ELBERT COUNTY
Meeting Minutes
PLANNING COMMISSION HEARING
BOCC HEARING ROOM
215 COMANCHE ST
KIOWA 80117
MARCH 20, 2018

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 pm by Ron Turner.

PRAYER: None

PLEDGE OF ALLEGIANCE: Led by Linda Krausert

ROLL CALL:

Commission members present: Ron Turner; Dan Michalak; Bob Lewis; Linda Krausert; Jim Keen; Paula Wilderman, Kipp Parker

Staff present: Vince Harris (Baseline); Jaxon Fagan (Baseline); Tracey Aaron, CDS Administration; Dale Murphy (Power Engineers -IREA); Mark Jurgemeyer (IREA)

STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S)

A. None

CITIZEN COMMENTS ON GENERAL ITEMS:

A. None

CONSENT AGENDA:

A. Sawyer Rezone (A TO A-2) and Minor Development. Case #: RZ-17-0033 and MD-17-0034

• Vince Harris speaks of preference to have Sawyer Rezone remain on consent agenda but asks Planning Commission if they would like to have a discussion/presentation, or move to public hearing
• Planning Commission agrees to move Sawyer to public hearing agenda

APPROVAL OF MEETING MINUTES:

A. Vince Harris states January 30, 2018 meeting minutes are in hard copy form within packet, but since PC have not had a chance to read them yet, asks if it could be reviewed and ready for approval at the next hearing. All agreed.

JAXON FAGAN (BASELINE) – PRESENTATION OF STAFF REPORT:

Overview of SAWYER REZONE & MINOR SUBDIVISION. Application RZ-17-0033 & MD-17-0034:

- Applicant, Zoe, Eric, and Justin Sawyer
- Rezone from A to A-2
- Divide a 40-acre parcel into two single family residential lots approximately 20 acres each
- This is to allow construction of residence on one of lots
- No new public infrastructure is required
- Referrals:
  - Elizabeth School District and Parks and Recreation District did not request dedication of land for schools or parks. Applicant will pay cash-in-lieu of dedicating land for open space as required
  - Elizabeth Fire District: Fire access, water supply, impact fees
  - IREA: Revision to electrical easement and dedication statement
    - Second referral comment: No objection
  - Town of Elizabeth: Requested additional public access / ROW, cul-de-sac
  - Elbert County Public Works: Exhibit formatting, access
    - Second referral comment: Minor formatting revisions, no objection
  - Elbert County Health and Human Services: No objection
  - Elbert County CDS: Exhibit formatting, access
    - Second referral comment: Minor formatting revisions
- The project does not require additional public infrastructure. Residences will use septic systems and will not require connection to the Elizabeth sewer system. IREA approves of the utility dedications as proposed
- No new public road dedication required
- Compatible with surrounding area
- Consistent with Elbert County Master Plan
- Minimal impact to county roads and services
- Traffic impacts are acceptable
- Septic systems will require county approval
- Acceptable fire access
- Not in flood plain
- Minimal impact to environment
- Will not adversely impact the provision of public services. Adequate access and utilities
• Will not be detrimental to the health, safety, and welfare of present and future inhabitants of Elbert County

FINDINGS AND RECOMMENDATIONS:

• In conformance with the Elbert County Master Plan
• Meets all criteria for approval in the Elbert County Zoning Regulations
• Compatible with surrounding area
• There are no significant concerns related to health, safety, or welfare of present of future inhabitants of Elbert County

CDS RECOMMENDS APPROVAL SUBJECT TO THE FOLLOWING CONDITIONS:

1. The applicant will be required to remove the Public Hearing sign(s) within seven (7) days of a decision by the Board of County Commissioners.

2. The Rezone shall not become effective until all fees are paid, conditions of approval are met, and Rezone Exhibit is recorded.

3. Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners’ approval.

MINOR SUBDIVISION: MD-17-0034:

• Minimal impact to neighboring land uses, county roads and services, public safety, and to the natural environment
• In conformance with the Master Plan
• Meets criteria for approval in Subdivision Regulations
• Zoning Regulations allow subdivision of lots at a minimum of 20 acres
• Heard no objections from other governing bodies
• Notices were given per Elbert County requirements

CDS RECOMMENDS APPROVAL SUBJECT TO THE FOLLOWING CONDITIONS:

1. The applicant will be required to remove the Public Hearing sign(s) within seven (7) days of a decision by the Board of County Commissioners.

2. The minor residential development shall not become effective until all fees are paid, conditions of approval are met, and minor development documents are recorded.

3. Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners’ approval.

