

Meggan Herington, AICP, Executive Director
El Paso County Planning & Community Development

O: 719-520-6300
MegganHerington@elpasoco.com
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Board of County Commissioners

Holly Williams, District 1
Carrie Geitner, District 2
Stan VanderWerf, District 3
Longinos Gonzalez, Jr., District 4
Cami Bremer, District 5

EL PASO COUNTY PLANNING COMMISSION

MEETING RESULTS (UNOFFICIAL RESULTS)

Planning Commission (PC) Meeting

Thursday, October 19, 2023

El Paso County Planning and Community Development Department

2880 International Circle – Second Floor Hearing Room

Colorado Springs, Colorado

REGULAR HEARING, 9:00 A.M.

PC MEMBERS PRESENT AND VOTING: THOMAS BAILEY, SARAH BRITTAIN JACK, BECKY FULLER, JEFFREY MARKEWICH, BRANDY MERRIAM, ERIC MORAES, WAYNE SMITH, TIM TROWBRIDGE, AND CHRISTOPHER WHITNEY.

PC MEMBERS VIRTUAL AND VOTING: NONE.

PC MEMBERS PRESENT AND NOT VOTING: NONE.

PC MEMBERS ABSENT: JIM BYERS, JAY CARLSON, KARA OFFNER, BRYCE SCHUETTELZ.

STAFF PRESENT: MEGGAN HERINGTON, JUSTIN KILGORE, KYLIE BAGLEY, CARLOS HERNANDEZ MARTINEZ, JEFF RICE, JOE LETKE, MIRANDA BENSON, AND LORI SEAGO (VIRTUAL).

OTHERS PRESENT AND SPEAKING: CATHY LANE.

1. REPORT ITEMS

Planning Department. Ms. Herington advised the board that Ms. Seago joined the meeting remotely. Mr. Kilgore advised that the next PC Hearing is November 2, 2023, at 9:00 A.M. He stated there are two items on the agenda: the second hearing for MP231, and a rezone.

2. Call for public comment for items not on the hearing agenda.

Ms. Cathy Lane addressed the board regarding the proposed Briargate/Stapleton Corridor Plan. She stated she watched the October 5th meeting online but wasn't aware she needed to email PCDhearings@elpasoco.com to join remotely. She had a paper handout (that is now uploaded to the project file in EDARP). She believes the plans need further study. Her family is developing 70 acres directly north of the corridor and she believes that should make her a stakeholder, but her family has never been contacted. She further stated that none of her family's comments that had

been submitted to the Wilson Company were responded to, uploaded to EDARP, or presented in the PC packet. She did not see the letter that the area HOAs wrote to the BOCC in September of 2022. She stated that her berm, pond, dam, fence, and access to her eastern pasture are all impacted by the proposed corridor and she doesn't see that cost in the Wilson report. She and 39 neighbors in 2.5-acre lots are directly adjacent to the corridor. They planned on a 120-foot-wide corridor. The Wilson report shows an ultimate width of 168 feet which she states begins the eminent domain process for those 40 properties. The Wilson report doesn't seem to mention this taking [of property] nor can she find the acquisition cost. She asks that the PC not approve the Plans as they were presented and asks that the width be limited to 120 feet along Black Forest Road, east to the Jaynes property. She also asked that the proposed access to her property be eliminated. She stated that they do not need access nor a traffic light. She stated her own development submittals seem to be stalled after a third or fourth review with hundreds of new comments that the County insists must be replied to before her proposed development moves forward, and yet the PC is being asked to swiftly approve 2 studies which directly impact her land.

Mr. Bailey stated that ensuring the public process works the way it's supposed to is a top priority. He stated her document will be added to the project file and he asked that County staff look into why they are missing previous comments.

3. CONSENT ITEM

A. Adoption of Minutes of meeting held October 5, 2023.

PC ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (9-0).

4. CALLED-UP CONSENT ITEMS – NONE.

5. REGULAR ITEMS **Items 5A and 5B were presented and discussed as a combined package.**

A. P234

HOWSER

MAP AMENDMENT (REZONE) FAIRYTALE ACRES

A request by Jacob and Sherry Kershman for approval of a Map Amendment (Rezone) for 7.59 acres of a 14.54-acre property from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The proposed Map Amendment (Rezone) excludes 7.04 acres; at this time, the applicant is proposing that this land remain zoned RR-5. A concurrent Minor Subdivision is also being requested. This Map Amendment (Rezone) request must be considered prior to the consideration of the Minor Subdivision request. A combined staff report has been provided. The property is located at 13055 Herring Road. (Parcel No. 5209000030) (Commissioner District No. 1).

