

*Town of Estes Park, Larimer County, Colorado, August 12, 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 12<sup>th</sup> day of August, 2008. Meeting called to order by Mayor William C. Pinkham.

Present: William C. Pinkham, Mayor  
Chuck Levine, Mayor Pro Tem  
Trustees Eric Blackhurst  
Dorla Eisenlauer  
John Ericson  
Richard Homeier  
Jerry Miller

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

Absent: None

Mayor Pinkham 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.

PUBLIC COMMENT

Virginia Page/Town Citizen requested the Town consider placing 30 minute parking signs on each of the applicable parking spaces in the Post Office parking lot.

George Hockman/Town Citizen expressed concern with the Town's current efforts to control noxious weeds. He stated C.R.S. 35-5.5-106 states a governing body of all municipalities shall adopt a noxious weed management plan. He asserts the Town has never been in compliance with the State law. He requested the Board direct staff and provide resources for weed control.

John Meissner/Town Citizen stated Ralph Macdonald and the Robbins family presented the Trail Gazette with copies of The Mountaineer in the 1930s. Full sets of the publication do not exist at the library or the museum. He requested that copies of the publication be made available to the citizens.

David Habecker/Town Citizen stated the Town's noise ordinance has not prevented motorcyclists from modifying mufflers on their bikes. It continues to be an issue. He requested the Town Board stop reciting the Pledge of Allegiance because the phrase "under God" is offensive and unconstitutional.

Ron Norris/Town Citizen commended the Board on addressing the Pledge and the issue of religion with flexibility, grace and common sense.

TOWN BOARD COMMENTS

Trustee Blackhurst reminded the public that the Estes Park Housing Authority would meet Wednesday, August 13<sup>th</sup> at 8:30 a.m. in Room 130, and the Utilities Committee would meet Thursday, August 14<sup>th</sup> at 8:00 a.m. in the Board Room.

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

1. Town Board Minutes dated July 22, 2008 and Town Board Pre-Budget Study Session Minutes dated July 25, 2008.

2. Bills.
3. Committee Minutes:
  - A. Public Safety, July 17, 2008.
  - B. Public Works, July 24, 2008.

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

**2. REPORTS AND DISCUSSION ITEMS:**

1. Initiated Ordinance Petitions for Estes Park Urban Renewal Authority (EPURA) – Report. Attorney White stated a petition was filed by petitioners William Van Horn and Larry Pesses with the Town Clerk on July 7, 2008 to require voter approval at a regular or special election for the creation and viability of the exiting EPURA and any new URA or Downtown Development Authority in the future. He reviewed the Initiated Ordinance procedure including the form of the petition. The Town Clerk rejected the petition because the creation of an URA or Downtown Development Authority is governed by C.R.S. 31-25-101, any existing URA is a separate entity and not a proper subject of municipal legislation and the proposed ballot Initiative Ordinance addressed multiple subjects. On July 20<sup>th</sup>, two separate petitions were received by the Town Clerk. The first petition contained the same provisions as set forth in the initial petition requesting a vote of the people. The second petition addressed the abolishment of EPURA under C.R.S. 31-11-106(1). The Town Clerk rejected the first petition for the same reasons as stated previously. Upon the completion and submittal of a first printer's proof of the second petition the Town Clerk would approve the petition for circulation. The Town Clerk's office has not received further correspondence. The Estes Park Citizens for Responsible Government and William Van Horn filed for Declaratory Judgment; however, the Town was not served until August 5, 2008. The Plaintiffs have requested the courts schedule a speedy hearing and find the proposed Ordinances are municipal legislation. The Plaintiffs must file an opening brief by August 19<sup>th</sup>, the Town has until August 29<sup>th</sup> to file a brief and the Plaintiff has until September 2<sup>nd</sup> to reply to the brief. The Town is trying to move forward as quickly as possible.

**3. ACTION ITEMS:**

1. **RE-APPOINTMENT: ADVERTISING COMMITTEE.**  
Director Pickering requested the re-appointment of the Advertising Committee (CVB Marketing Committee) which expired in April 2008. The appointments would expire December 31, 2008. It was **moved and seconded** (Blackhurst/Eisenlauer) **to approve the re-appointment of Cory Blackman, Kyle Patterson, Rob Pieper, Tom Pickering, Peter Marsh, Suzy Blackhurst, Bo Winslow and Julie Nikolai to the Adverting Committee as outlined above**, and it passed unanimously.
2. **INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE TOWN OF ESTES PARK AND LARIMER COUNTY FOR THE ESTES PARK LOCAL MARKETING DISTRICT.**  
Attorney White reviewed the changes to the fifth draft of the IGA between the Town of Estes Park and the Larimer County Commissioners for the establishment of the Estes Park Local Marketing District. The residency requirement was amended to require a Board member to reside within the service area of the district with five appointments by the Town and two

appointments by the County. Term limits for Board member can be waived by either the Town or the County if there are no qualified applicants to fill a vacancy on the Board. The establishment of the LMD and the authorization to levy a 2% marketing and promotion tax would be subject to voter approval at the November 4, 2008 General Election. The IGA designates the Town Clerk as the election official. The Town would be responsible for its pro-rata share of the election costs determined by the number of electors of the Town and the County eligible to vote in the district election. The LMD, if established, and upon receipt of tax revenue would reimburse the Town and the County for the cost of the election.

