

To: Eagle River Station File

Re: ERS Process at Board of Trustees Level

Date: March 13, 2012

Please submit this as part of the record contending the process issues related to the review of the Eagle River Station files by the Board of Trustees from November 2011-March 2012. Although I know the board members put a lot of time on the file, I do not believe the proper procedures were followed and a proper review was completed. I understand the developer has a legal right to come back with a new project but this is not being reviewed as a new project. Also note that some of these issues were previously submitted as part of the contention with the Planning and Zoning review process but since they were not addressed by the Board of Trustees review process, they are being listed again.

As a citizen, I have concerns if there is a procedure lawsuit is successfully filed, the developer will be able to sue the Town for damages.

For reference: PUD = Planned Unit Development, EACP = 2010 Eagle Area Community Plan

Developer = Trinity Red Development

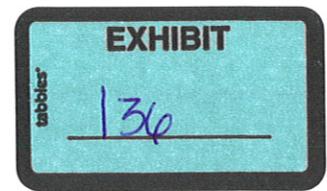
A. Prior voter denial:

A project consisting of 532,000 square feet and 550 housing units was denied by the voters in January 2010 after a lengthy review of the project in public meetings. Before the hearings started for the new proposal, it was stated at a joint work session of the Board of Trustees and Planning and Zoning Board in June 2011 by the Mayor of Eagle the project has not substantially changed so the development agreement should not have to substantially change. At a budget work session on November 2, 2011, the Town Manager stated the PUD guide has not changed a lot and it was stated again, that the project has not substantially changed so the development agreement would not substantially change.

B. The oath. Hearings were not consistently under oath:

The inconsistency covered a few different aspects. First, all of the staff did not take the oath at each meeting. Second, all citizens did not take the oath at each meeting. Presentations were sometimes presented by developer without being under oath (opening comments). I believe Section 2.20.030 of the municipal codes relates to all testimony at public hearings shall be administered consistently as any non-consistency can be construed as intimidation.

- Nov 22, 2011: hearing was not done under oath and was entirely the developer's presentation
- Jan 4, 2012: hearing was not done under oath
- Jan 10, 2012: hearing was done under oath but staff did not take oath
- Feb 1, 2012: oath taken after developer gave opening presentation, staff took oath, citizens took oath at beginning but several citizens came in after and did not take the oath.



- Feb 14, 2012: hearing was under oath
- Feb 22, 2012: this hearing was not done under oath. There was staff presentation (Town Manager Willy Powell) regarding the financial risk to citizen.
- Mar 7, 2012: hearing was done under oath

C. Land use file discussed outside of the land use hearing.

- Dec 13, 2011 meeting: After the land use hearing was closed, the file was discussed during open discussion of the regular meeting. All but one citizen who had attended the land use hearing had left. The review process and how to make things go quicker was the main topic of discussion.
- Nov 2, 2011 budget work session: did not advertise a discussion on the land use file but the meeting schedule was discussed. The developer received notice as Mr. Bill Clinkerbeard showed up for the ERS portion of the budget work session. Tom Boni, the Town Planner, also showed up for discussion of the meeting schedule and then left immediately afterward with Mr. Clinkerbeard. No public notice was given related to the Eagle River Station file.

D. Not open to all for public comment

- Feb 22, 2012: This hearing was not done under oath. There was staff presentation (Town Manager Willy Powell) regarding the financial risk to citizen. In addition, public comment was only opened for "those who didn't speak last week" by Kraige Kinney acting as Mayor Pro-tem.

E. Basic questions from citizens not answered.

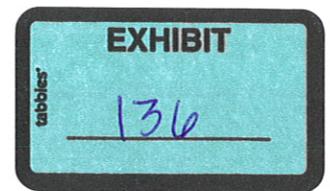
(Note – an email request was "allowed" and responded to on many other issues from various citizens so I do not believe not sending in an official public records request is relevant as this was following precedent.).

