

August 21, 2015

Dear Basalt Town Council:

After attending the Basalt Town Council work session this morning I came away with the distinct impression of a council feeling the pressure to "just do something" in the remaining open space at the former Pan and Fork property but not feeling at all comfortable about what the size and nature of that "something" ought to be. I have a suggestion that would go a long way toward relieving the Town of such pressure: purchase the property outright. By removing all outside partners from the equation the Town will be able to proceed with its review of and recommendations for this parcel at its own pace. Due to its unique location, downtown at the confluence of our two gold medal trout fishing rivers, this parcel is worthy of whatever time it takes to arrive at a decision regarding both the type and amount of development that will be approved. Anything less than a thorough, thoughtful review of the long term impacts of any approvals would be a disservice to both current and future generations of Basaltines. Clearly, this is a case where it is more important to get it done right than it is to get it done.

Greg Shugars

Basalt

Denise Tomaskovic

From: Denise Tomaskovic
Sent: Monday, August 24, 2015 10:32 AM
To: Denise Tomaskovic
Subject: FW: Greg Shugars Comment

Response from Rick Stevens to Greg Shugars.

From: 9lax@comcast.net [<mailto:9lax@comcast.net>]

Sent: Friday, August 21, 2015 4:56 PM

To: Pam Schilling

Cc: Bernie Grauer; Bernie Grauer; Gary Tennenbaum; Gary Tennenbaum; Gary Tennenbaum; Herschel Ross; RossHerschel; Jacque Whitsitt; Whitsitt, Jacque; Mark Kittle; Mark Kittle (Work); Rick Stevens; Rob Leavitt; Mike Scanlon; Judi Tippetts; Susan Philp; James Lindt; Denise Tomaskovic; gayle/greg; Tom Smith (Office)

Subject: Re: Greg Shugars Comment

Thank you - my impression of the meeting is that we are all ready to move forward at a pace to be determined by the land use process that comes attached to an application. Is that a misunderstanding? The majority agree on some level of building happening on the site - and what ever it time it takes to decide what is right for the site so be it. The recommendations from the public have been varied and by the dozens- so let us all sort it out- unless we do not trust ourselves to do that. The right answer will come in time -but not in glacial time. We can accomplish both a view of the river and a view point of the development if allowed to exercise our assets that exist on the staff and in our consultants and allow them to provide the info we have been asking for. Use your roles as electeds to insulate our folks so they can get their jobs done. That is our job. Just my two cents.

Greg asked that I forward this to Council.

Pam

Pamela Schilling, Town Clerk
Municipal Court Clerk

Town of Basalt
101 Midland Avenue
Basalt, CO 81621
970 927-4701 (Town Hall)
970 279-4381 (Direct)

Please note my new e-mail address: pam.schilling@basalt.net

Denise Tomaskovic

From: Pam Schilling
Sent: Sunday, August 23, 2015 8:01 AM
To: Bernie Grauer; Bernie Grauer; Gary Tennenbaum; Gary Tennenbaum; Gary Tennenbaum; Herschel Ross; Herschel Ross (personal); Jacque Whitsitt; Jacque Whitsitt; Mark Kittle; Mark Kittle; Rick Steves (preferred e-mail); Rick Stevens; Rob Leavitt
Cc: Judi Tippetts; Susan Philp; James Lindt; Denise Tomaskovic
Subject: Fw: Pan Fork Parcel

Forward per Rick.
Pam

From: 9lax@comcast.net <9lax@comcast.net>
Sent: Saturday, August 22, 2015 1:30 PM
To: Mike Scanlon; Jacque Whitsitt
Cc: Pam Schilling; Tom Smith (Office); Rick Stevens
Subject: Fwd: Pan Fork Parcel

nice guy - please forward to the rest of the world.

From: "Chuck Cory" <chuckcory@outlook.com>
To: 9lax@comcast.net
Sent: Saturday, August 22, 2015 10:51:05 AM
Subject: Pan Fork Parcel

Dear Rick:

How dare you say, ""If we want anything to happen here, we need to get past this nitpicky, accusatory, inflammatory finger-pointing or it ain't going to happen."!!!

The questions surrounding how the Pan Fork parcel should be developed is FAR from over. If you think that you and the other members of city council have the right to keep the decisions about how the parcel is to be developed, you're very much mistaken.

I have lived in Basalt for over 7 years and in the upper Roaring Fork Valley since 1979, and I'll be damned if I'm going to sit still while the 7 of you current members of the Basalt City Council just decide that YOU 7 will make the decisions and not the people of Basalt!

As reported by Scott Condon of the Aspen Times, "Whitsitt also suggested the issue might still end up on the ballot. A citizen initiative has been suggested as a possibility. The Pan and Fork issue also seems likely to factor heavily into the April municipal election, when the mayor's seat and three council positions will be decided."