4. The applicant shall comply with all requirements of the Elizabeth Fire Protection District.
5. The minor residential development plat shall comply with the submittal requirements in the Subdivision Regulations and the applicant shall submit two copies on Mylar for recordation at the Elbert County Clerk and Recorder.

PRESENTATION CONCLUDED

TOM MARONEY (REPRESENTATIVE) PRESENTATION:
- Summarizes the Sawyer application
- Sawyers own 40 acres; want to split it into two 20 acres for their kids to live
- Met all requirements

APPLICANT PRESENTATION (TOM MARONEY) CONCLUDED

BEGIN PUBLIC COMMENTS – PERSONS WHO SPOKE:
Colleen Moore, Dan Baerg, Rich Scaduto, Sam Moore

- Concerns over CR 142 and a stipulation (supposedly) put in place by Elbert County long ago stating only one home is allowed at the end of CR 142 and would like this “looked into” prior to homes being built. Speaks of previous easement issues.

- Landowner east of property. Concerned about the noise which comes from Sawyer property including gun fire. Nervous about projectiles near his house. Excessive gun fires and explosions.

- Landowner west of Sawyer’s was forced (believes lawsuit financed by Tom Maroney) to give up 2 acres of land to give access to the current Sawyer’s property due to it being landlocked. Landowner owned the last ¼ mile of CR 142 as his own private road. Ultimately donated the road to Elbert County with provision stating only one single family home would be allowed.

- Public safety issue. Spoke of a fire caused by Sawyer’s blowing up 2 pounds of Tannerite last year. Almost burned their neighborhood down. The Sawyer, who would like to build a home on the subdivided property was convicted of arson.

PUBLIC COMMENT CLOSED

TOM MARONEY (SAWYER REPRESENTATIVE) RESPONSE:
- These issues are civil issues and have nothing to do with this application. This application follows Elbert County Regulations, Zoning, and Master Plan. CR 142 is a public road and not relevant to application. States he has never been involved in a lawsuit nor financed anything.

END APPLICANT RESPONSE

PLANNING COMMISSION DISCUSSION & QUESTIONS:
Bob Lewis: CR 142, public road?
• Vince Harris confirms it is. Nothing shows on title commitment. Not aware of any restrictions on the public road, CR 142.

Paula Wilderman: Asks Rich Scaduto if he has any form of documentation regarding the restrictions of CR 142.
• Rich Scaduto explains the paperwork was to be filed by his attorney, Jim Thorburn. Rich will research his documents and contact his lawyer; may take 2 or 3 days.

Bob Lewis: Title commitment, Item 11, Section B2. There is no limitation stated on the deed, which typically would be if there was any. Referral agencies, Fire Dept., Public Works, etc. see no issues and feels there is no reason to make the Sawyers wait. Recommends no continuance.

Ron Turner: Agrees. Can add a condition of approval. CDS staff works with Road and Bridge to verify usage of CR 142. Once it became a County Road it had full usage.

Paula Wilderman: Would like to give Rich Scaduto the opportunity to provide documentation. Confirms the gun fires and noises are a civil issue and not of the Planning Commissions.

Kipp Parker: Concurs a vote should be proceeded with. Opposed to continuance. Must rely on the information that has been given.

Jim Keen: Would like to see documentation.

Linda Krausert: Agrees we should move forward with rezoning.

END PC QUESTIONS AND DISCUSSION

ROLL CALL VOTE:

RZ-17-0033: Motion to approve by Kipp Parker. Second by Bob Lewis. The motion carried 6 – 1 with one commissioner absent.

MD-17-0034 – Motion to approve by Dan Michalak to include conditions 1-5. Second by Kipp Parker.
• Vince Harris recommends to include findings and conditions by staff
• Dan Michalak amends his motion to include findings and conditions by staff

PLANNING COMMISSION DISCUSSION:
• Vince Harris will update BOCC and PC of their findings
• Will move this forward to County Commissioners
• Vince Harris recommends a condition of approval #6: CDS and county staff shall be responsible to research dedication documents of CR 142 prior to BOCC action on this case.

