



**TOWN OF ALPINE
SPECIAL COUNCIL MEETING**

**DRAFT ANNEXATION AGREEMENT – AND DRAFT ORDINANCE
ALPINE MEADOWS SUBDIVISION
ALPINE JUNCTION, LLC - OWNERS**

AUGUST 29TH, 2006

Please note: These minutes are a summary only of a tape-recorded meeting.

(clerk's note: Tape # 1 of 2 starts here)

The mayor called the meeting to order at 7:05 p.m. and the clerk established a quorum through a roll call. Council members present: Don Jorgensen, D.R. Hutchinson, and Shirley Brown. Donn Wooden absent and excused. Mayor Lloyd also present.

Staff Present: Brenda Bennett, Treasurer; Tracy Matthews, Clerk; and Paula Stevens P&Z Commission.

Contracted Staff: Elizabeth Koeckeritz, Town of Alpine attorney.

Others: Victoria DeCora, local resident; Dan Dockstedder, S.V. Independent; and Bryant Brown, local resident.

The Mayor called the meeting to order and advised this special council meeting can be used as a workshop meeting as well as a meeting in which action can be taken if deemed appropriate. Elizabeth Koeckeritz advised this meeting wasn't put on the Meridian Group's calendar; therefore, representatives from the company are not in attendance. It was decided the meeting would be utilized as a discussion meeting to review the two annexation documents. The Town will need to review the draft annexation agreement in order to set forth the zoning for the property, and other issues.

The draft ordinance will be read as a 1st reading next Tuesday, September 5th, 2006 and several changes will be made to the draft ordinance prior to the 3rd reading of the ordinance.

Elizabeth Koeckeritz reviewed the draft "Annexation Agreement between the Town of Alpine and Alpine Junction, LLC" for the public and council.

ANNEXATION AGREEMENT

PAGE 1. TITLE PAGE

PAGE 2. RECITALS

The recitals sections provides a legal description of the property as being 108 acres described in "Exhibit A" and indicates the land meets state statutes for being contiguous to the Town of Alpine. It sets forth the Town has the authority to carry out municipal purposes and functions including annexation of land. This particular annexation is a "logical and feasible addition to the Town's boundaries." The annexation of this land provides a natural, geographical, and economic social part of the Town.

This section will site the exact date the Town initiated annexation proceedings to annex the Alpine Meadows property pursuant to W.S.S. 15-1-101. According to W.S. 15-1-412 the Alpine Junction has the ability to prevent annexation proceedings and based on the owners consent to annex into the Town the annexation of this property was initiated by the Town. There are two statutes that address the ability of the landowner to object to the annexation proceedings; one of

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the statutes has a 20 day deadline and the other doesn't have a deadline. In researching other annexation agreements, Elizabeth Koeckertiz has learned the land owners can object at anytime to the annexation. If the land owner objects to the annexation of the property it prevents the Town of Alpine attempting additional annexation proceedings on the same land for two (2) years from the date of the objection. Therefore, this agreement is important to discuss and negotiate with the land owner. Mayor Lloyd questioned whether the annexation agreement could be completed after the third reading of the annexation ordinance. Elizabeth Koeckertiz advised that the two documents need to be approved as close together as possible but there could be further issues resolved in the annexation agreement following the last reading of the annexation ordinance. However, this annexation agreement should be completed prior to attempting to annex any additional properties. A similar annexation agreement would need to be completed with the Alpine Development Group-Damien Mavis.

This section goes onto to state there is a consensus between both parties for a plan to develop the property which is consistent with the goals and objectives of the Town of Alpine Master Plan. The Town is required to inform Alpine Junction about the foreseeable changes to the zoning of the property, animal control and other health and safety requirements pursuant to W.S. 15-1-404.

Additionally, it states Alpine Junctions worked collaboratively with the Town and Lincoln County, Wyoming in the preparation of a master plan.

