Meeting Minutes
PLANNING COMMISSION HEARING
Elbert County BOCC Hearing Chambers
215 Comanche St., Kiowa, CO 80117
June 6, 2017

Note: These meeting minutes are only a summary of the meeting. Duplication of the audio recording is available, for a fee, by contacting Community & Development Services.

The Planning Commission Meeting was called to order at 7:00 p.m. by Chairman, Dan Rosales.

PLEDGE OF ALLEGIANCE – Led by Kyle Fenner

ROLL CALL

Commission members present: Dan Rosales, Brian Harris, Jim Keen, Dan Michalak, Bob Lewis, Justin Klassen (arrived at 7:21 pm), and Kipp Parker

Staff present: Kyle Fenner, Director CDS; Tracey Aaron, Technical Coordinator CDS; Vince Harris, Baseline, and Cory Miller, Baseline

STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S)

A. No items

CONSENT CALENDAR

B. Approval of the Meeting Minutes for May 16, 2017. PC members and staff all agree that there seems to be missing information with regard to the vote that was taken on the DB Speed Special Use by Review application; PC and staff agree to table the approval of these meeting minutes until the determination is made that they are complete.

C. The approval of these meeting minutes was tabled at this meeting due to what appears to be an omission (possibly a page) of the record of a vote taken for the application “DB Speed.” This missing information will be forwarded to the Planning Commission members electronically so that they may ensure the meeting minutes for May 16, 2017 are correct and in order.
COMMUNITY INPUT:

A. Jackie Tugwell, 603 Coyote Trl.; asked if the June 27th PC meeting would be held in the Ag building. She also brought up the subject of citizens having legal representation, and if it was possible to ensure that the legal representation would be able to have more than the allotted three minutes that is normally allowed for public/citizen input.

B. PC and staff responded to Ms. Tugwell that there are no allowances to be made with regard to legal counsel or otherwise; each and every individual that chooses to be heard during the open forum known as public comment is allotted three minutes to speak.

C. Bob Lewis brought up the point that the aforementioned legal counsel may certainly write up their presentation for the Commissioners review; staff reiterated that any person or persons wishing to express their views whether for or against an item that is before the PC may do so, present it to staff, and staff will ensure that it is part of the packet that is presented to the PC for the hearing itself.

END PUBLIC COMMENT

PUBLIC HEARINGS

A. SU-16-0036 CATHOLIC RADIO NETWORK – COMMUNICATION TOWERS SPECIAL USE REVIEW FOR ANTENNA SUPPORT STRUCTURES USED NON-COMMERCIALLY FOR RADIO AND COMMUNICATION PURPOSES ON THE SOUTH HALF OF SECTIONS 9 AND 12, TOWNSHIP 9 SOUTH, RANGES 60 AND 61 WEST OF THE 6TH P.M. IN ELBERT COUNTY.

B. AMENDMENT TO ELBERT COUNTY SUBDIVISION REGULATIONS – NEW SECTION – SECTION XV – ADMINISTRATIVE LOT CONSOLIDATION
   This amendment is to simplify the lot consolidation process. It can greatly benefit some of the very small, unbuildable parcels in some of Elbert County’s historic communities allowing two to be easily combined to create a larger, buildable lot.

C. AMENDMENT TO ELBERT COUNTY SUBDIVISION REGULATIONS – REPLACE SECTION TO EXISTING SECTION XII, E.
   This amendment will provide for an administrative process that brings illegal parcels into compliance with the Elbert County Zoning Regulations. Until they are brought into conformance they are undevelopable.

D. AMENDMENT TO ELBERT COUNTY ZONING REGULATIONS, PART II SECTION 16 – PUD TO ADDRESS PLANNED UNIT DEVELOPMENTS (PUD)
This amendment will address existing PUD subdivisions that do not have any language on the recorded plat or rezone exhibit in reference to zoning.

OPEN CATHOLIC RADIO TOWER PRESENTATION

Cory Miller, Baseline - Project Manager; presents SU-16-0036.

