ELBERT COUNTY
Meeting Minutes
PLANNING COMMISSION HEARING
Ag Building, Elbert County Fairgrounds
95 Ute Ave, Kiowa, CO 80117
November 15 @ 7:00 PM

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, Daniel Rosales.

PLEDGE OF ALLEGIANCE

ROLL CALL

Commission members present: Dan Rosales, Ron Turner, Brian Harris, Paula Wilderman, Mike Kellison, Dan Michalak, and Bob Lewis.

Staff present: Kyle Fenner, Director CDS; Faith Mehrer, Office Manager, CDS; Tracey Aaron, Technical Coordinator, CDS; Vincent Harris, Baseline; Ethan Watel, Baseline.

AFFIRMATION STATEMENT FOR THOSE WISHING TO SPEAK AT THIS MEETING

STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S)

a. Kyle notified all in attendance that the ‘draft’ county budget meeting with the BOCC would take place on November 16 at 9 am in the Ag building, Elbert County Fairgrounds

ANNOUNCEMENT FROM DAN ROSALES

At this time Mr. Rosales read a statement from Commissioner Chris Richardson; Mr. Richardson has given formal notice of his resignation as a Planning Commission member effective immediately due to the outcome of the recent election and his upcoming appointment as a County Commissioner. He feels it is time to resign his position with the Planning Commission in order to plan for the near future, and to allow time for a replacement to be appointed to the Planning Commission as soon as possible.
Dan Rosales responded with a statement thanking Mr. Richardson for his commitment and time he gave the Planning Commission for the past two years. Mr. Richardson was never selfish with his time, and we wish him the best and success in his future as a County Commissioner.

CONSENT CALENDAR

a. There are no items for the consent calendar at this time.

COMMUNITY INPUT:

a. Shelly Rodie – 601 Coyote Trl; Concerns about Open Space; please remember the Master Plan when future development is being considered. Comments on possible future impacts on infrastructure in the County.

b. Michael McClure-PO Box 1857, Elizabeth; Shares similar concerns to Shelly Rodie, Also talks about infrastructure and water usage and future water availability. He has concerns about “overhead power lines,” and also asks the commission to be cognizant of these issues when they are progressing through the work on the upcoming Master Plan.

c. Troy Zulkoski-38989 Kittredge Pl; Speaks to the “change that is coming,” recommends looking at the current Master Plan, remembering how it came to be created in the first place. Quotes from Master Plan, with regard to envisioning Agriculture, Commerce and Industry being encouraged. Asks the Commission to please be sure and listen to the thoughts and ideas, the input from the community that the Planning Commission has asked for and is asking for moving forward towards the formation of the updated Master Plan.

d. Candace Head-Dylla-446 Meadow Station Circle, Parker; “Transplant” from New Mexico, she is concerned with water resources and issues she saw arise in New Mexico.

e. Steve Dylla-446 Meadow Station Circle, Parker; Concerns about water and the demands of the future. Concerned for residents on 5 acre plots like them will new wells need to be drilled in the future? Concerns for traffic on Delbert Rd and the coexistence of wildlife with the traffic. Asks for consideration of the PC for these issues.

f. Jim Duvall-40753 CO RD 21, Elizabeth; Concerned with the implication of “swearing in” persons wishing to speak to the Commission.

g. Diane Varner-36159 Winchester Rd., Elizabeth; Concerns about impact fees; will these fees cover costs in the future for emergency services, schools, etc. Addresses future developments and the need for businesses as well as homes. Worried about proposed “Special Districts.”

h. Daniel Hartman-1286 Starling Ln., Elizabeth; Resident for 30+ years. Worries about wildlife and where they will go if overdevelopment occurs, high density housing. Concerns over future light pollution; who does the water studies, who decides that we will have enough water in future years?

General Public Comment Closed
PUBLIC HEARINGS / WORKSHOPS

A. Continuance of Coyote Meadows RZ-16-0015 and MD-16-0016
Continued from 10-18-2016 PC Meeting

  a. Ethan Watel, Baseline; Summary of request for Rezone and Minor Development for six lots, approximately 10 acres each.
  b. New documents since last meeting:
     1. Email conversation between CJ Kirst and Elizabeth School District regarding bus pickup of children.
     2. Water Decree from Petrock and Fendel, P.C.
     3. Letter from County Atty., Wade Gately.
     4. Summary of water rights of 6 wells, including the Able property, from District Court, Water Division 1, Colorado; dated July 2015, Water Resume Publication.
     5. Email from Anadarko re: agreement to relinquish surface entry rights pertaining to coal.
     6. Reevaluated traffic impact letter from 2NCivil.
     7. Letter from Miles Hamburg, Esq., re: easement concerns for Ranch Road.
     8. Warranty Deed of 8/30/1995 between Hoagland/Bridge and Able and Snogren (describes the easement in question).

