



TOWN COUNCIL SPECIAL MEETING MINUTES
TUESDAY, OCTOBER 23, 2012
Ross Aragón Community Center South Conference Room
451 Hot Springs Blvd
12:00 P.M.

- I. **CALL MEETING TO ORDER** – Mayor Aragón, Council Member Alley, Council Member Bunning, Council Member Cotton, Council Member Lattin, Council Member Schanzenbaker, Council Member Volger
- II. **APPEAL OF RESOLUTION NO. 2012-12 OF THE TOWN OF PAGOSA SPRINGS DESIGN REVIEW BOARD** - Town Attorney Bob Cole reviewed the procedure for the meeting regarding review of the appeal and brief the Rader's have filed, consideration of the information presented by town staff and the appellants, Steven and Vivian Rader, and review of the criteria the Design Review Board applied to their approval process of the application. He advised the town council to come into the process without any bias. He said he has reviewed the information and feels that none of the council should be excluded from the process for bias one way or another. He explained the process regarding the request for additional evidence. He advised council that a written decision should be made by motion and to direct staff to prepare a written order by resolution to be heard on Thursday regarding the decision made during this meeting. The appellants, Steven and Vivian Rader, were not present when meeting began (12:14pm), Town Attorney Cole explained that he had left a message for the Rader's to appear by phone if they were not available to attend the meeting in person. The Rader's had not replied to Attorney Cole's message at the time of the meeting. The Town Council has the option to move forward with the hearing without the Rader's present.
1. **Request to Present Additional Evidence** – During the appeal process only those items presented in the appeal can be addressed unless the council approves the addition of other documentation. Town staff has requested to include documentation replying to the appellants claim regarding Mr. Mike Church's notarized document regarding authorized representation to act as manager for Echo Bay T-68 LLC. Town staff presented evidence showing that both Mike Church and Dan Sanders are authorized representatives. A second item included emails between town staff and Mrs. Rader regarding Resolution 2012-15 stipulated orders. Town Staff said this information will assist the Town Council to make clear decision on this item the Rader's objected to in their appeal. Council Member Volger moved to approve and accept the request to submit additional documentation, being that there is no objection at this time, and being that town council needs to have all the information available to make an accurate decision, Council Member Bunning seconded, unanimously approved.
 2. **Appeal Hearing** - On August 31, 2012, the Town Clerk received a Notice of Appeal submitted by Vivian and Steve Radar (Appellants), regarding the Town's Design Review Board's (DRB) August 21, 2012 approval decision for Wal-Mart's Major Design Review Application, via Resolution 2012-12, A Resolution Setting Forth Findings of Fact and

Conclusions and Approving the Wal-Mart Major Design Review Development application. This appeal hearing process is to follow Resolution 2012-15 requirements.

- a. **Appellants Arguments – 30 minutes** – The appellants, Vivian and Steven Rader did not appear and are not present to make their arguments. Mayor Aragon asked if anyone was appointed by the Rader's to make statements on their behalf; no persons addressed council on their behalf. Council Member Schanzenbaker asked that Town Attorney attempt to contact the Rader's one last time before proceeding. Council Member Volger said this is an important hearing for both the Rader's and the Town and he said the Rader's intentions are known by their brief, and he is not in favor of another phone call to the Rader's, town council concurs.
- b. **Town Staff Rebuttal – 30 minutes** - Town Planner, James Dickhoff, addressed the town council regarding the Resolution 2012-12 approved by the DRB. Section 2.4.13 of the LUDC sets out the appeal criteria that town council must base their decision on for this appeal. Mr. Dickhoff reviewed the documents presented to the Planning Commission including all public comment cards from the February 16th council worksession, the March 16th Wal-Mart open house, the Major Design Review application, the audio recordings, all written public comment documentation, all documentation and development plan and revisions from applicants, all reviews from Bohannon Huston, all staff reviews, and public notice requirements. He explained that on April 5th 2012 the town received the major design review application from the Wal-Mart application to be located in Aspen Village. All public notice regarding the major design review application were posted in required spots. He said the appellant, Vivian Rader, was present at the February town council work session, Wal-Mart open house in March, and the Design Review Board meetings May 22nd, July 10th, and August 21st which resulted in approval of Resolution 2012-12 design review for the Wal-Mart. He said the town hired an outside contractor, Bohannon Huston to review the application and all subsequent revisions. He explained the Design Review Board is responsible to hear the major design applications and the criteria required for the Design Review Boards decision was followed and substantial amendments were made by the applicant after three public hearings to bring their application into LUDC requirements. He said additional changes were made including changes to rear screening, parking area, landscaping islands which exceeds the minimum requirements, water quality devices to help the storm run-off, light source plan, easements for trail width, upgrades to building architecture, and the addition of decorative ballards. He said that staff feels the appellant was given adequate information and the DRB did follow the criteria as required. Addressing other items on the appellants appeal, Mr. Dickhoff said there is no requirement in the LUDC for the town to own legal access prior to approving access points, and the DRB had to only approve access points per the LUDC. He said the quitclaim deed for Alpha Drive is not illegal as suggested by the appellant. He said the Town was not obligated to contact the property owners association and the public notice process was in compliance with the LUDC. He explained the LUDC does not address accepting public comment, and said the procedure changed to require written documentation at least 8 days prior to the meetings to assist the DRB with reviewing this information prior to the meeting dates. He said the DRB had ample evidence that the applicant had obtained sufficient authorization that the Master POA considered the development plans in the open space parcel and they did provide consent. He said the additional documentation provided clearly states that Mike Church is authorized to act as a manager of Echo Bay. He said the DRB received information from the Colorado Secretary of State that the Masters Association was in Good Standing prior to final DRB public hearing. Mr. Dickhoff said with regards to the appellants objection to the wetland permit issue,