A. Cory Miller gave an overview of the application for the Catholic Radio Tower Network, using a power point presentation and findings from the review of the original application submitted to Elbert County CDS. Cory expressed that all referrals that were sent out as a part of the process of this application were answered or returned with no objections to the application. The FAA has also responded that the proposed structure poses no threat or hazard that they can determine. This application is determined to be compatible with the Master Plan of Elbert County, and there would not be a significant impact on the surrounding area as this application would not generate a noticeable increase in traffic or travel due to the tower. Cory also stated that the application meets zoning requirements as written pertaining to this type of structure, and he also addressed FCC requirements and the application in relation to the FCC requirements as being within guidelines specified for this type of structure. In summary, Cory Miller stated that this application is in general conformance with the Master Plan as well as Elbert County Zoning Regulations. Elbert County Subdivision Regulations are not applicable in this case, and the proposed land use is also compatible within the Agricultural Zone District. Staff would like to recommend that the Elbert County Planning Commission recommends to the Board of County Commissioners, approval of SU-16-0036, subject to the following conditions:

1. All fees and charges associated with the property and application are paid in full.

2. The Public Hearing sign be removed from the property within 7 days of the County Commissioners determination.

3. The document must be recorded within 180 days of the BOCC hearing if it results in approval.

4. The applicant shall comply with all conditions and regulations that are applicable for this structure from the FAA and the FCC.

5. By Elbert County Engineering; a request that the access road from the property line to the edge of Highway 86 be paved; this is in compliance with the Elbert County Road and Bridge Department and Road Standards.

END PRESENTATION OF SU-16-0036

APPLICANT RESPONSE
A. CJ Kirst – Thanked Cory Miller for a good presentation, addressed the Planning Commissioners to let them know he’s happy to answer any questions they may have regarding this application.

BEGIN PC QUESTIONS

A. The Planning Commission proceeded to ask questions of the applicant, CJ Kirst. For an overview of the questions asked, there are bullet points listed below; there is also an audio recording available of the entire meeting that may be listened to by request.

- Were studies done regarding the impact of this project on the property values in the area?
- Why is the notification area only 1320 feet from the proposed structure property boundaries?
- How does it work for Elbert County to have room on the tower?
- Question regarding the legality of the project for staff; is everything legal and in order?
- Is the tower itself “loaded,” is the base itself a part of the tower?
- Has the FCC approved the frequency?
- Questions regarding the setback requirements and if they are being met.

APPLICANT RESPONSE

- No specific studies were done, but the topic was discussed; historically this type of project hasn’t been shown to decrease surrounding property values in cases such as this.
- Per EC Regulations, the notification area is 1320 feet. Vince Harris, Baseline, responded that staff can’t change the notification process, and if the Regulations are amended to reflect a different requirement, then that requirement would be adopted with regard to future applications.
- Staff also responded that the FCC and FAA never have adhered to or expected any community to require studies done with regard to effects on property values with these types of projects.
- If ECCA wants space on the tower, the applicant fully supports that; he stated that any equipment that is used by Elbert County for emergency notification or communication would have to be provided by and paid for by the ECCA.
- Staff responded that everything is as it should be legally; applications and processes get much more complicated in instances where a tower is used for more in-depth types of things such as large commercial towers. This project is very basic and everything is in order and legal.
- Vince Harris adds that it’s very common for cases like this; a private entity such as the Catholic Radio Network being happy to share space on their proposed tower with ECCA; emergency services are important and if their tower can help expand the area in which emergency services can be provided; all the better.
• The Base is a part of the tower, “yes,” the tower is “loaded.”
• Cory Miller responded with the setbacks that are being observed and that they do meet the requirements for the applicant and project and the Ag setbacks as well.

