



551 Hot Springs Boulevard  
Post Office Box 1859  
Pagosa Springs, CO 81147  
Phone: 970.264.4151  
Fax: 970.264.4634

## **TOWN COUNCIL MEETING MINUTES THURSDAY, JUNE 19, 2008 12:00 P.M.**

**I. CALL MEETING TO ORDER** –Mayor Aragon, Council Member Cotton, Council Member Holt, Council Member Jackson, Council Member Pierce, Council Member Weiler

**II. DELEGATIONS -**

**III. NEW BUSINESS**

- 1. Request from Mountain Crossing LLC to enter into a Developer's Agreement** –Pagosa Partners LLC is requesting the ability to enter into a Developer's Agreement with the Town on the Mountain Crossings (Sawmill) property at Hwy 160 and Hwy 84. The Town annexed the Mountain Crossing property in 2001. In 2005 the developer submitted a conceptual land use overlay map for the Town's consideration. The item was withdrawn from the Planning Commission agenda as the Town was in the process of completing the Comprehensive Plan and determined the request should not be reviewed until adoption of the Comprehensive Plan. The letter submitted by Pagosa Partners LLC states the Town's PUD process "does not provide a feasible alternative" based on estimated infrastructure costs and the lack of flexibility in the PUD regulations. Mr. Jeff Knuckles, managing partner of LLC., says the large development proposal was put off due to several issues including the Big Box moratorium and a last minute change from mixed-use corridor to mix-use residential. Nancy Lauro with Russell Engineering is attempting to move forward in a positive way with a developer's agreement with the Town. The costs to access the proposed sight is in excess of \$3.5 million dollars, not including the utility improvements necessary. The developer's agreement provides flexibility for both the developer and the Town and she would like the agreement to include a reimbursable proposal from additional developers to reimburse the developer who put in the traffic/safety requirements. The developers are asking for a development agreement including vested property rights and establish a measure of certainty for the developer. Town Attorney Bob Cole says the developer's agreement is similar to an annexation agreement at the front end or a subdivision agreement at the back end. He thinks this kind of agreement can fit into the code and the future development plans. The reimbursement component he feels is standard and within the bounds of legal use and feels a developer's agreement will benefit the development and the Town. Mr. Jeff Robbins the developer's attorney asked that the Town Council to decide if this is appropriate and move forward with an agreement. Council Member Cotton moved to go forward with the development agreement with Mountain Crossing, Council Member Jackson seconded, motion carried.
- 2. Resolution 2008-14 Intent to Annex Blue Sky Village** – Prime Property Investment of Colorado LLC, has submitted a petition to annex seven tracts of property which include right-of-way tracts held under Colorado Department of Transportation ownership and an approximate 96 acre tract known as Blue Sky Village. The proposed annexation is known as a 'serial flagpole annexation' as right-of-way is annexed and used to establish the required contiguity otherwise not directly contiguous with the Town's boundary. Legal counsel advises that CDOT has the ability to formally challenge the annexation on the right-of-way issue. If the Town approves the Resolution of Intent to Annex, CRS requires

the Town process the annexation within 60 days. The Fairgrounds property is the area that makes this property not contiguous; however, the flagpole annexation is legal. Nancy Lauro with Russell Engineering believes this is an exciting mixed-use project for the Town and will help to further the goals and consistency with the comprehensive plan; it includes some retail space and a full mix of residential for the community. Attorney Bob Cole says the flagpole annexation concept is recognized by the code and on the legal issue side is very confident of getting the issues hammered out. A challenge of the annexation by CDOT, the landowner, can not come until the end of the annexation process and with a notice to the Town objecting to the annexation notice. The Town has been through annexation challenges in the past, but doesn't feel that CDOT will challenge this annexation. Mr. Bill Hudson asked when doing an annexation, does the Town benefit from all the property owners in agreement? Mayor Aragon says the Town doesn't solicit the annexation; it is usually the property owners who approach the Town to be annexed. Council Member Pierce moved to approve resolution 2008-14, resolution of 'Intent to Annex' property known as Blue Sky Village, Council Member Holt seconded, unanimously approved.

3. **Discussion in regards to adopting a Code of Ethics** – Amendment 41 prohibits government officials and employees, and their spouses and dependent children, from receiving more than \$50 worth of gifts in any calendar year, with certain limited exceptions. This amendment applies to municipalities, except that home rule municipalities can opt out of Amendment 41 by adopting their own Ethics Code. Attorney Bob Cole explained the new Amendment 41 rules might include a simple meal with a Town contractor may be viewed as unethical. In the recommendation from Attorney Cole, an ethics review panel might be created and the Town adopts an ethics code similar to the statute the Town had prior to Amendment 41. Council Member Cotton recommends adopting a code that states "Be Ethical". Council Member Cotton moved to go forward with an ordinance adopting a code of ethics and bring a draft to the July 1<sup>st</sup> meeting. Council Member Jackson seconded, motion carried.
4. **Discussion in regards to Sales Tax Collection** – Mayor Aragon recently received an inquiry as to the ability of the Town to waive sales tax collection on food and grocery items. It is not currently known what the impact would be if sales tax collection was waived for food and grocery items within the Town/County. Attorney Bob Cole explained the sales tax collection statute includes the County, so a County-wide vote would have to be made. Additionally, a current 2% sales tax with County and Town is a limited term tax and expires at the end of 2009; he recommends the tax goes back before the voters on the November 2008 ballot. Commissioner Robin Schiro said the County is ready to work with the Town to get this item on the November ballot. Council Member Weiler researched the ways to generate sales tax and found impediments of the retail sales tax in the downtown area, the downtown master plan including specialty retail, dining, local offices, etc., challenge from west side businesses, development feasibility study and unimproved lots. These lots, including 66% in the downtown area, if developed would bring the Town increased real estate tax revenue and \$1.3 million projected annual sales tax increase. Council Member Weiler suggests suspending all town impact fees, building fees, plan review fees, etc. for development in the downtown area for the next six months trial period. Staff is directed to put this item on the July 1st agenda for further discussion.
5. **Discussion in regards to Impact Fees with the ability to enter an executive session per C.R.S. Section 24-6-402(4)(b)** – Chris Smith representing Smith Construction Services, is requesting a refund of previously paid impact fees based on his interpretation of the Colorado Revised Statutes and the Town's municipal code as it relates to impact fees. Attorney Bob Cole says the impact fee issue has generated a lot of interest and discussion. The statute says that if you file a complete application for a development permit you are not subject to any subsequently adopted impact fees. This could be interpreted as referring to zoning and land use permits, and not necessarily to building permit. However the interpretation of that statutory definition was that the development permit is to be the building permit. He said the Town's ordinance was written to allow impact fees on any building permit that was requested subsequent to the adoption of the impact fees. Mr. Smith's final plat was approved prior to the very first impact fees ordinance approved in June 2007. Mr. Smith says Building Official Scott Pierce has been very helpful and he

