

SILVERTHORNE TOWN COUNCIL
Meeting Minutes
Wednesday, August 11, 2010
6:00 pm

CALL TO ORDER/ROLL CALL/APPROVAL OF AGENDA:

Those members present and answering Roll Call were Council Members Mayor Dave Koop, David Preaus, Bruce Butler, Darrick Wade and Dave Anderson. Vince Lanuza was absent. Councilmember Ann-Marie Sandquist arrived at 6:25 pm. Staff members present were Town Manager Kevin Batchelder, Attorney Jerry Dahl, Sergeant Bryan Siebel, Recreation Director Joanne Breigenzer, Public Works Director Bill Linfield, Community Development Director Mark Leidal, Planning Manager Michael Johnson, Planner II Lina Lesmes, Assistant to the Town Manager Ryan Hyland, Finance Director Donna Braun, and Executive Assistant Becky Hodgell. Meeting called to order at 6:08 pm.

Mayor Dave Koop proposed that Item D of Action Items (Worksession – The Reserve at Fox Crossing) be moved to Discussion Items on the Agenda.

STAFF COMMENTS:

Breigenzer announced that the Fall Pastimes brochure will be available soon at the Recreation Center and also online on Friday, August 13th. Registration day for fall classes begins at 6:30 a.m. on August 20th.

COUNCIL COMMENTS:

None.

CONSENT CALENDAR:

BUTLER MOVED TO APPROVE THE CONSENT CALENDAR INCLUDING THE TOWN COUNCIL MEETING MINUTES FROM THE JULY 28, 2010 COUNCIL MEETING AND THE REPLAT – ANGLER MOUNTAIN RANCH LAKESIDE TOWNHOMES, SIXTH AMENDMENT, A REPLAT OF TRACT Z, ANGLER MOUNTAIN RANCH LAKESIDE TOWNHOMES, FIFTH AMENDMENT. MOTION SECONDED BY PREAUS. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (SANDQUIST NOT PRESENT, LANUZA ABSENT)

CITIZEN COMMENTS:

Ann Brewster, 120 Robin Drive, Silverthorne – Brewster would like to have a public explanation of the definition of ex parte; why and how ex parte is used. Who is bound by ex parte and why ex parte is being applied on a large issue such as Lowe's. Brewster would also like an explanation of why ESTIP discussions are held in Executive Session and who has access to the information discussed in Executive Sessions.

Dahl commented that Citizen's Comments are meant to be directed to staff for action at the appropriate time. Dahl suggested that this is a separate lecture but is willing to give an explanation later in the agenda when the questions would be more applicable and associated with the agenda items that pertain to Lowe's.

PUBLIC PRESENTATIONS:

None

LIQUOR BOARD:

Summit County BPOE #2561 – Renewal of Club Liquor License

No Council Comment.

No Public Comment.

BUTLER MOVED TO APPROVE SUMMIT COUNTY BPOE #2561 (AKA ELKS LODGE), RENEWAL OF CLUB LIQUOR LICENSE. MOTION SECONDED BY PREAUS. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (SANDQUIST NOT PRESENT, LANUZA ABSENT)

Town of Silverthorne/Town Pavilion – Special Events Permit

No Council Comment.

No Public Comment.

BUTLER MOVED TO APPROVE TOWN OF SILVERTHORNE/TOWN PAVILION SPECIAL EVENTS PERMIT. MOTION SECONDED BY PREAUS. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (SANDQUIST NOT PRESENT, LANUZA ABSENT)

PUBLIC HEARINGS:

Minor Subdivision – L. Arnold Subdivision, First Amendment, 235 Maryland Creek Trail, Tract A, L. Arnold Subdivision

Planning Manager Michael Johnson presented the applicant’s request for minor subdivision approval for the L. Arnold Subdivision, first amendment. Johnson explained this Minor Subdivision creates one residential lot (Lot 1) and one tract of land (Tract A) reserved for possible future subdivision. Johnson reviewed the staff memo, noting Planning Commission’s recommendation for approval.

No Council comments.

No comments from the Applicant.