END FIRST ROUND OF PC QUESTIONS

BEGIN PUBLIC TESTIMONY

• Richard Tunney – Opposed to the location of the proposed tower, He believes that the proposed tower is inconsistent with the EC Master Plan; he is also concerned that the land with the tower is not going to maintain its agricultural use, and that it doesn’t “maintain the intended use of the land.”
• Kim Burgess – 26605 State Hwy 86 – Points out that there is an error on the map; spoke to health impact and property value affects.
• Lance Wheeler – 27178 State Hwy 86 – Addressed property values and health impact of the proposed tower. He wants to know the levels of power that will be generated and what exposure to high frequencies do to people in a close proximity to these types of towers.
• Beth Shelly - Her property is north of this proposed tower and outside the notification area; concerns over flashing lights on another nearby tower, wonders what types of issues this application/tower will create.

END PUBLIC TESTIMONY

APPLICANT RESPONSE TO PUBLIC TESTIMONY

• CJ Kirst - This tower will not have flashing lights because it is not required to by the FAA; they have adhered to notification area requirements, and the proposed location is in the Highway 86 corridor. There are other similar towers located in the nearby areas. The intended use of the land for this tower is only two acres; there are no plans to sell any portion of the other areas of this parcel for additional towers to be built in the future.
• Jim O’Laughlin – On “RF Towers,” (which this proposed tower would be,) the requirement is to fence in any area that may cause harm to anyone. The enclosed area will ensure safety for anyone in the area. He spoke to the possibility of someone else purchasing this parcel and building a cell tower; if that were to happen, it cannot be stopped per Federal Regulations. The proposed tower is much smaller than any cell tower would be. This tower will be used not only for am radio service, but if the county needs to do PSA’s or any emergency notifications, the Catholic Radio Network would accommodate that need.

QUESTIONS FOR APPLICANT

• What would the reach of the radio frequency be; how far will the signal reach?
If the tower only takes up approximately 2.5 acres, could the balance of the land be used for agricultural purposes?

Where was the notification published and when?

RESPONSES TO QUESTIONS

- Approximately 1.5 hour drive in any direction
- Yes, agriculture could be the primary use of this land.
- Ranchland News; within necessary time frame.

END QUESTIONS

Brian Harris makes a motion to recommend to approve: SU-16-0036

Second by Kipp Parker

There were a few questions posed by the PC regarding the future Economic Overlay plan and future uses on this parcel. There were also questions posed to staff with regard to the Master Plan; it was discussed that the Master Plan is a guideline, but not a regulatory document. Staff at times uses the Master Plan as a guideline when preparing staff reports and presentations in different applications, in different ways. There are several things that are uses by right or special use in agriculturally zoned parcels.

Vote is called for; Roll Call Vote taken; the motion carries 7-0, 2 absent.

END OF CATHOLIC RADIO TOWER SU-16-0036

10 MINUTE RECESS

BEGIN PRESENTATION FOR AMENDMENT TO ELBERT COUNTY SUBDIVISION REGULATIONS-NEW SECTION – SECTION XV – ADMINISTRATIVE LOT CONSOLIDATION – This amendment is to simplify the lot consolidation process. It can greatly benefit some of the very small, unbuildable parcels in some of Elbert County’s historic communities allowing two to be easily combined to create a larger, buildable lot.

A. Kyle Fennern gave a presentation to the Planning Commission specifying what the Administrative Lot Administration process will be in the future; what this amendment would mean. Kyle read the language of the proposed addition to the regulations regarding the ability to perform an administrative lot line adjustment aloud for the benefit of the Planning Commissioners; she gave an overview of how the existing zone districts and lot separation/boundaries in some of the older towns in the County make it difficult to develop some existing lots. She stated that it is currently difficult at best to develop some of the lots and properties within these towns as they are now, due to existing zoning regulations. This amendment would allow for the future ability of administrative lot line adjustments without going through an entire variance process and Board of
Adjustments hearing in a lot of cases. The process would be able to be simplified to an administrative in-house type of process which in turn would allow more developable lots to be plotted in the long run. Vince Harris, Baseline, spoke to the Planning Commission as well; explaining, as Kyle Fenner did, that this process wouldn’t change the zoning of the parcels, it would just allow for lot consolidation as long as the lots meet all criteria as set forth in the new section regarding Administrative lot line adjustments. He also spoke of the necessity, when these smaller lots are amended with the “administrative lot line variance,” there will be documents that will need to be recorded with the Title Company. Further information on this is available by listening to the recording of the Planning Commission hearing from June 6, 2017.

