pay. During discussion, it was enforced that all fees waived and considerations granted to David were only effectual when the property was sold to BEEP. The vote was five in favor, one abstention, Dan Ford. Motion carried.

**Action Agenda Item # 6: Public Hearing: Request For Rezoning of Lot 119B, rezoning From Multi-family to Community Service: Applicant Eli Max, LLC: (David Black, Principal) 606 Buck Highway, Sec. 11, T 34 N., R 7 W, NMPM Parcel # 5677-123-08-019:**

This is a request to re-zone Lot 119 B, Bay Heights Subdivision Re-Subdivision from Multi-Family (MF) to Community Service (CS) in order to accommodate the BEEP pre-school. The site plan has been revised due to the elimination of the requirement for the 60 foot easement. Staff recommended that they change the traffic flow, coming off of Mesa, entering at the immediate right, and exiting at a safer location. They are not required to submit a site plan until later. It will have a 36 space parking lot area.

The Planning Commission voted unanimously to recommend approval in changing the zoning on Lot 119 B from Multi-Family to Community Service, and waiving the park fee required in the subdivision since the fee does not apply to this type of zoning classification.

Staff recommended the rezoning request be approved and that the park impact fee be waived for this newly created Community Service area.

David Black requested that it be approved.

The Mayor opened the meeting for the Public Hearing. Carol Blatnick, 323 Pearl, Bayfield, Colorado spoke. She is the Director of the Bayfield Early Education Program. 'This pre-school program has been a long time in planning. It (the property) is a very good place for a pre-school'. She is confident that the contract will be finalized. She invited parents to comment. A representative of the BEEP Board said there is a huge need for this facility, the waiting list is 34 students. They have great staff, this will be a huge benefit to the community and to the students.

The Mayor closed the public hearing.

Tom Au moved to rezone Lot 119 B, Bay Heights Subdivision Resubdivision from Multi Family to Community Service, and that the park fee be waived as pertains to this Lot. Debbi Renfro seconded. The vote was five in favor, with one abstention, Dan Ford. Motion carried.

**Action Agenda Item # 7: CDBG Grant:** Justin C. included a memo outlining the general situation. He turned the floor over to Jen Lopez, who is heading this endeavor in behalf of RHA.

*Request for CDBG Sponsorship for Land Acquisition Grant:*

Her comments reflected her stance that CDBG funding has been under-utilized. She started requesting money for their Board last November. HUD audited them, and is currently denying RHA's status as a local government. As a result of this, they (HUD) are denying funding requests.

They (RHA) are working on a better business plan. Ninety percent of their funding comes from USDA. Fox Farm as had difficulty finding buyers.

Because they do not meet the criteria set for 'local government' they cannot apply for grants. She is therefore asking the Town to serve as the agent for the grants. Jenn promised Justin staff support in helping with grant applications.

Bob Piccoli asked if the Town faces liability if it pursues this activity. Her reply was 'You would be required to return the grant if things go awry'.

Dirk interjected 'you would not release any funds until after the work is done'.

Jen admitted CDBG is cumbersome. Dirk explained, 'we have not seen the contract yet. We would need to see the contract with the CDBG'. Justin C. reaffirmed that 'we need to be sure to minimize any risk on the part of the Town. He said he does not have time to

deal with this process. However, if his only responsibility is reviewing it, he is o.k. with it. He said he would review, sign and send it off. Justin C. asked 'is the Town comfortable being the fiscal agent? The nature of the relationship is what is important'.

*Request For CDBG Sponsorship for Capacity Building Grant:*

Jenn continued, 'the second request is much more complicated, and more risky. It could approach \$500,000.

Opportunity Builders wanted to do tax credit projects. They target the low income market. They want to see low income tax credits available outside of Durango.

The unusual facet of this process is that it requires funding by layers. The first one targets funding to cover the cost of land and infrastructure.

In order to get CDBG grants to cover this, the Town will take on a much bigger liability.

She summarized, all tax credits projects are difficult now because of the market.

If the national situation was not as is it, this program would have a pretty good chance.

She said it is necessary for Opportunity Builders to know they have local support. She is only testing the water tonight. Justin C. explained, there will need to be a public hearing for proceeding with the grant application, and it will be scheduled in conjunction with the project going forward.

It is imperative that there is a contractual agreement in place to protect the Town. The comment was made by a member of the Board, 'we are not housing experts'.

They could apply for the grant. The Town could pull out even if the grant was awarded.

Dirk question the Board 'do you want to authorize this tonight?' Justin C. asked the Board, 'are you comfortable with being a fiscal agent for RHA grants? Should we take on this role?'

