

*Town of Estes Park, Larimer County, Colorado, January 8, 2008*

Minutes of a Regular meeting of the Board of Trustees of the Town of Estes Park, Larimer County, Colorado. Meeting held in the Town Hall in said Town of Estes Park on the 8<sup>th</sup> day of January, 2008. Meeting called to order by Mayor Baudek.

Present:           John Baudek, Mayor  
                  Bill Pinkham, Mayor ProTem  
                  Trustees Eric Blackhurst  
                  Dorla Eisenlauer  
                  Richard Homeier  
                  Chuck Levine  
                  Wayne Newsom

Also Present:     Greg White, Town Attorney  
                  Jacquie Halburnt, Town Administrator  
                  Jackie Williamson, Town Clerk

Absent:           None

Mayor Baudek called the meeting to order at 7:00 p.m. and invited any person desiring to participate to stand and recite the Pledge of Allegiance.

**YULETIME LIGHTING CONTEST – PRESENTATION OF AWARDS.**

Mayor Baudek stated the contest was sponsored by the Town of Estes Park, the Ambassadors and the Estes Park News. Administrative Assistant Tracy Feagans stated the contest was expanded this year to include several different categories for both commercial/business and residential. The categories include best use of color, lighting and decoration, most original and best adaptation of theme. This year also included a Mayor's trophy. Each winner received a plaque, \$100 dinner certificate and a Town flag.

**Best Use of Color, Lighting and Decoration**

Business - McGregor Mountain Lodge  
Residential – Gary & Beverly Briggs

**Most Original**

Business – Rustic Mountain Charm  
Residential – Christopher Galas & Mark Clausen

**Best Adaptation of Theme**

Business – Antique Hospital  
Residential – Steven & Pat Jungbauer

**Mayor's Trophy**

Anne & Siggy Goetz

**PUBLIC COMMENT.**

Ralph Nicholas/Town resident, stated the Board of Trustees did not approve the Initiated Ordinance at the December 11, 2007 meeting and by state statute sent the issue to the electorate. He accused the Board of conducting government business in secret meetings.

**TOWN BOARD COMMENTS.**

Trustee Blackhurst reminded the public that the Estes Park Housing Authority would meet Wednesday, January 9<sup>th</sup> at 8:30 a.m. in Room 203.

**ROCKY MOUNTAIN NATIONAL PARK ELK & VEGETATION MANAGEMENT PLAN.**

Superintendent Baker stated the final Elk and Vegetation Management plan was released and is the result of a seven year research phase followed by a four year interagency planning process. The plan uses adaptive management principles that will guide the Park management of elk for the next 20 years. The plan was necessary to address the results of a larger, less migratory and more concentrated elk herd within the Park and the Estes Valley than would occur under natural conditions.

The preferred alternative for the management of the elk population envisions a gradual approach to culling with 0 to 200 elk culled during the winter of 2009, dependent on population estimates and the previous fall hunting success monitored by the state. Authorized agents, including other agency personnel, contractors and qualified volunteers could be used to assist NPS personnel in culling operations. A more intense fencing program would be implemented to protect the aspen and willows. Staff will use herding and aversive conditioning to redistribute large concentrations of elk.

The advantages of this approach allows work to be completed in house with a cost savings, minimize the impact on visitors, funds are available for fencing, and staff can detect any unintended consequences early and make adjustments as necessary. Meat from the culling operation will be donated through an organized program to eligible recipients, based on informed consent and pursuant to applicable public health guidelines. Costs will be greatly reduced with \$2 million estimated for fencing projects during the next 20 years and \$200,000 annually for culling, monitoring and testing.

Action steps will include fencing from 20 to 30 acre areas in winter range, initial lethal reduction would be tied primarily to feasibility of chronic wasting disease live test research, begin redistribution techniques and continue to monitor population. National Park Service staff will implement management strategy, monitor ecosystem responses, and refine management strategy. Possible future options and tools include fertility controls and wolves.

**1. CONSENT AGENDA (Approval of):**

1. Town Board Minutes dated December 6, 2007, December 11, 2007 and Study Session Minutes December 11, 2007.
2. Bills.
3. Committee Minutes:
  - A. Public Safety, December 27, 2007:
    1. School Resource Officer Agreement.
  - B. Community Development, January 3, 2008:  
CVB
    1. Frost Giant Road Closure – MacGregor Ave. between Elkhorn Ave. and Park Ln., January 27, 2008.
4. Resolution #1-08 - Public Posting Area Designation.
5. Sisk & Co. – Employee Benefit Consulting Service Agreement.