B. During the presentation by Kyle Fenner, there was ongoing discussion with the Planning Commissioners, Baseline (Vince Harris), and Kyle Fenner which contained questions as to the language of the proposed Administrative Lot Line Adjustment Regulation. There was discussion from Justin Klassen re: lot or parcel? If a building needs to exist on the lot in order for the lot to qualify for this process; if a building doesn’t exist, is it a parcel, a plot, or a tract of land? There was much back and forth discussion between Kyle Fenner, Vince Harris, Justin Klassen, Bob Lewis, and the rest of the Planning Commission.

C. After discussion regarding the language contained within the definitions and specific terms used, Kyle Fenner continued reading the language of the proposed Lot Line Consolidation Regulation. She read through conditions that would need to be met, guidelines that would need to be followed, requirements that would be necessary in order for this change to be allowed to be adopted as a part of the Elbert County Regulations.

D. There was further discussion about certain language contained within the proposed “patch.” This term, “patch,” was used by the Planning Commission and Kyle Fenner during the discussion of this regulation. Kyle Fenner stated that this Administrative Lot Line Consolidation process was recommended as something she could put together in order to simplify a process that doesn’t have to be so prolonged in the case of these small, non-conforming lots that currently exist in some areas of the county. What it boils down to, is erasing “interior lines” to create a parcel that is now going to be large enough that it will be conforming. One of the items mentioned during the discussion several times was the necessity for a survey to be done on the newly created plot, parcel, or lot.

E. After Kyle Fenner made her presentation and read aloud the proposed Administrative Lot Line Adjustment language of the Regulation, or “patch,” to the Planning Commission, (during which there were several items talked about back and forth,) there were some items that were decided to be changed from how this original presentation/ “patch” was worded. There was determination from all parties (the PC, Kyle Fenner, and Vince Harris) regarding the minor changes that would need to be included in this as a part of the recommendation for approval. Some changes necessary were clarification from lot to lot/parcel, definition of changes that would be made to the parcels, not changing the outside perimeter or periphery of the parcel or lot, as well as certain placement of punctuation and reiteration of items continually when not necessary.
END OF KYL FENNER PRESENTATION

BEGIN PUBLIC COMMENT

- Shelly Rodie – 601 Coyote Trl.-She was concerned that the term “designee” and how it was defined by CDS with regard to the above referenced Administrative Lot Line Adjustment Proposed process. She was concerned that if the “designee” wasn’t specifically clarified, it could be a “janitor.” She spoke to concerns about checks and balances when a simple process like this is created, and suggested some sort of report/tracking when these types of administrative lot line adjustments are done.
- John Dorman – 1968 Carlson Rd. – Difficulty allowing the discretion of just one person (like Director Fenner) being able to perform tasks such as these. He felt that items such as these should go into the PC Consent calendar at the very least. He feels “there are good directors and bad directors.”

END PUBLIC COMMENT

BEGIN COMMENT/DISCUSSION FROM CDS DIRECTOR, BASELINE, & PC

A. Response from Kyle Fenner, Director of CDS with regard to “Designee.” The discussion was that there really isn’t language written specifically anywhere else, and should the designee she chooses as Director be the janitor, she would probably lose her position. Designee simply means the person that would be qualified for the task.

B. Justin Klassen feels that there may be issue in the future with not being specific about “who qualifies as an appropriate designee.”

C. Bob Lewis feels that the Director needs to be given broad scope with regard to choosing a Designee. It is not the PC place to tell the CDS Director who he or she can choose as a designee.

D. Kyle spoke about the changes that have been made in CDS; how things are tracked within Blue Prince and how much more is tracked than used to be. She wishes that she had additional staff and bandwidth to be able to track the types of things that were mentioned by the citizen as a concern; at this time she doesn’t.

