

SILVERTHORNE TOWN COUNCIL
Meeting Minutes
Wednesday, September 8, 2010

CALL TO ORDER/ROLL CALL/APPROVAL OF AGENDA:

Those members present and answering Roll Call were Mayor Dave Koop, Council Members David Anderson, Darrick Wade, Vince Lanuza, David Preaus, Bruce Butler and Ann-Marie Sandquist. Staff members present were Town Manager Kevin Batchelder, Attorney Jerry Dahl, Chief Mark Hanschmidt, Administrative Services Director Donna Braun, Recreation Director Joanne Breigenzer, Public Works Director Bill Linfield, Community Development Director Mark Leidal, Planner II Lina Lesmes, Assistant to the Town Manager Ryan Hyland and Town Clerk Michele Miller.

STAFF COMMENTS:

Batchelder informed Council that Board of Adjustment, Item X., A. Lowe's Sign Variance has been pulled from the agenda by request of the applicant. Regarding the Lowe's application, additional citizen comments received after the packet deadline are before Council. Breigenzer updated Council on the upcoming Blue River Festival events; she encouraged citizens to visit www.blueriverfestival.wordpress.com website for information.

COUNCIL COMMENTS:

None

CONSENT CALENDAR:

LANUZA MOVED TO APPROVE THE CONSENT CALENDAR INCLUDING THE MINUTES FROM AUGUST 25, 2010, AND RESOLUTION 2010-19, OLD DILLON RESERVOIR FUNDING AGREEMENT. MOTION SECONDED. MOTION PASSED UNANIMOUSLY BY COUNCIL.

CITIZEN COMMENTS:

Ann Brewster, 120 Robin Drive, commented on the alleged conflict of interest with Dave Anderson and David Preaus. She requested all Council members vote on the Lowe's project. Denise Roberts, Lilly Lighting, Frisco, commented on Dave Anderson's alleged conflict of interest and requested that all Council members be allowed to vote on the item. Howard Hallman, 211 Fox Court, requested that all Council members be allowed to vote on the issues presented tonight.

Tim Glasco, 325 Rainbow and Neils Lunceford, is disturbed to have two Council Members requested to step down on this vote.

Larry Lunceford, Neils Lunceford owner, stated Dave Anderson is a minority owner of Neils Lunceford and does not participate in the day to day running of the business. He is an honest public representative. He requested Mr. Anderson be allowed to vote on the project.

PUBLIC PRESENTATIONS:

None

LIQUOR BOARD:

None

PUBLIC HEARINGS:

A. Commercial Subdivision - Lowe's HIW, Inc., 201 Buffalo Mountain Drive, Lot 1 and Tract A, Bass Auto Park Subdivision, and An Unsubdivided Parcel of Land (Subdivision Improvement Agreement)

Koop stated there are six Lowe's items before Council for consideration. There will be a single public hearing on the subdivision, site plan and the two disturbance permits; items 8A and 9A, 9B and 9C. After the Council has acted on those items, we will take up Action Items 9D and 9E, the tie back agreement and ESTIP Agreement.

Dahl addressed the quasi-judicial aspects of the Lowe's Application. 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 reviewed again in order to avoid pre-judgment of the application. Ex-parte contacts and prejudgment are up to the individual council members to disclose. The Home Rule Charter Section 3.9 Conflict of Interest was reviewed by Dahl as well.

Dahl asked the following questions of Vince Lanuza since he was not present at the August 11, 2010 Council meeting:

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

Lanuza stated no.

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

Lanuza stated no.

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

Lanuza stated yes.

The questions and responses from the August 11, 2010 Town Council meeting concerning Lowe's application were added to the record of this hearing.

Dave Anderson admitted a minority interest in Neil's Lunceford; he is not an employee, not an officer or responsible for the day to day operation. He answered the questions on August 11, 2010 honestly. He voted in favor of the Lowe's On-Site Preliminary Disturbance Permit at the August 11, 2010 Town Council Meeting. He believes Lowe's has a right to be located on this site. He asked to be excused from the Lowe's vote tonight.

Dahl read the Home Rule Charter, 3.9, Conflict of Interest. Only the Council as a whole can vote on whether a Council member has a conflict under Charter 3.9. They determine if there is a substantial personal or financial interest or not.

Butler asked if Anderson's statement makes a motion necessary.

Dahl stated the issue has been raised.

Anderson remembers Council Members leaving a meeting without a vote.

Dahl stated a vote of the Council is necessary to excuse any Council member from a vote

Anderson stated he has had ex-parte contact on this item. He asked to be excused due to his honor being questioned. He requested a motion from Council to excuse him.

Dahl stated the remaining Council Members make the motion regarding conflict.

WADE MOVED THAT COUNCILMEMBER ANDERSON DOES NOT HAVE A SUBSTANTIAL PERSONAL OR FINANCIAL INTEREST IN THE LOWE'S MATTER AND THEREFORE DOES NOT HAVE CONFLICT OF INTEREST AS OUTLINED IN 3.9 IN THE HOME RULE CHARTER. MOTION SECONDED.

In response to Council questions, Dahl stated the reviewing District Court judge takes the Council motion from the record into consideration on any appeal.

Preaus stated he understands and supports Anderson's decision to excuse himself.

Dahl reviewed the pending motion before Council.

Anderson asked to be excused from the Lowe's vote.

Butler stated this is an unfortunate chain of events. He requested full Council's consideration of the application. He suggested a continuance might be necessary on these items for two weeks.