Public Hearing Open:

No public comments.

Public Hearing Closed.

WADE MOVED TO APPROVE THE L. ARNOLD SUBDIVISION, FIRST AMENDMENT. MOTION SECONDED BY BUTLER. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (SANDQUIST NOT PRESENT, LANUZA ABSENT)

BOARD OF ADJUSTMENT:

None

ACTION ITEMS:

A. Preliminary Plan Review of the Our Lady of Peace Church PUD

Planning Manager Michael Johnson reviewed the staff memo and explained the proposed project. The Applicant, the Catholic Community of Summit County, is requesting approval of a Preliminary Plan for the Our Lady of Peace Church PUD. The PUD would allow the zoning of an unsubdivided parcel from A-1 Agricultural Zone District to PUD, allowing a church and church related uses including a rectory. Johnson explained the location and

back ground of the land use and the purpose of the PUD. Staff finds the PUD is an appropriate use of the land. Planning Commission recommended approval of the PUD with the condition that the PUD follows the Destination Commercial District Design Standards.

Council Member Sandquist arrived at 6:25 PM.

Presentation by Applicant:

Bobby Craig, Arapahoe Architects introduced Jennifer Thong of Enos Architects, Father Dave Allen and Deacon Chuck Lamar.

Craig gave an overview of the project layout, size, signage etc. and asked for input on the design. Craig feels many of the Town guidelines are not applicable in this case. This design exceeds Town guidelines.

Thong explained the proposed site plan, parking, lighting, landscaping and vegetation, and water conversation. The building will be 13,000 sq. ft. and will have seating for 400 people. Thong showed superimposed photos to give Council an idea of the building concept and proposed architecture. The applicant will be asking for a variance in building height to accommodate a church steeple. The Applicant does not believe neighbors' views will not be disturbed.

Wade – Are authentic materials going to be used?

Craig – Applicant is intending to use real wood and real rock.

Wade – Are you opposed to writing architectural guidelines to go with this PUD?

Craig – Not opposed, if we can keep it simple, it would be more effective than using commercial guidelines.

Preaus – Planning Commission would appreciate some architectural standards.

Craig – Applicant plans to pursue site plan approval soon. Construction is planned for 2011.

Wade - Appreciates sensitivity in architectural guidelines but would like architectural guidelines as a condition.

Craig - Is OK with condition but would like to strike Planning Commission's condition.

Public Comments:

Eddie O'Brien, Hamilton Creek Resident - Do you have room for expansion? What are the views from inside the church?

Craig commented that the design is planned with a future expansion in mind.

Thong explained views from inside the church.

Leslie Le Coq, Three Peaks Resident, is concerned about variances in building heights and sign heights. It's important not to turn this town into a city and not lose the mountain town feel.

Council Comments:

Butler is excited about this project. He is not concerned with the height variance or neighboring views. He does agree that commercial standards do not apply in this case.

Preaus is a member of this Church. The design is fitting for the area and the concept looks great. We do need some sort of architectural plan.

Wade agrees that the condition written by the Planning Commission does not apply. We should be careful with architecture and would like to see the Applicant write up some sort of guideline to preserve the general feel of our town.

Anderson stated this is a beautiful facility and he applauds the efforts of the Church. Sandquist commented that the additional height is needed and will support the idea. Mayor Koop feels a formal guideline needs to be in place for everyone's benefit. The architectural outline looks great but a written guideline is necessary.

WADE MOVED TO APPROVE THE PRELIMINARY PUD PLAN FOR THE OUR LADY OF PEACE CHURCH WITH THE FOLLOWING CONDITION: THAT DESIGN GUIDELINES BE DRAFTED BY THE APPLICANT FOR REVIEW AND APPROVAL BY THE TOWN AT FINAL APPROVAL. MOTION SECONDED BY BUTLER. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (LANUZA ABSENT)

B. On-Site Preliminary Disturbance Permit (DPA) – Lowe's Of Silverthorne, 201 Buffalo Mountain Drive, Lot A And Lot 1, Bass Auto Park Subdivision and an Unsubdivided Parcel of Land Located in T5S, R78W.