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(CONTINUATION OF RECITALS)

Recitals continue on page 3 indicating that collaborative efforts occurred prior to the annexation proceedings as well as this agreement. Additionally, Lincoln County, Wyoming approved a planned unit development for the property. According to W.S. 15-405 the Town was required to hold a public hearing concerning this annexation which was held July 6th, 2006.

At the July 6th, 2006 public hearing the following was found:

- 1) The property is contiguous and adjacent to the Town.
- 2) Annexation of the property is logical and feasible addition to the Town.
- 3) The urban development of this property constitutes a natural, geographical, economical, and social part of the Town.
- 4) Annexation of said property is beneficial to and protects the health, safety and welfare of persons residing on the property. This section goes onto state several reasons why this development fits the master plan for the Town (see page 3 of 9, Section 4-a to 4-e)
- 5) Annexation of property is generally beneficial to the Town because it:
 - (a) permits development of the Town in a way that is consistent with the Town of Alpine's Master Plan
 - (b) Ensures the Town will maintain its sound fiscal condition since the property is located in the general area where there is potential for residential which will positively influence the amount of sales tax and property tax revenue
 - (c) Ensures the Town will maintain its sound fiscal condition since the property is located in the general area of the community where there is the potential for commercial development which will result in increased sales tax revenues.

Based on the representation of the Town at the public hearings, Alpine Junction waives its statutory right to prevent annexation of the Property pursuant to W.S. 15-1412.

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This page of the agreements states that at the conclusion of the public hearing on the annexation, the Council approved the annexation of the Property subject to the terms and conditions orally agreed to in that meeting and during previous discussions with Alpine Junction, which specifically includes the terms and conditions of annexation of the Property, including the plan for development of Property. In summary, the recitals section indicates it is of mutual benefit to both parties to enter into the agreement.

II. AGREEMENT

A. PARTIES: "Parties" to this Agreement are the Town of Alpine and Alpine Junction, LLC.

B. INCORPORATION OF RECITALS: The foregoing recitals are included in this agreement

C. PARTIES AGREE TO ANNEX: Based upon the planning and studies prepared in support of annexation, the PUD for the Property previously approved by Lincoln County, Wyoming with the Town's concurrence, the testimony and evidence heard at the public hearings on the annexation, and the terms and conditions of this Agreement, both Parties agree the property should be annexed.

D. PURPOSE: The specific purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to Town.

E. VOLUNTARY: Each party represents that it is voluntarily entering into this Agreement with the other Party.

F. DEVELOPMENT OF PROPERTY: Parties agree development of Property shall be subject to the following terms and conditions, which are (in summary):

1) **Master Plan:** Property will be developed in compliance with Lincoln County PUD and the Master Plan previously approved by Lincoln County on August 10th, 2005 (attached as Exhibit B). Moreover, at some later date the Parties may mutually agree to modify the Master Plan, and those modifications shall be approved as an amendment to the Master Plan, provided; however, that all such future modifications shall use Town, rather than Lincoln County, land development ordinances and regulations.

According to Elizabeth Koeckeritz a lot of issues still remain to be answered regarding zoning rules of the Town's and how this will effect the development after annexation. Mayor Lloyd questioned why any changes would occur to the zoning of the development as the plat has already been approved for the subdivision. He doesn't feel any changes should be made to the zoning of the property unless the owner makes the changes. Paula Stevens agreed with the mayor and the Town must honor the approval of the subdivision plat. The Town is charged with the responsibility to provide the regulatory framework for ensuring that is the case. Regulatory framework includes detailed, guidance documents such as the land use classification which has been added to this agreement. Ms. Stevens recommends the Town adopt what has already been proposed by the developer and that adequate, detail is within the agreement to lessen confusion in the future.