E. There was further discussion as to why this change is being proposed. Kyle Fenner read through several other items and listed the requirements that would need to be met in order for any parcel or lot to be eligible for this type of Administrative Lot Line Adjustment. She mentioned that there are several types of parcels and lots that this type of process would benefit. Kyle Fenner also reiterated that the creation of this process was a direct request from the Board of County Commissioners.

F. Further discussion and questions from the Planning Commission; part of the discussion questioned what this process would be titled as it’s approved, as well
as the purpose for this process, and what the finished and approved process should look like.

G. There was also mention of State Statutes and how they would apply to this situation; legality of designee’s and governing bodies (in the county), and adhering to guidelines already in the Elbert County Regulations.

H. Bob Lewis brought up marking the calendar for one year from this date in order to take a look at how often this administrative lot line adjustment is used.

I. More information available by listening to the audio recording of this meeting, on file with CDS.

END DISCUSSION OF ADMINISTRATIVE LOT LINE ADJUSTMENT

Jim Keen made a motion for approval of the Administrative Lot Line Adjustment

Second by Bob Lewis

The motion carried 7-0, 2 absent.

ILLEGAL PARCELS – REPLACE SECTION TO EXISTING SECTION XII, E. –
This amendment will provide for an administrative process that brings illegal parcels into compliance with the Elbert County Zoning Regulations.

A. Kyle Fenner gave a presentation to the Planning Commission regarding illegal parcels in Elbert County. She spoke about the different ways that some of these illegal parcels were created. One example she gave was when a parcel was foreclosed on; the bank may have only foreclosed on the portion of the parcel where there is a residence; thereby creating an illegal parcel because of the foreclosure. Kyle spoke about the purpose of this fix for illegal parcels; it would create a simpler way to fix these illegal parcels without having to go through a long drawn out process.

B. For specific details regarding this portion and Kyle Fenner’s presentation; please refer to the recording of this hearing, available for a fee through the CDS Department.

C. The purpose of this change is to convert the parcels in the county from XX to a saleable, buildable, usable parcel. At this time, these XX parcels cannot be issued building permits; they are technically not zoned, as XX is not a legitimate zone category.

END OF KYLE FENNER’S PRESENTATION
BEGIN PC COMMENTS, QUESTIONS AND DISCUSSION

A. The discussion speaks to whether or not the PC feels the CDS Department should be allowed to administratively “fix” these parcels (bring them into conformity) or not.

B. Vince Harris spoke to the allowance of any one person to be allowed (per state statutes) to change zoning. He believes, according to state statutes, that it must be a “governing body” only that is allowed to change the zoning of a parcel.

C. There is discussion as to the possibility of wording this change to reflect the possibility of a landowner bringing it to the attention of CDS that their parcel is “XX,” and from there CDS could possibly review the situation and bring the issue before the Board of County Commissioners for review and to possibly remedy the problem.

D. The main concern seemed to be that approving this would be in conflict with state statutes.

E. There was further discussion back and forth between staff and the PC.

F. Kyle Fenner speaks to continue this topic to a date certain; she suggests that the Elbert County attorney review this; if the statement from the attorney states this is something that can be done the way it’s being suggested, this proposal can move forward.

END DISCUSSION OF XX PARCELS

The Motion to continue XX Parcel Discussion to a date certain of August 22, 2017 was made by Bob Lewis, it was seconded by Kipp Parker. The motion carried with a vote of 7 – 0 with 2 absent.

BEGIN PRESENTATION OF UNDEFINED PUD’S BY KYLE FENNER

A. Kyle gave her presentation of what a PUD is; she presented an overview to the Planning Commission regarding Development Guides and discussed that one of the reasons for this proposal is to clarify the uses and definitions of PUD’s and PUD’s that don’t have Development Guides.

B. Staff and the Planning Commission expressed the same concerns about this proposal with regard to state statute conflict as they had with the previous proposal.

Motion made by Dan Michalak to continue to a date certain of August 22, 2017, the motion was seconded by Brian Harris.

The motion carried 6 – 1, 2 absent.

Meeting adjourned at 11 pm