MINUTES
PLANNING COMMISSION HEARING
LOCATION: 215 Comanche Street, Kiowa – BOCC Hearing Room
DATE: May 16, 2017 -- TIME: 7:00 PM

1. **CALL TO ORDER** – The meeting was called to order by Chairman Rosales at 7:02 PM.

2. **PLEDGE OF ALLEGIANCE** – Lead by Paula Wilderman

3. **ROLL CALL** In attendance were Planning Commission members: Dan Rosales, Ron Turner, Brian Harris, Paula Wilderman, Jim Keen, Bob Lewis and Justin Klassen. Staff present: Kyle Fenner (Elbert County, CDS Director), Ethan Watel (Baseline Planner, AICP for Elbert County) and Jaxon Fagan (Baseline Planner, AICP for Elbert County)

4. **STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S) PERTAINING TO MATTERS OF THIS BOARD**: Director Fenner updated the BOCC on the “patch” amendments that she was working on including the Undefined PUDs, an Administrative Lot Line Adjustment, XX parcels and the Economic Development Area Overlay zone. Also, Director Fenner was instructed to get a proposal from Baseline for a complete rewrite of the ECZR, the subdivision regulations and the 1041 regulations. All the patches were going to move forward despite the impending rewrite but that they would be incorporated into the updated regulations. There would be no “new” patches other than the ones that had been previously discussed with the planning commission in this and other meetings.

5. **CONSENT CALENDAR**: There were no consent agenda items or meeting minutes ready for approval.

6. **CITIZEN COMMENTS**

SPEAKERS/COMMENTS WERE MADE BY:
1. Shelly Rodie
2. Jean Haberkorn
3. Diane Varner
Each of the above citizens discussed their interpretation of what Article 68 of Title 24, C.R.S. meant for vesting and did not believe that a rezone created vested right. They expressed that they believed that "vesting went away" after 3 years if no final plat was recorded or work done on the project. They worked hard to keep their comments regulation specific as was recommended to them by the BOCC as opposed to discussion of a specific development. At least one speaker directly quoted a document that was posted on the Elbert County website (that has been since taken down), that was directly related to the Independence project, its vesting, entitlements and density.

7. PUBLIC HEARINGS:

PD-16-0030 & MD-16-0029/DB SPEED REZONE AND MINOR BUSINESS/COMMERCIAL/LIGHT INDUSTRIAL SUBDIVISION FOR AUTO AND ATV SALES AND REPAIR IN A PORTION OF SECTION 10, TOWNSHIP 7, RANGE 65 WEST OF THE 6TH P.M. IN ELBERT COUNTY.

RZ-14-0022 & MD-14-0021/FULKER REZONE AND MINOR DEVELOPMENT IN THE EAST HALF OF SECTION 34, TOWNSHIP 10, RANGE 60 WEST OF THE 6TH P.M. IN ELBERT COUNTY.

Chair Rosales made the decision to hear the Fulmer application first as it was predicted to be simple and quick and the Fulmers had a long drive back to Simla. It would be followed by the DB Speed applications.

All agreed.

OPEN Fulmer Rezone and Minor Development:

A presentation was given by Ethan Watel first for a rezone from A to A-2 and then for the one-lot minor development to bring the Fulmer’s 22+/- acre parcel into compliance. The lot was illegal and had been created when the Fulmer’s sold a part of their parcel to Big Sandy School leaving them with less than 35 acres. The sale of the land and creation of the new lot did not go through a subdivision process. The lot was created intentionally and done outside/against adopted Elbert County subdivision regulations as well as against Colorado State Statute. Therefore it was the applicant’s responsibility to bring the parcel into compliance.

Project planner, Ethan Watel discussed the lengthy/prolonged history of the application, that it had started several years ago and that it had been stalled by the re-permitting process of the
well for the new-sized parcel. Former Planner Curtis Carlson began the process in 2014 formally. When the applicant finally succeeded in getting the updated well permit as required by the State, the application began to move forward again and because of its simplicity and lack of opposition originally, staff was able to pick up where the application left off. It was the Director’s decision to instruct the planner to do so.

It had been sent out for referral comment in 2014 and there was only one comment and no objections to the application. The one comment was regarding the re-permitting of the well. He explained that because there were no other objections and the one objection had been satisfied that staff did not send it out for referral again. Staff determined that it was not necessary.

Staff recommended approval of the application for a rezone from A to A-2 and for approval of the one-lot minor development.

Planning Commission Comments:

Bob Lewis expressed profound disappointment that staff presented the PC with the application in its current form, and was troubled that staff would find it acceptable. He stated that he felt the application should be current, forms recompleted and referrals re-done regardless of the reasons that staff provided.

Paula Wilderman expressed the same feelings and stated that she expected a "pristine" application and that all information should be current. She asked about the taxes as the statement of taxes paid was from 2014. Staff responded that the taxes were indeed current as they had pulled a statement a week earlier. She was upset that it was not in the packet. Staff was informed to not let it happen again.