Ms. Stevens believes with the substantial, proposed changes to the Town regulations, Mr. Halpin will most likely want some type of guarantee the use and zoning of his property is solidified in perpetuity rather than being subject to the Town's regulation changes. Elizabeth Koeckeritz questioned how this will occur as the current use of the project has zoning categories which don't exist in the Town of Alpine currently, e.g., such as Town homes. Additionally, by adopting certain documents in total, the Town may be adopting something that is more between a private land owner and the developer. Land uses, setbacks, building heights should most definitely be included. It may take some to call out portions of these documents which apply and pieces which do not should be left out of the document. Ms. Stevens advised the processing of these building permits once this section is annexed will be more complex for administrative staff, and the P&Z Commission as the land will be subject to the Town's regulations and also sections contained in this document.

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Paula Stevens advised undoubtedly there will be areas that have fallen through the cracks on both sides; therefore, the agreement should have a section added which identifies a process in which any vague issues are solved if they arise when executing this agreement.

The clerk expressed concerns regarding administrative impacts due to this annexation such as the need for software to process the building permits, and business licenses with this new annexation. Additionally, the Town's EMS and Fire Departments will have a significant impact. Brenda Bennett, Treasurer advised the Town failed to set aside for an "impact fee study" with Jim Pedersen. Ms. Bennett advised money will need to be found to pay for this study or one of the developer's could pay for it. BBC Research's annexation report did not cover annexation fees. According to Paula Stevens, without the "Impact Fee Study" which underlies the charging of any fees, the Town is not covered legally and could be challenged.

Major items such as impact fees are currently left out of the annexation agreement as Ms. Koeckeritz advised she needs the Town's administrative and council to guide her in this area.

(a) **Land Uses:** This section defines the mix of uses already approved for the project such as: residential uses, townhouses, condominiums, offices uses in the business park, commercial uses, services, restaurants/ bars, and indoor and outdoor recreational uses.

(b) **Total Residential Units and Nonresidential Square Feet:** This section indicates the number of single residential units will not exceed 166; the total square footage of the business park shall not exceed 266,000 sq. ft.; and the total sq. footage of the mixed use areas will not exceed 190,000 sq. ft.

(c) **Rules and Regulations; Covenants, Conditions, & Restrictions:** The Town has reviewed and approved the Rules and Regulations and the Covenants, Conditions, and Restrictions that will apply to the Property.

(d) **Open Space/ Pathways:** Alpine Junction shall not lessen or diminish the amounts of land that it currently has dedicated to the open space and/ or pathways without the prior approval of the Town.

2. Zoning Plan for Property: Ms. Koeckeritz asked for approval that this Property is zoned as "Planned Unit Development" to which Paula Stevens agreed and stated the regulatory framework isn't in place currently. This section states that upon approval of the Alpine Planned Unit Development Zoning District designation, and the prior approval of the Master Plan, any amendments to the Town's Land Development Regulations shall not affect the uses and residential densities to this Property for a period of ten (10) years unless the Town can demonstrate by substantial competent evidence at a public hearing that the application of such amendments to the Property is essential to the health or safety of the Town.

Paula Stevens reiterated a "sub-set" of criteria from all the documents affecting the annexation should be gathered in which all Planning & Zoning areas are spelled out to ease the processing of this PUD's building permits in the future.

3. Environmental and Wildlife Protection: This section states the Property will be developed in compliance with all Town, state, and federal environmental and wildlife protection laws and regulations.

4. Storm Water Management: Alpine Junction, LLC agrees to comply with all applicable Town, state, and federal storm water management laws and regulations.

5. Public Facilities:

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a. Potable Water: Alpine Junction is solely responsible for the supply of potable water upon its Property, until such time as Alpine Junction and the Town enter into an agreement for the Town to accept such responsibility. In the future, the Town shall allow development on the Property to connect to the Town's potable water system, consistent with payment of connection fees and compliance with Town laws, regulations and policies that apply to potable water connections at the time the connections occur.

