ELBERT COUNTY
Meeting Minutes
PLANNING COMMISSION HEARING
Elbert County Fairgrounds – Ag Building
95 Ute Avenue, Kiowa, CO 80117
July 11, 2017 – 7 pm
Continuation of June 27, 2017 Hearing

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 7:01 p.m. by Chairman, Dan Rosales.

PLEDGE OF ALLEGIANCE – Led by Justin Klassen

ROLL CALL

Commission members present: Dan Rosales, Ron Turner, Brian Harris, Paula Wilderman, Jim Keen, Dan Michalak, Bob Lewis, and Justin Klassen.

Staff present: Kyle Fenner, Director CDS; Tracey Aaron, Technical Coordinator CDS; Vince Harris, Baseline; Vince Hooper, Baseline; Ethan Watel, Baseline; Todd Rand, Engineer Baseline; Zach White, White Bear, Ankele and Tanaka & Waldron, Attorneys at Law.

STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S)

A. No items

CONSENT CALENDAR

A. No items

B. Announcement by Chair Dan Rosales regarding the process of the hearing this evening.

APPLICANT REBUTTAL – Dianne Miller, Special District Attorney for Applicant
A. Mr. Craft began his presentation for this evening. He stated that they had prepared some slides for this evening, will speak, and be available for questions. He expressed his appreciation to the Planning Commissioners and Staff for their review of all of the information submitted, as well as all the time they’ve given to this application. He went on to speak of the four (4) wells that are proposed for the Independence location, along with the 300 year supply studies that were done. Mr. Craft stated that the proposed wells for this site represent less than 1/10\(^{th}\) of 1% of the wells in Elbert County, and that they have exceeded both the county and state requirements for the well setbacks. He noted that he had additional handouts for the PC, and at this time, turned over the presentation to Gina Burke, the applicant’s water expert.

B. Gina Burke (water consultant for the Independence project) spoke to the water court process; the original application was filed with the water court by Mr. Bentley; to go through the water court process, a water expert (such as herself) must be hired, as well as a water attorney. She continued to present an overview of the process, also stating it was case # OCW-59. It was stated that no objections were filed during the course of this water application review. In September of 2006, this water application was signed off on by the State, the Division, and the Water Court Judge. She also explained that the source of the water for the Independence project would be two wells from the Denver Aquifer, and two wells from the Arapahoe Aquifer. The water rights for this project are adjudicated and decreed.

C. Mr. Craft began speaking again with regard to water, moving on to other topics regarding the proposed Independence Project. Listed below are bullet point items that were discussed.

- First Category 3 water treatment plant in the state.
- Sustainability package not seen anywhere in Colorado.
- 520 year plus supply of water.
- No plans to pump any water out of Elbert County.
- Waiving their right to pump water out of Elbert County at this time.
- Voluntary restrictions on the terms of water export.
- Traffic concerns; working on plans to mitigate these concerns.
- All roads concerning Independence will be paid for by Independence.
- Strong employer for the county; 4000 temporary jobs and approximately 500 permanent jobs.
- Economic impact studies done; fiscal impact studies done.
- Net positive to Elbert County of ¼ million dollars each year with tax revenue.

Mr. Craft ends; asks Diane Miller, Districts Attorney, to speak.

A. Diane Miller, (Miller and Associates) the attorney for the Districts within the Independence Project, speaks about the Special Districts. Below are some points about the Special Districts that she spoke of.

- Most developments in Colorado do require Special Districts; they allow new development to “pay their own way.”
- Services provided by Special Districts include road maintenance, water and sanitation districts, parks and recreation, storm drainage, street improvements, traffic safety and other services.
- Water and Sanitation District being asked for; it’s a special type of district, will maintain water and sewer services for the development.
- Metro Districts; traffic, park and rec, ongoing maintenance of infrastructure. Some maintenance will go to Elbert County; that maintenance that the county doesn’t require be done by them will be taken care of by the Independence special districts.
- Taxes generated within the subdivision are used to pay for the special districts and the services they offer.
- Purpose of the Overlay District is to manage the landscaping, open space, public parks and recreation, trails, etc. This district is intended to replace an HOA; there will be no HOA in Independence. The taxes that are imposed with regard to this district are tax deductible; HOA dues are not tax deductible.

Ms. Miller ends her presentation and Mr. Craft speaks again.

A. Mr. Craft reemphasizes that the monies paid in taxes to the districts by the citizens of Independence are tax deductible where HOA dues are not.

- No new taxes from this development will be applied to the county.
- Spoke of the tax levies and amounts
- Spoke about density and open space
- Third party marketing consultant found that this overlay program is the preferred structure of homebuilders.