It was **moved and seconded** (Pinkham/Blackhurst) **the Consent Agenda be approved**, and it passed unanimously.

**1A. PLANNING COMMISSION AGENDA (Approval of):**

Mayor Baudek opened the Public Hearing for the following Consent Agenda Items:

1. **CONSENT ITEMS:**

- A. PRELIMINARY PLAT
  - 1. Deer Ridge Subdivision, Amended Plat of Lots 3 & 4, Skoog Subdivision, Paul M. & Katherine M. Kochevar and John A. Skoog/Applicants. Applicant requests continuance to February 26, 2008.
- B. AMENDED CONDOMINIUM MAP
  - 1. Rivers Pointe Downtown Condominiums, Unit E, WAG Corporation, Inc./Applicant.
- C. SUPPLEMENTAL CONDOMINIUM MAP
  - 1. The Promontory at Kiowa Ridge Condominiums, Supplemental Condominium Map #3, Lot 6, Mary's Lake Replat, The Promontory, LLC/Applicant.

As there were no comments, Mayor Baudek closed the public hearing and it was **moved and seconded** (Newsom/Eisenlauer) **the Consent Agenda be approved with staff conditions of approval**, and it passed unanimously.

2. **ACTION ITEM:**

Mayor Baudek opened the Public Hearing for the following item:

- A. **WAPITI CROSSING DEVELOPMENT PLAN 07-13 APPEAL: APPEAL OF THE PLANNING COMMISSION DENIAL OF DEVELOPMENT PLAN 07-13**, Wapiti Crossing, Lot 22, South Saint Vrain Addition.  
Attorney White stated the applicant, Lexington Lane LLC, is appealing the Estes Valley Planning Commission's (EVPC) denial of the Development Plan 07-13 based on the development's significant impact to the wildlife. He instructed the Board that the appeal hearing shall be limited to whether the development as set forth in the proposed plan failed to comply with the terms and conditions of the Estes Valley Development Code (EVDC) Section 7.8 Wildlife Habitat Protection. Specifically, Sections 7.8 (F)(3) which states the Colorado Division of Wildlife (CDOW) will determine whether the proposal results in "significant adverse affect on wildlife or wildlife habitat only if the development adversely impacts the following: b) a calving or fawning area" or Section 7.8 (G) Review Standards.

Trustee Levine left the meeting due to an illness.

Planner Shirk reviewed the staff report. Lexington Lane LLC filed an appeal of the EVPC's decision on November 20, 2007 disapproving the proposed development plan. Pursuant to the EVDC, the Planning Commission is the Decision-Making Body for development plans; however, the Code allows the property owner to appeal a decision to the Town Board. The appeal states the Planning Commission's decision did not address any deficiency in the Application's compliance with the EVDC standards or the Comprehensive Plan. The Planning Commission denied the Application based upon a "significant impact to wildlife" and found no other deficiencies.

The plan proposes 42 residential units to be located on the southwest corner of Highway 7 and Lexington Lane with no variances requested. The property has been zoned Multi-Family development since 1961. The plan also satisfies the review standards and

includes native vegetation proposed for vegetation, no fencing except for limited fencing to mitigate wildlife damage, proposed exterior lighting to be minimized and code compliant, bear proof refuse enclosures and domestic animals to be restricted. Total impervious coverage for the development would be 38% with 62% of the property left vegetated.

Discussion of the letter from the CDOW followed among the Board as to the impact of the development on wildlife. It was the consensus of the Board that the letter did not state there would be a significant adverse impact on the wildlife.

Steve Loos/Project Architect for the Mulhern Group stated the proposed Development Plan complies with all applicable standards with regard to land use, density, lot coverage, building height, parking, open space and EVDC Section 7.8 Wildlife Protection Standards. He commented the code as written does not contain language for the denial of a development plan due to an adverse impact on wildlife; rather, the code contemplates mitigation of the impact to the wildlife. The proposed plan goes beyond the EVDC requirements by reserving more than 60% of the property as open space and providing corridors for the movement of wildlife. He reiterated that the CDOW did not find a significant impact to wildlife in their letter dated October 25, 2007 and only required the compliance with EVDC Section 7.8. The CDOW did not request a wildlife conservation plan for this project. This site is part of a larger surrounding area where elk forage, rut and calve. This property can not be segregated out as significant due to the high level of adaptability and the highly habituated nature of the elk population in this area. In-fill development within Town boundaries aids in limiting sprawl in adjacent areas that could be more significant wildlife habitat.