MD-17-0034: Bob Lewis makes a motion to include condition #6. Second by Dan Michalak. The motion carried 7-0 with one commissioner absent.
CLOSED SAWYER: RZ-17-0033 AND MD-17-0034

BEGIN - IREA EASTERN RELIABLE UPGRADE: SU-17-0002 & 10-17-0004

JAXON FAGAN (BASELINE) PRESENTATION:

- IREA requests for Special Use Review and 1041 Permit for Site Selection and construction of a Major Facility of a Public Utility
- 12.2 mile-long electric power transmission line in Elbert County
- 75 ft. wide Right of Way
- Project area is zoned Agriculture (A) and used primarily for agriculture use with some dispersed single-family residents
- There are mapped 100-year floodplain areas where the project crosses Kiowa Creek, Dry Creek, and an unnamed drainage
- Elbert County Floodplain Development Permits will be required for any land disturbance or construction within floodplain
- Surrounding properties are zoned A with the exception of one NZ (No Zone)
- Project starts at Kiowa Substation, west across Kiowa Creek, then starts to go north into Arapahoe County
- Predominantly wood electrical towers, but are 4 types. Most structures are approximately 75 feet tall
- Applications had an initial 45-day referral period, and a second 14 day referral period. After third submittal was received, staff requested minor changes to the materials
- Had a public open house at Kiowa Highschool
- Proper notice of the hearings was given per Elbert County Regulations
- Referrals:
  - Colorado Division of Water Resources: No objections as long as water for dust suppression and concrete mixing is supplied from a legal source
  - Colorado Geological Survey: No objections
  - Arapahoe County: No objections
  - Kinder Morgan (pipeline): No objections
  - Elbert County Health and Human Services: No objections
  - Elbert County Engineering: No objections
  - Elbert County Community and Development Services: Requested changes to SUR, 1041, and adjacent property owner’s list documents
    - At this point, CDS feels the referral comments to be adequately addressed
- Consistent with the Elbert County Master Plan
- Compatible with current and future surrounding land usage
- This route avoids as many residents as possible, no subdivisions or agricultural developments. Also avoids ridgelines
- Little environmental impact
- The project adheres to applicable county standards that address environmental, social and economic impacts, including comprehensive evaluation criteria in the Major Facilities of a Public Utility section of the 1041 Permit regulations and the Special Use Review criteria section of the Zoning Regulations. These are
addressed in further detail in the 1041 and SUR evaluation sections of this staff report

- Minimal impact to County roads and services
- Environmental: No transmission line structures are proposed within wetlands, streambeds, recharge areas, or riparian areas. Any disturbance within the 100 year flood plain will require an Elbert County Floodplain Development Permit. No known occurrences of federal-listed threatened or endangered plants or animal species or designated critical habitat areas were identified in the project area. The Project’s construction, operation, and maintenance activities are not anticipated to impact federal-listed species or species habitat
- Public safety: The structures and facilities will have to include safety precautions per National Electrical Code
- Economic impacts: The Project will not require the extension of any County infrastructure and will not create a financial burden for the County or its residents. Will pay property owners for easements. Tax revenue goes to county for utility uses
- CDS finds the 1041 Permit is compliant with Elbert County Guidelines and Regulations for Areas and Activities of State Interest
- No significant impact to the health, safety, and welfare of residents in surrounding area
- Meets criteria for approval in 1041 Regulations
- The project is needed to improve service reliability in Elbert County and to help meet the region’s expected future energy demand
- The project will not utilize water, sewer, and gas services
- Air Quality: The project will not deteriorate air quality
- Hazardous materials are not involved in the construction or operation of the Project

1041 PERMIT FINDINGS AND RECOMMENDATIONS:

1. The proposal in general conformance with the Elbert County Master Plan.
2. The proposal meets the criteria for approval of a permit application for site selection and construction of a major facility of a public utility per the Elbert County Guidelines and Regulations for Areas and Activities of State Interest.
3. The proposed land uses are compatible with existing and allowable land uses in the surrounding area.
4. The proposed land uses will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

1041 CONDITIONS OF APPROVAL:

1. The 1041 Permit will not become effective until all fees are paid, conditions of approval are met, and County required documents are recorded.
2. Recordation of all appropriate documentation in Condition 1 above is to occur within 180 days after the Board of County Commissioners’ decision.
3. Approval of the IREA Eastern Reliability Upgrade Special Use Review SU-17-0002.
SU-17-0002 SPECIAL USE REVIEW FINDINGS AND RECOMMENDATIONS:

1. The proposal in general conformance with the Elbert County Master Plan

2. The proposal meets the criteria for approval in the Elbert County Zoning Regulations.

3. The Elbert County Subdivision Regulations are not applicable to this project.

4. The proposed land uses are compatible with existing and allowable land uses in the surrounding area particularly the agricultural uses of properties within and near the project area.

5. The proposed land uses will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

CONDITIONS OF APPROVAL:

1. The Special Use will not become effective until a 1041 Permit for Site Selection and Construction of a Major Facility of a Public Utility is approved and any documents related to the approval are recorded.

2. The Special Use will not become effective until all fees are paid, conditions of approval are met, and documents recorded.

3. Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners’ approval.

4. The project owner shall execute a Master Road Use Agreement with Elbert County prior to the issuance of building permits and said Master Road Use Agreement shall include measures to mitigate fugitive dust during construction.

5. The project owner shall obtain access permits for each access point from private access roads to Elbert County Roads and State Highways, as the case may be.

6. The project owner shall obtain Floodplain Development Permits from Elbert County prior to any construction or disturbance within the 100-year floodplain.

7. The project owner shall obtain property rights on the land necessary for the proposed project prior to recording the Special Use Site Plan Exhibit.

8. The project owner shall execute a tree mitigation agreement with Elbert County prior to the issuance of building permits.

9. The project owner shall comply with any United States Army Corp of Engineers wetlands jurisdictional standards.
10. The project owner shall provide Elbert County with a legal description of the project’s right of way prepared by a Professional Land Surveyor licensed in the State of Colorado and said legal description shall be placed on the Special Use Site Plan Exhibit prior to recordation.

11. The applicant shall submit two copies of the final Special Use Site Plan Exhibit on Mylar in accordance with the Elbert County Zoning Regulations to be recorded in the records of the Elbert County Clerk and Recorder.

JAXON FAGAN PRESENTATION CONCLUDED

DALE MURPHY (POWER ENGINEERS - IREA REPRESENTATIVE)

PRESENTATION:
- IREA – Nonprofit
- Right now, if something happens on the transmission line at the current substation, all power goes out in the area; this could be caused by bad weather, maintenance reasons, strong winds, etc.
- Recaps description per Jaxon’s presentation
- 1.5 miles will use existing IREA easements
- There are “holes” in the area where service is needed
- Completion date intended for 12/2019
- ¼ mile away from any development
- Sent out notices to 1100 land owners; everyone in project area were invited to open houses
- Chose project line that would have least impact on community
- Went through 41 route plans and came up with 4. Plan A was felt to be best
- End result is Special Use and 1041 are in compliance to Elbert County Master Plan

BEGIN PUBLIC COMMENTS - PERSONS WHO SPOKE:
George Kristovich; Jim Campbell (Running Creek Ranch representative); Paul Bruchez (representing father and aunt); Chris Weems

Opposition:
- Never received public invitation
- Concerns about power line wires: health risk, noise, cancer, fires
- EMF impact: negative impact on health of humans and animals
- Documented cases regarding birth defects in animals
- Concerns over dog breeding business and losing money on defected dogs due to high voltage power lines; how to compensate for such?
- Decrease in property value
- Why can’t they use existing power lines or go underground?
- Feel IREA is trying to cut costs at publics’ health risk
- Would like further studies and better proposals
- Negative impact on land
- Feel route B would have a less impact, but might cost a little more; need to look at other alternatives
- Bruchez: Line goes right through privately owned 640 acres
- Is in ridgeline
PUBLIC COMMENTS CLOSED

DALE MURPHY – APPLICANT RESPONSE:

- Sent all invitations out per list from Elbert County
- 10-15 times the cost for underground lines; not feasible, especially for “not for profit” IREA
- Route B: more than just cost, when you lengthen the line the more environmental impacts you have, the more property owners you are going to disturb
- Spoke to Art Bruchez at September open house about his concerns; adds another mile to the line, introduces another floodplain issue if different route
- EMF: there have been significant studies which shows no impact. Those studies were provided to those who requested copies

END APPLICANT RESPONSE

PLANNING COMMISSION DISCUSSION & QUESTIONS:

Jim Keen: Requests to see ridgeline on map – possible to avoid ridgeline?
- Dale Murphy: Trying to avoid getting closer to the creek. Push other direction, it gets too close to subdivisions and developments

Linda Krausert: Heard about health effects of power lines. Have never seen studies. Any documentation from studies for health of people and animals?
- Mark Jurgemeyer: Representative of IREA. Recommends looking at National Institute of Environmental Health. They have done comprehensive studies on health and transmission lines. Found there is no documented ties between cancer and/or deformities of animals and/or people due to power lines. Website: NIEHS.NIH.GOV

Dan Michalak: Addressing IREA: how did IREA work with landowners? Easements, negotiations, etc.?
- Dale Murphy: Started with open houses with anyone who could be affected. Once route A was picked, IREA contacted each landowner. In regards to Bruchez, Elbert County shows they are 2 different parcels

Kipp Parker: Where is timeline right now? Is this a normal timeline? Have you negotiated with each landowner? Estimated cost per mile? What do you do if landowner in not interested in IREA’s offer? Goal is to avoid ridgelines but Elbert County has many ridges.
- Dale Murphy: Have contacted landowners. The land acquisition is in process; not sure how long it will take. Roughly a million dollars per mile. Most projects go through with negotiations between landowners. IREA does have eminent domain capabilities but prefer not to use it

Paula Wilderman: Disclosure: has oil & gas background; also runs a non-profit. IREA must make more effort to contact landowners as there are 2 people here who say they weren’t contacted. Do due diligence and negotiate with these people. We all have
property rights as well as the right to not have powerlines on them. Comparing Route A to Route B. Route B might be best so not to go through someone’s property regardless of cost.