Mayor Lloyd advised currently the Town is only able to offer 100 gallons per minute of surplus water to be sold to North Star Utility. Mayor Lloyd doesn't see why a resolution couldn't be approved currently agreeing to 100 gallons per minute for "X" of dollars of surplus water sold to the North side of the river. An additional clause could be added allowing for an adjustable rate per gallon which would allow for additional expenditures. The distribution line going across the river should be constructed at the expense of North Star Utility.

Elizabeth Koeckeritz advised that if the Town franchises water service, the issue has to be put to a vote by the residents of the community, according to Wyoming State Statutes. Wastewater does not require a vote prior to franchising. Ms. Koeckeritz read W.S. 15-7-701 "Water Works Franchises" which states a city or Town can grant water works franchise subject to a vote by the voters of the city or Town. Irregardless of the Town's ordinances governing water franchises, the state statutes require a vote by the people. Kathy Ellsworth is aware of this statutory requirement.

Ms. Koeckeritz questioned if the vote would need to occur if NSU already has water and is providing this water to the project prior to annexation. She will contact Kathy Hunt with W.A.M. regarding this statutory requirement. To reiterate the annexation of the Property is with Alpine Junction, LLC and the franchise agreement would be with North Star Utility.

b. Wastewater: The WWTP Agreement is complete and the franchise agreement with North Star Utility needs to be completed.

c. Roads: Alpine Junction shall be responsible for the payment of all costs associated with the construction and maintenance of the roads, including snowplowing, upon its Property, until such time as Alpine Junction and the Town enter into an agreement for the Town to accept responsibility.

Paula Stevens inquired the review of the project's CC&Rs included the detail standards necessary to move forward comfortably. The clerk also advised the Lincoln County Planning & Development office does not require the local fire and EMS review plats. Whether the roads were built to the standards necessary for the Alpine Fire Department is unknown. During the platting process street standards are addressed conceptually but when development permits are issued there is a closer look given, according to Paula Stevens. She encourages a hard look at the streets systems and design in detail not just conceptually.

d. Open Space and/or Pathways: Alpine Junction shall be solely responsible for the maintenance and upkeep of the open spaces and/or pathways located on its property.

e. Other: Alpine Junction shall be responsible for complying with all Town, State and federal laws, regulations, franchise agreement, policies and rules in effect at the time all other on-site infrastructure and utilities are provided to serve Property, including but not limited to electrical utility lines, telephone lines and cable TV lines.

(6) Dedications: When dedications of land or easements are required to be made to the Town, Alpine Junction will dedicate land by General Warranty Deed or other appropriate instruments of conveyance.

G. ZONING PLAN DETERMINED THROUGH POLICE POWERS AND IN THE TOWN'S DISCRETION: The parties acknowledge the Town Council, in the exercise of its police powers and in its sole discretion propose the zoning plan for the Property identified in section F2 above, to advance the health, safety and welfare of its citizens.

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H. LEGISLATIVE DISCRETION: FAILURE TO ADOPT ZONING AND MASTER PLAN- This section acknowledges that annexation of the Property is subject to legislative discretion of the Town Council. If the Town fails to zone the Property as set forth in Section F2, this agreement may be terminated by Alpine Junction, LLC. The Town cannot technically zone the Property until the property is annexed. In this event, their waiver to prevent annexation is null and void and the Property can be de-annexed.

I. DEVELOPMENT COSTS: Alpine Junction shall pay the Town all costs associated with the review of all development and building approvals and plans in accordance with all applicable Town ordinances in effect at the time of submission of the plans. Any subsequent impact fees negotiated will be inserted here or any additional fees.

Brenda Bennett interjected at this point and advised after talking with Jim Pedersen of Pedersen Planning Consultants they can begin the impact study by mid October 2006 and finish by January 2007. Mayor Lloyd stated he felt there is an easier way to determine impact fees to which the Treasurer advised the impact fees need to stand up in a court of law which is why the study is necessary. Mr. Lloyd feels a study and impact fees can be done prior to January 2007.