David Habecker/Town Citizen expressed great concern that all LMD Board members could have residency outside of Town limits. Businesses in town limits may not have representation on the Board.

The Town Board emphasized the lodging tax would be collected by the State and transferred directly to the new LMD Board. The Town and the County would not dictate how the money is spent except through the approval of a yearly operating plan. Funds currently used for marketing by the Town would be used for infrastructure and capital improvements for the citizens and tourist of our community.

After further discussion, it was **moved and seconded** (Levine/Homeier) **to approve the Intergovernmental Agreement between the Town of Estes Park and the Larimer County Board of Commissioner for the formation of the Estes Park Local Marketing District**, and it passed unanimously. The Mayor thanked all for their efforts in bringing this issue forward.

**3. INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE TOWN OF ESTES PARK AND LARIMER COUNTY ELECTIONS OFFICE FOR THE 2008 COORDINATED ELECTION – LOCAL MARKETING DISTRICT.**

Town Clerk Williamson stated pursuant to C.R.S. 1-7-116(2), an IGA would be required between a political subdivision and the County Clerk and Recorder to participate in the upcoming coordinated election. The agreement places all election responsibilities on the County for the preparation and conduct of the coordinated election and provides for the appropriate costs to be paid pursuant to the IGA between the Town and the County for the LMD. The estimated cost of the election is \$20,000 to \$33,000. It was **moved and seconded** (Eisenlauer/Ericson) **to approve the Intergovernmental Agreement between the Town of Estes Park and the Larimer County Clerk and Recorder for the Coordinated election to be held on November 4, 2008** and it passed unanimously.

**4. WAPITI CROSSING DEVELOPMENT PLAN 07-13 APPEAL OF THE PLANNING COMMISSION APPROVAL OF DEVELOPMENT PLAN 07-13, Wapiti Crossing, Lot 22, South Saint Vrain Addition.**

Attorney White stated the appellants, adjacent property owners, are asserting the Estes Valley Planning Commission (EVPC) did not correctly apply Section 7.8 of the Estes Valley Development Code (EVDC) during the review and subsequent approval of the development.

Planner Shirk reviewed the history of the proposed development including a previous denial of the development in November 2007 by the EVPC based on a significant impact to wildlife. In January 2008, the developer appealed the EVPC's decision to the Town Board and the Board remanded the development plan to the EVPC to review a Wildlife Conservation Plan. The plan was prepared by a Staff approved certified wildlife biologist, forwarded to the Colorado Division of Wildlife (CDOW) for review and the EVPC found it complied with the requirements set forth in Section 7.8.H. After preparation of

the Conservation Plan, the applicant revised the development plan to reflect suggestions made in the plan. These included removal of one unit to the northwest of the multi-family building, widening a migration corridor to the north of the property and reduction in the amount of landscaping. The plan also includes no fencing, removal of some street lights, bear-proof trash enclosures and requiring domestic animals to be in control by their owners at all times. In addition, all utilities would be completed at one time and construction would not begin until after calving season.

Steve Loss/Mulhern Group was present to represent the developer. The plan meets and/or exceeds the EVDC. The development plan has also eliminated the path connection the existing cabin to the roadway. A direct path from the multi-family building would be constructed to the existing cabin. The use of the cabin as a community building would be limited during the calving season to reduce contact with the wildlife. The wider migration corridor has been placed within the area currently used by the animals to cross over to the golf course. Christopher Roe/Roe Ecological Services stated the wider corridor also encourages wildlife to cross the highway at a more visible section of the roadway.

Trustee Miller questioned if the buffer requirements in Section 7.8.G.1.a was met by the development. Director Joseph state Rick Spowart/CDOW informed the EVPC at the May meeting the biggest impact would be the loss of the open meadow for elk staging during the rut, the breeding season, and normal social interaction. He did not mention the preservation of the calving habitat. The potential calving area on the lot is a small wooded portion on the south end. Mr. Roe stated the amended development plan provides an adequate buffer from the potential calving area.

Those speaking in support of the appeal included: Arleta Bell/Town Citizen and Appellant, George Hockman/Town Citizen, Richard De Long/Town Citizen, Sandy Lindquist/Town Citizen, Sandy Osterman (letter)/Town Citizen, Dick Coe/Town Citizen, Bonnie Haughey/Town Citizen and Jon Nicholas/Town Citizen. Comments are summarized: the developer has a right to develop the property; however, the development should meet the codes of Estes Park; Rick Spowart stated 41 condominiums can not be constructed on the site without having a significant impact; the neighborhood views the property as a necessary habitat for wildlife and should be preserved; the property values of the preexisting property owners should be protected from the proposed development; the property should be limited to 3 - 8 units per acre with large buffer areas from the existing homes; the plan should be denied and a new Conservation Plan approved by the CDOW should be developed; he development is incompatible with the surrounding neighborhood; the approval or denial of the development plan should be based on the adequacy of the Conservation Plan.