- **Dale Murphy:** If change routes, going through the creek could possibly have environmental concerns. The other direction takes them to subdivisions

Bob Lewis addresses Vince Harris: Activity of state interest handled differently?
Bob Lewis addresses Dale Murphy: Purpose of public get-togethers? Questioning bisecting Bruchez parcel? There are already power lines running down Kiowa-Bennett Rd., might be best to use Route B to follow Kiowa-Bennett?

- **Vince Harris:** Subject to 1041 evaluation process. Must use that criteria.
- **Dale Murphy:** To inform the public who would be affected and to get information from them about things IREA may not be aware of. If IREA were to follow lines along Kiowa-Bennett per Route B, it would violate Elbert County Regulations needing to be ¼ mile away from subdivision. Tried for a variance about 8-9 years ago but was denied by Elbert County. Existing easement does not allow.

Paula Wilderman: Proposed routes should be viable options. Route B isn’t even an option.

- **Dale Murphy:** We could submit for a variance for Route B

**PC:** Discuss concerns over alternate routes while viewing maps

PC: 115 KB line require different setbacks?

- **Dale Murphy:** Yes, setbacks depend on each voltage class

**Ron Turner:** How many letters of intent are outstanding from owners? 12, 13? Discusses the Bruchez property issue. Reads a portion of Elbert County Master Plan

- **Dale Murphy:** We have not acquired any easements at this time but intend to negotiate with property owners

Bob Lewis expresses concern over single property vs two parcels of the Bruchez.

**PC:** Discusses possibility of moving transmission line to follow along property lines.

**Dan Michalak:** Appears the application is premature and has not enough evidence to make a decision, at least in regard to the question of property. Understands state interest and eminent domain. Suggests to reschedule hearing or vote.

**Ron Turner:** 4 motions: motion to recommend approval based on staff report; motion to recommend approval with conditions of approval; motion to recommend denial with reasons for recommendation; motion to continue the request.

**Vince Harris** speaks to **PC:** Have to go through the process to evaluate the alignments. At some point in time they need to contact the landowners. Vince further discusses the process.

**Ron Turner:** Speaks of how property owners responded negatively to this alignment.
Dale Murphy: IREA has already started the process of speaking with land owners. Some people agree some do not. The negotiation process takes time. Negotiate construction damage. Appraisers must appraise all land as well.

Dan Michalak: If we approve the alignment and landowner does not want to give up land, can IREA use eminent domain since the routing was approved?

PC: That’s a legal question beyond PC. PC continues discussion.

10 MINUTE BREAK: 9:25 – 9:35PM

Ron Turner: Bruchez and previous Hunt property need to come to an agreement with IREA.
- Dale Murphy: Still in negotiation with owners

ROLL CALL VOTE:

1041 Permit: 10-17-0004 – Motion to approve subject to Conditions 1-3 and 4 findings by Kipp Parker. Second by Ron Turner.

PC Discussion: Recommend approval on good faith IREA will negotiate with all owners and come to an agreement.

Bob Lewis: Recommend 4th Condition. Subject to successful negotiation of Right of Way and use access.

Ron Turner: Spoke of Condition #7 in SUR.

Paula Wilderman: Hesitant to agree. Doesn’t want to approve with the said alignment because if it’s a path allowed, it will probably be taken.

ROLL CALL VOTE:

Amendment to include Condition #4 to original. Bob Lewis; second Jim Keen. Approved 6-1 with one commissioner absent.

1041 Permit: 10-17-0004 – Motion to recommend approval subject to Conditions 1-3 & 4 and 4 Findings by Kipp Parker. Second by Ron Turner. Approved 6-1 with one commissioner absent.

SU-17-0002: Motion to recommend approval subject to Conditions 1-5 and Findings 1-11 by Dan Michalak, second by Kipp Parker. Approved 6-1 with one commissioner absent.

END PC DISCUSSION

SU-17-0002 & 10-17-0004 CLOSED
HEARING ADJOURNED AT 9:45PM