The Board would be involved in the contracts. Justin C would focus on protection for the Town. He didn't mention 'risks', he referred to them as 'challenges'.

Rick said that housing credits involve inherent risks. He stressed having adequate protection for the Town. The contracts should be written in a fashion that would negate the risks.

Dan Ford recognized the flaws. He is concerned about the (lack of a ) safety net for the Town. He does not want the Town to have to pay back \$500,000.

Justin C. suggested not applying for a grant that includes land and fees. There should be no waivers of water taps or sewer taps. He cautioned, the processes are arduous. There are fluctuating factors, costs rise, the economy is faltering.

He concluded with 'If they don't get CHFA allocations in April, it won't go this year.

The stars have to align for this to proceed. There were 24 applications for tax credits, only four were approved.

Tom Au made a motion to approve having the Town act as agent for RHA, and apply for a CDBG Grant on their behalf, contingent upon obtaining an agreement that would provide the necessary legal buffers in order to protect the Town. Dan seconded. The vote was six in favor, motion carried.

### **Action Agenda Item # Item #8: Park Fee Waiver for Opportunity Builders:**

Opportunity Builders will provide a park on site.

Justin C. has not received a commitment that the park would be a specific size. He is looking for authorization from the Board to write a letter confirming a waiver of the park fee if park equipment costing an appropriate amount would be supplied by Opportunity

Builders. He would not accept anything less than equipment equal to the value of the waived fees. Bob Piccoli voiced concern, 'what happens if we waive the fee, then they come back and say, we don't have money?'. Dirk responded, 'you will re-visit this during the negotiations for the final agreement as pertaining to the terms of improvements. Until the project exists, there is no issue'.

Justin C. needed confirmation from the Board that they want him to proceed in this direction. They nodded approval.

**Action Agenda Item # 8A: New/ Unfinished Business:**

Dan Ford felt he should clear the air about any misunderstanding regarding inappropriate conflict of interest that may have evolved as a consequence of his statement about the ColoTrust Funds at the last meeting. He hopes every and all banks will bid on this.

Tom would like to use local people (local contractors, sub-contractors) for town projects. Justin C. replied that, all things being equal, a tie gets awarded to local business. The Board will need to decide, in each case, regardless. The issue of direct (financial) gain is hard to determine.

Tom Au stressed the written procedure being completed regarding 'complete plans coming to us by date certain!' Tom echoed, 'let's get it done!'

Dirk replied 'we are working on moving the submittal time back'. Tom countered, 'let's just change the procedure and avoid the problem'. He is still concerned that there were no easements dedicated on the plats submitted this evening.

Justin C. countered, staff is working on this.

Tom Au asked if he could be supplied with Roberts Rules of Orders.

Rick remarked, regarding the plat issue, 'when an applicant argues with the Board, it is very irritating'.

Joe Crain said he specifically asked David to be sure that the easements were on the plat. David submitted an old plat. Dirk said it is codified, 'these are the requirements. Is Joe obligated to accept plats that do not comply? David refused to put the easements on the plat'. Justin C, said 'we need to set a procedure for reference when the applicant should be refused'. The Mayor said 'if it is not complete, it is not complete'. This places the responsibility for compliance squarely on the individual doing the submittal.

Tom Au added, don't even think about presenting things with four pages of conditions.

Dirk said Joe needs a few more days to review things before including the documents in the packets.

Rick added, 'we can mandate that people have to have their stuff to the staff on Monday before packets'. This is in process.

Regarding the retreat, the Board asked if they could start at 8 a.m. Justin C said 'sure'.

Debbi asked who reviews the plats. Joe replied, the engineer. Debbi asked how the construction standards were progressing. Justin C. is using a template from Cortez.

The Gem Village lift station took precedence, as far as the State was concerned, over the construction standards. And, Justin C. said, it required his full attention in order to meet the construction season window.

Debbi asked about the progress on road impact fees. They will be discussed at the retreat.

**Action Agenda Item #9: Executive Session: C.R.S. Sec. 24-6-402 (4) (e) Consent Order: Gem Village**

Tom Au moved to go into Executive Session, citing C.R.S. Sec. 24-6-402 (4) (e) and asked that Dirk and Justin C be included. Bob Piccoli seconded. The vote was six in favor. Motion carried. Board moved into executive session.

The regular meeting of the Board re-convened. Dan Ford moved to direct staff to execute the Consent Order, including the recommendations of Staff. Tom Au seconded. The vote was six in favor, unanimous. Motion carried.

Motion to adjourn.

Approved As Written, April 7, 2009