Anderson stated the applicant has substantial time and money invested for this final presentation and he requested the application go forward.

Lanuza stated he is the Council member that talked to Anderson about a possible conflict of interest. He never asked Anderson to excuse himself. Making the second on the motion reflects how he has felt about this matter from the start.

Anderson informed the applicant and staff he has not studied the entire Town Council packet for completeness due to the conflict of interest conversations he had from last week and his expectation that he would be excused.

MOTION PASSED BY COUNCIL. (ANDERSON ABSTAINED FROM THE VOTE: PREAUS NAY). WADE, SANDQUIST, BUTLER, AND LANUZA AYE.

Preaus stated he also was approached by a Council member as to the perception of a conflict of interest. The accusation caught him off guard since he has been honest and up front about his business all along. He disclosed he is a partial owner in Creative Cabinetry in Breckenridge but has no financial interest in the Lowe's application. He feels the need to defend his honesty and integrity as Anderson has.

WADE MOVED THAT THE COUNCIL FIND THAT COUNCILMEMBER PREAUS DOES NOT HAVE A SUBSTANTIAL PERSONAL OR FINANCIAL INTEREST IN THE LOWE'S APPLICATION AND THEREFORE DOES NOT HAVE A CONFLICT OF INTEREST AS OUTLINED IN 3.9 OF THE HOME RULE CHARTER. MOTION SECONDED. MOTION PASSED BY COUNCIL. (PREAUS ABSTAINED FROM VOTING)

Lina Lesmes, Planner II, presented the Lowe's HIW, Inc. Commercial Subdivision proposal and Lowe's Final Site Plan for an 111,371 square foot Lowe's store, on-site Final Disturbance Permit, and Off Site Final Disturbance Permit. She reviewed her staff memos dated September 2, 2010 and requested approval.

Council Questions

Butler asked about the retaining wall aesthetics.

Lesmes stated the applicant will cover that issue.

Sandquist asked for clarification on jurisdictional and non- jurisdictional wetlands.

Lesmes reviewed the definitions of jurisdictional and non- jurisdictional wetlands.

Lanuza asked about the number of issues that will be handled during the construction phase; is it common for an application of this size.

Lesmes stated yes.

Wade asked about the wetland criteria and if it was a condition of approval.

Lesmes stated that was a Planning Commission condition that was removed by the Town Council at preliminary review.

Applicant comments:

Ted Anderson, Lowe's representative, passed out a handout of the power point presentation. He reviewed the previous approval by the Planning Commission and Town Council. He reviewed the project vicinity and existing site conditions,

John Jessey, Thomas Graham Civil Design Group, reviewed the Site Plan, operations, landscaping, road improvements, and architecture. He addressed the 14 preliminary conditions met from the January 28, 2010 Town Council Meeting.

Brian Reck, Brown Engineer Consultant, reviewed the geotechnical report prepared for the site.

Rick Valentine, Retaining Wall Engineer, reviewed his qualifications. The technology to build this wall has been around for many years. He reviewed the test borings and anchors. He reviewed the retaining wall design, retaining wall cross section, retaining wall material and color.

Jessey reviewed the offsite improvements, off site mitigation, and existing road alignment.

Erin Griffin, Kimley Horn Engineers, reviewed the Traffic Impact Analysis she prepared. She reviewed the project access points.

Jessey reviewed the traffic coming down from Wildercrest Road and the proposed left hand turning lane.

Mitch Garrett, Scott & Goble Architects, reviewed the architectural design of the building.

Ted Anderson reviewed the benefits available to employees, and community outreach programs. He reviewed the next steps for opening the store.

Patty Silverstein, Development Research Partners, prepared the Economic and Fiscal Impact Study. She reviewed the SiteStats model analysis she utilized to prepare the report. She reviewed construction activity impacts, annual business operations, annual employee spending and the Total Economic and Fiscal Impact Report.

David Rogers DSR Marketing Systems, Inc. reviewed his financial report, market need, his research approach, building material store sales, reversing tax leakage, Silverthorne's under performance, trading area, market support, building materials/garden equipment/supplies dealers, future trends, impacts, and consumers.

Council questions

Anderson asked if the existing road structure will serve the needs of the store.

Ted Anderson reviewed how they came to the logic of the new road. Some intersections are already deficient. The road improvements are necessary for the store opening.

Anderson asked if there a willingness to make improvements to the front of the building to look like timber.

Mitch stated they have looked at timber and it imposes an ongoing maintenance problem.

Anderson requested the applicant create a design that looks more like mountain environment. He asked if the wall anchors would extend under the town right a-way. He is concerned about the liability for the Town with the placement of the anchors. He doesn't want the Town to participate in this due to the liability.

Valentine stated the anchors need to be at the location he specified, there is already an issue with the road and it cannot be done any other way.

Dahl stated the Tie Back Easement Agreement addresses the Town's liability.

Anderson thanked the presenters for all the information presented.

Butler thanked Valentine for the presentation. This is a tricky site. He believes that a stable wall can be built. He asked that we be sensitive to the fascia of the building due to the number of the people driving by the area. He asked about the road infrastructure, does the alignment of the road need to be redone.

Jesse reviewed the road needs for the area.

Butler knows the current road does not perform. What needs to be done about the road for opening day? He asked for clarification on the wage numbers presented.

Silverstein reviewed the salary numbers for Silverthorne.

Vince complimented staff on their work. He asked about pending issues for the site.

Ted Anderson addressed pending issues.

Valentine reviewed the geologist response to his letters and his response to their comments.

