

RECORD OF PROCEEDINGS

Town of Estes Park, Larimer County, Colorado, February 25, 2008

Minutes of a Special meeting of the **ESTES PARK URBAN RENEWAL AUTHORITY** of the Town of Estes Park, Larimer County, Colorado. Meeting held in the Municipal Building in said Town of Estes Park on the 25th day of February, 2008.

Commissioners: Chairman Swank, Commissioners Cope, Ericson, Halburnt, Little, Steige, and Wilcocks

Attending: Chairman Swank, Commissioners Cope, Ericson, Halburnt, Little and Wilcocks

Also Attending: EPURA Dir. Smith, Attorney Paul Benedetti, Deputy Town Clerk Deats

Absent: Commissioner Steige

Chairman Swank called the meeting to order at 8:05 a.m.

Chairman Swank stated that the purpose of the special meeting is to reach an agreement regarding the extension of the Riverwalk through the Park Theater Mall with the owner of the Mall, Sharon Seeley.

REQUEST TO ENTER EXECUTIVE SESSION.

24-6-402(4)(e), C.R.S. – For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators.

It was **moved and seconded** (Ericson/Wilcocks) **the Estes Park Urban Renewal Authority enter Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e). The subject of the negotiations is the Redevelopment Agreement relative to the Park Theater Mall Area Riverwalk**, and it passed unanimously.

Chairman Swank adjourned the meeting to executive session at 8:08 a.m.

Chairman Swank reconvened the meeting to open session at 8:57 a.m.

DISCUSSION RELATED TO THE PARK THEATER MALL AREA RIVERWALK.

Per a request from Chairman Swank as to progress that has been made on the project and an expected timetable for completion, John Spooner, Van Horn Engineering, stated that the design for the north and south retaining walls and the south walkway are approximately 98% complete, the design for the bridge and handicap ramp are approximately 95%, and stated that Van Horn Engineering is not involved in the design changes to the mall itself. Randy DeMario, President of Heath Construction, addressed the construction related to the work in the river, and stated that work in the river must continue without delay in order to finish by April 15th and avoid any problems that might be associated with early runoff and high water levels in the channel. He also stated that if work began on the mall by March 1, he would anticipate it could be concluded by mid-June, with landscape and beautification type projects still ongoing at that time.

Chairman Swank reported that Atty. Benedetti reviewed the changes to the original development agreement made by Ms. Seeley's attorney Judson Hite and found the document to be one-sided, open-ended, and unacceptable due to the risks involved. Discussion among the Commissioners followed and is summarized: due to delays construction schedule is not on track; revised contract not acceptable to move forward

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with; not enough time to re-negotiate development agreement and still have time to complete project before tourist season; complete work on the north wall; what work can successfully be accomplished before the Memorial Day weekend; reviewed the contents of the motion made at the February 20th meeting; and possibly re-authorize work at a later date.

Dir. Smith stated that EPURA's goal to complete the Riverwalk throughout the downtown area will not be realized without the connection through the Park Theater Mall and that if an agreement cannot be reached no further monies should be spent on the project.

Sharon Seeley stated that the extension of the Riverwalk through the Mall is a project unlike any other previously undertaken by EPURA, since it involves construction on private property. She stated that she cannot sign a generic development agreement and must consider her tenants and prime time for renting her retail spaces. Atty. Hite stated that Ms. Seeley had originally contacted him regarding an easement to the Town related to the project. He stated that there are many things that must be included in the document which will take time to negotiate and possibly precludes the project from being completed at this time. He stated that he would not advise his client to go forward with work in the Mall.

Atty. Benedetti reiterated that EPURA is not in a position to accept the risks that are present in the revised contract. In addition, he added that the indemnity clause in the original agreement requires revision, as normally a public body cannot indemnify unconditionally and insurance would be required to eliminate risk being imposed on EPURA. He stated that he cannot recommend going forward with either agreement.

Discussion ensued on the following topics: revised agreement contained a list of construction projects related to the mall that EPURA cannot provide; parties too far apart to re-draft agreement in a timely manner; status of the agreement for work to begin on north and south river wall; closure of businesses along the river for construction purposes; loss of rentable retail space within the mall and its estimated value; value-added by improvements more than compensates for loss of 176 sq. ft.; and money should not be spent on Phase II, if agreement does not exist to complete Phase III.

It was **moved and seconded** (Little/Wilcocks) **to approve the completion of Phase I work on the north river wall and table Phase II and Phase III for further discussion and until an adequate development agreement can be reached**, and it passed. Those voting "Yes" Cope, Halburnt, Little and Wilcocks. Those voting "No" Ericson.

Whereupon, Chairman Swank adjourned the regular meeting at 9:45 a.m.

Cynthia Deats, Deputy Town Clerk