In response to Brewster's questions during Citizens' Comments, Dahl addressed the quasi-judicial aspects of the Lowe's Application. Dahl explained that the state statute and the Town's Home Rule Charter allows an exception to the open meetings laws for executive sessions to discuss security measures, personnel matters, to take legal advice and to instruct negotiators. Recordings of Executive sessions are not accessible to the public, unless under court order.

Dahl further explained quasi-judicial action as an act of applying specific standards in the Town code to make land use decisions, no matter the size of the project. Ex parte contacts were also explained as Council members cannot interact with the public or the applicant outside of a hearing, in order to avoid pre-judgment of the application. Ex parte contacts and prejudgment are up to the individual council members to disclose. Conflicts of interest was defined by Dahl as well.

Koop appreciates the education and explanations.

Brewster: Who is covered by ex parte rules?

Dahl stated members of Council and Planning Commission because Planning Commission gives direct recommendations to Council. Ex parte rules do not apply to staff. EDAC makes recommendations, but ex parte rules do not apply to EDAC, as the group does not directly vote in the land use process.

Brewster asked if it's only Town Council & Planning Commission, why were candidates not allowed to talk?

Dahl responded.

Brewster thanked Dahl for his responses.

Dahl asked the following questions of each Council Member:

1) Do you or any family member have a financial interest in the Lowes application?

All council members present answered "No" to question #1.

2) Have you had any contact with the applicant or others about the application, outside of the public meetings and hearings?

3) Do you believe you can make a fair and impartial decision on the application?

Sandquist has had no contact with the applicant. She noted a few people have asked her when Lowe's will be built. Sandquist believes she will make a fair and impartial decision regarding the Lowes' Application.

Anderson has had no contact with the Applicant, has received casual comments and opinions (both pro and con) from the public regarding the Lowe's application. Anderson feels he can make a fair and impartial decision regarding the Application.

Wade has had no contact with the public or the applicant regarding the Lowe's application. Wade feels he can make a fair and impartial decision regarding the Lowe's application. Wade noted he used a newspaper article regarding Lowe's for a current events class he teaches at the High School.

Preaus has had casual conversations (pro and con) with the public before deciding to run for public office. Preaus feels he can make fair and impartial decision on the Lowe's Application.

Butler has had no contact with the Applicant but has received a few unsolicited emails from the public. Dahl is aware of these emails. Butler feels he can make a fair and impartial decision regarding the Lowe's Application.

Koop has had no contact with the Applicant but has received a few unsolicited emails from the public concerning the Lowe's Application. Koop feels he can make a fair and impartial decision in the event he has to vote.

Planner II Lina Lesmes presented Lowe's request of a Preliminary Disturbance Permit for disturbance of on-site wetlands in the proposed building site located at 201 Buffalo Mountain Drive, Lot A and Lot 1, Bass Auto Park Subdivision. Lesmes explained that the proposed disturbance meets Standard #5 of the Code Section 4-8-20. Nine standards were reviewed and found #5 meets. The applicant also evaluated on-site mitigation and found that any on-site wetland mitigation would require drainage to support its hydrology. A fee in-lieu of mitigation is being proposed in the amount of \$59,385.00. Lesmes further explained that the Planning Commission, by a vote of 7-0, recommends approval with the condition that Standard #5(a) be met.

Sandquist asked why we didn't review this issue in February.

Lesmes explained the review had to wait until summer due to snow coverage.

Wade asked what conditions have we accepted cash in lieu of mitigation?

Leidal explained we could not mitigate on-site to create quality wetlands, therefore; the cash in lieu was the option recommended. This would be the first time the Town has accepted cash in lieu of mitigation.

Wade asked if the Town has required off-site mitigation before?

Leidal responded yes, in other circumstances.

Preaus asked how the \$59,385 would be used.

Leidal commented that staff would submit suggestions to Council, for their consideration.

Dennis Linville, Lowe's representative, had no comments.

Koop qualified that the issue before us is the preliminary disturbance permit and welcomed public comment on this subject.

