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## Town of Minturn, Planning and Zoning Commission Wednesday, March 14, 2007 Meeting Minutes

### Study Session 5:00 p.m.

Discuss rezoning portions of Martin Creek Character Area District  
Discuss Parking at 382 Main Street along Harrison Avenue

### 1. Call to Order/Roll Call

The meeting was called to order at 6:09 pm by Chairman Woody Woodruff. Roll call showed Woody Woodruff, Lynn Teach, Jim Brinkerhoff, Ernie Glesner and Kristie Bloodworth present.

Also present was Town Planner Wiley Smith, Town Planner I Chris Cerimele, Town Attorney Allen Christensen, Public Works/Planning Department Assistant Torrey Maxwell and Court Reporter Rosie Stahl.

### 2. Approval of Agenda Items

- a. Items to be pulled from the Consent Agenda
- b. Items to be pulled from Action Items
- c.. Emergency Items to be added
- d. Order of the Agenda Items
- e. Approval of the agenda

**Motion** by J. Brinkerhoff second by L. Teach to **approve** the agenda as presented; **Motion passed 5-0**

### 3. Approval of Minutes – Minutes from February 28, 2007.

**Motion** by E. Glesner, second by J. Brinkerhoff to **approve** the minutes of February 28, 2007 meeting; **Motion passed 5-0**

### 4. Action Item – Final Design Review, Gary Prupis, 532 Taylor Avenue, Game Creek Character Area – Residential Use, to gain design approval through the Design Review Board.

C. Cerimele, Town Planner, Gary Prupis, applicant, is requesting Design Review and Conditional Use approval for a proposed residential duplex with attached garages on lot 15 of the Taylor's Addition to the Town of Minturn in the Game Creek Character Area.

Inter Mountain Engineering prepared a Preliminary Drainage Report of the subject's site and presented it to Staff on March 7<sup>th</sup>, 2007. In addition, Carter Burgess (CB) inspected the retaining wall on March 8<sup>th</sup>, 2007 and based on their visual observations they concluded that the wall is performing adequately at this point in time.

Design Review and Conditional Use submittal requirements have generally been addressed per Town of Minturn Zoning Code, Chapter 16, Appendix B Minturn Design Standards and Guidelines. The Staff finds that the proposed Residential use in a Residential zoned district appropriate and any future changes will require

approval from the Planning Director and Design Review Board. Considering the findings and other information provided, Staff recommends approval of these applications subject to the conditions stated in the Staff report.

C. Cerimele then provided two exhibits to the Commission; a letter from Paul Lotenbach, professional engineer from CB and another is from an adjacent property owner.

W. Woodruff stated that Joyce McSpadden, adjacent neighbor has a concern regarding access to maintain her property which hangs into Mr. Prupis property.

A. Christensen responded that it sounds like something neighboring homeowners need to work out. Staff would have recommended something like that. Sounds like the property owners will have to enter into an easement agreement. I don't think that involves anything that you can require or approve.

W. Woodruff inquired it isn't our fight.

W. Smith responded no it is not.

A. Christensen responded that he just wants to make sure it isn't part of the code. The answer from me is no.

W. Woodruff restated it isn't part of the code so we can't.

A. Christensen restated it is not part of the code and if there is not an encroachment, it is built right up to the property line, they just need to enter into an easement agreement between the two of them. I don't think that is anything for you to require as a condition of approval for his building design.

W. Woodruff stated you can't tie it to the code.

A. Christensen replied, no, it is not in the code.

J. Brinkerhoff questioned if we don't require it is only voluntary between them.

A. Christensen replied right, there is nothing in the code to hang your hat on. You can strongly recommend it but you can not make it a condition of approval. And there are people in the room who have done just that sort of thing.

J. Brinkerhoff said maybe we should ask the applicant if he is willing to do that or if that is something he is not willing to do.

W. Smith replied if it is not in the code, there isn't anything really should ask the applicant.

A. Christensen noted that there may be rights that already exist, but we can't presume or speculate what those rights are.

J. Brinkerhoff stated that in the CB letter they have looked at the wall and they seem to be convinced that it is in good shape. We were concerned about drainage and we have a report from InterMountain Engineering with a drainage study and plan. Very tangible engineering which helps very much.

W. Woodruff asked Joyce McSpadden if she had any concerns and she responded from the audience without a microphone, not audible.

Mr. Prupis stated that the report says it will knock out 88% of the water that goes towards your house.

W. Woodruff summarized that on the site is not the issue at all, it is up the hillside. The studied up the hillside and where the water is coming from and because of where it is coming from and that swell you are talking about, it all channels into your property. And you have made adequate engineering with a lot of drains that will take it down and out onto the street. I think we are satisfied.

W. Woodruff then inquires if Ms. McSpadden was satisfied; she responded from the audience and was not audible.

**Motion** by E. Glesner, second by K. Bloodworth finding ourselves in agreement with staff findings including all plans and attachments as set forth in the report dated March 9, 2007, we recommend approval of this application subject to the following **conditions**:

1. Applicant makes any required improvements to the rear retaining wall if requested by Town Engineer
2. Applicant making any modifications to the plan document as requested by the Planning Staff, Building Inspector and Eagle River Fire Protection District prior to Certificate of Occupancy
3. Applicant obtains a Conditional Use Permit
4. Applicant shall pay all required fees and charges related to development of the subject property
5. The DRB grant final approval to the applicant meeting in a general fashion the design and other regulations of the Town

J. Brinkerhoff added that the Commission strongly **recommends** that the applicant enter into a Repair & Maintenance Easement Agreement with the next door neighbor; **Motion passed 5-0**

**5. Action Item – Conditional Use, Gary Prupis, 532 Taylor Avenue, Game Creek Character Area – Residential Use, is requesting a Conditional Use approval in a Residential Zone for a residential duplex building on Lot's 14 -16 C, in the Taylor Addition.**

W. Woodruff inquired of Staff if there was anything additional to consider; C. Cerimele responded no everything is covered.

**Motion** by E. Glesner, second by J. Brinkerhoff for the necessary findings referred to as a., b., and c. of the Staff Report, including the recommendations in this motion proposing a Conditional Use Permit at 532 Taylor Avenue, we have read the staff report and we find ourselves in agreement with staff findings including all plans and attachments as set forth in the report dated March 9, 2007, and recommend **approval** of this application subject to the following **conditions**:

1. Approve the application as submitted
2. Approve the application subject to such modifications or conditions as necessary
  - a. The applicant making any modifications to the plan document as requested by the Planning Staff and Building Inspector prior to Certificate of Occupancy
  - b. The applicant shall pay all required fees and charges related to the development of the subject property

**Motion passed 5-0**

**6. Action Item – Design Review, Michael Boyd, 504 Eagle Street, Old Town Character Area – Residential Use to gain approval through the Design Review Board for attached stairs to the exterior on the west side of the garage on lot 15 of the Taylor's Addition to the Town of Minturn.**

W. Woodruff recused himself because he is a property owner adjacent to the applicant's property and K. Bloodworth, Co-Chair has been out of town and is not up to speed on this request so J. Brinkerhoff will be acting Chair during this action item.

*W. Woodruff recused himself, stepped down from the Commission and joined the audience.*

W. Smith, Town Planner, this is a request by Michael Boyd at 504 Eagle Street for a DRB review approval for attached stairs to the exterior of the west side of the garage on Lot 15 of the Taylor Addition to the Town of Minturn in the Old Town Character Area. There is an outstanding issue with this application. The applicant has submitted a 2005 ILC as part of this application showing no recorded easement crossing his property. I have just received a recorded ILC and a recorded 1969 Easement from ERWSD of an easement crossing the applicant's property. The recorded document is inconsistent with the ILC submitted by the applicant. At this time I request that the Planning Commission table this application until the easement crossing through his property is or is not confirmed. Is there any questions of Planning Staff at this time.

J. Brinkerhoff inquired if the Planning Commission had any questions for the Planning Staff and there were none. He stated that it is his understanding that we are tabling this application and he inquired if we are taking questions from the public on this at this time since we are tabling?

W. Smith replied yes we are tabling and no we are not taking questions from the audience until we get an ILC confirmed at this time.

J. Brinkerhoff asked if L. Teach would like to read the motion for the Commission.

**Motion** by L. Teach, second by E. Glesner in the application for the residential use at 504 Eagle Street, we find ourselves in agreement with the Staff findings and recommend **tabling** the application subject to the following **conditions**:

1. The applicant come back to the Design Review Board with an answer to the discrepancy of the ILC
2. And reclude the Planning Staff to review Article 21, General Lot Requirements and Dimensional Standards and Article 22 of Chapter 16 of MMC referring to this application

A citizen asked from the audience (barely audible) if they could add anything on to that too.