Lanuza asked about the lack of stability on the slope.

Valentine stated the wall is designed for additional load. That is a "what if" question, and those are hard to deal with.

Lanuza asked about the travel improvement time. How will the traffic be impacted when the roads are completed?

Griffin stated overall with the improvements the level of service will be acceptable. There are improvements needed for the intersection to obtain a better rating.

Lanuza asked about the architecture and the roof design.

Ted Anderson stated they believe they have designed a roof that meets the requirements. They feel any implementation of screens will draw attention to the units.

Butler asked if screens would cause problems with the function of the units.

Ted Anderson stated there are products that screen and allow air flow.

Lanuza asked about contamination of the Blue River and what they are doing to avoid that.

Jesse reviewed the storm water runoff, filtration, water isolation on the site, and irrigation.

Preaus thanked the applicant for the level of detail. He is not thrilled with the design of the building, feels it could have been done better. The roof could look better. The Town Code does not allow outdoor display. Regarding traffic, he requested they look into the roundabout. He feels the retaining wall concerns have been addressed. He doesn't want any issues with the wall in the future.

Wade stated there are probably several options for roof top screening. He asked in cases where Lowe's stores have closed, what has happened to the vacant buildings.

Ted Anderson stated there have only a couple of stores that have closed and he was unsure how they were handled.

Wade asked what has been the exit strategy for Lowe's stores closing in communities. How does this building's sustainability compare with the most sustainable building Lowe's has built?

Garrett stated he does not have real data to compare the sustainability features of both buildings. The standards come from the west coast and are set high. His best professional guess would be that this building is more efficient because of improvements made in technology in the last five years.

Sandquist echoed other comments on the architecture. The wall is an important part of the project. What is the safety factor? She thanked the applicant for the amount of detail provided.

Valentine stated the safety factors for the materials and the anchors exceed federal standards and private development standards.

Sandquist stated the traffic is a big issue for the Town and its neighbors. The Town has been studying traffic in this area for years. What is the grade given to this section of the road?

Linfield stated the existing levels of service at several intersections in this area are rated at an "F". The level of service will improve with the proposed improvements.

Sandquist asked about a roundabout vs. a traffic light at the intersection.

Linfield stated the intersection could function with roundabouts. There is vacant property and more development that will occur in this area in the future. With any growth, the roundabout doesn't allow for adequate gaps in the traffic. We want to build the ultimate road system now and not make changes to adjust to growth. It makes sense financially for the long term.

Butler asked about the potential evacuation of Wilderrest and Mesa Cortina in case of emergency. He recalled that a roundabout would impede an evacuation.

Linfield stated an emergency evacuation has been studied and planned for by Summit County Emergency Services and Silverthorne Police Department in table top exercises.

Chief Hanschmidt reviewed the table top evacuation plan for Mesa Cortina and Wilderrest. Officers can take control of the traffic lights and move traffic more efficiently than a roundabout.

Koop thanked the applicant for the level of detail provided tonight.

Public comments

Rob Waterman, attorney for a group of Silverthorne neighbors and residents, does not feel the application was processed under the right classification. It would mean the difference between Use by Right vs. Conditional Use. He read from the Town Code. He asked how staff came to the Use by Right process for this location. He does not feel the correct procedure was followed.

Mike Brewer, Cortina Ridge, has issues with the project. If there was enough room for the project they would not need to cut into the hill. Traffic is an issue. He wants the traffic problem solved first then entertain the idea of a Lowe's. He is very displeased with the Architecture.

Fred Stanley, 311 Red Hawk Circle, supports the project. This is a vision that will contribute to the positive growth of the Town. We shouldn't limit the choices in shopping. If Lowe's meets all the requirements of the Town for the project we should welcome them. Good job in presenting the project. Citizens will benefit from a new store. The problems regarding the roof, wetland, and traffic have been addressed by the applicant. This was an excellent job by staff and Lowes.

Ken Gansman, 1630 Golden Eagle Road and EDAC member, like it or not we live and die by sales tax revenues in Silverthorne. Competition is a good thing. There are those businesses that are about to die or those that will change with the needs. Some of those that worry about competition don't understand that the customer can be better served.

Larry Lunceford, Neils Lunceford owner, staff has told him that this is a Use by Right application and he believes that. If the application is complete then the store should be built but it will have a great impact to the businesses already in place. The negative impacts to Silverthorne are not represented by the financial study presented. The data is manipulated. The decisions made by Council are important to the community. He requested a separate financial study.

Al Zuckerman, Greer's Appliance, claimed to speak for many of the small local businesses. Consultants spoke of the effects on the small business. He feels they made a big jump with assumptions. The jobs this applicant will provide are not very many for this size of store. If there was a loss of jobs from several existing local stores closing the impact to jobs would be negative. They already compete with Lowe's and Sears. He feels that the number assigned to business leakage is over estimated. What is good for Lowe's is not necessarily good for Silverthorne. The store does not provide opportunities.

Patty Sherry, Lowe's manager in Denver and former local Target manager, reviewed the number of employees needed for this store. Lowe's provides competitive pay and benefits. Competition is good. There is a lot of room for the specialty stores in Silverthorne to remain in business.

Jeff Knapp, Frisco, Capco Tile, feels the roof can be done better. He asked about the number of studies that need to be completed before construction starts. The soil testing needs to be done in different seasons.