Public Comments:

Gray Pearson, 1108 Royal Buffalo Drive, asked where do the 2 -1 mitigation ratios comes from?

Lesmes explained it is included in the Town Code.

Pearson asked if there were any variances?

Lesmes responded "No".

Brewster asked what happens if this mitigation fails?

Koop responded that the Town will take a good look at the site selection.

Leidal explained the code process. Since this is non-jurisdictional wetlands, the Town is responsible for monitoring wetland mitigation related to the Lowe's property as opposed to the Army Corp of Engineers project.

Mike Claffey, Claffey Ecological Consulting, Inc., stated although it is difficult to mitigate wetlands, there are many successful mitigation projects throughout the County.

John Karis, Blue River, asked to submit a letter of opposition to the Lowe's site plan application to Council on behalf of SIBA. The Mayor explained we are discussing the issue at hand only (wetlands mitigation of Lowe's) and are accepting comments to that effect only.

Council Comment:

Wade is struggling and is not confident in standards #2 and #5, health /safety/welfare of the public and safe pedestrian access. Wade would like to see a site plan showing pedestrian access. He requested a condition of the approval of cash in lieu to be used directly for wetlands implementation.

Preaus agrees there are contradictions with the standard #5, safety/health/general welfare.

Preaus feels the standard is not met and questions wetlands exception for building purposes.

Butler wrestles with the 5a standard and notes it probably a code section needs to be revisited. Health/safety/welfare is subjective. The Town needs to look ahead and set up some rules for on-site mitigation. Nothing in this application saying we are doing anything special for the applicant and will support wetlands mitigation.

Sandquist feels this is odd timing with winter weather and April Council elections, etc. We want to treat this applicant fairly and would like to see successful off-site mitigation.

Anderson will support mitigation with conditions.

Koop feels the general welfare is met. The existing wetlands on the property are marginal at best. With good advice and good location, the Town will be able to build better wetlands.

Preaus is not opposed to cash in lieu, but is concerned with wetlands standards not being met.

Wade needs a stronger toe hold than the "grayness" of standard #5, if we are going to approve this.

Butler feels the proposed condition is subjective but realizes it's in the Code.

Sandquist feels Planning Commission's exception does not apply.

BUTLER MOVED TO APPROVE THE LOWE'S PRELIMINARY DISTURBANCE PERMIT APPLICATION, WITH THE CONDITION THAT ANY MONEY COLLECTED IS USED EXCLUSIVELY FOR THE BETTERMENT OF WETLANDS. MOTION SECONDED. MOTION PASSED 3 – 2 BY COUNCIL PRESENT. (WADE/PRE AUS NAY) (LANUZA ABSENT)

C. **Off-Site Preliminary Disturbance Permit- Lowe's of Silverthorne, Portions of the Wilderdest Road, Adams Avenue and I-70 Rights-of-Way**

Lina Lesmes, Planner II, presented Lowe's request for a Preliminary Disturbance permit to disturb 2,925 square feet of jurisdictional wetlands located off-site for the purpose of constructing a drive entrance at the Wilderdest Road/Buffalo Mountain Drive/Adams Avenue intersections. Lesmes explained the site conditions. Staff finds that the disturbance of the off-site drainages and wetlands is necessary to achieve access from Wilderdest Road and the new intersection of Wilderdest Road, Buffalo Mountain Drive and Adams Avenue. Lesmes noted Planning Commission's recommended approval (7-0 vote) with two conditions: That the applicant obtain approval of a Nationwide Permit 14 from the Army Corp, which is required for the construction, expansion, modification or improvement of linear transportation projects *and* that the applicant obtain approval from CDOT for the realignment in their right-of-way.

Sandquist asked if CDOT has been involved in this discussion?

Lesmes explained CDOT is in the process of reviewing the Permit. Applicant has met with CDOT.

Dennis Linville, representing the Applicant, had no comments to add.

Public Comments:

None

Butler feels Planning Commission is doing a good job in applying our Town Codes. Butler believes Planning Commission's recommendations are "right on".

Linville is OK with the conditions set forth by the Planning Commission.