W. Smith responded that they are not taking anything from the audience at this time.

**Motion passed 4-0** (Note: *W. Woodruff had recused himself*)

The Applicant spoke from the audience audibly stating that he brought the Final Plat signed by the Town and there is no easement on it. I asked W. Smith this afternoon if he needed anything and he said no. His concern is that his application is tabled when he has shown before a Final Plat that shows no easement and to table him for something that the Commission can recommend but can't require.

*W. Woodruff retook his seat as Chair of the Commission*

W. Woodruff stated that the applicant needed to figure out what the recorded easement is about, if it is not or it is. You just have to work that out before you bring it to us, that is all.

The Applicant responded that you can't require me to work out something with the sewer company that your own town code states you can't require.

W. Woodruff noted that we are not asking you to work something out with the sewer. There is a discrepancy of a recorded ...

The applicant responded that this is the recorded plat.

W. Woodruff responded that is not what, we received other information that is recorded so it has been tabled.

There was general discussion between the Chair and the Applicant regarding for how long it would be tabled and that the Commission was told they can't make the Applicant make a deal with ERWSD; there is no easement on shown on the plat of his property. The Chair repeated that it has been tabled and it can be on the agenda for the next Planning Commission meeting if the applicant gets it figured out.

A citizen spoke from the audience audibly stating that there needs to be an open discussion on what we (the applicant) need to do; it is very vague and if we go to the Town's people to ask it needs to be addressed.

## **7. Action Item – Battle Mountain Planned Unit Development Preliminary Plan**

W. Smith stated that we will continue from the previous meeting and at that point the Applicant was taking questions from the Planning Commission. Staff has added conditions to the reports, they are on your agenda, but we have not discussed it or see anything new since that time.

Dominic Mauriello stated that the Ginn representatives are here to listen and take notes.

W. Woodruff stated that there had been some discussion about changing format. The commission likes the discussion format. We like being able to talk amongst ourselves and ask questions. If you don't have the answer to the question or the person to answer that question isn't here, just say so.

Sarah Baker noted that Ginn brought a skeleton crew after discussions with the attorneys and staff and were under the understanding that Ginn would be doing more listening. We will answer any questions we can tonight but we will certainly get back to you with answers to questions we can't answer.

Bill Andree, Division of Wildlife; stated that data is the most important but not very useful without base line data; they have baseline data going back to the 50's.

- Mapping for winter range is mapped over a ten year span of time. Last severe winter was spring of 92, before that it was 83-84' and before that it was 79-80'.
  - Severe winter range is considering mapping the worst two out of the last ten years.
  - Winter concentration area - density exceeding 100% of the surrounding area in the worst two out of ten winters.
  - Winter range is figured if 90% of the animals occupy that winter range during average winter; nine out of ten years they are generally there. Each one of those has a different a different value. Location is everything.

Unit 45 is one of the most extensive studied areas in the United States. They started this study in 85' and continue through the year 2000 with 175 radio collars on this herd at one time. The herd population is estimated at 1,500 so over 10% were collared. Three Masters Students have gone through this study to get their Master's Degree and one PhD. Each one of these has been Peer reviewed by professional wildlife biologist and

they agreed with the study, the techniques and the conclusions and they have all been published. Most of these studies were actually done with the help of other large developments that had questions on just what wildlife movement was and what their impacts were and they stepped up to the plate and said they were willing to go forward and find out what really goes on with these critters to answer some of these questions that nobody has the direct answer to.

Last week you saw a PowerPoint Presentation on the Mitigation Policy of the Division of Wildlife. He brought copies of that policy tonight because there were large parts of that policy that were left out; avoiding impacts has always been and will always be the preferred alternative. Sometimes you can't avoid if the entire property is wetland for example. Also included is a study out of the Alps; reporting that the impact of ski areas are going outside the ski area itself. Cascade Lift at Dowd Junction, ten years ago nobody skied down behind Inter Mountain; now they are all over it. The study focused mainly on Grouse but the professor who did the study expands to Red Deer which is a relative of the Elk.

United States Forest Service is your referral agency, we work for you, and our job is to have the facts on the wildlife and that it is provided to you in a clear and precise form. Mitigation is not an exact science and sometimes common sense is going to work best; buffer zones be it on Raptors or Calving for Elk. The impact doesn't automatically stop because you end the buffer zone. Someone had to come up with what the buffer zones were and that is exactly what it is. These distances are generally based on studies that show that in a large percent of the situations if you maintain the buffer zone you have success in retaining that species. Each species and each individual animal is different. You have all seen Elk you can get right next to and Elk you can't get within a half mile of.

One of the biggest issues is on the roads. A lot of studies on wildlife and roads, none of them were actually done here; most of them were done in Montana and Idaho and deal a lot with logging. Direct impact when you are looking at a typical road 24' wide you are looking at three acres for every mile that is a direct loss. There isn't any discussion about it, it is pavement and Deer and Elk don't eat pavement. That is accurate for a non-snow period or if you are in Florida. Not accurate for Colorado because once you start plowing you are pushing the snow 10-12' off the road on each side. And if you have a chance to drive up into areas with similar elevations; Cordillera, Vail Pass you will see people using snow blowers when you get wind blown snow. Then you end up with almost a cliff face that Deer and Elk can not navigate through. Once you start snow plowing, your actual road width becomes closer to 48'. Deer and Elk aren't going to paw through the hard packed snow, we all know you can walk over the top of it. So you go from three acres per mile to six. Since winter period is the limiting factor for everything in Colorado as far as Big Game goes you have a significant increase in loss of acreage and as far as he can tell, that wasn't figured into any of the wildlife analysis.

There are also studies that look at indirect impacts. As the cars go up and down the road you don't want your kids to play near it; Deer and Elk don't want to be near it either. We see the ones feeding along I70 and the ones that make the mistake pay for it with a one time encounter with a truck or car. If you look at the studies done in Idaho and Montana all of the studies reported an impact and they use a width that is avoided by Elk anywhere from a ¼ mile to 1.8 miles. The Forest Service uses ¼ on either side of a logging road; that gives you ½ mile buffer. That, as far as we can tell, has not been factored into any of the analysis. The actual width of the buffer is going to depend on the kind of traffic you have, slow or fast, is it constant traffic or just during peak hours or just odd times during the day, quality of the road, density of the cover adjacent to the road. I70 the last thing you want when you are driving 70mph is a bush for the Elk to go hide behind. In some ways to reduce road kills we automatically increase that buffer because we want to remove all of the cover alongside the road to provide better site distance to make it safer for the drivers.

Cut and fill on steep mountain roads; reduce the ability for the wildlife to migrate. And this again is intensified in the winter with the plowing and you can actually end up blocking some of the movement and forcing the animals to more funnel their movements that may not be the best site distance or the best place to get them across.

Looking at the wildlife report prepared by their biologist, Eric Pederson, it appears to reflect the direct impacts of the road at 24' wide; it does not reflect any of the impacts, direct or impact from roads within the project other than that. The mitigation prepared by the project recommends keeping a speed limit of 40mph. It has been documented road kills all the way down to 30mph. Just in the last couple of years they have documented road kills with snow cats and snow mobiles. The speed isn't always going to reduce the road kills; their mitigation recommended 40mph. If you build a road for 40mph; people then drive 50-60.

In Eric Pederson's report it showed highway crossings on Hwy 24 for Elk and Deer. There was discussion during conceptual plan to do an over pass (which he isn't sure would be the best solution) but in the Preliminary Plan all discussions on road crossings are gone. There is no doubt in anybody's mind that if you increase the road traffic and the duration of the peak time for that traffic and you decrease some of the habitat you increase road kills. That needs to be addressed. It is addressed on every major project that comes through the Valley.

Peak Traffic Levels; changing the work hours for the project. That probably works good to solve traffic problems but is a bad thing for wildlife. If you extend rush hour traffic, now it is a two hour rush hour and that makes for greater road kills.

Golf Course; The Division of Wildlife does not map golf courses as winter range. They are used a lot of times in the fall and spring as refuge during hunting season. In the spring they have value when the green up. But if they green up too quickly the Deer and Elk get Grass Tetany (diarrhea). Grass Tetany is more detrimental to Deer than Elk just due to size. Food is not processed; it just runs through their digestive system ending up with no nutrition and dehydration. A Golf Course not only is not winter range, it can be detrimental in the spring. Examples with and without houses; when a course is first completed the Elk will use it for forage but if houses start to be built, they will generally leave it. Eagle Vail, Arrowhead and Beaver Creek all have houses around them. Eagle Vail in the beginning had about 200 head of Elk, Arrowhead used to be a hay field, and Beaver Creek used to turn the sprinklers on at night to run off the Elk. As the houses came in, the Elk went to smaller and smaller areas. What we never figured out is at what point the Elk decided they were going to get out of there and crossed I70. Clearly we are not interested using the golf course. As Snow Depth increases any utilization is limited to berms and rough areas that have a south or west facing slope as these areas melt off the fastest.