B. Chairman Dan Rosales continues onto Public Input
  a. Mark Wells, 40700 Ranch Rd; Wants assurance that the documents released in the future contain the comments and concerns that are given by the public; he wants these comments added to meeting minutes. He wants to be sure that the public’s voice is heard and recognized.
  b. Brittany Wells, 40700 Ranch Rd; Slide representation with regard to possible confusion at the last meeting about them (Ranch Road homeowners) “actually owning the road.” The actual access to the property in question is actually a farmer’s gate off of Cattle Drive.
  c. Miles Hamburg, Parker; reiterating that the letter he wrote “lays out everything clearly and succinctly,” he will make himself available for any questions.
  d. Fred Skillern, Attorney; Will be available for questions when necessary.
  e. Sheri Hunager, Ranch Rd resident; Concerns about expansion of Ranch Rd., speaks to the fact that the new six lots will not “own” the road, just be using it.

PUBLIC COMMENT ON APPLICATION CLOSED
APPLICANT RESPONSE

a. CJ Kirst, Centennial; Feels that the applicant has addressed issues that were brought up at the previous meeting, submitted additional information that was previously asked for, states that there is “no interest in parking on Ranch Rd,” this in response to a previous comment from Ranch Rd resident.

QUESTIONS FROM THE PLANNING COMMISSION

a. Ron Turner; Responded to the applicant with questions as to the type of road Ranch Road is classified as. Has the road been inspected and determined to be a “type 1” gravel road by the civil engineer? Was the road inspected to have at least 6 inches of gravel base in order to be classified as a “type 1” gravel road?

b. 2NCivil, Englewood; responded that Ranch Rd. has been inspected and has been determined to be as close as it can be to a “type 1” gravel road; it cannot be classified as a “type 1” road specifically because it is not a public road, but a private road. 2NCivil responded that the road base depth was not determined since Ranch Rd is not a public road and would not be “classified as a type 1” road anyway.

c. CJ Kirst; responds that what remains there today is the result of 20 years of use; it is apparent that there needs to be ongoing maintenance of Ranch Rd., and the applicant is willing and able to participate in maintenance agreement with the current residents of Ranch Rd.

d. Bob Lewis; Asked about the applicant having reached out to the residents about a maintenance agreement for the road; what has come of that?

e. CJ Kirst; The applicant tried to come up with a maintenance agreement about a year ago with the homeowners for Ranch Rd; the homeowners told the applicant that they wouldn’t be allowed to use the road and there was no reason to agree to shared maintenance of the road. The applicant has put together a plan to ensure they are a part of the future maintenance of Ranch Rd.

f. Bob Lewis; Wanted to know if the easement language of the applicant’s warranty deed described access to Ranch Rd., or to Cattle Dr., the other access (for applicant) road in question.

g. Fred Skillern, Greenwood Village, Atty; Stated that the warranty deed conveyed to the applicants from the Hoaglands to the Ables upon their purchase of this parcel of land does apply to Ranch Rd. When 2HB sold their land, they set forth in the warranty deed such language that would allow all present and future owners of any of this land the right to use Ranch Rd to access the parcels or land created from the sale of their land. The answer to Mr. Lewis’ question was yes, the easement language applies to Ranch Rd.

h. Bob Lewis; asked Miles Hamburg if he agrees with the previous statement from Fred Skillern; does the easement language of the deed apply to Ranch Rd?

i. Miles Hamburg, Atty; Responded to Mr. Lewis, mentions cases he has quoted in the letter he wrote to the Planning Commission. He does agree with Mr. Skillern that the easement language in the applicant’s
deed does indeed apply to Ranch Rd. Mr. Hamburg went on to discuss the “historical use” of the easement as being agricultural, and that is the argument they are presenting; that the proposed future use of Ranch Rd by the applicant does not fit with the language presented in the easement.

j. Paula Wilderman; Questioned Mr. Hamburg regarding his area of expertise (related to easement issues), and asked if he was legally allowed to practice law in Colorado.

k. Mr. Hamburg; Responded to Ms. Wilderman that he is able to practice law in the state of Colorado and gave her a business card with his Bar Number on it.

l. Mr. Lewis; asked which is the dominant parcel and which is the servient parcel(s).

m. Mr. Hamburg; The Able parcel is the dominant and the other homeowners would be the servient properties.

n. Dan Michalak; Speaks of the nature of easements and different reasons why they are granted. Asks Mr. Hamburg about the uses of easement terminology.

o. Miles Hamburg; responded regarding the “historical use” of this easement.

p. Fred Skillern; also responded to Mr. Michalak’s question about easement language.

q. Paula Wilderman; is there currently an active HOA? How is the road currently maintained? Would it be reasonable to assume that the new six lots would also be a part of maintaining the road in the future? Ms. Wilderman maintains that there can hopefully be an arrangement made in the future with the residents and the applicant to maintain the road long term in the future. Asking for a compromise w/the residents and the applicant; two legal opinions say yes, the applicant’s future plans allow use of the road, one legal opinion says no, the applicant doesn’t have the right to use the road in the future plans. Ms. Wilderman stated that she hopes the residents will be able to come to an agreement with the applicant to agree to a future maintenance agreement.