END APPLICANT RESPONSE

BEGIN PLANNING COMMISSION QUESTIONS AND COMMENTS

The following is a list of bullet points regarding questions asked by the Planning Commission. At this time, each Planning Commissioner was given the chance to ask one question of the applicant; Chair Dan Rosales stated that at this time, the questions would be kept to the subject of the Preliminary and Final Plats only.

- Concerns regarding access to the subdivision; only one single entrance and exit. Concerns for the safety of people living in and around the area. Fire dept. access concerns.
- The above concern was addressed by Kara, the Fire Marshall with Elizabeth Fire Dept. She stated that under Phase 1 only, there will be access off of CR 158. There will be requirements of secondary access as the subdivision grows. There will always be a secondary fire/emergency access no matter what, and this access will be maintained no matter what the weather conditions (it will be an all-weather road) by the metro districts. She also spoke about other fire stations that would respond to this area as needed. Access points will be increased as the phases are built. (neighborhoods)
• “What are the foreseeable uses for water was questioned;” what might the water available in Independence be used for in the future?
• Mr. Craft stated that there is ‘excess’ water available, there is no plan as of yet as to what to do with the ‘excess’ water, possibly agricultural use in the future if it’s allowed by the state; that they would be willing to have a condition of approval which states that they aren’t allowed to sell or give water outside Elbert County. (Diane Miller spoke here about exportation of water outside of the county; that it would not happen.)
• Questions regarding whether the nearby fire stations are volunteer or manned full time.
• Comments and questions as to the cost of the “state of the art” water and sanitation system; what the costs to the homeowners be, is it necessary?
• Dave Takata spoke about the water resource facility; best quality water in Colorado that comes out of wastewater treatment plant-Category 3, highest in state.
• CDPHE gave approval 3/21/17 for initial plan.
• Regulation 84 – covers all uses of treated affluent water - non-potable but many other uses, like commercial, irrigation.
• Average household will use 150,000 gallons/year for both indoor and outdoor use.
• Base rate of water and sanitation bill for average household was discussed.
• Base fee for potable and non-potable water per household is $65; there are “tier” levels dependent upon the ‘type’ of water usage. Example: Tier 1 is 0-6,000 gallons, Tier 2 would go from there, and so on; prices would be according to water usage and type of water usage. Approximate bill would be $100 per month; each home will have to “smart” meters connected to Wi-Fi.
• Traffic concerns; where the majority of the traffic would flow, where acceleration and deceleration lanes would be located and if they would be a part of phase 1 or come later.
• Applicant responded with traffic slides to show what types of lanes would be constructed; applicant answered that these types of lanes would be built.
• Commissioners spoke about the language written in application regarding the export of water without express permission and approval by the BOCC; it was stated “that language has got to change.”
• Applicant reiterated that water wouldn’t leave Elbert County.
• Degradation of roads, etc. that may be caused by large equipment; will there be continuous maintenance and clean-up. Will traffic lanes be constructed prior to building homes? Traffic will increase with construction, not just with selling of homes.
• Applicant states that the road improvements will be a part of the beginning of any construction. Prior to any building of any homes, roads will be addressed.
• Maintenance of roads had been addressed in several reports submitted as part of the application; yes, the roads will be maintained and paid attention to.
• Expansive soils addressed by PC and applicant; plans are in place.
• Questions regarding Subdivision Improvement Agreement; why is it not already complete and submitted?
• Applicant stated that there have been ongoing negotiations between the applicant and the county; it is in progress and will be something that will be fully executed and agreed upon in the near future.
• At this time Kyle Fenner asked to address the PC; she stated that in speaking with Sean O’Hearn, he recommends the PC make it a condition of approval that the SIA is fully negotiated and executed prior to the first BOCC public hearing in this matter.
• PC asked about the engineering of the proposed wells; questioned the depth, casings, type, etc.
• Applicant asks Gina Burke to speak about the depth, type, engineering of wells. She responded that they really won’t know exactness of descriptions until the drilling begins. She used visual aids to aid in her description of where the wells may be drilled, and she also spoke about what the requirements are through the state, and approximate depths they may reach.
• More discussion about the wells; questions about why certain things would be done. Ms. Burke answered fully all questions regarding aquifers “speaking” to one another, why the wells are designed a certain way, what the state requirements are and why.
• There was a question to about how much water would be pumped from which wells; Ms. Burke spoke as to the way the water would be pumped and she even spoke about the Arapahoe vs. the Denver and how the quality of the Arapahoe is better, there is less iron in the water.
• What impact might there be on neighboring areas from the wells and water use in Independence?
• Transmissive or water-bearing nature of these aquifers is horizontal; she believes that there won’t be any measurable impact on the neighboring areas with the wells in use in the Independence development.
• Much more conversation about wells, drilling, supply, demand. Applicant response to all questions, topic surrounded the use and type of wells, and impact on surrounding areas and other aquifers.
• At completed buildout, the projected usage is said to be 293 acre feet per year of potable water.
• PC questions proposed costs of homes; how many may be priced at the projected price; how many may actually be sold at that price.
• Applicant replied that projections are varying; market prices and demands have an impact on pricing and projected sales of homes.
• PC concerns over mill levies and the cost to the homeowners vs the home values. What if the higher mills need to be paid back and only the lower value homes are being built/sold? Bond payments need to be paid back; how are payments going to be made if market doesn’t perform to capacity and enough homes haven’t been sold to pay for the bonds that are due.
• Applicant states that there are plans in place, it’s one of the reasons they are requesting multiple metropolitan districts; they do have plans so there won’t be financial difficulty for any mill levies, bonds, etc.
• Applicant spoke to Capitalized Interest Loans; if there isn’t money in place to pay bonds coming due, there are other ways they have planned for in order to maintain financial stability for the development.