Eagle Springs, Frost Creek and Eagle Vail Par 3 they would be examples of golf courses without homes. Frost Creek was just built this year; sod was just laid in Brush Creek Valley as Elk and Deer Winter Range all around it. There has been probably 20-30 Elk that have utilized the course this winter, it has not been overrun by Elk. Eagle Vail Par 3 is on the very east end of Eagle Vail and there aren't really any houses, the school is there. That is Winter Range and the State of Colorado actually leases that Whiskey Creek School section. It does not receive huge use. Eagle Springs is the golf course at Wolcott on the north side of the interstate, used to be a hay field. If you see Elk and Deer use it is usually right next to the natural vegetation. They do not walk out into the middle of that golf course; there is no security cover for them. Because of the increase of snow depth on flat areas it requires more energy for Elk to walk and paw through it.

Eagle Ranch Golf Course was left off and we talked for the last two weeks with Bill Hiker who was there when it was developed and Craig Westco who is the officer there now. There was disagreement among us on if the houses have moved the Elk out or have the Elk moved out because there is better feed in the Adam's Rib field

where they are no longer feeding cattle. There were several items that confounded trying to come up with a good answer so it seemed easier to leave it out then to try to include it. Golf courses do not make good winter range

Good winter range usually will have south or west facing hillsides; Dowd Junction, Two Elk shooting range are steep. The reason for that is those areas melt off first and it provides good cover, food, and the least amount of snow. If you look at the flat areas down at the shooting range itself that is where the most snow accumulates. As the snow accumulates and gets denser it uses more energy to paw through it and get to the vegetation underneath. Deer and Elk, if they have the chance are going to get the easiest vegetation first. Deer and Elk are on a starvation diet, when they come to winter range everyday they are losing weight even in the easiest winters we have. With the openness, if you see Deer and Elk out on a golf course, Eagle by the Justice Center, if you watch their activity over a day you will always see about a half dozen Elk standing. The Elk are not in a sleeping mode, they are much more aware. We have done a lot of heart rate monitors to determine what the heart rate is on ungulates are (Deer and Elk) when they are under disturbance. We have done this with snowmobiles, cross country skiers, walkers and dogs. Even though they may not flee they increase their heart rate. Similar to us when we get up here to speak; we stutter, we stammer and our house is energy drain. Golf courses don't normally contain security cover, what Elk can use to hide. It can be topography but the best way is vegetation or a combination of the two. Since it isn't there they have to travel a much longer distance to get from feeding areas to security areas. Then return again later in the day as they generally feed two to three times a day. When they are on a starvation diet and you increase their calorie consumption by 10% it means they didn't make it to April, they died. The second worst thing is that the cows didn't make it, they abort their calves. You can produce a population for very long if you don't have reproduction.

Forage (the food) and foraging is not equal for cows and calves. Cows are of course much bigger, the calves being smaller have a higher metabolic rate in order to maintain their body temperature. They require more food and they can only get that by selecting the most digestible forage. They want the young of the year growth, they don't want old tough branches to eat, grass full of cellulose, and they want something that is highly digestible. The calves don't come with the large fat deposits that subsidize the body maintenance of the Cows in the winter. When a cow Elk in prime condition hits winter range it has 70 days of body fat. Calves don't have that. So the conservation of energy while they are traveling for forage is extremely important for calves. That makes their utilization of areas with minimum snow depth and snow density extremely important. Old time Colorado residents have a saying "Winter Weakens, Spring Kills".

Peregrine Falcon; you heard last meeting from Ginn's lawyer that presented their wildlife concerns, which I must say is a first, that Peregrine Falcons are successful in Denver. Unfortunately that is not a true statement. The Division of Wildlife and several other organizations did what was called a "hacking project". "Hacking" is where you put a young Peregrine Falcon, just hatched; in a box and you feed it. The boxes were put on top of buildings and these birds were fed Pigeons and Quail. They were fed so that they could not see it, usually with a funnel. When it comes time for these birds to fly, the box is opened, food is still put there for them, but the birds then fly out and hunt. Since that has been done there has been no, none, zippo reproduction in the Denver Metro area of Peregrines. It was not successful. There are still some birds that do still hunt in the Denver area because of the Pigeons available but there is no nesting.

W. Woodruff inquired what happens to those chicks; do they perish or do they go off and find another place that is more suitable habitat.

Mr. Andree responded that he believes about 50% perishes but that isn't much different than a wild chick.

W. Woodruff continued that there is success in the fact that a percentage of the chicks survive they just don't prosper in the city, it is just a launching place and then they go off somewhere else to live?

Mr. Andree stated that if you look here in Minturn since the time this nest has been active, this nest has fledged about eighteen chicks. We have not seen an increase in the number of Peregrine Falcons in the Eagle County area, even with that nest putting out eighteen chicks. The date rate, like on a dove, 90% death rate. On raptors it is a little bit less because there is not much eating them. But if you look at the problems they run into with flight; windmills, radio towers there are hundreds of birds found dead under these. There are a lot of things out their besides just natural predators impacting them. Other hack sites have been used in the wild and the birds came back to those sites and have been successful.

There is a large difference when you look at a Peregrine Falcon; there have been Peregrine Falcons that have nested in urban areas but they choose to nest there after the area was already developed. The Peregrine Falcon on these cliffs chooses to nest for some reason above Hwy 24. Generally what we find is development below the nest is less obtrusive than development above a nest. It is approximately 900 vertical feet from that nest to the traffic down on Hwy 24. Traffic is pretty constant and there may be Jake brakes and loud noises, but that alone since it is constant and those birds chose to nest there, the developed a tolerance to deal with that. They have not developed a tolerance for activities above them. Holistic approach is taken when we recommend protecting raptor habitats. It is important to protect the nesting site but it does no good if you destroy their hunting areas. If they can't find food, it won't do them any good to nest, the young will perish and they will leave anyways. Buffer zones are for the nesting areas but development just outside the buffer zone does not take in the need for foraging habitat. You have to be considerate of that. We may recommend ½ mile buffer there is nothing to prevent the town from increasing or decreasing that buffer.

Peregrines generally enter the nest from above. It is not unusual for them to do it but these Peregrines, in the time he has watched them, the come in from above the ridge, circle around and then fly at about the same elevation as the cliff and then pull in from there. When they come in over those cliffs they are going to be right at the level of the development.

There is an error in our last letter. We had a March 1 as our Seasonal Closure date and it should have been March 15<sup>th</sup>. When they first delisted the Peregrine the buffer was one mile for the seasonal closure date and the dates were February 1 to August 1 that is what was approved in the original recovery plan. But as we did more studies we were able to reduce that buffer to ½ mile and reduce the closure to March 15 to July 31. This closure is a no surface occupancy that includes human habitation as well as non-human habitation (gas wells, oil wells, tanks, roads and trails). And the closure is beyond what is historically occurred in the area. If the Peregrines decided to build in the middle of Minturn, whatever is there is fine, it is not a problem. But if they decide to build on a cliff with nothing around it, especially above it, that would be the historical occurrence in the area and our recommendation would be that you don't have anything else happening there.

Nesting areas; at the last meeting Ginn presented a point on a map of the nesting area for the 2005 year. We don't use a point on a map to designate Peregrine nesting. They are not like a Bald Eagle, they don't build a huge nest and use the same nest every year. They use a cliff face and their nest is nothing more than landing on a cliff ledge, scrapping a little depression in the rocks and laying their eggs. It is not uncommon for these Peregrines to move their nest up and down a cliff system. The division maps the entire cliff system and then around that we put a ½ mile buffer. The developer chose to use the 2005 site in their presentation at the last meeting. If you used the 1999 site, that is the farthest south they have nested, it would be an entirely different buffer zone then what you saw. In order to get away from that and to make it the same and consistent for everybody that is why we do a nesting area buffer and do the entire cliff band.