Chris Roe/Roe Ecological Services, LLC (RES) reviewed the elk and wildlife impact assessment of the subject property. The purpose of the assessment was to determine the potential impacts of this development on the elk and other wildlife that make use of the property, the surrounding subdivisions and the area as a whole. RES assessed the highly valued local wildlife viewing area; daily and seasonal loafing and foraging activity by the elk; elk movement across the property as well as the general area both daily and seasonally; elk reproduction, considering both individual animals and the overall population; and other wildlife in the area, including deer and bear.

The proposal will have a significant and negative impact on a highly valued local wildlife viewing area; however, viewing opportunities will remain from the open areas in the northwest corner of the property and between the buildings. This wildlife viewing opportunity will be similar to those in other parts of the town.

The proposed development will reduce the quantity of forage and total loafing area; therefore, the development would likely reduce the number of elk that utilize the property. The remaining open space within the development would be similar to other development within the surrounding neighborhood. No significant, long-term impact to the local elk population, their generalized activity, or seasonal movement would be expected.

The proposed development would not create a significant impact to wildlife movement in the areas and would create only a slight to moderate impact. Due to the habituation of elk to the urban/suburban environments within Estes Park, elk behavior, and calving habitat characteristics, the proposed development would not significantly impact elk calving in the area east of Prospect Mountain. It is recommended that construction not occur between early May and late June, no trees be planted near the buildings and no fencing be placed within the development. He also stated the impact of the development would be less as the development would be phased.

Mark Leslie/CDOW Area Wildlife Manager stated the Division has the responsibility to provide comments related to the impact of development on wildlife. Our responsibility and role is to make recommendations to the Board as the regulatory agency. The proposed development is significant as it relates to calving and fawning as per the EVDC. There is no scientific information on the number of animals using the property.

Rick Spowart/DOW District Wildlife Manager stated based on the EVDC the proposed development would have a significant impact on the wildlife as it pertains to calving and fawning. He stated the current code language is not adequate to address the impact of development on wildlife. He requested the Town consider a bear-resistant ordinance to address the increase encounters of bears in residential neighborhoods. He commented the property is important for elk movement through the area to their ultimate goal, the golf course and is used as an area to congregate.

Mayor Baudek questioned whether there exists any developable property that would not have an impacted on the wildlife. Mr. Spowart stated there are few; however, the unique aspect of this property is the high use by the animals. The whole valley is considered critical deer and elk winter range. He stated there is calving within this area and the species are very adaptable.

Trustee Blackhurst questioned whether the report provided by RES addressed the concerns related to the development. Mr. Spowart disagrees with some of the conclusions. The report does not fully address the calving and fawning areas on the property.

Mayor ProTem Pinkham asked if the intense use of the property by the elk is due to the surrounding development. Mr. Spowart agreed the elk are utilizing the open space for forage, calving and fawning as well as a corridor to access the golf course. He stated the proposed development would increase the use of the golf course by the elk.

**Public Comment:**

Those speaking in opposition to the proposed development: Ronald Norris, Sandy Osterman, Steve Mares read a letter from Becky Mares, Dorothy Billingham read a letter from Al Persons, Ania Stein, Judith Nichol, Dick Coe, Sandy Lindquist read a letter from Cory La Bianca, Bob Ernst, George Hockman, Tom Ewing, Dirk Knobel, Fred Mares, and Stefanie Hart. Statements included the development did not follow the intent of the Estes Valley Comprehensive Plan; the proposal does not address the impact to wildlife; the developer was aware of the wildlife issues prior to purchasing the property; wildlife habitat should be preserved; open space should be maintained for the wildlife; the development will negatively impact the tourist

economy; increase traffic along Hwy 7; the property is a highly valued elk viewing point and there will be an increase in human and elk encounters with the development that could be dangerous, especially for children.

Judith Nichol, Corey La Bianca, Robert Ernst and Dirk Knobel requested Trustees Blackhurst and Newsom recuse themselves from the discussion and decision due to the perceived conflict of interest as both are realtors. Both stated they have had and would not have a financial interest in the development.

Paul Fishman/14ers Café commented the discussion should be framed around responsible development. There needs to be a review on the social, economic and environmental effects of each development. The current process is not working and is leading to lengthy and expensive lawsuits; therefore, all sides should come together to determine the definition of responsible government.

Peggy Lynch/Remax Realtor spoke to the number of condominiums on the market. She stated the current real estate market has 355 properties on the market including condominiums, which are similar to the number in 2004/346, 2005/343 and 2006/365. She stated the condominium market is strong.