I agree with Mike Scanlon when he said, "...the necessary work could not be completed in time to place a question on the November ballot."

We need to take adequate time to present sensible alternatives and then let the people of Basalt decide next April.

If you think that the 7 of you can ramrod this through and exclude the many, many voices of the people of Basalt, you're sadly mistaken.

Yes, the ballot question will weigh heavily on the minds of the people of Basalt next April when they vote on council seats and the mayor's seat. Good! Their fate will most likely depend on how they stand on the Pan Fork parcel.

Don't you dare take away the right of all of us who live in this town by deciding that it's not up to the people. Yes, we elected you and we can also vote you out of office very easily.

We need to take the fall and winter to rationally layout the various options and clearly present them to everyone who lives in Basalt after which, WE will decide how the parcel should be developed. Not YOU. The people of Basalt are educated, sensible and care about how this prime parcel is developed.

Sincerely,

Chuck Cory
Basalt, CO
970-618-8263 (cell)
chuckcory@outlook.com

Denise Tomaskovic

From: Tom Smith <tsmith@aps-pc.com>
Sent: Monday, August 24, 2015 2:41 PM
To: Pam Schilling; Bernie Grauer; Bernie Grauer; Gary Tennenbaum; Gary Tennenbaum; Gary Tennenbaum; Herschel Ross; Herschel Ross (personal); Jacque Whitsitt; Jacque Whitsitt (Jacquewhitsitt@comcast.net); Mark Kittle; Mark Kittle (Work); Rick Stevens; Rick Stevens; Rob Leavitt
Cc: Mike Scanlon; Judi Tippetts; Susan Philp; James Lindt; Denise Tomaskovic
Subject: RE: Lowe Enterprises

We do not know whether the facts alleged by Mr. Carnow are correct or not. For the most part, the allegations relate to circumstances in which Lowe was not able to secure financing to build certain projects. When that happens, there is ordinarily no direct detrimental financial impact on the local government. The impact is that time may have been wasted in the planning process, but even that is not always true. You may recall that this is precisely what happened at Willits when Mariner took over that project. And we always get financial security to guarantee the completion of public improvements. So there are safeguards to address the potential that a developer cannot perform.

Beyond that, Bernie is correct as to the work of Ehlers. The financial viability of various development scenarios must be taken into account in connection with both Lowe and the Town, and this necessarily involves an analysis of Lowe's ability to perform its obligations.

From: Pam Schilling [<mailto:pams@basalt.net>]
Sent: Monday, August 24, 2015 2:27 PM
To: Bernie Grauer <begrauer@comcast.net>; Bernie Grauer <bernie.grauer@basalt.net>; Gary Tennenbaum <garytennenbaum@yahoo.com>; Gary Tennenbaum <Gary.Tennenbaum@co.pitkin.co.us>; Gary Tennenbaum <Gary.tennenbaum@basalt.net>; Herschel Ross <herschel.ross@basalt.net>; Herschel Ross (personal) <hr81623@sopris.net>; Jacque Whitsitt <jacque.whitsitt@basalt.net>; Jacque Whitsitt (Jacquewhitsitt@comcast.net) <Jacquewhitsitt@comcast.net>; Mark Kittle <mark.kittle@basalt.net>; Mark Kittle (Work) <mkittle@tosv.com>; Rick Stevens <rlax@comcast.net>; Rick Stevens <rick.stevens@basalt.net>; Rob Leavitt <rob.leavitt@basalt.net>
Cc: Mike Scanlon <mike.scanlon@basalt.net>; Judi Tippetts <judi.tippetts@basalt.net>; Susan Philp <susan.philp@basalt.net>; Tom Smith <tsmith@aps-pc.com>; James Lindt <james.lindt@basalt.net>; Denise Tomaskovic <Denise.Tomaskovic@basalt.net>
Subject: FW: Lowe Enterprises

From: Bernie Grauer [<mailto:begrauer@comcast.net>]
Sent: Monday, August 24, 2015 2:22 PM
To: 'Gerald Terwilliger'
Cc: Pam Schilling
Subject: RE: Lowe Enterprises

Pam, could you please send this to the Council and city officials. Thanks, Bernie

Yes, Gerry, That will be done by our trusted financial advisors Ehlers. They will do a due diligence study on the developer as well as other development options on the CDC land. This is now part of the Master Plan, by council amendment. Ehlers will analyze the financial implications for the town for several development options. Those options go from a park with low development to substantial development. The consensus at the council work session Friday was that this study is mandatory for making any decision about that parcel. Thanks for asking. Bernie

From: Gerald Terwilliger [<mailto:grterwilliger@gmail.com>]
Sent: Sunday, August 23, 2015 9:45 PM
To: bernie.grauer@basalt.net; 'Bernie Grauer'
Subject: Lowe Enterprises

Bernie,

Don't you think it would be a good idea to verify the information given by a Charles Carnow in this Sunday's Aspen Times letters to the editor before deciding to proceed with a predevelopment agreement with Lowe Enterprises?