Fred Mares/Town Citizen stated the Planning Staff and Attorney White interpreted Section 7.8 of the EVDC as having no provision for denial, only requiring the submission of a Wildlife Conservation Plan and that the effectiveness or adequacy of the plan at mitigating the adverse effects of the proposed development on the habitat is of no consequence. The neighbors contend the interpretation and instruction were incorrect. This development was the first to require a Wildlife Conservation Plan in the eight year history of the EVDC. Section 7.8.F.4 requires CDOW to review the plan to determine whether or not it adequately addresses the adverse impacts on wildlife caused by the development. This requirement provides a basis for denial of the proposal.

Rick Spowart /CDOW restated the role of the Division is to act as a source of information and not to make recommendations on development. He commented the Wapiti development would have a significant impact on the habitat of the wildlife. He agreed the typical fawning and calving area would be the wooded area on the southern portion of the lot.

Trustees questioned if there was a development that would meet the requirements and create less impact, whether there was an adequate buffer and if the Conservation Plan was inadequate. Mr. Spowart stated a less dense development would have less impact on the wildlife and their habitat. He commented buffers are more critical for deer fawning and the development would have a significant impact on fawning. The Plan does not adequately address the impact on wildlife. However, he stated the migration corridor would be more essential than the buffer on the south side of the property. The elk would follow the path of least resistance and would likely spend more time on the golf course if this development is approved.

David Habecker/Town Citizen spoke against the appeal. He stated the conditions of adverse impact have been exacerbated by the neighboring homes surrounding this lot. Additional conditions can not be placed on the last developable lot in the neighborhood. He also stated the CDOW has and will always claim development adversely impacts the wildlife in Estes Park. The size of the lot precludes any significant adverse impact on the wildlife and the handful of calves or fawns born each year on the lot is not significant to the herds.

Eric Waples/Town Citizen spoke to the effectiveness and enforceability of Section 7.8 of the EVDC. The Town has ignored this section of the code and clear guidelines need to be developed and enforced. He stated the intent of the Section 7.8 is clearly stated and should be upheld. The Town would in effect destroy the intent of the code if Town staff or the Town Attorney did in fact instruct the EVPC that no grounds for denial of the development plan existed.

Cherrie Pettyjohn/Town Citizen and past Planning Commissioner state the property has been zoned RM – Residential Multi-Family since the 1960s, the developer has not requested any variances and the development meets the EVDC requirements. The code can be amended but it is the responsibility of the citizens to revise the code and address the issues related to development.

Ron Norris/Association for Responsible Development (ARD) spoke in support of the appeal for the following reasons: the property is a documented calving and fawning area; the Wildlife Study found the proposal would cause significant adverse impact on the wildlife habitat; the mitigation plan was found inadequate by the CDOW; and the EVPC was precluded from exercising reasonable judgment. ARD would support development on this property with a revised project that mitigates the effect on wildlife and receives written approval from the CDOW.

Board discussion is summarized: the EVDC, Section 7.8 as written provided the EVPC the ability to deny the development plan if the Commission found cause; this portion of the EVDC is inadequate and should be rewritten; the EVPC made the right decision with the information presented at the time regardless of staff or legal comments; the developer has complied with Section 7.8.f.3 by reserving a calving area and providing a migration path toward the golf course; the developer has made adequate mitigation efforts; the developer has property rights and the density proposed meets the zoning regulations; the Estes Park Housing Study has found the growth rate in the valley to be 1.3%; therefore, the valley has been growing at a slow and steady rate; the Town needs to determine what properties need to be preserved for open space and address

the issue in the code; there needs to be a balance between protecting open space and protecting property rights.

Trustee Miller stated concerns that the development plan does not meet the buffer standards in Section 7.8.G.1.a, Section 7.8.H.d has not adequately been addressed as to how the mitigation efforts would be measured, and the code does not guarantee the maximum density would be available. He suggested the issues be addressed prior to moving forward with the development.

It was **moved and seconded** (Blackhurst/Levine) **to uphold the Estes Valley Planning Commissions approval of the Wapiti Development, Development Plan 07-13 with the staff conditions of approval**, and it passed with Trustees Ericson and Miller voting “No”.

5. **TOWN ADMINISTRATOR REPORT.**

No report.

6. **REQUEST TO ENTER EXECUTIVE SESSION:**

24-6-402(4)(b), C.R.S. - Conference with Town Attorney White for the purpose of receiving legal advice on a specific legal question – Lot 4, Stanley Historic District.

It was **moved and seconded** (Levine/Eisnelauer) **the Town Board enter into Executive Session for the purpose of a conference with Town Attorney White to receive legal advice under C.R.S. Section 24-6-4-2(4)(b).with regard to Lot 4, Stanley Historic District**, and it passed unanimously.

Whereupon Mayor Pinkham adjourned the meeting to Executive Session at 10:06 p.m.

Mayor Pinkham reconvened the meeting to open session at 10:40 p.m. and adjourned the meeting at 10:40 p.m.

---

William C. Pinkham, Mayor

---

Jackie Williamson, Town Clerk