Paula Stevens advised she will call BBC Research to see if they can complete an impact fee study quickly and she agreed to call the agency the next day. BBC Research has already compiled the annexation report for the Alpine Meadows project.

J. MUNICIPAL SERVICES: This section identifies the fact, at this time, usual municipal services, including electrical services, potable water and wastewater services, road, sidewalk and pathway maintenance and snowplowing, will not be made available to the Property from the Town. The Town will provide, however, police fire and EMT services.

The clerk advised the Town is legally responsible for the Alpine Police Department and is a separate agency from the Alpine Fire Department. D.R. Hutchinson inquired that since extra policing will be warranted with the development whether the costs to hire additional manpower could be assessed to the developer.

All agreed a separate agreement should be entered into between the developer and the Alpine Fire Department.

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H. TOWN'S LAWS:

1) General: Nothing in this Agreement shall constitute a waiver of the Town's legislative, governmental or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants; nor shall this Agreement prohibit the enactment or increase by the Town of any tax or fee. Ms. Koeckeritz inquired how impact fees are determined, e.g., per household? Paula Stevens advised whenever a residential or business development is filed in Teton County there is an impact fee assessed. At this point on the tape Ms. Stevens further comments cannot be deciphered.

(Tape #1 of 1 – Side B starts here)

Elizabeth Koeckeritz suggested this agreement contain verbiage that user impact fees will be determined in detail subsequent from this agreement in the future. Options such as using Ted Smith, local resident, as a consultant were also discussed. Mr. Smith has offered and given a tremendous amount of support and help to the Town over many Planning and Zoning issues. Paula Stevens strongly advised that the legal basis for the impact fees must be covered completely by anyone completing and assigned the task of the impact fee study report as it may set precedence for future annexations. The Town must ensure that any developer cannot "work the system."

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Mr. Brown inquired whether any new development would be subject to impact fees to which Paula Stevens indicated he was right that any new lot being developed commercially could be assessed a fee. In order to be fair and equitable, as well as legally defensible, Ms. Stevens advised the impact fee should be given to anyone developing land.

2) Amendments: This section sets forth how any amendments to this agreement will be handled. Moreover, any references within this agreement which references any ordinance, resolution or policy is intended to refer to any subsequent amendments or revisions to the ordinance, resolution or policy; and the Parties agree such amendments or revisions shall be binding to Alpine Junction, LLC except to the extent the amendments affect the uses and residential densities and non-residential intensities approved in the PUD for this property as already accepted within the agreement.

I. FUTURE COOPERATION: The parties agree they shall cooperate and act in good faith.

J. LAWS GOVERNING AGREEMENT:

(1) Wyoming Law governs

(2) Jurisdiction in Wyoming State Courts – the clerk inquired whether an arbitration clause could also be used rather than allowing for court involvement initiated by either party to which Elizabeth Koeckeritz advised an arbitration clause could be added.

(3) Prevailing Party Entitled to Attorney's Fees

(4) Remedies for Breach or Default

K. EFFECT. This agreement shall be binding on and inure to the benefit of the heirs, transferees, successors, and assigns of the parties.

L. TERMS OF THE AGREEMENT: This agreement shall remain in effect for a period of ten (10) years from the final effective date of the Annexation Ordinance.

M. SEVERABILITY:

(1) General. The Parties agree that provisions of Sections F- H are essential to and severable from the remainder of this Agreement. Except for Section F-H, the Parties agree that if any part, term, portion or provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, then the validity of the remaining parts shall not be affected.

(2) Sections F through H: This section states that both parties agree that if any party, term or provision of Section F –H (“meat” of the agreement) is determined or held invalid or unenforceable by a court of competent jurisdiction, the Parties at their option and upon notice to the other Party may terminate this Agreement. Additionally, the parties agree that in the event of termination of this Agreement, if the Property has been annexed it is in the best interest of the Parties that the Property be de-annexed from the Town of Alpine, pursuant to W.S. Section 15-1-412.