Kyle Fenner stepped to the podium and explained to the Planning Commission that every time an application is touched it costs the tax payer’s money. Just because the application was old didn’t make it invalid. Fenner pointed out that there had been zero objections to the project by referral agencies other than the Department of Natural Resources regarding re-permitting the well. She stated that it would have been a poor use of department resources to “do it all over again” when it wasn’t necessary. Fenner also asked the Commission to bear in mind that it is the staff’s job to ensure that appropriate documentation is current and a part of any packet, and would
they please trust in staff and have faith that whatever staff testifies to is the truth. Just because an application is “old” or dated doesn’t mean it needs to be “redone”. Many applications take a long time for many reasons. Our system assigns numbers according to the year – once entered that number will never change.

Justin Klassen expressed concern over differences in exact acreage on exhibits within the planning commission packet.

Mr. Watel responded that there were some very small tweaks that the applicant still needed to make on the final exhibit and that staff would ensure that the exhibit was 100% accurate prior to recordation. Because the current staff wasn’t the initial planner he couldn’t comment on all the specifics other than to assure the commission that it would be correct prior to recordation.

Commissioner Rosales asked staff for clarification on how the lot was created and then expressed his concerns and disapproval that citizens circumvent the subdivision process and then come to the county to “fix” it. Rosales asked about a checklist that was part of the forms that was always left blank by staff.

Staff responded that the checklist was created by former staff and wasn’t a tool that current staff used. It would be removed from the packets going forward because it was not necessary.

Fenner responded that indeed that the lot was created illegally but that the owners were here and had done the work to bring it into conformance.

The applicant was commended for their “act” of selling to the school, and staff was questioned as to why a “new application” accompanied by a “re-do” of the application process wasn’t implemented in this case.

Again staff commented that they were working hard to be efficient with very limited resources. Fenner pointed out that in the time the application was submitted, the county had no mechanism to call an application dead and had no authority to force an applicant to “start over”. Through amendments carried by Fenner, in 2016 changes were made to Part I, Section 8: Fees that do allow CDS to deem an application dead and to throw it away. That was not the case when this application was filed and it did not seem to staff that it was necessary or a prudent use of time and tax payer dollars.
Additional discussion was had between planning commissioners.

The applicant's representative, Steve Wilson, superintendent of the Big Sandy School described the history of the application from his perspective. He believed, based on what he was told by former CDS Director, Richard Miller in 2011, that the process was going to be relatively simple and easy. The school was busy being built between 2011 and done in 2014 so he started the Fulmer application. He stated that he didn’t realize it was going to take this long. The Fulmer's (the owners) were also present with Steve Wilson. (NOTE: what is simple to a planning director might not also be simple to a non-land-use person). Steve Wilson managed the application for the Fulmers.

Motion made by Justin Klassen to continue the application to a date certain with the instruction to staff to update the application and to clarify for certain the total acreage of the lot. The motion was 2nd by Bob Lewis. There was no further discussion. Chair Rosales called the question. The motion failed by roll-call, vote 2-yes to 5-no.

Motion was made by Paula Wilderman to approve RZ-14-0022 with conditions 1-3 from the staff report plus the following provided to the BOCC in their packet:

1. A current tax statement
2. Correct/final acreage on the exhibit
3. Justification for not conducting referrals again
4. That all application forms will be recompleted and resubmitted.

The motion was 2nd by Jim Keen

Roll-call vote: 5 yes, 2 abstain

Motion was made by Paula Wilderman to approve MD-14-0021 with conditions 1-5 from the staff report plus the following provided to the BOCC in their packet:

5. A current tax statement
6. Correct/final acreage on the exhibit
7. Justification for not conducting referrals again
8. That all application forms will be recompleted and resubmitted.
The motion was 2nd by Brian Harris

Roll-call vote: 5 yes, 2 abstain

MOTION PASSED

OPEN DB SPEED, PUD REZONE and MINOR DEVELOPMENT (one lot minor)

A presentation was given by project planner Jaxon Fagan. For details of the presentation please see the staff report. The lot was created illegally by the applicant David Brill and did not go through the subdivision process when it was created. It was created so that the applicant could move his business from its current location across the street. Mr. Fagan stated that one of the things that took so much time on this application was the negotiations for access/driveway. Elbert County Road and Bridge standards didn’t allow for direct access onto Singing Hills; when a lot is created without going through the standard channels, access options often become complicated. Mr. Brill was required to utilize the platted road Wind Spirit Lane and access his parcel off of that. The Director of Road and Bridge did provide a waiver from distance between driveways to allow even that access to happen. Because the parcel fronts a major Elbert County arterial road he was also required to dedicate ROW.

The general idea behind the application was to bring the parcel into compliance and to zone it as a “limited commercial use” parcel. This process required both the rezone to PUD and the creation of a one-lot minor development. Without this application process and approval the lot would be undevelopable. The parcel is 5 acres +/- and will be served by well and septic. Elbert County regulations do not have a 10 acre requirement for well and septic use for commercial lands like residential parcels.

The applicant was then asked to speak. Mr. Brill stated that he was excited and was also a county resident and wanted to provide great service and good prices to other county residents. He stated that he had been “working on this” for 6 years.