David Habecker, Town resident, stated the Trustees must determine whether or not the development will impact the wildlife that frequent the lot with a lack of scientific data and no one to provide expert advice. He stated 30 years ago a bear sighting was rare; however, after 1,000 condominiums have been developed the number of elk has increased and bear sightings are more common. He reiterated that the Town Board and the Planning Commission are obligated to uphold the codes of the Town and can not arbitrarily apply them to this development without incurring another expensive lawsuit. He stated the Trustees must uphold the codes and overturn the Planning Commission's decision.

The Mayor called a 10-minute recess at 9:50 p.m. and reconvened the meeting at 10:00 p.m.

Chris Roe/RES reiterated the character of the area would change with the development; however, the developed lot would be similar to other developed areas within Estes Park. He stated the impact to calving would be temporary and the impact to the wildlife would not be detrimental.

Steve Loss/Mulhern Group commented the design has taken into consideration the impact to the wildlife and has followed the EVDC. A Wildlife Conservation Plan was not provided as it was not requested by the planning staff or CDOW.

Mayor closed the public comment.

Trustee Eisenlauer stated this development has been controversial and emotional. She questioned whether a Wildlife Conservation Plan would effectively address the issue of a significant adverse effect on wildlife. Mr. Leslie stated there is no way to know what the plan would include. She commented that as an elected official she took an oath to uphold the Constitution, Colorado Constitution and the

codes and laws of the Town of Estes Park. She stated the developer has met the regulations of the EVDC.

Trustee Newson stated he has had no involvement with the sale of this property. As to the accusations he coerced realtor and developers to attend tonight's meeting, he stated that he made a statement at the last Board of Realtors meeting that the development would be discussed. He commented that each property owner has personal property rights and the responsibility and obligation to follow the codes. The proposed development has followed the code. Developers continue to build condominiums because they continue to be a popular purchase.

Mayor ProTem Pinkham commented that the issue tonight is with regard to elk calving and foraging and not viewing. He questioned if the significant impact to elk implies the land can not be developed or that a Wildlife Conservation Plan should be developed to mitigate the development. Mr. Leslie stated the CDOW has not said the property can not be developed. The CDOW would be available to aid the developer in mitigating the effect of the development on wildlife.

Trustee Homeier questioned if the CDOW has found that the development would have a significant adverse impact on wildlife. Mr. Leslie and Mr. Spowart stated the proposed development would result in a significant adverse impact on wildlife due to the fawning and calving that take place on the property.

Trustee Blackhurst suggested the Town take this opportunity to begin a dialogue regarding the Comprehensive Plan and development in the valley. He stated the proposed development meets the requirements of the EVDC. He recommended the item return to the Planning Commission to review the wildlife assessment in conjunction with a Wildlife Conservation Plan. The developer has the personal property rights to develop this property in accordance with the EVDC.

Mayor Baudek stated the previous Comprehensive Plan review reduced build out from 32,000 to 22,000. The Town needs to protect the property rights of all citizens of the Town of Estes Park.

After further discussion, it was **moved and seconded** (Homeier/Blackhurst) **to remand the Wapiti Crossing Development Plan 07-13 to the Planning Commission due to the Colorado Division of Wildlife's finding of a significant adverse impact on the wildlife and to review a Wildlife Conservation Plan pursuant to Section 7.8.F.4 of the Estes Valley Development Code**, and it passed unanimously.

## 2. ACTION ITEMS:

1. **LIQUOR LICENSING: TRANSFER OF OWNERSHIP – FROM TWO DOLPHINS LLC, dba GRUBSTEAK RESTAURANT TO TWO DOLPHINS INC. dba GRUBSTEAK RESTAURANT, ALEXANDRA P. JONES, 134 W. RIVERSIDE DR., HOTEL AND RESTAURANT LIQUOR LICENSE.**

Town Clerk Williamson reviewed the application stating all necessary paperwork had been received. The owner of the Grubsteak reorganized the business from a LLC to a Corporation in 2007. This change in structure requires a transfer of the liquor license. Mayor Baudek reminded the applicant that the Town requires liquor licensed establishments to check identification. It

was moved and seconded (Newsom/Blackhurst) the Transfer of Ownership Application filed by Two Dolphins Inc. dba THE GRUBSTEAK, be approved, and it passed unanimously.