Ann Brewster, 120 Robyn Drive, the traffic studies and acceptable levels of traffic flow need to be addressed. The design standards for the Gateway District need to be met. The roof needs to be designed to meet green standards. Has the fiscal impact study been presented to Council long enough for them to review it? Have they taken into account the seasonal need of employees? What happens to the store if Lowe's abandons it? The statistics need to be addressed. She requested an 18 month moratorium on this decision.

Frank Lilly, 334 Hillside Drive, has many issues with the project, retaining wall, wetlands, and visual impacts. He doesn't feel the retaining wall issues have been addressed. This is too big of a project for the site. The Town's Gateway Standards have not been met. This building will be the first image visitors will see of Silverthorne. Have traffic, air, and water and pollution

been adequately addressed. We need to slow down and implement an eighteen month moratorium on this type of project.

Ken Deshaise, 472 Bighorn Circle, feels the classification of Lowe's as a hardware store is not appropriate. The net amount of jobs for the town will be a loss over a couple of years. He requested this issue be put to a vote of the citizens or an eighteen month moratorium put in place. We need to have a third party objective on the issues. The Town should not be interpreting the zoning so loosely. Any business coming to Town should not be offered an incentive.

Tim Glasco, 325 Rainbow Court and Neils Lunceford, stated the economic analysis is flawed. He doesn't consider the negative economic impact to his business of 0-5 % as being realistic. The study is biased towards the applicant. The only entity that will benefit from this big box coming to town is the Town. He will change his business model, but big boxes are business killers. Projections and theories are just that. The Council has a level of responsibility to the citizens. There will be destruction of businesses in Silverthorne if this project passes. Vote no on this project.

Katie Roberts, 690 Belford, SIBA President, reviewed her view and SIBA's on the fiscal impact study provided and the questions it raises. Studies show that big boxes generate less per square foot than independent retailers. Studies show that big boxes deplete more money for safety and services than is returned to the community. They pay less to their employees than independent retailers. Independent retailers are already on shaky ground due to the economy. There are facts in regards to the damage that big boxes do easily obtainable on the internet. She urged the Town to slow down and learn the facts. There were assumptions made in regards to the fiscal impacts. People move here to get away from this type of development. Citizens don't mind driving for items to save the character of their community.

Eddie O'Brien, EDAC, thanked Council for letting EDAC review the Lowe's impact study. EDAC voted as to the validity of the fiscal impact study, six in favor and five against. The group voted unanimously that this is the correct location of the Lowes store. Does the project promote the economic development goals of the Town passed nine in favor and two opposed. Does Lowe's application have a positive long term impact to the area; this passed unanimously. He encouraged Council to look at incentives for existing businesses.

John Karris 493 Rena Road, Blue River, stated he cares about the whole county. The presenters are paid by Lowe's. The economic impact study should be made by an independent contractor. He requested time to review the information given by the presenters tonight. He questioned the final design of the wall. Who is responsible for the wall if Lowe's pulls out? He has questions about the impact to the wetlands. He requested the LEED standards be met by the applicant. This might be a business decision, but we should be worried about the character of the Town. What will Silverthorne become?

Marg Scheri, Salt Lick, patronizes businesses in Silverthorne. She has great concerns about where Lowe's is being proposed. She has concerns about the retaining wall, there needs to be more information before construction. She is unclear about the monitoring and soil testing season to season. Can we learn from the Walgreens wall failure? Do we have all the information on the wall anchors? Not enough independent studies or evaluation to approve the application. She is concerned about the mag chloride coming off the site. Traffic is going to be a major issue for her. She is not happy with the intersection rating of the traffic flow. There should not be a rush to judgment and she requested a moratorium.

Lisa Knobel, 220 Tanglewood, stated the current site is appropriate for this type of use. Silverthorne is the business center of the county. Small businesses can survive after Lowe's comes to Town. The consumer experience is good at Neils Lunceford and Greer's. As for the

engineering of the wall, the process and the steps the engineer is taking are adequate and she is confident in the wall design. This is a good project.

John Harrington, Alpine Gardens, stated this is a different presentation tonight than what was seen last week. Do we want the gateway to Silverthorne to be a 100,000 square foot roof? We need to have a study that is unbiased. There are fewer wetlands identified than there were five years ago. The retaining wall in Dillon was deemed secure and now it has failed. He has concerns about the cutting edge techniques used on the wall. He supports a moratorium on this project. The wall needs more testing before construction.

Don Sather, Big Horn, expressed concerns for Dick Humphrey on the traffic coming out of Wildernest. He provided a picture of Lowe's roof. The zoning of the property is a loose interpretation of the code. He asked, "Does it qualify as a hardware store"? He passed out a sheet identifying the issues that have not been adequately addressed. Financial studies should be done independently. He does not feel it conforms to the Comprehensive Plan. If we choose to apply the rules loosely it won't stop other big boxes from coming in. The CDOT interchange study is being done as we speak and we should wait until it is complete. He asked for a vote of the public or a moratorium.

Phil Schaffer, 272 Poplar Circle, requested we slow down with the decision. The way he sees it, all traffic goes by Lowe's. A traffic study needs to be done and look at the big picture for Silverthorne. There are ten traffic lights located within one mile. Solve the problem with the traffic light or maybe a roundabout might be the solution to keep the traffic flowing. The architecture is adequate standing in front of the building, but from the roof it is terrible. This is three acres that everyone looks down on. An environmental impact study has not been done and needs to be. What is the exit strategy when Lowe's leaves Town?