• The PC questions how this type of loan would be paid back; applicant stated that when the builders pay their fees, the monies for this would be paid back.

• PC asks if there could be more units as there is concern over the price point; the applicant responded that they are restricted to the PUD guidelines. They would love to add more units, but they have to abide by the restrictions set by the county.

• Questions about financial surety, the SIA, how many developments the applicant has been responsible for to date; “county doesn’t want to be left holding the bag.”

• The applicant stated that they have come in and “rescued” 4 communities to date; communities that were experiencing problems like the PC has shown concern with regard to issues that may arise with Independence. The applicant also stated that in addition to turning around the condition of the 4 developments that were not doing well, he personally has been involved in at least 25 Master Plan communities to date along the Front Range. They have never had a failed project yet. They had one project that had a sink hole, but they fixed it through one of the metro districts that were in place.

• Will there be an HOA?

• The applicant stated they want to incorporate HOA type of structuring into the Overlay District. The fees would be comparable to HOA dues, the Overlay District has the same governing power as an HOA; architectural approval, etc.

• Transportation questions; how many trips per day will a project of this size generate? What may be other options for the possibility of building roads earlier in the process?

• Kyle Fenner stated that no one is in disagreement about the roads being improved, connections made, etc. Spoke to “tying something to a clock when the product is market driven.” She speaks to tying the improvements to building permits, and also speaking from the recommendations of road and bridge engineering.

• PC stated he felt the traffic study was weak and he felt there should be more data; that is what he is looking for. Feels that the road connections should be made in conjunction with the completion of the first phase; within an 18 month time frame.

• Applicant responded that connecting the roads, doing too much too fast would be an example of something that could well put the project on the road to some of the troubles the PC has spoken about. It would put an immense burden on the developer. He stated that they are committed to building that road; the time frame is that it would be constructed at approximate issuance of the 370th building permit, if not negotiated to be sooner.

• Questions of ROW.

• Extension of CO RD 1?