We are concerned about all of the impacts inside that buffer and at the last meeting Ginn talked about not looking at the stuff below; we aren't concerned about the bike trail. If you read our letter, we did mention the bike trail, the golf course and the entrance roads into the development. We think there is a lesser impact on stuff below but we still have a concern on it. It sounds like there are others concerns on the bike trail so maybe this will help solve some of those. The impact below the nest is going to include part of the Gondola, part of the golf course, the entrance roads, and right now, the current bike path. The additional concern that we did not bring up in our letter is that once a building gets over 100' there is generally a large amount of glass. One of the problems for Peregrines is a large amount of glass. Glass = a strike hazard and they fly right into the building.

Helicopters and the timing for using helicopters to sling loads in. Some of the worst disturbances we have seen with helicopters are slow moving loads. If something is in and out of the area quick there is less time for it to bother it. A slow moving load being slung in by a helicopter has a huge impact and should be done outside the closure periods. Eric Pederson's report states that changes in nearby habitat may cause the Peregrine Falcon to abandon the nest site; we agree that is a very big possibility. He also states that they may end up abandoning their site anyways due to other portions of their habitat being developed at Bolt's Lake and outside of the ½ mile buffer. Even with this conclusion neither the report nor the mitigation report provides any mitigation for this impact. If you apply the developers technique of assessing impacts, that would be 100% loss of Peregrine Falcon in Big Game Unit 45 and a 33% loss to Eagle County. Either of those would be considered a significant loss.

Housing Impacts; Housing impacts are a difficult one to use and something we have learned over the years that we have always underestimated. It is unclear from the study what footprint they used. I don't know if that is a building envelope that is designated in their plan, if it is a clearing site or if it is an actual footprint for a house. If it is actually a building envelope, then it will include the 1000 square feet of privacy fencing they are allowed if they attach it to the house. Again, if you go to the literature you can find that there are several studies about the impacts from people who are not in motor. The significance of a vehicle is that they don't know you are human if you are inside a car. People who are outside of motor vehicles the result showed that they (Elk) prefer to be ½ mile away. This distance can be reduced by vegetation and topography or a combination of both. But under any circumstances there is an indirect impact beyond the building envelope. This level of impact needs to be addressed for the home sites and adjusted to account for the vegetation and topographical relief. Once it has been completed the impact area, and it would not exceed that ½ mile buffer needs to be addressed and added to the wildlife impact.

We have heard from the developer that they want to be treated like other large development and in our mitigation policy it states we are to treat everyone the same. If you look at other large development in the valley there has been a different standard. The Eagle County Master Plan, their guiding policy is *to protect, maintain and enhance critical wildlife habitat areas, avoidance of critical habitat areas by development is the county's preferred approach. When avoidance is not feasible or conflicts with other County Policy require development to be so located, designated and used that the function of the critical habitat served for each species are preserved. These functions may include but are limited to providing food, cover, production areas, nesting, roosting sites or areas for migration and travel.* That is tough to live up to but that is what is expected of the developments in Eagle County. When I give you the mitigation policy our first choice is avoidance when feasible. On a 5,000 acre property that is not all winter range I think avoidance is a reasonable suggestion and something that can be achieved. We have a long relationship with development in Eagle Valley and each development that is completed the division has been able to address the pluses and minuses of each project. Unfortunately it is 20/20 hindsight. But sometimes we learn best by studying the mistakes. You only have to look at the conflicts in the Eagle Valley to see that things could have been better for wildlife. Mitigation plans

for previous developments have made great progress but are far from perfect. Arrowhead Rick Thompson completed mitigation project for this but the wildlife showed us they would cross Hwy 6, the Eagle River, the railroad tracks, and I70. Elk said clearly you screwed up, they just left. These Elk were all radio collared since 1985, the Elk moved in 95'. It wasn't like something else happened, we had Elk radio collared all over Unit 45. No other Elk made these huge movements all of a sudden. These movements have continued to increase every year to the fact that the Elk come back in the spring to their calving areas. Looking back now we know we did not address the impacts of the ski runs, the ski lifts, the increased activities, human activities on the Elk winter range. We did not include any buffer zones for roads or for homes, we went with direct footprints. We did not foresee the impact of the Elk crossing I70 or to the ones that moved into Lake Creek and are causing damage to private land. Bachelor's Gulch, Arrowhead, Cat 2 (China Bowl), Cat 3, Blue Sky Basin and Adam's Rib not only worked with the division on mitigation plans, each developed assisted specific wildlife studies to help us answer specific questions and concerns on wildlife use. Most of these studies also included agreements that future development would be adjusted by the results of these studies. To date, Ginn has not worked with us at all on the mitigation plan and we have had one meeting with the lawyer and that was just before the last meeting and only to a very limited degree on their wildlife analysis. If you look at these other projects they have been much more forthcoming and they have dealt with wildlife from the front end.

Riparian Impacts; riparian is the most limited yet species rich eco system in Colorado and it is the one that is being impacted the greatest. Protection of the riparian system is not only important for terrestrial species but also for the health of the stream. Minturn in the last five years has been awarded 2million dollars to improve the quality of the Eagle River. Protecting the riparian habitat cost nothing but can have a greater impact than anything we can do by moving rocks. Regarding being treated the same, in Eagle County and Vail both had a 50' set back. Eagle County just moved theirs to 75'. If you do a set back it should include not just Eagle River but all of the tributaries; Cross Creek, Turkey Creek, Willow Creek, Kiln Creek and Rock Creek. If you look at their ski areas design as it is today, many of the ski runs are right up next to the creeks. If you look at the design for the entrance into the Icon Building area, you are going to put four bridges over the Eagle River. The first million dollars that Minturn was given was to go and fix the project where the bridge crossed over to the cemetery. The bridge narrowed the stream and resulted in the stream widening down below in additional deposition zones. If they are going to do four bridges, these bridges should span the entire river. It will be more expensive but it doesn't make sense to have \$2 million to fix a river and upstream you are going to let that river be destroyed.

Ginn's Analysis of the Elk impact in all of Big Game Unit 45. It is one of the more interesting ones I have seen but unfortunately it is irrelevant. It shows a lack of understanding on the movements and habits of the Elk herd within the project area in Minturn. The impact from the project is not going to impact the entire Unit 45. It won't impact Elk that are wintering in Homestake or East Lake Creek. But it is going to extend beyond Minturn's boundaries. It is not as simple as simply saying you are going to impact "x" acres because there is a multiplier involved. It also involves the concerns of quality of habitat and the impact of that habitat is further degraded. If we went out today and removed every Elk out of Unit 45 and left the habitat intact in less than ten years I could bring this elk herd back through management and reintroduction it wouldn't be a big deal because the habitat exist. But once you over graze that habitat and damage it, you are looking at 15-20 years to get the habitat back before you can bring the animals in. You also have the problems of weeds so you will need weed control, increase erosion and the loss of soil similar to a dust bowl. If you look outside at the Minturn hillside unfortunately it is pretty degraded and it can't stand any increase of animals. If you are looking to get an impact of what really going to happen from the project you should add vegetation in along with age and sex ratios. That is where you go in with a helicopter, he has done the counts for the last 26 years, and they age and sex from the helicopter every Elk we see. Aging is counted as a Calf, Spike, Spike Bull, Mature Bull or a cow. We know from when we had 175 radio collars that if we can count 50% of the Elk in this Unit and multiple by two. For the past nine years the area from Dowd Junction to Red Cliff has run about 219-302 Elk. So if you

average that we are probably at about 250. We know the herd population is about 1,500 Elk. If you work with 250 Elk that is 16% of the Elk herd in Unit 45 that will be impacted. If you use the factor that we know we didn't count more than 50%, now you are talking 500 Elk which is 33% of the herd. The division stated in their letter that with this project the way it is proposed there is going to be a reduction in this Elk herd.

We are still trying to figure out is how we went from a signed wildlife report of 650 acres to a mitigation plan that nobody sign of 130. The Pederson report provides maps and shows the impacted area where the mitigation does provide any such documentation. One thing in wildlife biology you live and die on your reputation. Eric Pederson signed that report. There is no signature of any wildlife biologist on the mitigation plan. Don't know who put it up or how they came up with the figures. Even though we agree with much of Eric Pederson's report we still feel a 650 acre number doesn't align exactly with our mapping in the Bolt's Lake area and it does not include some of the impacts we talked about today as far as the buffers. Because of the elevation, lack of agricultural land, ski area to the east and I70 to the north there is no place for these Elk to move once you put a project in. Therefore the impact of moving the Elk from the development areas to adjacent winter range is going to impact beyond the immediate development area. The Elk displaced from this project are going to be forced to Cross Creek, Game Creek, Dowd Junction, Two Elk and further up Turkey Creek. Turkey Creek is the worst one because Elk are already wintering at 9,500-10,000 feet, they can't move any higher unless they are going to move into Bell's Camp at the top of Blue Sky Basin. The current winter range is already being over utilized and is so restricted that it can not support additional animals.