B. MS236

HOWSER

MINOR SUBDIVISION FAIRYTALE ACRES

A request by Jacob and Sherry Kershman for approval of a 14.54-acre Minor Subdivision illustrating four (4) single-family residential lots. The property is zoned RR-5 (Residential Rural). A concurrent Map

Amendment (Rezone) request is also being requested to rezone a portion of the property to RR-2.5 (Residential Rural). The Map Amendment (Rezone) request must be considered prior to the consideration of this Minor Subdivision request. A combined staff report has been provided. The property is located at 13055 Herring Road. (Parcel No. 5209000030) (Commissioner District No. 1).

STAFF & APPLICANT PRESENTATIONS

Mr. Howser asked if an abbreviated presentation to focus on the waivers and deviations could be permitted. (It was.) The presentation began.

Mr. Moraes reiterated that a landowner could propose a Minor Subdivision and be exempt from the International Fire Code (IFC) language. If an area large enough is leftover, could they then propose another Minor Subdivision and divide the land without having to meet IFC, and again, etc.?

Mr. Howser stated that PCD would apply the same logic they've used in other situations; if PCD notices multiple Minor Subdivisions being proposed after one another, they will treat the project as a Major Subdivision that needs to meet those applicable criteria. He stated he would recommend that the second subdivider no longer meet the IFC exemption.

Mr. Trowbridge added that the LDC states applicants are not allowed to do consecutive Minor Subdivisions to avoid having to follow certain aspects of the Code.

Mr. Moraes brought up that applications may not be within 6 months from one another or be proposed by the same individual (if the large portion is later sold).

Ms. Herington added that PCD does not enforce the IFC. While PCD would enforce aspects of the LDC [if consecutive Minor Subdivisions were proposed], she doesn't know when a Fire District would see that Minor Subdivision, see building permits within that subdivision, or how they would apply the IFC.

Ms. Fuller asked if the Fire District is making a recommendation for PCD to look at that.

Ms. Herington stated that each Fire District interprets the IFC differently for development within their own district. If there's a consecutive Minor Subdivision that comes through PCD, they will apply the LDC. The IFC goes past firewater onsite and specific road-design for access; it's all encompassing. When a question is asked related to the IFC, PCD can only apply what overlaps with the LDC and would not see other details that are only part of IFC. She stated she doesn't know how a Fire District would interpret the IFC.

Mr. Whitney clarified that the Black Forest Fire Protection District (BFFPD) is not saying they don't agree, they're just not saying "okay". (Mr. Howser agreed.) He then asked if there was concern about setting a precedent. If they don't have any objections, why don't they just say "okay"?

Ms. Herington stated that part of the LDC references the local fire authority working with PCD to make a recommendation. Currently, the BFFPD Fire Chief feels that it is not within his purview to make recommendations or to drive the development process. Instead of PCD sending BFFPD a request for specific comments, the BFFPD is choosing not to comment. They feel that they do not

have the standing or authority to provide comments. They do not have a Fire Marshall like other districts, so the Fire Chief is saying that they do not have anyone on staff with the ability to review all of these [proposals] and make comments related to the IFC and the LDC. They are choosing to stay neutral.

Mr. Bailey mentioned that this situation would be like other situations where an agency has made no comment at all or there has been no expert opinion submitted.

Mr. Trowbridge asked for clarification because the Staff Report seemed to include a recommendation within the emergency services section. It appears to recommend that the applicant submit a comprehensive fire protection report. Are they asking PCD/PC to have the applicant do that? He also asked if BFFPD said they *wouldn't* provide services.

Ms. Herington answered that they did not say they wouldn't provide services. She stated that she has met with all the area Fire Districts. She explained that [BFFPD] will be making standard, blanket comments for all development projects. She felt that PCD would be remiss if they didn't mention the wording that remains in the LDC even though Minor Subdivisions are exempt from the IFC. She feels that it does need a waiver from the LDC. In the future, BFFPD may not comment on each item. PCD will have to rely on the applicant and the information being presented when there is a proposal for an alternative design and PCD doesn't have comments from a Fire District.

Mr. Markewich asked for a comparison between the proposed alternative design and what would normally be required. (This was provided in the applicant's presentation.)

Mr. Howser stated he would defer to the applicant.