Mr. Brown questioned whether the above provision in this agreement is a reasonable provision to which Elizabeth Koeckeritz advised from the Alpine Junction, LLC’s perspective it is and from the Town’s perspective the Town should have the ability to terminate the agreement if something should fall apart in Section F-H. It was agreed that additional verbiage would be added stating that all differences will be attempted to be resolved prior to dissolution of this agreement and de-annexation of the property.

Paula Stevens questioned how de-annexation could occur in theory, e.g., could 3-4 acres only be de-annexed by a new owner rather than the developer? Elizabeth Koeckeritz advised this annexation document will be binding to anyone purchasing land from the developer. Additionally, the development has been approved by the Lincoln County Planning & Development office. Elizabeth Koeckeritz agreed to research further whether adequate language exists in tonight’s draft agreement regarding whether the land owners purchasing property from the developer will be bound to this agreement.

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According to D.R. Hutchinson, the developer is requiring any buyer to sign and agree to the fact they are in agreement with annexation into the Town of Alpine when it occurs in the future.

Mr. Brown advised to his recollection at one of the recent workshops, the developer advised they cannot bind new owners to annexation into the Town of Alpine. To Elizabeth Koeckeritz's knowledge Alpine Junction, LLC cannot force other developers to include this language in their CC&Rs. For example, they cannot force Damien Mavis to include this verbiage; however, if Damien Mavis includes it on his own that is o.k.

Paula Stevens advised that since CCRs are a private contract that could be amended at anytime, she would like to add language that discusses successors and assignees. Additionally, she questioned whether this annexation agreement will be recorded against the properties. Elizabeth Koeckeritz stated this document should absolutely be filed against each property within the project.

Elizabeth Koeckeritz agreed to conduct further research regarding this section. This section may be changed to eliminate confusion and to further stipulate individual owners of properties cannot de-annex on their own.

N. NOTICE: This section sets forth how official notification will be made to each party and their official representatives.

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O. HEADINGS:

P. THIRD PARTY BENEFICIARY:

Q. ENTIRE AGREEMENT:

R. AMENDMENTS: The agreement cannot be modified, except on terms mutually agreed to by the Parties.

Elizabeth Koeckeritz advised she is attempting to contact all landowners who have shown past interest to also be annexed. Paula Stevens advised when arranging the original annexation report completed by BBC Research she advised BBC Research that the Town may need their continued involvement. A similar agreement will need to be defined for future annexations as well.

There is not a particular timeline to finish this annexation once the "clock" or deadline is met to hold the public hearing regarding the annexation of the property (this meeting was held July 6th, 2006).

Everyone in attendance tonight agreed that it has already been advertised to complete a first reading of the new annexation ordinance for the Alpine Meadows Project and that it should proceed. However, it was well recognized much work remains to finalize this agreement with Alpine Junction, LLC. Elizabeth Koeckeritz agreed to discuss impact fees with Kathy Ellsworth.

The clerk expressed concern at the end of the meeting whether the lot that has been set in the Alpine Meadows project is zoned for "ball fields" or as "open space." Concerns would be the Homeowner's association after annexation would not want to deed the property to the Town. The Town has a finite amount of public land and the clerk expressed her concern the land is negotiated for ownership by the Town now rather than later. She asked that this be researched and negotiated/ added to the "Pathways and Open space" area of the agreement.

Don Jorgensen motioned to adjourn the meeting. Shirley Brown seconded. VOTE: 4-Yes; 0- No; 0- Abstain; 1- Absent (Donn Wooden)

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Mayor David Lloyd adjourned the meeting at 8:17 p.m.

Don Jorgensen, Mayor

Date

ATTEST:

Tracy Matthews, Clerk

Date