Brian Edney, 125 Two Cabins Drive, supports the Lowe's application. The Town relies on sales tax; a property tax for Silverthorne was turned down firmly by the voters. If something happens to the factory stores we would be in real trouble. Smaller businesses do provide vibrancy for the Town and we have tried to attract them. We still cannot attract small businesses for the Town Center. He requested assistance for existing small businesses. We are a service town, and this is an ideal location for this type of business. Very sure the smaller businesses will adjust their business model to address the competition. Consumers are important and we should give them choices.

Kevin McDonald, 730 Willowbrook and Silverthorne business owner, he has been on Town Council and EDAC. At this time, the Town Council is the most educated group in the room; you have looked at all the documents for this application. You have the burden and the work that goes along with it. You must look at the full body of work and how it all works together. He is a strong believer in representative government. The Council must look at everything and make decisions for the whole community. He hopes we don't conduct a social engineering exercise tonight, to decide who belongs here and who doesn't. We want a community that allows businesses to open and a Council who doesn't decide which ones are allowed in or not. You are mandated to interpret the Code, look at the information presented and make a decision.

Gary Drescher, 40 Lodge Pole Court, is opposed to the roof membrane system. It is not in compliance with the Design Standards. It needs to be a dark color. He believes that it is possible to meet those standards and meet the third condition of approval. He requested that when the retaining wall is constructed, that every effort will be made to keep Buffalo Mtn. Road open.

David Koons, 41 Marmot Circle, contractor, he won't shop there and is against the project. The project is too big for the location. The ESTIP is not fair to the other businesses.

Jeff Gourey, 1641 Chipmunk, likes the look of Town Hall and Vista Auto Group. The building proposed is ugly. More should be expected and Lowe's should fit Silverthorne better. Council should consider the financial impact to Silverthorne. We need more detail. He is against the project.

Jim Ernest, 200 Arnica Lane, this is the most highly informed meeting in Summit County. Thousands of people knew about the meeting and did not show up and he believes that they are the silent majority. The issues have been looked at in some detail, Council has it all and they need to make a decision.

Public comments closed.

Council comments

Sandquist stated there have good comments tonight and she appreciates the opportunity to hear everyone. The four items Council is voting on first are land use issues, not social or economic issues. It is a private property issue and whether the applicant has the right to build. The zoning on this property has been in effect for twenty years. Back in 2008 there was a major review of the Comprehensive Plan. A lot time was spent talking to the public about what they wanted to see in the separate districts. At that time there were no comments that the Gateway District was inappropriate for this type of building. This is an appropriate location for this type of business. The Lifestyle center was proposed back in 2007-2008 and was the same footprint as this proposal. There was no objection about that building at that time. We listened to the citizens of this Town with the input on the Comprehensive Plan and Town surveys. There is a property tax question on the Town survey and the answer has always been no. The question that has been yes is "Would you support diversifying the sales tax base". The Town did not go searching for Lowe's; they came and made their application under existing zoning laws. She is not in favor of a moratorium. There has been plenty of time to study this application. The Town has our own engineer to study the traffic. This is going to improve the traffic in this area. Council is aware of what CDOT is studying at the interchange. The wall is a benefit to the Town and the residents above it. Buffalo Mtn. Drive is failing and the Town does not own the property at the bottom of the hill to fix it. It is a long term fix. She is in favor of this application.

Wade understands Silverthorne's dependence on sales tax. Some of our decisions can't be based on money and have to be made on other basis'. The proposal has been submitted as a Use by Right. The proposal and presentations have been well done. Our community is not for sale and therefore we need to pay attention to certain details. There are costs to obtaining the new sales tax revenue. What are the impacts to the Town on sound, town staff, wetlands, and local businesses? I want to make sure we foster growth for our local business, what kind of tools can we give them to succeed. It is difficult to rely on the financial study because it does not take into account some of these concerns. What is the impact of the new jobs on the housing market? He doesn't like to react to a proposal. His preference is to be out front of the issues, what do we want to be as a Town and plan that to that level. We need to decide what kind of fabric we want and how it ties into the community. He disagrees that once land is zoned we are subject to private sector proposals. He supports approval of some of the items. He would like time to discuss the ripples into the community and impacts of this type of application. He would like to talk about "what ifs" before they happen. He requested a continuance for six months, for Lowe's to look at screening measures, stability issues that have been brought up by the State of Colorado and sustainability for the building.

Preaus: this is a tough choice. He is looking at this as a Use by Right issue not an economic issue. It is Final Site Plan and small issues have been overlooked; the roof and outdoor

storage. He does not agree with the On-Site Final Disturbance Permit. Considering there are several issues on a couple of the Action Items, at this point he cannot approve this project.

Lanuza doesn't want to repeat the comments Sandquist made. The presentation has satisfied his questions. This is a tough decision because it will have an impact on local business. This is a land use issue. There was a lot of input by the citizens for the 2008 Comprehensive Plan. There were meetings with Planning Commission and Town Council. There were town meetings to listen to the public input. EDAC reviewed the economic impact of the changes being made to the Comprehensive Plan. EDAC would like to attract different types of businesses but there are still vacancies at the Town Center. The Community Survey questioned citizens on what to do about the fluctuations in sales tax and it overwhelmingly said increase the sales tax base by adding sales taxable businesses. This is a land use application and the applicant meets the qualifications. This is a good location for this type of building. He is concerned about the roof and encourages the applicant to address the concerns expressed tonight. He supports the application.