r. Residents Responded; they currently take care of the road amongst themselves. One of the residents agreed that they would be willing to work out an agreement with the applicant for future maintenance of Ranch Rd.

s. Mike Kellison; obviously the use of the road is a point of contention. Asked whether or not the staff’s opinions have changed in light of the new information added to this application.

u. Dan Rosales; County property rights; fundamental here in this argument; the landowners have the right to use their land within the limits of the law. The adjacent properties have been subdivided in 10 acre lots. It troubles him that it was okay before, but doesn’t seem to be okay for future subdivision. “If we don’t allow it to change, we would never allow development, and that goes against the grain.” Quotes from the Master Plan with regard to future changes (from agriculture to development). Speaks to how this proposed change is
identical to the previous change that created the other six lots that currently exist.

v. Ron Turner; Asked about the Anadarko issue; it appears to have been resolved.

w. CJ Kirst; Anadarko application will be updated with regard to surface and subsurface mineral rights, and the Anadarko issue is resolved.

x. Ron Turner; In order to say “Aye,” he would like to see some sort of agreement reached between the current Ranch Rd residents and the applicant.

y. Bob Lewis; Spoke of the three legal opinions presented and the legality of the applicant being able to use the road. Would like to see all parties reach an agreement, but doesn’t see an agreement necessary in order to make a decision currently; hopes for an agreement to be made between all parties eventually.

z. Dan Rosales; Asked what the intentions of Anadarko are.

aa. Brian Able; Explained the “asset” that Anadarko has, the proposed solution, and what has been agreed upon. “Anadarko goes away for $9000.”

bb. Dan Rosales; Had further questions about Anadarko, stated that whatever agreement the applicant and Anadarko have would be “private,” as well as any future agreements between parties should be a “private” issue; he just wanted to ensure that there would be no issues with Anadarko in the future.

c. Paula Wilderman; Stated that Anadarko will be relinquishing their “surface entry rights.”

d. Mike Kellison; asked if the PC is making one vote or voting on these issues.

e. Ethan Watel; stated that the issues were discussed together, but should be voted on separately. The Rezone should be voted on first, because there can’t be a minor development created without approval of a rezone.

**ORIGINAL ROLL CALL VOTES GOT THE SAME RESULTS AS BELOW. WITH THE FIRST VOTE THE PLANNING COMMISSION FORGOT TO BIND THE APPLICANT TO THE CONDITIONS OF APPROVAL).**

10 MINUTE RECESS WAS CALLED.

ROLL CALL VOTE TO VOID PREVIOUS VOTES
Motion to Approve was made by Bob Lewis to Void previous vote
Motion to Approve was seconded by Dan Michalak to Void previous vote
Dan Rosales-Aye
Ron Turner-Aye
Brian Harris-Abst
Paula Wilderman-Aye
Mike Kellison-Aye
Dan Michalak-Aye
Bob Lewis-Aye
Motion carried on a vote of 6-0, 1-abstain
ROLL CALL VOTE ON RZ-16-0015
Motion to Approve was made by Mike Kellison
Motion to Approve was seconded by Paula Wilderman
Dan Rosales-Aye
Ron Turner-Aye
Brian Harris-Abst
Paula Wilderman-Aye
Mike Kellison-Aye
Dan Michalak-Aye
Bob Lewis-Aye

Motion carried on a vote of 6-0, one abstain
-Subject to conditions stated in staff report-
-Acceptance of the applicant to conditions-applicant responded that they accept the conditions of approval.

Motion to approve made by Commissioner Mike Kellison. Motion carried on a vote of 6 to 0, 1 Abstain.

ROLL CALL VOTE ON MD-16-0016
Motion to Approve was made by Mike Kellison
Motion to Approve was seconded by Paula Wilderman
Dan Rosales-Aye
Ron Turner-Nay
Brian Harris-Abst
Paula Wilderman-Aye
Mike Kellison-Aye
Dan Michalak-Aye
Bob Lewis-Aye
Motion carried on a vote of 5-1 and one abstain
-Subject to conditions stated in staff report-
-Acceptance of the applicant to conditions-applicant responded that they accept the conditions of approval.

Motion to approve made by Commissioner Mike Kellison. Motion carried on a vote of 5 to 1, 1 Abstain.

CLOSE PUBLIC HEARING
BEGIN WORK SESSION

No public input allowed during this work session; public is welcome to stay and listen and observe.

Dan Rosales asked Kyle Fenner, Director, CDS, what a “Concept Plan” is. Kyle told Mr. Rosales that it is a way for the community or applicants to present a “conceptual idea” to the Planning Commission; a presentation prior to the submittal of and application.
C. Independence Work Session-Concept Plan – Tim Craft Slide Show Presentation-
Tim Craft, 1787 Broadway, Denver CO
This was a presentation of the “Concept Plan” for the proposed Independence
Development; a slide show was presented, Mr. Craft shared a lot of information with the
Planning Commission and Staff, and members of the community who were in attendance.
This information is available upon request online and through Community and
Development Services.

Meeting adjourned at 10:30 PM