• Applicant stated that will be determined with the negotiation of the SIA, also thinking along the lines of the build out, reaching the 370th home.
• What about mosquito and weed control; what plans are in place?
• Overlay District is responsible for this type of task.
• Open space; native grasses; water conservancy. What happens if there is a grass fire?
• Applicant has been working closely with the FD; they will ensure they speak with the FD regarding this type of issue.
• Storage ponds; capacity to store enough water in winter? Will there be overflows?
• Dave Takata spoke again; went over plans that are in place regarding safety when it’s a rainy year, drought conditions, etc. There won’t be runoff, there will only be precipitation from above. There are overflows in place if needed. There are plans in place for all types of situations.
• PC questions about where the school acreage designation would be; how much acreage is designated; 14.7 and 24.7 acres would be designated for schools.
• Applicant responded that 14.7 acres is a requirement but small for a middle school; the extra 10 acres was offered by the applicant.
• Questions to the discrepancies in numbers between the PP and FP numbers regarding the amount of acreage. 60.4 in one, 84+-.
• Questions about the numbers of students; when the school may or may not be built.
• The applicant speaks about “phases being labels,” the school system would determine when the school would need to be built.
• More questions about possible future residents using Douglas County schools because it’s more convenient; people residing in Independence will possibly work in Douglas County; they will also enroll their children in Douglas County Schools.
• Concerns over the “five person board that don’t even live within the Independence District.” Wonders about who determines how much property is set aside for the school, what type of school will be built, or when it will be built.
• The applicant responded that they have no sway over what the school district does; they have all the decision making ability when it comes to the schools.
• Comments about recommendations to survey for methane gas because of issues in other portions of the state at this time.
• Ethan Watel spoke about an Environmental Assessment associated with the Independence application. He stated that there is one abandoned/capped well on the subject property; the location is noted on the preliminary plat, and there is a recommendation from staff that there is a survey and tests are performed and no homes are built on or near the abandoned well.
• Concerns that the PC member didn’t find responses to the recommendations; the applicant then stepped up and brought up slide on the screen showing that there was response to the recommendations made by staff.
• Talk of what types of lighting will be used to help preserve the dark night skies of the county; the applicant stated that downward facing lights would be used to try to mitigate the amount of light shining into the sky.
- Questions as to when Fire Stations or Sheriffs Depts. would be built; the applicant answered that it would be at the discretion of those districts as to when they may build satellite stations within Independence.
- Concerns over the locations of water treatment plants and water purification plants, water supply.
- Why so many special districts?
- Questions as to the election of board members
- PC had questions about Impact Fees; the applicant answered that it is not up to them but the county as to how they are applied and what is charged.
- It was noted at this time that there is some difference between what the applicants have to read from, and what the PC has to read from. Both parties have the same information and it is complete; however, it is also noted that the PC has all of the information for a complete packet.
- Questions about the roads and designs; Ethan Watel spoke that there were meetings with EC Road and Bridge, these items have been addressed and are a part of the application documents.
- PC member had questions about the process of filtration, inactivation, and microorganisms.
- Applicant representative, a microbiologist responded how the process is intended to work.
- PDR (Process design report); under review at this time; should be approved and back prior to any construction of water treatment facilities.
- Copy of approved covenants completed yet? Supposed to be done prior to approval.
- Ethan Watel noted that the PC doesn’t approve the covenants, but they are required to have a copy, which they do at this time.
- Much discussion back and forth regarding covenants, HOA, difference in numbers and sections where items are located in staff packets as opposed to PC member packets as opposed to applicant packets; apologies by staff for the different types of binders, information delivery.
- Resolutions 09-13 and 09-14, regarding final construction of Hancock “Way,” also questions about the construction of “Delbert” Rd., also known in EC as CO RD 1.
- The applicant responded with information regarding talks with staff and the county about the completion of CO RD 5 upon issuance of certain building permits, negotiation of the SIA; further talks are necessary.

END PP AND FP QUESTIONS

BEGIN SPECIAL DISTRICT QUESTIONS

- PC member questions why there are so many Special Districts.
- Attorney representative Ms. Miller explained that there are several different districts to cover the future costs of the different areas of development. Each district will only cover the costs of the infrastructure for a certain area. When costs are covered and paid, each Metro District may absorb into the Overlay, or go away completely.
- More discussion regarding formulation of areas for each district; explanation by Ms. Miller for PC regarding how boundaries will be
created; this is something that will come with the development of the entire project.

- More explanation as to what happens to the metro districts over time; they are absorbed by the Overlay, or they go away. The water and sanitation district will remain and be served by a board of directors.
- Questions regarding who the board members will be with regard to the special districts. Concerns whether or not there will be input “from the people.”
- Comments that developers move on; who may be on the board; who will be controlling all of the money that is collected by the districts? Possible taxation without representation, concerns that the homeowners being represented won’t be on the boards.
- Ms. Miller responded with information regarding the “process” of how persons are elected to these boards. She went on to explain in detail the election process.
- PC member asks language be in documentation regarding election of people to the boards; staff answered that it is covered by state statute and is not usually a part of any service plan.
- Discussion regarding Regional or “outside” improvements.
- PC member that didn’t realize there was additional information in his packet in digital form.
- Discussion regarding the Gallagher amendment pertaining to the assessment of property.
- Mill levies can be increased if the Gallagher amendment causes the homes in this development to be assessed at higher rates; this will cover additional costs and keep everything aligned as it should be.
- More discussion regarding the exportation of water from the Independence development to outside of the development.
- Ms. Miller stated that there is a possibility of water being used outside of the development, not outside of the county.
- Kyle Fenner also spoke about the potential for the Independence development to benefit surrounding areas with the water they have access to rather than having new or emerging businesses, etc. have to create more water districts. This is something that was contemplated by the county, not the applicant.
- Talk about performance guarantees and requirements as development occurs.
- Questions about functions of an HOA that the special districts would or would not perform.
- Overlay District would be classified as a local government body; it would not, for example, have social functions like an HOA might; it can’t because of the law.
- PC asks for a condition of approval that no water can be sold or exported outside of Elbert County.
- Staff reminds PC of their role to make a recommendation; staff states that should the BOCC decide to make the above recommendation a condition of approval; that is the BOCC’s decision to make.
- Discussion regarding material modification of the service plans for the districts.
Ms. Miller explained the process to the PC.
Question to the applicant as to whether the applicant would supply a yearly record of water withdrawal to the county as well as the state.
Gina Burke responded that the older water decrees didn’t have the language that the newer one’s do; there will be language within the well permits issued to Independence in the future with regard to the requiring of metered wells and notification to the state of water usage; the county may also request proof of water withdrawal amounts at any time.
PC asks about equestrian usage; the applicant responded that they would be very happy to have horses allowed, but according to the negotiations with the county and the approved PUD, it disallows equestrian use on the paths that are set to be a part of the development. Mr. Craft did state that there is significant open space and right of way dedication but they will follow the approved PUD to the letter.
Questions about the proposed recreation/community center. How will homeowners in Independence feel about paying for a pool that anyone in the county can use?
The applicant intends to have a management company for the pool, rec center; reasonable costs will be charged to outside of Independence residents. They hope to have the pool under construction at about the issuance of the 400th building permit, if not sooner.
Comments and questions with regard to the wells; backup plans? What happens if one or more of the wells are out of service? The applicant response (Dave Takata); spoke about the process to be used, they do have set plans, including wells being independent of each other, storage tanks, and a diesel generator in case of a power outage.