Butler thanked everyone for coming out tonight. Thanked EDAC for their work and their expertise. He would welcome forming a committee to review what we could do for the small businesses. Consumers have free will. He wants to see every business succeed. The heart and soul of Silverthorne is its citizens. He appreciates Kevin McDonald's comments tonight. We need to be consistent in applying the rules to every applicant that comes before Council, big or small. The roof needs to be a more agreeable color. We do need sales tax but we are not in a position that we have to approve this project based on that. This is private property that has requested development. The site is currently an abandoned car dealership and not approving this will have the property sitting vacant for years. He requested the wall be aesthetically appealing. The financial impact study utilized the most current data available. He supports all the proposals.

Anderson acknowledged the concerns expressed are legitimate. This is a land use issue. Lowe's has a right to occupy this site. He is sympathetic to the smaller businesses in town. The current roof is not very pretty. He asked Lowe's not to take the most economic direction with the architecture. The Economic Impact Statement has been discussed a lot tonight. An independent financial impact study is not necessary; it is imprudent to spend the money. The traffic study presented tonight is confusing and he is not sure we have it right. He has concerns about the wall. He does appreciate the efforts made but he does not want to engage the Town at risk. The public had an opportunity to ask for a moratorium some time ago, if that is what they wanted. Some people want to deny this application based on competition and he disagrees with that. He does not want to deny this applicant's land use rights.

Koop stated there have been good comments tonight. This is a land use issue. It is private property with zoning attached to it and the owner is proposing a Use by Right under that zoning. The application has been gone over thoroughly by staff. The rules were in place when the application came in the door. He agrees with staff's recommendations on the application. Our charge is town wide; we make decisions for all the citizens. He appreciates all the comments.

Anderson asked if there is any concern about Mr. Waterman's comments.

Leidal stated there is a use schedule and staff goes through the uses that are proposed. We do not have a home improvement store on the schedule. Staff goes through and finds a majority of the uses to identify how the application is to be processed. As the Planning Department Director, he reviewed the uses and decided how the application was to be processed. Staff classified the application as a Use by Right.

BUTLER MOVED TO APPROVE THE LOWE'S COMMERCIAL SUBDIVISION AND THE ASSOCIATED SUBDIVISION IMPROVMENTS AGREEMENT, FOR THE REASON SET

FORTH IN THE STAFF REPORT DATED SEPTEMBER 2, 2010. MOTION SECONDED. MOTION PASSED BY COUNCIL 4-2. (NAY PREAUS AND WADE)

ACTION ITEMS:

A. Final Site Plan - Lowe's HIW, Inc., 201 Buffalo Mountain Drive, Lot 1 and Tract A, Bass Auto Park Subdivision, and an Unsubdivided Parcel of Land.

LANUZA MOVED TO APPROVE LOWE'S OF SILVERTHORNE FINAL SITE PLAN, FOR THE REASONS SET FORTH IN THE STAFF REPORT DATED SEPTEMBER 2, 2010 WITH THE PLANNING COMMISSION RECOMMENDED CONDITIONS:

1. THAT THE FINAL CONSTRUCTION PLANS OF THE PROPOSED INTERSECTION OF WILDERNEST ROAD, BUFFALO MOUNTAIN DRIVE, AND ADAMS AVENUE BE DESIGNED IN A MANNER THAT IS CONDUCIVE TO PEDESTRIAN CIRCULATION.

2. THAT ALL THE CONDITIONS NOTED IN THE PUBLIC WORKS MEMORANDUM, DATED AUGUST 25, 2010, AND ATTACHED AS EXHIBIT E. BE ADDRESSED.

3. THAT THE BUILDING ROOF TOP AND FAÇADES BE ADDRESSED TO BE MORE AESTHETICALLY PLEASING AND TO FIT MORE WITH OUR MOUNTAIN ENVIRONMENT.

MOTION SECONDED. MOTION PASSED BY COUNCIL 5-1. (WADE NAY)

Preaus requested a revote on the last item. It is 1:30 a.m.in the morning and he did not intend to vote for that motion.

Dahl advised on the correct procedure for reconsideration.

SANDQUIST MOVED TO RECONSIDER THE PREVIOUS VOTE. MOTION SECONDED. MOTION PASSED UNANIMOUSLY BY COUNCIL.

BUTLER MOVED TO APPROVE LOWE'S OF SILVERTHORNE FINAL SITE PLAN, FOR THE REASONS SET FORTH IN THE STAFF REPORTED DATED SEPTEMBER 2, 2010 WITH THE PLANNING COMMISSION RECOMMENDED CONDITIONS.

1. THAT THE FINAL CONSTRUCTION PLANS OF THE PROPOSED INTERSECTION OF WILDERNEST ROAD, BUFFALO MOUNTAIN DRIVE, AND ADAMS AVENUE BE DESIGNED IN A MANNER THAT IS CONDUCIVE TO PEDESTRIAN CIRCULATION.

2. THAT ALL THE CONDITIONS NOTED IN THE PUBLIC WORKS MEMORANDUM, DATED AUGUST 25, 2010, AND ATTACHED AS EXHIBIT E. BE ADDRESSED.

3. THAT THE BUILDING ROOF TOP AND FAÇADES BE ADDRESSED TO BE MORE AESTHETICALLY PLEASING AND TO FIT MORE WITH OUR MOUNTAIN ENVIRONMENT.