Kara Helige in the Army Corps of Engineers Durango Office said the application is withdrawn but not taken out of the queue until the applicant submits the additional information that was requested. He said Wal-Mart has since submitted all requested information and the application is being actively processed. He said the lighting plan submitted originally was reviewed at the first public hearing and resubmitted with changes reviewed at the July 10th meeting. He said the plans did state the hours of illumination as 24 hour operations. He said the LUDC does not set forth any additional lighting plan requirements for a 24 hour store. He said the hours of operation are not an approval criteria item for the DRB to consider for a major design review application. He said the town has a strict illumination program, more restrictive than the national model. Mr. Dickhoff said the DRB, Bohannan Huston, town staff reviewed the application thoroughly, and the fact that the town hired Bohannan Huston to provide a detailed third party review helped to ensure the applicant was held to the high standards. He said the other businesses in the Aspen Village Development required less landscape and stringent requirements than the Wal-Mart design requirements. He said that Mr. Jerry Pope is the majority property owner in the area and said he supports this project as approved at the last DRB hearing. He said town staff feels they did everything legally, appropriate and properly and within the LUDC requirements, without forgery in any documentation as claimed by the appellant. He said the DRB and staff feel there is not constitutional wrong doing in approving this project. Replying to the appellant's claim of prejudice against the county properties, Mr. Dickhoff said there are different design standards for different areas of town and the LUDC validly imposes difference standards in different zones of town. He said the appellants claim regarding lack of mitigation in the application is not true. He said the DRB helped mitigate water quality to the wetland, the reduction of access points, screening and buffering requirements, ensured internal traffic flow, and ensured contingencies were set in the resolution for other application approvals in the process. He said that staff feels there was no lack of notice, denial of due process, fraud or forgery as the appellants insinuate. He said the procedures for appeal related to resolution 2012-15 were developed with full disclosure to the appellants; staff was open with the correspondence with the appellants to accommodate their requests. He said the DRB was thorough in the review of the Wal-Mart major design review development application as evidenced by the three DRB public hearings each resulting in additional mitigation and amendments to the proposed development plan and incorporated into their final DRB approval of resolution 2012-12.

- c. **Appellants Surrebuttal – 15 minutes** – Again Mayor Aragon asked if there was any person present to speak on behalf of the appellants, no surrebuttal by applicants was heard.

Attorney Bob Cole again reviewed the procedures for council to consider this appeal. Council Member Volger said this is a simple matter to deliberate on. He said he has received detailed information from the DRB, town staff and the appellant. He said after reviewing the documentation and hearing the testimony by Mr. Dickhoff, he said it seems the allegations were unsubstantiated, mistaken, and said the appellant's questions, concerns and problems were addressed in the documentation received. Council Member Cotton agrees with Council Member Volger that there is not a basis for an appeal based on the LUDC criteria; he believes staff has answered the appellant accusations thoroughly. Council Member Volger moved to deny the appeal filed by Steve and Vivian Rader and affirm the Design Review Board's Resolution 2012-12, finding that the Design Review Board acted in compliance with their duties and authority as set forth in the LUDC as follows: The Design Review Board considered the facts, documents and comments presented to them at three public hearings in

consideration of their final determination of the Wal-Mart Major Design Review Application, in relation to the requirements and intent of the Code, second the Design Review Board considered the negative and positive impacts of the requested development regarding the achievement of the Town's stated development goals and objectives, third the Design Review Board found that the application is consistent with the Comprehensive Plan, maintaining the Town's ability to implement it's Comprehensive Plan and, fourth the Design Review Board applied the provisions of the LUDC as has been interpreted in the past, and staff be directed to produce the appropriate documents for filing, Council Member Cotton seconded, the motion passed with 7 ayes and 0 nays.

III. ADJOURNMENT – Upon motion duly made, the meeting adjourned at 1:03pm.

Ross Aragón
Mayor