BUTLER MOVED TO APPROVE THE LOWE'S PRELIMINARY DISTURBANCE PERMIT APPLICATION, WITH THE PLANNING COMMISSION RECOMMENDED CONDITIONS. MOTION SECONDED BY SANDQUIST. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (LANUZA ABSENT)

DISCUSSION ITEMS:

Worksession – The Reserve at Fox Crossing (Moved from Action Items)

Lina Lesmes, Planner II explained that the applicant has requested a work session prior to submitting a formal application for a PUD. Background was provided to Council. Applicant is looking for guidance. The applicant wishes to change the use from commercial to residential and reduce the density of the property.

Leidal explained the Worksession is intended to give the applicant direction on uses and densities on the proposed project.

Bobby Craig, Arapahoe Architects, would like to get a feel for whether the Town would like to see all residential or mixed residential and commercial on this property. All commercial is not economically viable. Craig presented the footprint of the proposed buildings of all residential property, comparing the size of the units to the Ponds at Blue River. Craig asked for comments.

Rodney Allen, realtor, recommended that there is a need for smaller, less expensive units.

Butler understands that building commercial units will not cash flow the site and is willing to concede residential but could be convinced either way. We do need to be sensitive to surrounding neighborhoods.

Preaus doesn't see that commercial units are necessary. Let's keep the neighborhood residential. The smaller units will most likely sell.

Wade believes commercial is not the right use. Changes to all residential access to the property will be an issue, as well as wetlands mitigation. Proximity to the neighbors could be an issue. This is an opportunity to change zoning.

Anderson understands reasons for not building commercial units. Anderson is concerned about density and inquired about the range in size of the proposed units.

Allen explained.

Anderson stated that unit size is an issue. He suggested relooking at size.

Sandquist is in agreement that this location is not fitting for commercial use. She is also concerned with density and traffic.

Koop agrees with no commercial and feels it could be a traffic nightmare. He appreciates smaller units as it's important to be affordable and occupied. Blending in with existing neighborhood structures with architecture, landscaping, etc. is necessary.

Ken Deshaies, Snowhome Properties, asked if the project will be deed restricted.

Brewster believes the project will cause a problem with density.

Allen will be meeting with the Ponds and Eagles Nest HOAs.

Preaus believes no restrictions means free market later and likes the idea of no restrictions.

Wade believes this is an opportunity to practice sustainability.

The applicant thanked the Council for their comments.

EXECUTIVE SESSION

WADE MOVED AT 8:28 P.M. TO GO INTO EXECUTIVE SESSION FOR A CONFERENCE WITH THE TOWN ATTORNEY AND APPROPRIATE STAFF, UNDER CHARTER SECTION 4.13(c) AND SECTION 24-6-402(4)(b) AND (e), C.R.S., SPECIFICALLY TO TAKE LEGAL ADVICE AND INSTRUCT NEGOTIATORS CONCERNING THE ESTIP REQUEST OF LOWE'S STORE.

WADE FURTHER MOVED TO ADJOURN THE COUNCIL MEETING AT THE CONCLUSION OF THE EXECUTIVE SESSION. MOTION SECONDED. MOTION PASSED UNANIMOUSLY BY COUNCIL PRESENT. (LANUZA ABSENT)

EXECUTIVE SESSION:

Legal Advice and Instruct Negotiators Under Charter Section 4.13(c) and Section 24-6-402(4) (b) and (e) CRS, Specifically ESTIP Request of Lowe's Store

INFORMATIONAL:

- A. Planning Commission Meeting Minutes – August 3, 2010
- B. EDAC Meeting Minutes – August 3, 2010

EXECUTIVE SESSION CONCLUDED AND MEETING ADJOURNED AT 9:13 P.M.

DAVE KOOP, MAYOR

ATTEST

BECKY HODGELL, EXECUTIVE ASSISTANT

These minutes are only a summary of the proceedings of the meeting. They are not intended to be comprehensive or to include each statement, person speaking or to portray with complete accuracy. The most accurate record of the meeting is the videotape of the meeting, maintained in the office of the Town Clerk.