Note: Mr. Brill had never provided a complete application to Elbert County until 2016 despite multiple meetings with him outlining the process. The parcel was illegally created by Mr. Brill in 2010 but until 2016 he had not paid any fees at all nor
provided the County a complete application packet to bring it into compliance with county regulations.

The applicant was asked about a 5 day a week auto repair and Mr. Brill stated that would not be until phase 2. Following the applicant’s presentation a number of citizens had comments questions:

1. Sandi Jones: Ms. Jones shared that she lived very near but just outside the notice distance requirement. She had visited with Mr. Brill on his property and had come in to the CDS department to review the file. She is a professional equestrian and is concerned about the motorcycle “dirt track”. She asked that the planning commission approve it only if the track hours were the same hours as the store’s hours (as stated in the staff report & application). She was not against the project she just wanted to know that there would be “quiet time”.

The applicant responded that it was just a test-drive tract and there would be a single bike on it at a time and that it would only operate during business hours. It was not going to be used as a “motor cross” track.

2. Another citizen: unintelligible name/did not sign in commented that she had done business with Mr. Brill and that everything that he said about providing good service and good prices was true based on her experience.

Other citizen questions – this was nearly cross talk with the CDS director going to the podium repeatedly and unable to take down names in the process:

Q1: Why is it is PUD? Why not just straight commercial?
CDS Director Response: Straight commercial has very, very broad uses. When placing commercial near existing residential straight commercial zoning can be incompatible with late night bars being allowed and a whole host of other uses that might not work in that location. Also, the county has no design standards for architecture, landscaping, etc. with straight zoning. With PUD we can minimize negative impact on existing residences while making it valuable and useful to the applicant.

Q2: A citizen asked us to go back to a slide that showed a neighboring subdivision that was also zoned PUD. She asked why is that PUD and not straight zoning?
CDS Director Response: “That is a great question”. It is an older subdivision and we have found a number of older subdivisions that are PUD that probably shouldn’t have been. A PUD is for a unique set of uses or mixed uses. These subdivisions could easily have been straight zoned but back then for some reason they weren’t. It was just at the time the “PUD” zone district was invented and it might have been that the planning department didn’t yet fully understand their requirements and application. We are working on an amendment to the zoning regulations that will address some of these older PUD subdivisions that don’t have development guides (DG). A PUD must have a DG to be properly zoned. We are going to create an amendment that manages these “undefined PUDs” (ones lacking a DG) as though they were straight zoning.

Chairman Rosales called for a motion.

Motion to approve PD-16-0030 subject to staff conditions of approval was made by: Ron Turner

2nd: Bob Lewis

Motion carried: 7 to 0 to approve PD-16-0030 subject to the conditions of approval outlined in the staff report.

Motion to approve MD-16-0029 subject to staff conditions of approval was made by: Bob Lewis

2nd: Justin Klassen

Motion carried: 7 to 0 to approve MD-16-0029 subject to the conditions of approval outlined in the staff report.

8. PRESENTATIONS: Economic Development Areas Overlay Zone (EDZ) – Presenter Kyle Fenner, CDS Director.

CDS Director Kyle Fenner gave a presentation about the concept of an economic development area overlay district that is connected to both economic development areas from the existing master plan and the highest traffic roads as identified in the West Elbert County Transportation Master Plan.

Fenner outlined the severe lack of properly zoned lands for any sort of commercial activity. There is basically no inventory of such zoned lands. The EDZ would not rezone lands but create an overlay that adds commercial and industrial uses to lands
that are along certain travel corridors. Fenner also pointed out that this is promoting “strip development” which isn’t ideal but that with beautification, landscaping and architectural standards we could preserve and enhance the visual quality of these corridors.

9. There was a discussion among the commissioners about the Comprehensive plan progress. Many expressed a feeling of being “in the dark” and not engaged at all. Others expressed concerns about the questions in the survey, the “chip game” that was played and felt that these things were either not representative/useful to Elbert County or that they were not the things that they were “sold” in the presentation that Design Workshop gave to win the project.

When asked about it the director pointed out that it was made very clear to her that the Comp Plan project belonged to the Planning Commission; they had expressed clearly that they “owned it” and that she had been told that she had little to no input on it or anything about it.

A last minute handout that had been created by the director at the request of Commissioner Richardson (who is also on the Comp Plan citizen task force) was provided to each PC member. One version had already been printed to be used in outreach small meetings and a direct mailer version was going to print almost immediately. Paula Wilderman expressed frustration/anger that no one knew about it first and that because it was going to the printer that soon she could not help with it. She said that she felt it was filled with errors, that she couldn’t read it, and that based on how it was designed she was concerned that no one would read it. She commented that she felt it was a waste of resources and her name was on it.

Chairman Rosales apologized to the group for the poor communication but pointed out that there were going to be times that he would have to make decisions to get things done. If he were to send this to the whole PC for comment that would constitute a meeting and a violation of the Sunshine Laws. He pointed out that the flyer was just a motivational piece for people to be reminded of dates, events and the project.

All commissioners expressed concerns over communications and about Design Workshop’s progress and methods to date.

10. ANNOUNCEMENTS

11. ADJOURNMENT (No later than 11:00 PM per Resolution 00-01)