The adjacent winter range also has severe problems and limitations that would impact the ability to enhance the habitat to provide for additional forage for animals displaced by this development. Because of the limited number of acres, crowding more animals onto those acres, even with habitat enhancement would increase the risk of disease and predation. All of these factors are part of the reason that the Division of Wildlife stated that because of the significant impact it may not be possible to offset the impacts on site or even adjacent to the area.

The Division of Wildlife has always recommended that mitigation occurs on site as the best option, adjacent would be the next and in the same drainage and the last option was in the same Data Analysis Unit (DAU). However there are cases where there are no good way to mitigate the impacts within those guidelines, we moved to adjoining DAU to provide options.

Ski Run construction; the wildlife analysis really has nothing on that. Other large developments, who their ski planner has worked for, they provide you with a plan that is every 10' contra interval. You could literally go out and find each tree. There is nothing in there on are the runs going to be flush cut or graded and that makes a huge difference to the sedimentation. Are the runs going to be mowed in the winter? What level of snow making will be required? What portions of the runs are important forest carnivore habitats? Where is the snow making reservoir going to be? How are the drainages going to be protected? When you cut trees off of a hillside you increase the water flows. Snow making and compaction and the increase in water yields generally does not increase peak flows, it increases the duration of those peak flows. There is no Hydrologist report that talks about can those small drainages stand an increase in flow for the duration. Their mitigation plan states that cutting ski runs doesn't necessarily preclude Elk use. But snow compaction, grooming activity and increased human activities will. We have lots of examples in the Eagle Valley; Bachelor's Gulch, Arrowhead, and Cascade Lift. The examples go beyond just the ski area, outside the ski area we talked about the West Vail area from the Cascade Lift to Dowd Junction. You can look at the Tenth Mountain Hut on Ranch Creek in Camp Hale. Elk used to winter right on that road and utilize that group Aspen right along side the west side. They have now moved up further towards Climax because there is too much activity. Elk are not going to paw through a compacted ski run. Once you put a ski run in there, compact the snow and start snow making you have destroyed the winter range value. Winter range is December 1 to April 1 and that is ski season. Snow

making, compaction and grooming also delays green up. When you delay green up, which is a period of time the Deer and Elk are looking to find small amounts of green grass to get their energy back. If you delay green up you are impacting them in the spring. The Division of Wildlife and the Forest Service have both documented an increase in Snowshoe Hare numbers within Cat 3 based on skiing and habitat changes.

Aquatic impacts. There are two major items; Whirling Disease and water depletion. Unfortunately there is no information on water depletion in any of the analysis. The Eagle River can't recover without sufficient flows and minimum stream flows are just that, minimums. You can't expect a quality resource if it has to maintain itself on minimum flows. When we talk about minimum flows it is simply enough to keep fish alive not for that fish to have a successful life. Pinch your nose and see how long you can survive with minimum oxygen. Whirling Disease is a huge issue in all the Western States. There was recently a conference in Denver that addressed Whirling Disease and had experts from all across the globe including Germany. The issue is of such importance that the Federal government has funded and created a mechanism to work on the problem. Coming up with the solutions or mitigation on this issue for this project currently are all but impossible without detailed information on the water system and how it will be operated. The greatest level of contamination is from infected fish moving the spores. When we talk about that at least with the mine and the tailings, we knew it was all headed downstream. But with fish that carry the spores it can head up stream and can extend through the entire Eagle River and the tributaries. There are currently studies being done in Yellowstone looking at the ability for the spores to be moved by other animals but the results are not complete. At the conference it was a general consensus that 95% of the infection is based on the movement of fish. We used to tell fisherman that when you fish in one stream we want you to Clorox your waders before going to the next. It looks now like that is less than a 1% chance of a way to move it.

Mitigation does not make the impact disappear and technically mitigation is always a losing battle. The best mitigation is to avoid the impacts from the start and to plan your project around where you know conflicts will be. Mitigation plans need to be specific to each development and not cut and pasted from other developments. The mitigation plan submitted by the developer has numerous errors and does not reflect the specific impacts from this development. They have in there a cost of aerial fertilization of \$69 an acre. This year we did one in East Lake Creek and it is \$94 an acre. It hasn't been \$69 an acre since the 90's. Fertilizer is an oil based project and every time oil price goes up, so does the cost of fertilizer. If we do a project in Wolcott it is \$5 an acre cheaper than doing one in Edwards. It will be \$10 more for the plane to fly from Eagle County Airport to here. The Division of Wildlife has in the past recommended a straight mitigation fund which is based on if you impact one hundred acres you figure out what those acres actually are and you come up with enough money to do the fertilization project every three years. We are not recommending that anymore for large projects for the simple reason that we have discovered problems. There is no way to adjust the fund for the rising cost associated with habitat mitigation. If we got \$100 from the Arrowhead project and when we started that project it was \$50 an acre now it is \$100 an acre we are 50% behind the eight ball. There is no way to develop additional funds to offset impacts that were not addressed in the analysis which showed up later such as the Elk crossing the interstate, the Elk showing up in Lake Creek and damaging people's landscaping. And the fund is totally dependent on the interest rates. When we first started this we actually relied on Vail Resorts financial wizards which we thought was a great idea. As soon as we penned the agreement the interest rate dropped. We started at 5% and for six years we got 2% if we were lucky. We can't invest this money in anything risky so most of it goes into CDs. For those reasons we have gone to a Transfer Tax option which has to be a willing developer who is willing to do this, it can't be required. Eagle Ranch used it and East West Partners used at the North Star ski area in California. These are all good options to use. The tax at Eagle Ranch was .2% and it has generated \$200,000. They have used that to restore Brush Creek and rebuild the banks. It continues every time you sale and the price of the home goes up you have marked in inflation and increased your fund.

We do not certify Bear Resistant Trash Cans as that is now done by the interagency Grizzly Bear Committee which is a group that actually has bears in west Yellowstone and they put the garbage cans in with the bears and the bears tell them which ones work. North American Bear Society isn't even in business any longer. We brought them here in 1985 to start with the first bear proof containers and they no longer exist.

Small mammals, there was a concern noted by Eric Pederson that these small mammals is really a large group of animals. Again we were treating everybody the same, we used small mammals when we talked about the impact at Cat 3. You probably don't want to learn the difference between a Red-backed Vole, Montane Vole and a Heather Vole so we simply lump them in one group. You can deal with more than one species; it is merely a broad phrase in order to reduce the length of our letters. It is the same as forest carnivores. Yes it does refer to Lynx but also Pine Martin Weasel and if you deal in other areas they will talk about Fisher and Wolverine. Luckily we don't have to deal with those two. Again, it was used to reduce the length of our comments and its similar analysis on other large projects. It is possible to provide impacts and mitigation for more than one species at the time.

And the last one is that there was a discussion on adding Minks and Otter to their analysis. There is no huge concern that development is going to destroy the Minks and Otter; it is simply that if you are going to do an analysis you should accurately portray what exist there. Since the early 1990's Minks have slowly started to increase in numbers. From 1995 to 2006 the trapping or hunting season was closed. We noticed in 1990 at our Gypsum pond site down by the Eagle River in Gypsum; fisherman started to see Minks. When I first came here in 1980, Al Orlovski, started with the division as a beaver trapper. I have relied on his information for Fur Bearer populations and there were so few Minks that nobody tried to trap them. Trapping was not a big mortality for Minks because very few made the effort. If you look at the time that the Minks started to show up it correlates perfectly with the clean up on the mine. In 1994 we found Rainbow Trout at five of the sites we shocked versus only two in 1990. The Brown Trout population also increased significantly in the years 93-94'. This is during the same time that in Edwards we started to routinely see Minks at the sewer site. Water quality was and is more of an issue for Minks mortality than hunting or trapping in the Upper Eagle River drainage. The elevated Zinc levels were documented all the way to Eagle. When you realize that a Minks spends an inordinate amount of his time in the water eating aquatic fish or amphibians, the increased zinc took out the entire aquatic food source for them. As that food source came back we have seen Minks at Game Creek and at Belden. The same with the River Otter we have had several sightings of the River Otter in the Eagle Valley and in Gore Creek and just last year we had a pregnant female that was killed at Camp Hale. It is not like a pregnant female is going to make a huge jump to come over here to have their young, they were somewhere in this area. There are more than enough fish in Cross Creek, Home Stake and Two Elk and now in the Eagle River with the clean up to support otters.