Gerry

Gerald R. Terwilliger

grterwilliger@gmail.com

970-927-4629

PO Box 2839

Basalt, CO 81621

"One must imagine Sisyphus happy" - Camus

Denise Tomaskovic

From: mark kwiecienski <mkwiecienski@comcast.net>
Sent: Monday, August 24, 2015 4:01 PM
To: 'Tom Smith'; Mike Scanlon; Gary Tennenbaum; Bernie Grauer; 9lax@comcast.net; Rob Leavitt; Herschel Ross; Mark Kittle; jacquewhitsitt@comcast.net
Cc: Susan Philp; Denise Tomaskovic
Subject: RE: Subject: Conflict of Interest and Disclosure In the Master Planning Process and the CDC Zoning Process

Thanks Tom. I will take your advice on the Master Plan issue, however the CDC zoning and the master plan are being debated as integral parts of each other, and because of that, it changes things making a far more complex issue. I agree, the definition of conflict of interest presented is not be the legal definition for Colorado, however all definitions have same legal intent regardless of the definition you want to use. Because entering into a predevelopment agreement is on the town council docket tomorrow, upon entering into the agreement, the probability is extremely high that situations involving conflicts of interest will be in existence and that certain members of councils votes in all likelihood will be challenged when they come to vote on the ultimate application. As the town attorney, you are responsible for giving advice that keeps the town from incurring liability and situations that will very likely expose the town to much liability. The other consideration for the decision makers, is it best to proceed into the predevelopment agreement with this knowledge, or would it be better as many have suggested that the town take the time to decide what it wants first, and then enter into a predevelopment agreement, with the appropriate parties. I believe the most beneficial outcome for all would be the second choice.

Thank you.

Mark Kwiecienski

From: Tom Smith [mailto:tsmith@aps-pc.com]
Sent: Monday, August 24, 2015 2:29 PM
To: Mike Scanlon; mark kwiecienski; Gary Tennenbaum; Bernie Grauer; 9lax@comcast.net; Rob Leavitt; Herschel Ross; Mark Kittle; jacquewhitsitt@comcast.net
Cc: Susan Philp; Denise Tomaskovic
Subject: RE: Subject: Conflict of Interest and Disclosure In the Master Planning Process and the CDC Zoning Process

Mr. Kwiecienski:

Conflict of interest is a legal issue. There are state statutes which identify requirements for elected officials, and the Basalt Municipal Code also applies. Finally, there are judicial precedents which may also have applicability in a specific case. Wikipedia decidedly does not apply in determining if a Colorado local official has a conflict of interest.

One of my responsibilities is to advise member of the Town Council on issues of conflict of interest. There is neither a master plan amendment nor a development application for the RFCDC property before the Town Council as to which an issue of conflict could be raised. Since a master plan is legislative in nature, as opposed to quasi-judicial, there can be no conflict of interest with respect to a potential Master Plan amendment pursuant to Colorado law. Neither Lowe nor anyone else has a development application before the Town, so it is premature to allege any conflict of interest with respect to that entity. I do not understand at all your reference to other entities in this context.

So to be clear, it is my opinion that at this time no member of the Town Council has any conflict of interest with respect to the current planning process for the potential redevelopment of the RFCDC property.

Tom Smith
Basalt Town Attorney

From: Mike Scanlon [<mailto:mike.scanlon@basalt.net>]

Sent: Monday, August 24, 2015 2:15 PM

To: mark kwiecienski <mkwiecienski@comcast.net>; Gary Tennenbaum <Gary.tennenbaum@basalt.net>; Bernie Grauer <bernie.grauer@basalt.net>; 9lax@comcast.net; Rob Leavitt <rob.leavitt@basalt.net>; Herschel Ross <herschel.ross@basalt.net>; Mark Kittle <mark.kittle@basalt.net>; jacquewhitsitt@comcast.net; Tom Smith <tsmith@aps-pc.com>

Cc: Susan Philp <susan.philp@basalt.net>; Denise Tomaskovic <Denise.Tomaskovic@basalt.net>; Mike Scanlon <mike.scanlon@basalt.net>

Subject: Re: Subject: Conflict of Interest and Disclosure In the Master Planning Process and the CDC Zoning Process

I've forwarded this to the Town Attorney.