MOTION SECONDED. MOTION PASSED BY COUNCIL 4-2. (WADE AND PREUAS NAY)

B.On-site Final Disturbance Permit (DPA) - Lowe's of Silverthorne, Lot A and Lot 1, Bass Auto Park Subdivision and an Unsubdivided Parcel of Land

Butler asked about the cash in lieu of wetland mitigation and the amount being designated to the enhancement of the wetlands within the Entrance Park. He asked for the designation of the Entrance Park Location to be removed from the motion so the highest quality of wetlands could designated at a later date.

Anderson agrees with that request.

Sandquist agrees as long as the cash is designated for wetland mitigation only.

SANDQUIST MOVED TO APPROVE LOWE'S FINAL DISTRURBANCE PERMIT APPLICATION FOR ON-SITE WETLANDS, FOR THE REASONS SET FORTH IN THE STAFF REPORT DATED SEPTEMBER 2, 2010, PROVIDING CASH IN LIEU OF WETLAND MITIGATION IN THE AMUNT OF \$59,385 FOR ENHANCMENT OF THE WETLANDS.

MOTION SECONDED. MOTION PASSED BY COUNCIL 4-2. (NAY PREAUS AND WADE)

C. Off-site Final Disturbance Permit (DPA) - Lowe's of Silverthorne, Portions of the Wilderrest Road, Adams Avenue, and I-70 Rights-of Way

BUTLER MOVED APPROVE LOWE'S OF SILVERTHORNE OFF-SITE FINAL WETLAND DISTURBANCE PERMIT APPLICATION, FOR THE REASONS SET FORTH IN THE STAFF REPORT DATED SEPTEMBER 2, 2010 WITH PLANNING COMMISSION'S RECOMMENDED CONDITIONS:

- 1. THAT THE APPLICANT OBTAIN APPROVAL OF A NATIONWIDE PERMIT 14, WHICH IS REQUIRED FOR THE CONSTRUCTION, EXPANSION, MODIFICATION, OR IMPROVEMENT OF LINEAR TRANSPORTATION PROJECTS.**
- 2. THAT THE APPLICANT OBTAIN APPROVAL FROM CDOT FOR THE REALIGNMENT IN THEIR RIGHT-OF-WAY.**

MOTION SECONDED. MOTION PASSED UNANIMOUSLY BY COUNCIL.

D. Permanent Tie Back Easement, Slope Easement and Temporary Construction Easement Agreement, Lowe's HIW, Inc.

Mark Leidal, Community Development Director, presented the applicant's request for approval of the "Permanent Tie-Back Easement, Slope Easement and Temporary Construction Easement Agreement". He reviewed his staff report and recommended approval.

Anderson asked if there is indemnification in perpetuity. Are we asking for a bond? He is concerned about this being a liability for the Town.

Leidal stated yes there is indemnification but there is no bond required. There is a two year warranty period in the agreement. The land owner is responsible for any issues that arise with Buffalo Mtn. Drive.

Butler asked if Lowe's leaves town and someone else purchases the land, who would be responsible for repairs and the ties.

Leidal stated the agreement runs with the land and the land owner is responsible.

Anderson feels this is a dicey thing.

Dahl stated there are two indemnification provisions, an insurance provision and the agreement runs with the land. He reviewed the procedure if a property owner did not comply.

Sandquist would prefer not to put a bond or value on the repairs. She would like to see the land owner responsible with the value of the property as a guarantee.

Preaus expressed concerns about Buffalo Mtn. Drive remaining open during the construction.

Leidal stated Buffalo Mtn. Drive remaining open is addressed in the traffic management plan.

Ted Anderson stated it is hard to say what will happen in 100 years and hard to put a dollar amount on something like that. When the agreement runs with the property you are protected.

We are adding value to the land with the improvements.

Koop stated this is a mutually beneficial agreement for both parties. Two years is the length of time you get on new projects.

Sandquist stated a bond is not forever. The property is valuable collateral for the long term and a guarantee for the Town.

Lanuzza feels it best to have the land owner responsible and land as collateral.

Butler asked if continuing this item to the next meeting would be beneficial.

Public comments

Stan Katz 1876 Perrigan, reviewed the agreement, feels the Town is covered by the agreement. He doesn't understand the issues being raised; there is no risk to the Town.

Don Sather Big Horn Store, asked if property rights run vertically, then the tiebacks would be on County land.

Leidal stated the tie backs are on Town property.

Sather feels a bankruptcy judge could release the obligation of the property owner.

John Karris, asked for clarification on the responsibility of the landowner and maintaining the retaining wall. Who is responsible?

Staff stated the land owner.

Eddie O'Brien stated this type of agreement has been already been done in Silverthorne at the hotels behind First Bank. The bottom line is the land owner is responsible for the repairs.

Council comments

Anderson stated he has handled property purchases for companies and he would never agree to this type of agreement language without a bond.

Lanuzza looks at this agreement in a positive way and he is comfortable with it.

Butler asked if Council would agree to a continuance.

BUTLER MOVED TO CONTINUE THE PERMANENT TIE-BACK EASEMENT, SLOPE, EASEMENT UNTIL SEPTEMBER 22, 2010. MOTION SECONDED. MOTION PASSED UNANIMOUSLY BY COUNCIL.

E. Lowe's Enhanced Sales Tax Incentive Program (ESTIP) Agreement

Mark Leidal, Community Development Director, presented the applicant's request for approval of the Enhanced Sales Tax Incentive Program Agreement. He reviewed his staff memo and the background and purpose of the program. He recommended approval.

Council questions

Lanuzza stated these improvements are needed and this is a good way to finance the much needed improvements over a period of time. Without the ESTIP, the Town would have to pay for the roads.