In all honesty he thinks that this development can be done with fairly limited impact. When we look at a development we don't look at the number of houses, we look at location. By moving some of the locations you can greatly reduce that impact. It won't do anything for traffic but it will at least reduce some of the direct impact.

W. Woodruff noted that the Elk herd can grow 33% a year, is that true? What limits the herd? How do you take the herd size down?

Mr. Andree responded easily. These Elk live over twenty years and reproduce to the end and in an average winter if we have a 2% die off.

Disease and draught can limit it. When we get a draught it affects Elk more so than Deer because of their large body size and it is no different when you look at reproduction of an animal, think of your wife. If you wife goes into her third trimester in poor shape she doesn't have a very good baby. Bad babies don't last very long, they die. If you and I were in a fight for food, we would feed our kids first, Deer and Elk don't. They eat first so they can reproduce. As the winter range gets hit more and more with the draughts and over utilization it slowly reduces the quality of the animal. One of the studies that were done, the PhD showed that if we allow human activity in calving areas we were able to take the calf cow ration in the summer from 70 calves per 100 cows down to 40 when we harassed Elk on their calving grounds. At that rate you no longer have an increasing Elk herd you have an Elk Herd that is in decline.

We have attempted herd reduction in several ways. The biggest problem is that the hunter population is aging and it is getting smaller. We have increased the hunting season; we do an early Elk season in Unit 45 to try to get people out when it is nice and further into the back country. We have a private land season which this development would be applicable for which goes from August 15 to January 15. If we fail, Mother Nature will eventually do it for us.

L. Teach asked who controls hunting on the development and why would that be allowed if the project itself is limiting the herd.

Mr. Andree responded that no matter how smart we are, the animals are smarter. If you have an area that is safe for them they are going to go there. Arrowhead and Beaver Creek, Mountain Star is all projects that allow hunting and to date most of them have not done it. The reason they do it is that after you plant about \$10,000 worth of landscaping in the fall to get ready for the next year and the Elk come in and eat them down, it doesn't take very long for the homeowners to decide that somebody ought to eat that Elk instead of it eating my plants. If you look at Alamos, the Town of Craig; all of these areas are looking at having a hunting season within their city limits. Who would control it would be a cooperative agreement between the division and the developer. We would provide the license, they can hand pick their hunters, and they can put whatever restrictions on the hunters that they want as long as they are not less than our laws. We are talking cows not bulls. If you are trying to reduce the population you kill the cows, not the bulls. When you put in good vegetation; new Aspen trees, Choke Cherry around your house the animals love it and a certain number of animals are going to come feed on them. With hunting pressure all around your development those animals are going to say I am going to be shot or I can be bothered by cars and people. And the take being bother by cars and people instead of being shot. Elk are going to do a certain amount of migrate, they don't stay in the exact same area, so if the Elk find a good place for food, somehow they have the ability to tell their buddies. During 1983 when they brought in food for the Elk, within one month they doubled in numbers. Vegetation that people put around their houses, it attracts beaver if you do it around a stream, and you are going to bring Deer and Elk onto your property to eat that. As the Elk population increases the habitat does not decrease at the same and there is this huge lag. So the Elk population increases and they keep hammering the habitat and then one day you hit the straw that broke the camel's back and the habitat is gone and you end up with a massive die off.

L. Teach inquire if the elimination of the fences that are suggested on the properties, does that help the herd?

Mr. Andree fences are tough on animals. They are tougher on Deer than they are on Elk but they are pretty hard on Elk calves. There is a whole book on wildlife friendly fencing and generally it looks at keeping the fence height below 42" and you have a kick space at the top that is great than 12".

J. Brinkerhoff asked Mr. Andree what is the best way to get to a conclusion.

Mr. Andree responded that it should include the town because the town is the permitting authority. We still have to consider what the EPA and Fish and Wildlife service have to say. The best way is to sit down with the maps and say this is the worst place to put a house. The town may have to decide if that a good place to put it for the town isn't a good place for Elk. Avoid the impact is the cheapest and easiest way. Regarding the Peregrine nest, he thinks there is a place you can move those houses and get them out of that zone. You might not be able to retain a ski run in there which might be a problem but at least you can move the houses to a better place.

L. Teach said that Bald Eagles were mentioned but it sounds like there isn't a lot up there however she has seen them in Minturn along Hwy 6. Are they just flying through there or is there a nest?

Mr. Andree responded that the closest nesting area is near Carbondale. The Bald Eagles use the entire Eagle River drainage all the way up to Red Cliff. Eagles are considered to be more of a fish eating bird; they are coming south to live here in the winter from Alaska, Canada or Montana and they are feeding a lot on carrion, dead Elk and Deer. You used to see them a lot before we fixed the fence along Eagle feeding on the dead Deer and they don't feed as much on fish up here. Golden Eagles nest in Eagle County and in the cliff bands but not within the development site. We generally don't look much at the Red-tailed Hawk, they are a generalist, they can live most anywhere. The only other species that you are going to have that gets a lot of attention is the Boreal Owl and you would find that up top of their ski area. I would assume, although it is not in there, that they have done some type of surveys. They were found in Cat 3, over the top of PHQ, so they do exist in that area and that would be an item that should be surveyed and this is the time of year to survey with a call.

W. Woodruff inquired what kind of habitat do the Peregrine Falcons hunt in?

Mr. Andree responded that they use about a ten mile zone around their nest for hunting. They eat more birds than they do mammals. They love Pigeons, Duck, Quail, Barn and Mud Swallows, normal forest birds, grouse, Mallards, etc. This one moved into the Vail ski area within the zone of its hunting area, it was not within the buffer area of its nesting. Cutting ski runs isn't going to affect the hunting it is just with whether or not they put up with the impact of that much activity.

W. Woodruff said that it has been proved to be nesting habitat so you would want to reserve that even if the birds left, five years, now ok we can build everything because they are not coming back and when the build out is done, won't they come back.

Mr. Andree stated because we used an arbitrary figure, five years, you can be stricter than we are. If we say "x" you could say bull it is "xxx" and we aren't going to allow construction in that area.

*W. Woodruff called for a ten minutes break.*

W. Woodruff asked Mr. Andree to provide a little information on the Federal Government.

Mr. Andree said that Fish & Wildlife service is a regulatory agency that they protect Endangered and Threaten Species and set regulations. They will submit a proposal to Ginn to start an Environmental Impact Survey. The Fish and Wildlife Service just requested from us this week that we provide them with all documented locations for Lynx, both Satellite and Visuals, all the way from Hwy 91 by Copper Mountain to Lake Creek, a little north of I70 and to Leadville. They will use the information we provide along with Eric Pederson and Rick Thompson guidelines the Forest Service has on denning habitat and forage habitat and then they will sit down and go through this whole EIS. There are not a lot of people who have gone through this process, so we are all

learning as we go along. They will look at all species but probably only provide you with a regulatory comment on Lynx.

W. Woodruff inquired who has the final say on these properties so we don't set things in motion and then have one of the other agencies squash our plans. And when will we hear from them.

Bill Weber, 627 Hernes Creek Drive, responded that the way it is set up, there are two federal agencies involved; for the Bolt's Lake area the Environmental Protection Agency (EPA) is the lead agency. Since it is a Superfund site along with Gilman, they have to approve whatever happens. I say this respectfully to other agencies but they are the trump card for those two properties. If for example, the Corp of Engineers says I want Blue and the EPA says Red, it is going to be Red because they are the final say on it. On the east side of Battle Mountain 1 property US Fish and Wildlife (F&W) is the lead agency. They will make their comments stating that we need to do such and such to get the permits. All of the comments that Mr. Andree has just made are true. He continued by saying he hopes to have the EPA sign off on Bolt's Lake within the second quarter or sooner of this year. Normally a project does not stop and wait for federal agencies because they take a period of time. What happens is that one of the conditions is that you have to meet all of your federal and state agency criteria. F&W should come in optimistically should be in around the fourth quarter.

Mr. Andree asked F&W if they would come and talk with the Planning Commission and explain the process and provide some type of timeline. We asked to be a cooperating status agency so we will have a seat at the table when they go through their Lynx analysis and wildlife analysis. We will be a signatory on their paper. I told them that I can bring what goes on at the meetings in Minturn so you are somewhat up to speed but I need to start attending your meetings so that I can Minturn up to speed on yours. They plan on starting their meetings next month and if things work out they may be able to get somebody up here to answer some of your questions. It went out in the Federal Register that this is going happen but that would have been a chance for Minturn to say "here are our concerns on this". I think there should be a scoping process in the EIS and the Town should have an opportunity to make comments similar to what you would do with a Forest Plan. On 90-95% of this I feel good on but I do know there are some areas that have high quality Lynx habitat that it would be best for us to wait and see what F&W is going to say about that. But the Peregrine nest, they can address some of that, but they aren't going to come back and say you can't build there. They may provide a recommendation to follow certain buffer zones. Lynx aren't going to be an issue on Bolt's Lake but it could be an issue up top along with traffic.