MScanlon

From: mark kwiecienski <mkwiecienski@comcast.net>

Date: Monday, August 24, 2015 at 12:40 PM

To: Gary Tennenbaum <Gary.tennenbaum@basalt.net>, Bernie Grauer <bernie.grauer@basalt.net>, Rick Stevens <9lax@comcast.net>, Rob Leavitt <rob.leavitt@basalt.net>, Herschel Ross <herschel.ross@basalt.net>, Mark Kittle <mark.kittle@basalt.net>, "jacquewhitsitt@comcast.net" <jacquewhitsitt@comcast.net>

Cc: Susan Philp <susan.philp@basalt.net>, Denise Tomaskovic <Denise.Tomaskovic@basalt.net>, Mike Scanlon <mike.scanlon@basalt.net>

Subject: Subject: Conflict of Interest and Disclosure In the Master Planning Process and the CDC Zoning Process

Subject: Conflict of Interest and Disclosure In the Master Planning Process and the CDC Zoning Process

Dear Mayor and Council Members,

It is vital in the master planning process, that all conflicts of interest or potential conflicts of interests are properly identified so that an unbiased solution can be agreed to. Any conflicts of interest, once identified, can then be weighed and measured. People with conflicted or potential conflicts of interests often subtly adjust their opinions and speech so that an entire debate and outcome can be clouded, **This is not about if we agree with what is now being proposed, but rather, that those casting votes are impartial, and if not, what can be done about that.**

As quoted from Wikipedia: " A conflict of interest (COI) is a situation in which a person or organization is involved in multiple interests (financial, emotional, or otherwise), one of which could possibly corrupt the motivation of the individual or organization.

The presence of a conflict of interest is independent of the occurrence of impropriety. Therefore, a conflict of interest can be discovered and voluntarily defused before and corruption occurs. A widely used definition is: "a conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest.

Primary interest refers to the principle goals of the profession or activity, such as the protection of clients, the health of patients, the integrity of research, and the duties of public office. Secondary interest includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favors for family and friends....."

In the case of the Master Plan and the Pan and Fork: The review process would be much more demanding on a developer, if any council members supporting the contemplated Lowe development application had to recuse themselves. It is my belief that if a land use application, similar to that being brought forward by Lowe Enterprises, was brought forward by two of the most probable developers of the CDC parcel and the downtown area, who in my option, are Chaffin and Light Management (development) and or the development arm of the Roaring Fork Club, that the application would not pass due to visible conflicts of interest.

The business structures of these entities, combined with their historical relationships, and the fact that various partnerships and LLCs are formed to accomplish investment objectives, and that many of the personnel, officers, and investors in these companies overlap, it is my belief that the same application were made by either of those entities, it would require recusal of several council members do to visible conflicts of interest.

It is my belief that four council members, very likely have conflicts of interest that should preclude them from voting on any issue related to the Lowe proposal or master plan due to the circumstances noted here. Earlier this year it is noted that in a matter concerning Roaring Fork Club approvals, that both Mark Kittle and Rick Stevens recused themselves for conflict of interest purposes. It is assumed that nothing has changed since then which would lessen the conflict of interest for an application put forth by these parties. Donna Grauer serves as the chief financial officer for Chaffin Light Management (development), so logic would say that Bernie Grauer would also have a conflict of interest for an application put forth by either of these entities or any master plan zoning that would affect these entities.

One technique used by some developers with apparent conflict of interest issues is to engage a different entity to advance a development application to seemingly defuse the conflict of interest issue, and then after approvals are gained, they transfer or joint venture their interest to the other parties. This does not remove the conflict of interest in merely keeps it from being on the front burner. So with respect to Lowe Enterprises, any discussions or presumptions made to joint venture assign or sell a part of the project after approvals are gained between Lowe Enterprises and either of these entities or a subset of these entities, or subsidiaries would constitute a conflict of interest that council can now avoid. In this context, it is my opinion that any existing or presumed business arrangements between the parties that have been discussed, or that are in place, would have the same effect regardless if Lowe Enterprises is making the application or if one of those other parties were making the application.

With the extremely high level of involvement, interest, and pressure that individuals from members of these others entities have been exerting on council and P&Z to get a master plan implemented and a pre- development application signed with Lowe Enterprises, the probability is extremely high, after looking at all the circumstantial facts, that potential undisclosed conflicts of interest exist, and council should use its prudence to act accordingly by carefully questioning and exploring these potential conflicts of interest, and then to either recuse any affected council members from voting, or insist that the applicant personally sign an affidavit stating that there are not, or have not been any discussions, presumptions, or agreements made between the parties to joint venture, assign or sell a part of the project after approvals are gained. Any discussions or agreements that have been made need to be disclosed by the applicant now.

Additionally, **any council member who has previously or currently has invested or contributed to the Manaus fund should be recused from voting**, since any person in this conflicted position would present an exceedingly high likelihood to adjust their recommendations to fit the developer's agenda in order to accomplish the payback of the Manaus fund presumably at the expense of the public.

The town council members needs to use care to protect the interest of the public and not expose the town to future lawsuits due to these issues. No moves that would move this process toward committing the town to granting a certain level of development entitlements should be made until these and other issues are resolved.