would like to see the right thing done and is willing to look at compromise. He has concerns that PAWSD might change their impact fees and charge him their impact fees if the Town changes his impact fees. Council Member Weiler feels this will impact many other stages and developers and is concerned with unintended impacts in the future. Attorney Cole says the building permit fee point is the logical time to assess the impact fees, rather than at the subdivision time. Mr. Bob Hart says the planning process on his project took so long, right before the building permit phase, the impact fees were implemented and he took a big hit on his development. He did not know of the impact fee during the planning phase and is willing to pay it now that he knows it is assessed. Council Member Cotton says impact fees should be assessed at building permit and understands that Bob Hart and Chris Smith got caught in the middle of the transition. Attorney Cole suggested the possibility of moving the impact fee option date to help out developers who may have been caught in the middle of the planning time. Scott Pierce says \$320,750 worth of collected impact fees would be affected by moving the impact fee dates. Chris Smith is asking for \$8,700 in impact fees for the most recent building constructed returned and not to have to pay approximately \$47,000 on a new application that was submitted before the impact fee schedule was adopted for a building permit. Mr. Jim Smith believes impact fees are anti-growth and impact growth in a negative way and would like to find a better way. Mr. Bob Hart feels the impact fees implementation was very unfair due to the timing of his project and when he brought his feelings to Town staff, was told “No, we won’t return the impact fees”. Once the impact fee ordinance was adopted, fees were only assessed to building permit applications submitted after the implementation. The building department received a large amount of plans submitted on the 5<sup>th</sup> of July due to the potential of impact fees adoption on the 6<sup>th</sup> of July. Mr. Whittington said if a developer is in between in the process, they should not be charged impact fees. Kim Moore believes the impact fees put on the developers might not be as beneficial as the revenue they might create. Mr. Robbie Pepper thinks that the Town has put the cart before the horse when it comes to impact fees. He thinks that by reducing or eliminating the impact fees will help the town. Council Member Weiler would like to get help from the developers as to how to create the infrastructure if the Town does not collect the impact fees. Mr. Smith asked for a compromise since his plans were submitted prior to impact fees being implemented. Mr. Jim Smith suggests a sales tax increase to spread the burden across the community rather than the impact fees hurting the businesses. Mr. Hart understands some impact fees are required and believes that at the time he found out about the impact fees, they were well on their way into the plan stages and had a financial obligation to the project. Mrs. Robin Schiro stated the governor has signed a bill removing the cap on the 6.9% sales tax, as this may be an option if the Town and County decide to raise the sales tax. The money collected from impact fees have already been distributed to the other entities the Town collects for and have or are being spent on several projects including the Lewis street, Riverwalk trail, and others.

**IV. ADJOURNMENT** – Motion duly made and seconded, council adjourned at 2:52pm

**Ross Aragón**  
**Mayor**

**PAGOSA SPRINGS SANITATION GENERAL IMPROVEMENT  
DISTRICT MEETING MINUTES  
THURSDAY, JUNE 19, 2008  
12:00 P.M.**

- I. **Discussion in regards to GID Enterprise Zone and Reimburse for the financing of the proposed Waste Water Treatment Plant** – Town Attorney Bob Cole has been able to finalize the framework terms for the Town, through the Sanitation General Improvement District to receive financing from the Colorado Water Resources and Power Development Authority for construction of the new wastewater treatment plant. He is also pursuing final documentation for the grant and loan that will be received from DoLA. In March 2007, the General Improvement District adopted a Resolution establishing the Town of Pagosa Springs Sanitation General Improvement District Wastewater Enterprise. The Enterprise acts as a subset of the General Improvement District. The Enterprise is able to have the loan issued to them, instead of the District, solving some problems. The project will be funded by approximately \$1,700,000 in grants and loans from DoLA and a low interest loan from Colorado Water Resources and Power Development Authority for \$2,000,000. The current property taxes collected for the sanitation district will be used for operation, maintenance, and to repay the current loan; all fees received from our sanitation customers will be used to repay the new loans for the Enterprise. In July, Attorney Cole will present a resolution amending an Enterprise, and a resolution for reimbursement of any expenditure for this new treatment plant. Mayor Aragon gave Attorney Cole the go ahead with the paperwork required for the Waste Water Treatment Plant. On motion duly made, the meeting adjourned at 3:07pm.