A. Christensen asked did you say how long the comment period was.

Mr. Andree responded that he did not know. Any federal agency, to get something done in a year, with an EIS would be very optimistic. I think you are looking at 2008.

W. Woodruff said that we would then be making it a condition but continue to do what we can especially with the Elk

Mr. Andree stated that hopefully as these meetings get started that they will be able to come forward, as the EIS process moves forward we will more guidance each time.

J. Brinkerhoff interjected that he does not think he is qualified to negotiate any of that and he feels a lot of confidence in Mr. Andree. Can we make it a condition where the applicant and Mr. Andree agree and sign off on a document where Colorado Dept of Wildlife is happy? And if they get to a sticking point on 5% of the issues then come back in and say we can't agree and we would break the tie.

W. Woodruff interjected that he wants to get through the information because we are the regulatory body, the Town.

J. Brinkerhoff said for an example, he is building a house in the Cordillera area right now. One of the conditions of the site plan approval from the original developer; there was a wildlife mitigation agreement that was not created by the developer itself. It was created with participation from the developer, a wildlife group, and a consultant and they created an agreement. They created an extensive amount of mitigation for every house; what you could do, what you couldn't do, if you could put a fence up, etc. It seems to have worked very well for that whole development.

Dominic Mauriello stated that the developer has provided a draft mitigation plan and it is draft, it hasn't been signed because it is still a draft document. That is the document I think you are talking about. You have the ability to weigh in on that and you could be the judge and jury. We have tried to sit down with Mr. Andree and talk to him about those things and we are still doing that. If there is something in there that he disagrees with us on or we disagree with him on, you can be the ones to settle that disagreement. But you do have the very specific mitigation plan that has been submitted to you. We can tweak that.

J. Brinkerhoff added that what he is hearing is that Mr. Andree feels like it is inadequate.

Mr. Mauriello responded that Mr. Andree can tell the developer where specifically he feels it is inadequate and suggest some additional language and then we can respond to that.

W. Woodruff inquired if Mr. Mauriello was referring to the recent document the commission had received?

Mr. Mauriello responded yes.

W. Woodruff stated that report said nothing about fish, nothing. That is inadequate to my eye. It dealt with dogs, bears, etc. but it needs to be much more obviously. We would like to see the developer sit down with Mr. Andree.

Mr. Weber we do not have our experts here tonight but even if they were here, we need to do some more work. We plan on talking more with the Division of Wildlife. We need to sit down with Division of Wildlife as we agree with some of the things said and we disagree with some, and some we don't understand. We need to get with Division of Wildlife and optimistically get to the point of true avoidance and mitigation and Department of Wildlife will be more supportive of what we are doing.

J. Brinkerhoff stated he would like to see a mitigation agreement that Mr. Andree signs off on and says this is acceptable.

Mr. Andree noted that the agreement in Cordillera they did sign off on, the one on Arrowhead we signed off on. It has become politically confusing lately, but generally what we have done with other big projects is sit down with the developer and hammer out everything we can. And then we can come back to the regulatory authority, whoever it is and say we have agreed all of these items and disagree on these items. We did it on Cat 3, before there was an agreement with the Forest Service or F&W there was an agreement between Vail Resorts and Division of Wildlife. He may not be able to physically sign the agreement but he could say that he agrees or doesn't agree and you can have that on the record. All of these are generally part of the PUD and it provides for the county, the developer, anyone of those parties can enforce the mitigation agreement. If mitigation says you

can't have dogs on the golf course, recluse themselves because it is a neighbor. That is why it is set up that way so that the town or the county can come in and say, it says you got to do it, you got to do it. That is the best way. In Arrowhead there were deed restrictions that you couldn't have dogs on those lots because they were adjacent to elk winter range. A deed restriction carries even more power than a PUD.

W. Woodruff and with our home rule we can impose a deed restriction.

Mr. Andree added the truly the best way to get a project for wildlife is to be able to sit down at a table with maps and say here is where we agree, here is where we disagree, come back to you guys, more visible from the town or we are going to have to change a road here or there, give and take on both sides.

L. Teach spoke on the Peregrine Falcons possibly hitting the windows on certain heights of buildings. And that the mitigation on that might possibly be to lower the height on the building. Is there a type of glass that can be used or is it just height restriction.

Mr. Andree stated that this is out of his expertise on this one. He does know that when song birds are hitting home windows the put up silhouettes of hawks or owls. Generally the window reflects the forest and they think they are flying into the forest or they can see through the house and think they are just flying through.

L. Teach said that she does some landscape work and when she is working in yards that is what sometimes happens, we just see a tremendous amount of birds that have hit windows.

Mr. Andree responded that he will get an answer.

J. Brinkerhoff interjected one other question. When he is reading reports or listening to you there are all of these animals that we are trying to protect but when we talk about bears we just talk about bear proof trash cans. Do we just not care about the bears or are they no problems with bears?

Mr. Andree responded that when they are in your trash can they are a problem. Bolts Lake will have some impact on bears as there are a lot of berry bushes out there. If you go to Maloit Park right after the Rummage Sale when all of the trash cans are full, you will see where the bear has been to every trash can out there. The bear population at this point is what we believe to be over capacity in Eagle County. If we could close up every trash container in Eagle County we would see a reduction of bears. There will be some growing pains with it.

W. Woodruff noted that it makes sense for you guys to get together and report back to us as often as you can.

Mr. Andree stated that the next four weeks will be pretty tight for him. He will have a hard time meeting with them in the next four weeks but he will do what he can.

J. Brinkerhoff stated that the traffic engineers are not here tonight. He has written down some of the underlying assumptions but he isn't sure if the answers are going to solve his concerns.

General discussion ensued regarding hiring an outside firm to discuss possible mitigation.

W. Smith stated firmly that we are going to go with the study that C&B has done for us. We are not prepared to support another study at this time.

Strong ongoing discussion ensued debating back and forth the impact of traffic and the mitigation thereof.

W. Woodruff inquired then what is the answer. No body has talked about how you are going to solve it when it hits. We want to not only talk about it; we want you to solve it now. We want it over engineered now so that as the traffic grows it will grow into the structure, whatever that is. I haven't heard word one about stop lights, turnarounds, about going from two lanes to three.

Mr. Mauriello stated that is because the study suggests that you don't need to do any of those things.

W. Woodruff stated we don't agree and that is what we are trying to tell you. These guys live right on Main Street and have to back out. We want a solution now. All of the earlier meetings, everybody said traffic was a big deal. That is the biggest impact. We want you to do something about traffic before you turn a shovel. That is what we are telling you. We haven't even heard any ideas of what you are going to do.

J. Brinkerhoff interjected that if the numbers do fail in five years, I want to know now; what is the solution. I don't want to wait five years. What is the potential?

Mr. Mauriello stated that they can come back at the next meeting and provide you with an analysis of what we believe those mitigations might be. We welcome the input and we got input from your organization, Carter Burgess who is one of the largest engineering firms in the country. They are a savvy firm. And we have taken input from CDOT who is the owner of the actual road. They have a consultant who advises them.

J. Brinkerhoff noted that they have different goals then the town does.

E. Glesner added that everybody is going to be uneasy if we don't have plans mitigating if something happens. It would be horrible if the mitigating mechanism for traffic was to everybody's disapproval. It is a hugh concern.

J. Brinkerhoff agreed and stated if you make us feel good about traffic and the mitigation and the wildlife, we aren't going to be as worried about density because I will feel like we are covered. But if I am worried about that then I know that half density is one way to solve lack of mitigation.

W. Woodruff added that is a good point and we have a responsibility to this town to keep it a pleasant place to live. We don't have a solution and we haven't heard a solution, so come on bring us some solutions.

E. Glesner stated that we aren't talking as an outside component, we live here and we can see the sort of issues that this can cause and we just need clarifications on this.

W. Woodruff said just try to turn left or right during rush hour traffic today.

Mr. Mauriello said we will go back and address that as issues because you are right, I think A-M different types of solutions, and it could be increased transit use on our property. It could be different kinds of things that are not necessarily physical improvements.

E. Glesner stepping up the bus system, changing times. I still can't grasp where all of the construction guys are going to park without a garage or a special place to park. On site or off site.

Mr. Mauriello noted that is one of their responsibilities, or the contractors that we hire, is to provide those kind of solutions.