Wade asked how the ESTIP is calculated and how it affects our budget.

Braun stated the reimbursements will come out of the general fund.

Public Comment

Frank Lilly, President SIBA, stated it is not the government's role to restrict commerce. He strongly pointed out that it's not the government role to offer or give incentives. The proposed increase in sales tax is based on the fiscal impact report. The sales tax increase is based on capturing the leakage of sales out of County. Local business could suffer and the sales tax increase would not be as large as projected. Home Depot is not considered in this equation. Lowe's can afford to pay for the roads and infrastructure and the Town should not be required to pay for them. Silverthorne has a budget surplus and there is no reason to offer incentives. He requested the ESTIP be denied.

Brian Edney, 125 Two Cabins Drive, stated this is a financing tool and it works well. Confident that Lowe's numbers are accurate. He recommended approval.

Don Sather, Big Horn Stores, stated that more current data is obtainable from sales tax revenues and building permits. Approving the ESTIP request is setting the stage for other big boxes to come in. It is more encouragement to the big box teams to come forward and make an application in Silverthorne. He recommends denial as a local business person.

David Koons, Marmot Circle, echoes Mr. Sather's comments. Lowe's can afford to pay its own way.

Public hearing closed.

Council comments

Sandquist feels there is a lot of confusion around the ESTIP program, it is a finance tool. It is part of the Town Code and generally not given to smaller business because not there is not as much impact to traffic and infrastructure. It is an interest free loan to the Town, to complete the improvements in a timely manner for all of those who utilize the road. It is costly to float a bond for the Town, it requires a vote and it is very difficult in this economy. Town Council has

been very careful with its calculations on the ESTIP. The applicant is not responsible for all the costs to the improvements of the road. She reviewed the figures and the methodology of determining the ESTIP agreement. If Lowe's goes out of business in two years, the Town is not required to pay back the money for the road improvements. Council has heard all of the comments.

Wade asked if road improvements were done today, what fund would it come out of. He agrees with Sandquist's comments; council has been over this thoroughly. His issue is that there are ripple impacts with the ESTIP that have not been talked about. The ESTIP would come out of the General Fund. He feels there are still issues with the impacts. He cannot support this at this time.

Preaus stated he agrees how this ESTIP was calculated. He requested an independent financial impact to calculate the impact and ESTIP, and that was not available. He does not agree with the philosophy of ESTIP. A large business needs to determine if a location is good for them same as a small business. He does not agree with giving a large business something that would not be available to a small business. We need to take care of our small businesses.

Lanuzza supports this ESTIP agreement. He doesn't want to repeat Sandquist's comments. He agrees there needs to be incentives for the current or small businesses.

Butler agrees with Sandquist and Wade. He wants to bring a consistency to his decisions. This is a tough decision. This is a way to get the work done up front on an interest free loan. A lot of time was spent on the calculation of this by Council in executive session. Personally he would like to say no, but we need to be fair to the people that live in Wilderrest and Mesa Cortina and get the road construction completed before this store opens. There is no other feasible way to get this done at this time. He requested that other areas in Town be looked at and budgeted for so we aren't in this same position with other areas. He supports this ESTIP request.

Anderson asked if the ESTIP was voted on by the EDAC committee.

O'Brien stated they had several discussions on this.

Anderson asked Leidal for clarification on the traffic and ESTIP numbers.

Leidal reviewed the traffic numbers and the ESTIP numbers, they are not set arbitrarily.

Anderson stated this is financially perceived as by the public as unfair advantage to large businesses. We don't have the same consideration for small businesses. He requested that the improvements be completed without the ESTIP. In the political interest and fairness to the small businesses we should find a way to pay for this. Can the Town pay for this without borrowing or in segments, or over a period time? We are at a point that the moral input of this Council is necessary.

Koop views this agreement as a financial tool that is beneficial. It is improvements up front that are necessary. The Town could probably fund it five years from now. The road improvements are crucial for this area. With this project, we have the tool to make the improvements for all the traffic going up the hill. The ESTIP agreement worked well with Target and that agreement was not as restricted. There was a good job done negotiating this agreement with Lowe's. The ESTIP works with this project.

Preaus asked that we be more proactive with the infrastructure so that we aren't in this spot again, and need to agree to something like this again.

Anderson agrees. He wants the Town to pay for these improvements.

Butler stated this agreement was talked a lot about in the Executive session. Staff and Lowe's worked hard on the agreement.

SANDQUIST MOVED TO APPROVE THE ENHANCED SALES TAX INCENTIVE PROGRAM (ESTIP) AGREEMENT WITH LOWE'S AS PRESENTED. MOTION SECONDED. (YEA

SANDQUIST, LANUZA, AND BUTLER; NAY WADE, PREAUS AND ANDERSON) KOOP AYE. MOTION PASSED.

BOARD OF ADJUSTMENT:

Lowe's Sign Variance – 201 Buffalo Mountain Drive Buffalo – Pulled by applicant

DISCUSSION ITEMS:

None

EXECUTIVE SESSION:

None

INFORMATIONAL:

- A. SPORT Committee Meeting Minutes – August 19, 2010
- B. Planning Commission Meeting Minutes – August 31, 2010

SANDQUIST MOVED TO ADJOURN. MOTION SECONDED. MOTION PASSED UNANIMOUSLY BY COUNCIL. MEETING ADJOURNED AT 2:34 A.M.

DAVE KOOP, MAYOR

ATTEST

MICHELE MILLER, TOWN CLERK

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.