2. **PUBLIC HEARING: NEW 3.2% BEER OFF-PREMISE LICENSE APPLICATION FILED BY GAEL INC. dba CASA DEL SOL Y LUNA MINI MARKET 920 DUNRAVEN STREET.**

Mayor Baudek opened the Public Hearing and reviewed the procedures. Town Clerk Williamson presented the Application and confirmed the Town has not received any communications or evidence in support or opposition to the application, and required T.I.P.S. has been scheduled. Comments were heard from Ericka Gonzalez/Applicant. Mayor Baudek encouraged the Applicant to be vigilant on checking identification prior to selling and that the Board takes very seriously the operation of liquor licenses and the Liquor Code. There being no further testimony, Mayor Baudek closed the Public Hearing. Stating the Board of Trustees finds that the reasonable requirements of the neighborhood are not met by the present liquor outlets in the neighborhood and that the desires of the adult inhabitants are for the granting of this liquor license, it was moved and seconded (Pinkham/Newsom) the 3.2% Beer Off-Premise Liquor License application filed by Gael Inc. dba CASA DEL SOL Y LUNA MINI MARKET be approved, and it passed unanimously.

3. **ESTES PARK CHAMBER FUNDING FOR CONSULTANT.**

Town Administrator Halburnt reviewed the request by the Estes Park Chamber of Commerce for additional funding. JJ Johnston/Econogine, LLC was retained by the Town of Estes Park to perform an analysis and create a work plan for the Chamber of Commerce. The Chamber would like to retain Mr. Johnston for another month at the cost of \$7,500 to help them begin implementation of the work plan, and requests the Town fund the additional expense. To date, the Town has paid \$7,500 for the plan and \$1,000 in membership fees to the Chamber. If the Board approves the additional unbudgeted funding, staff recommends an amendment to the General Fund Community Services budget to reflect the expenditure. This would reduce the General Fund ending balance for 2008 and reflect a fund balance of 29%. Staff would recommend the Town enter into the agreement with JJ Johnston directly and authorize the funds for the first quarter of 2008 only.

Louis Smith/Chamber President stated the Chamber has tried to determine a method to grow the membership over the last 18-months. They are seeking the aid of the Town due to a loss of revenue. Membership dues can not support the day-to-day operations and the need for JJ Johnston's expertise.

Trustee Eisenlauer requested clarification on the goals and outcome of the first \$7,500 and how the second \$7,500 would be spent. Ms. Smith stated the initial funds were used to development a work plan for the Chamber with a presentation presented to both the Chamber and the Town. The second \$7,500 would be used to implement the plan.

Mayor ProTem Pinkham reviewed the survey conducted by JJ Johnston with over 30 individuals to assess the Chamber, the Town and the relationship between the two entities. The plan developed by Mr. Johnston contains steps to move forward organizationally and broadening the scope and community involvement of the Chamber.

Trustee Blackhurst stated that the Board does not disagree that the Town would benefit from a strong Chamber. He commented the lawsuit does hinder the Town and Chamber relationship. He would be supportive of the additional funding if the Chamber could raise a portion of the money.

JJ Johnston reviewed the scope of work for the next phase. The next step would be the membership survey to identify the programs that the membership would support and engage an expanded board, conduct a planning retreat to develop a pro business scope of work.

It was **moved and seconded** (Pinkham/Blackhurst) **to approve a contract with Econogine, LLC for up to \$7,500 to implement the Chamber work plan during the first quarter of 2008**, and it passed unanimously. Trustee Homeier requested a copy of the report presented to the Town. Trustee Blackhurst stated it would be useful to provide a copy of the executive summary to the press.

4. **ELECTION – APRIL 1, 2008.**

Town Clerk Williamson reviewed Resolution #2-08 scheduling the regular municipal election for April 1, 2008 and the agreement for rental of election equipment with Larimer County. It was **moved and seconded** (Pinkham/Newsom) **Resolution #2-08 and the Rental Agreement in the amount of \$550.00 be approved**, and it passed unanimously.

5. **TOWN ADMINISTRATOR REPORT.**

- A public meeting will be held on January 15<sup>th</sup> at 6:00 p.m. in the Board Room to discuss the fee for fire service within the areas outside town limits. She encouraged those with alternative ideas to attend the meeting.
- A joint meeting of the Town Board, County Commissioner and Planning Commission would be held on January 29<sup>th</sup> at 3:00 p.m. at the Conference Center to discuss land use issues. No public comment will be heard at this meeting; however, the community is welcome to attend.

6. **ADJOURN.**

Whereupon Mayor Baudek adjourned the meeting at 11:35 p.m.

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John Baudek, Mayor

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Jackie Williamson, Town Clerk