E. Glesner said we are going to have to know some of those to feel comfortable.

W. Woodruff stated that is our responsibility is to make sure that is covered before we give you guys any kind of vote. A plan, it can be adjusted, it will be, but we have to start with a plan. We are not talking to your contractors, and I want to make that clear, I don't want to talk to your contractors. I am not making a deal with your contractors, I am making a deal with you guys. We want that plan.

J. Brinkerhoff said that one thing he has been thinking about on mitigation is one obvious place to mitigate is to shuttle employees. It would be interesting for you to look at building a garage at the north end of town, wherever the sewer plant may be, on top of it and running a shuttle operation for all of these employees. I know there are complications to that but getting people into transit would be huge.

E. Glesner added that we are more concerned about construction that is going to be more mayhem than build-out.

J. Brinkerhoff said that he still doesn't see that vertical construction is in the traffic study. That is a big number. We are building a spec house and there are days that there are 30 people up there. It takes a lot of people to build these homes. Even if you only had five or ten people at a peak time, your absorption rates it is staggering numbers. So let's transit those people. Another idea is that we should explore is the imposition of a general improvement district on the annexed property where if you put 2 mils on the tax rate, for all of the people that are going to benefit by this development, that you could create a district that could be controlled 100% by this town and that would provide an immediate source of funds for traffic and transportation and could also be expanded to environmental and wildlife.

L. Teach added that it might also draw the type of person that really wants that kind of environment. What she sees often is these people come to the mountains and build these big beautiful homes and the minute the Rocky Mountain Yellow Bellied Varmint attacks their pansy bed they have a bunch of Havahart traps out. It might be a means to attack the people who really want this. There was an article in Singletree where the deer started to move in and this man wanted to go out and kill all of the deer in Singletree because they were killing his garden.

A. Christensen added that he talked to Carter Burgess this afternoon, they did the T-Rex, so I think they have the people on board.

W. Woodruff said that sense we are getting some resistance, why don't we ask Carter Burgess for a mitigation study on the traffic. Not just numbers but solutions. Can we do that?

W. Smith you would just request it and the staff would then ask Ann Capela to negotiate that with Carter Burgess. The next step would then be to ask the Town Manager if that is feasible to have Carter Burgess do it. If you feel the study is incomplete that you have now, then to found out if the town will pay Carter Burgess to do that study.

A. Christensen noted that they have heard you loud and clear and they will get you more information. If the information they provide is not adequate then we can decide if we will get our own experts.

Mr. Weber said that this is the town's function but the town and developer have a funding agreement where the Town request certain things from the developer to pay for as part of this process, not only the P&Z process but

the annexation process. He isn't making that recommendation; they are paying for Carter Burgess, they are paying for other things so if you all and the town council would make that request we would be very receptive to that.

A. Christensen said that they will work with them to see exactly what is needed and we will clear it with this body too.

Tom Henderson, 517 Water Street, Red Cliff, CO, member of the Red Cliff Board of Trustees, your comments on the traffic through town is very appropriate but could you please expand that through the traffic up Hwy 24? I don't know how many of you have followed a dump truck up Hwy 24 but the traffic backs up forever with just one truck. Could your traffic study include Battle Mountain?

W. Woodruff replied that the study includes all the way up and to the turn down to Red Cliff.

Mr. Weber stated that the traffic study that is on going is from Dowd Junction and right up to Red Cliff. Three weeks ago, based on conversations we have had with the Red Cliff people, we have implemented a traffic study through Red Cliff. I think what you all are talking about here is over and above that, specifically for the downtown Minturn or from the begin of Minturn up to where our property is. I think we have Hwy 24 covered and I think we have the other part covered, but again that is your call.

W. Woodruff responded, no, I think we are talking about the whole thing. We are talking about mitigation from Dowd Junction all the way up to Leadville. At least bring in the traffic coming in from that direction.

J. Brinkerhoff said he is not mitigating Leadville but the study does show traffic that is coming from Lake County and what it looks like.

Mr. Mauriello noted that the current traffic study does all of that.

J. Brinkerhoff noted that from the last meeting Ginn was pretty much willing to blockade Red Cliff from construction traffic and from employee traffic so my sense is, that if Red Cliff wants that, there isn't going to be a lot of traffic that goes through there for anything.

Mr. Henderson said he is talking about Dowd Junction and all of the way up that is the problem.

W. Smith said he can find out and let you know by first of next week on when Carter Burgess can present.

Mr. Mauriello noted that this is exactly what they were told would happen tonight, that you would ask questions and we would come back on the 28<sup>th</sup> to talk some more about these things. He request that the commission get their list together of what you want us to respond to.

W. Woodruff said we have a lot more to go through and you are going to have some answer to what we ask, we will have more questions, etc.

Mr. Weber said that it is important and tonight we came with a skeleton crew, we will come with full crew next time.

**Motion** by K. Bloodworth, second by E. Glesner that the public hearing on File No. PUD PDP 06-01, applications for the Battle Mountain PUD Preliminary Development Plan together with the Environmental

Impact Report for the PUD be **continued** until the next regular Planning Commission on March 28<sup>th</sup>, 2007 at 6:00 pm here in the Town Hall; **Motion passed 5-0.**

S. Baker asked that the public hearing on File No. PUD AZDM 6-01, application for the Amendment to Zone District Map - Battle Mountain PUD Preliminary Development Plan be opened and for the record for the public hearing on the Battle Mountain PUD Preliminary Development Plan and Environmental Impact Report is hereby incorporated herein.

**Motion** by K. Bloodworth, second by J. Brinkerhoff that the public hearing on File No. PUD AZDM 6-01, application for the Battle Mountain PUD Amendment to Zone District Map – Preliminary Development Plan and the public hearing on the Battle Mountain PUD Preliminary Development Plan and Environmental Impact Report is hereby incorporated herein, be **continued** until the next regular Planning Commission meeting on March 28, 2007 at 6:00 pm here in the Town Hall; **Motion passed 5-0.**

Ms. Baker requested as a matter of clarification to make sure that the hearing was actually opened.

W. Woodruff opened the meeting and then K. Bloodworth and J. Brinkerhoff repeated their motion as being motioned and seconded.

Ms. Baker requested that the hearing on the Plat be opened.

W. Woodruff stated that the public hearing on File No. PUD PP 06-01, application for the Battle Mountain PUD Preliminary Subdivision Plat is now open.

Ms. Baker noted that for the record for the public hearing on the Battle Mountain PUD Preliminary Development Plan and Environmental Impact Report is hereby incorporated herein.

**Motion** by K. Bloodworth, second by J. Brinkerhoff that the public hearing on Files No. PUD PP 06-01, application for the Battle Mountain PUD Preliminary Subdivision Plat be **continued** until the next regular Planning Commission on March 28, 2007 at 6:00 pm here in the Town Hall incorporating all of the evidence that has been heard tonight and previous hearings; **Motion passed 5-0.**

W. Woodruff stated that it has been requested by the lawyers that the commission have an executive session regarding water so that we can be brought up to date.

A. Christensen added that you need to be brought up to speed on some of the things that are going on behind the scenes as there is a lot that you need to know before going in front of public hearings and saying things you might not want to say.

W. Woodruff stated that Executive Session will begin at 5:15pm on March 28, 2007

W. Smith stated that he has the final draft of the Three Mile Plan that he would like the commission to review and then discuss at the next meeting. It has been gone through and it is at a point that the commission can then recommend it to the town council. He would like input on this next meeting after they finish the Ginn portion of the meeting.

A. Christensen added that it is a statutory thing that has to be updated annually and we always take it to the planning commission. It is Ginn related but it isn't necessarily only Ginn related.

W. Smith added that there is one more item that was included in the packet that was included and that is the citizen handbook of engineering standards in town. We would like you to look at it and then pass it on to town council.

W. Woodruff noted that there might be more input that we just want to go past 9:30

J. Brinkerhoff added that he read it, he edited it, we approved it lets send it to council.

E. Glesner agreed and said he approves it.

J. Brinkerhoff stated that it has already been done, we went over it with Carter Burgess and he thinks it is a good document.

J. Brinkerhoff said a question he has is why are we annexing tracks C & D of the National Forest of the elk habitat, what is the purpose of that. All the way down to Two Elk, the Gun Range. Just curious as to why that gets annexed, and then at some point does it turn into urban sprawl.

A. Christensen stated that we will have an answer and if we don't the developer will.

E. Glesner noted that there is no developer on that, it is Forest Service.

A. Christensen added that they just sent out notice of sale, they are starting to sell their property.

W. Woodruff adjourned the meeting 9:19pm