END PC QUESTIONS, COMMENTS

A. There is a motion made by Jim Keen to continue this hearing in order to review the thumb drive containing additional application information. Second by Bob Lewis.

B. Tim Craft made a statement that the applicant did submit a complete application and staff did confirm that the applicant did submit a complete application.

C. Chair Rosales made a statement regarding the delay of the hearing in order to review the thumb drive. Kyle Fenner reminded the planning commission that they were fully informed that there was information on the thumb drive, but that it was not vital to their review of the application. She reminded them that they each received it on the same day that they received the hard copy planning commission packets/binders.

D. The vote was taken on item A. above; the motion was defeated 5-3.

E. Chair Rosales expressed concern regarding the allotted time remaining to finish all business prior to 11 p.m.
F. Vince Harris made a statement regarding the process of the possibility to finish the hearing with all conditions of approval in hand or written as a part of the record.

G. Chair Dan Rosales spoke about the process of the voting; reminded the audience that there would be no outbursts regardless of the vote. He began the sequence to take a vote on the Preliminary Plat and Final Plat, and was reminded by staff of the time line involved with regard to the Special Districts; staff then stated that the Special Districts need to be dealt with and voted on first.

H. Chair Rosales entertained a motion regarding the Water and Sanitation District, SR-17-0020; Dan Michalak made a motion to approve this district with a condition of approval for the applicant to be expressly denied the right to export water out of Elbert County, and subject to the staff recommendations A thru J. At this time, Dan Michalak asked if there were questions. Brian Harris made a second on the motion made by Dan Michalak.

I. Paula Wilderman stated that she didn’t like to be rushed, and she is concerned regarding the motions before them which contain several conditions of approval and the concerns over water. She stated that she takes her job very seriously and is concerned that there are items she would like to review. She apologized for delaying the hearing.

J. Tim Craft requested that the hearing be continued to a date certain of July 12, 2017.

K. Justin Klassen reiterated that he didn’t feel the votes would be taken in the time allotted; he also wants to continue to a date certain.

L. Bob Lewis spoke to the applicant apologetically, stated that he feels the diligence needs to be done on the part of the PC; he spoke of the value of the applicant’s time and of the quality of the application, and again apologized. He also spoke of the motion that had been made by Dan Michalak and had a second by Brian Harris.

M. Chair Rosales again stated that the question had been called.

N. Vince Harris made a statement regarding the items discussed during the course of this hearing. The SIA, water, conditions, etc.

O. Bob Lewis questioned staff with regard to the SIA.

P. Chair Rosales called for a vote; there was not time to complete the vote. Chair Rosales asks to table the motion; discussion dictated the motion would not be tabled at this time, only left to be continued to the next meeting with a date certain.

Q. Bob Lewis made a motion to continue to a date certain to be recommended by staff; Kyle Fenner recommended July 12, 2017. Chair Rosales recommended the
21st of July; staff recommended the next regularly scheduled meeting which would be July 18, 2017.

R. Dan Michalak made a motion to continue to a date certain of July 18, 2017; the vote was seconded by Brian Harris. The vote carried 7 to 1.

S. Paula Wilderman made the motion to adjourn; Dan Rosales made a second, all in favor.

Meeting adjourned at 11:00 PM