- Julia Parker's email from Feb 8th and followed up Feb 19th requesting that the citizens letters submitted to the planning and zoning be submitted to the Board of Trustees part of the file when staff presented planning and zoning file.

F. Scale drawings not discussed or presented as part of the public process even though models/drive by requested and referenced in the EACP. Such details are generally required/expected in any large scale PUD review. The absence of these materials or presentations creates a question as to the conformance of the project as well as the transparency of the proceedings.

- Trustee Turnipseed and Trustee Webster both noted the drawings were not referenced to scale. Staff's response was that Trustee Turnipseed could see those drawings in the office.

G. Public document withheld from public. We believe this record was not made part of public record timely intentionally because of the issue involved and the possible impact on citizen's view of the project. As of the March 7th date, it was not on public record. Citizen Brandi Resa requested this record be put on record at the March 7th hearing.



- February 15th letter from the cemetery district regarding the tax increment financing.

H. Documents review:

We do not believe the full documents were presented or reviewed adequately as required by our Town standards. These documents include the PUD guide, the EACP, 1997 Eagle Area Open Lands Plan, Eagle River Watershed Plan, and the Eagle County Comprehensive Plan.

- Contention 1: The EACP specifically calls for the East Eagle area to be reviewed as one PUD guide. No details were provided for Phase II although the developer had sketched Phase II for their marketing flyer pulled from their website.
- Contention 2: Eagle County's comments were not discussed. It is referenced as should be considered on the EACP, page 2 (top right).

I. Staff issue:

In early 2010 after the controversial vote, a consultant member of Trinity Red Development's team, Tom Boni was hired on as the Town's planner. Tom Boni was then the lead staff of the Town of Eagle presenting approval on the same project he worked on for an extended time.

- Contention 1: This seems like a conflict of interest. Mr. Boni's employment record should be reviewed for time period as referenced on page 27.2 of the Town of Eagle's employee handbook.

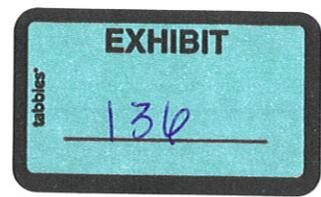
J. Normal process was not followed:

In comparison to the Haymeadow File which was another land use file presented at the same time of the Eagle River Station new proposal, the projects did not follow the same process.

- Contention 1: Haymeadow went through a sketch plan process first while Eagle River Station went through a combined joint review process of a zoning/development plan PUD and subdivision sketch plan. Again, if the project was new, it should have followed the same path as a new project or like Haymeadow which is an equally complex and significant land use file submitted at the same time.

K. Outside communication was held:

- Per Trustee Dean at the March 7th hearing, when the Board was asked about the cemetery district letter not being on file by a citizen, Trustee Deane stated that she spoke with the cemetery district about the financial impacts of the district and it was only (approximately \$3,900 per year). This does not seem appropriate outside of the hearing process especially



considering the financial considerations and impacts of the project on the same district and that this important conversation was not put on the public record.

L. Information not provided to citizens.

- Per Trustee Dean at the March 7th hearing, when speaking with the cemetery board (Kathy Heicher), she said it isn't that much money as it is only \$3,900 per year (approximate) and they discussed what impacts if any there might be from the project. However, citizens asked twice for the tax increment financing analysis/calculation and were told there was no such numbers except for the developers report. Except for the one developer report that includes the Town of Eagle's mill levy impacts (and note – the mill levy used was incorrect), there was no calculations done. How did Trustee Deane have this information if it was not done and if it was done, how come the information was not provided to citizens upon both requests?

M. Citizen communication after hearing closed:

- After the March 7th hearing closed, a citizen went up to the board and discussed the issues related to the project (whether people would shop there, business that comes to Town from visitors, etc..) with the Board waiting on executive session. This conversation went on approximately 6-8 minutes. Pam Boyd of the Eagle Valley Enterprise was also present in the room as she was discussing another topic with Trustee Kostick.

Thank you
Brandi Resa
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