Ms. Brittain Jack asked if the IFC covers topics like roofing and building materials.

Ms. Herington explained that it talks about building materials as well as subdivision access, onsite firewater, cisterns, the amount of water required for different sized buildings, wildfire mitigation, etc. It is all-encompassing. Those are parts of the local version of the Fire Code adopted in 2013 from which Minor Subdivisions are exempt.

Mr. Bailey speculated that the intent of the BOCC when adopting [BOCC Resolution 13-503] was to acknowledge that there is a broad IFC which should be applied, but they recognize there are some small things and regardless of the blanket application of the IFC, there will be local fire authorities reviewing projects and making recommendations based on specific details.

Ms. Herington added that she was told that when these conversations were happening in 2013 between the Fire Protection Districts and the development industry, there was significant discussion related to how big a subdivision needed to be before needing its own onsite cistern. It does get expensive and can be labor-intensive to install. There was an in-depth conversation in 2013 and she was told that it was agreed that multiple details (i.e., access, onsite firewater, sprinkling systems for residences over 6,000 sq ft) were exempted purposefully for smaller subdivisions. It was decided that Minor Subdivisions should not be expected to install cisterns or have full fire-loaded, fire-rated access to the subdivisions. That discussion was what led to the adoption of the ICF with the local exemptions within BOCC Resolution 13-503.

Mr. Howser added that the LDC intentionally uses the word *should* as opposed to *shall*. PCD does not mandate that the Fire District provide a recommendation, but it was common practice. The applicant's presentation began.

Ms. Merriam asked if the subject property was impacted by the Black Forest Fire. (It was.)

Mr. Trowbridge asked if the driveway would be in a non-revocable easement. (It will be.)

Ms. Fuller asked if the southern part of the RR-5 lot (south of the driveway) was over 2.5 acres. (This was answered by Mr. Howser later in the meeting: The southern portion of the lot, from lot-line to improvements, would measure 2.3 acres. From lot-line to the center of the proposed easement, it would measure 2.57 acres.)

Ms. Ruiz, with Vertex Consulting, said she didn't know. She reiterated that to split that lot, the land would first need to be rezoned. That area is maintaining its RR-5 zoning with this proposal.

Mr. Moraes asked why the applicant objected to installing the fire cistern.

Ms. Ruiz answered that though finances aren't part of the approval criteria, it is a consideration. She also mentioned that the fire department is within a 5-minute drive so they could relay fire trucks back and forth easily, filling up the trucks at the station to fight any fires. She added that the adoption of BoCC Res. 13-503 means the IFC standards don't apply.

Mr. Moraes asked if that meant the applicant doesn't need a waiver.

Ms. Herington disagreed. She stated the section of the LDC from which the applicant is requesting a waiver was written in 2014, after adoption of BoCC Res. 13-503. She wonders why this section of the LDC was not written to specify that Minor Subdivisions were not required to follow the LDC. While Minor Subdivisions are exempt from the IFC, the language [requiring a fire cistern] still exists in the LDC. She believes the PC and BoCC could still say that even though the IFC does not require a cistern, the LDC *does*, and they want one installed. That is up to the PC and BoCC.

Mr. Moraes reiterated his understanding. It's a Minor Subdivision, so the BoCC said the IFC doesn't apply, but the LDC says that they do actually need a cistern irrespective of what the IFC calls for.

Ms. Herington gave a similar example: The IFC says the minimum subdivision access must be 20 feet wide but the ECM says the minimum is 24 feet wide. There's are differences between County regulations and the IFC. PCD is in a situation where there isn't a fire professional making comments from the BFFPD so they left are piecing it together. PCD is presenting the LDC waiver criteria and explaining that other codes (i.e., IFC) would not have this requirement. There's a need for conversation regarding whether this needs a waiver from the LDC at all. There's language that would allow for alternatives. PCD may use what is decided at his hearing as the example moving forward.

Mr. Bailey stated he was concerned that it was found that this requirement has not been applied on projects lately. He wonders why it's still in the LDC if it's not going to be enforced.

Mr. Whitney agreed. The LDC raises the issue of requiring a cistern even after adoption of Res. 13-503 but since 2020, it has not been enforced. If it was even reviewed at all.

Mr. Bailey stated he appreciated being made aware of the situation. As the LDC is revised, things like this need to be addressed.

Ms. Herington added that when PCD sends a request for outside agency reviews and no response is received, it is assumed that they had no comments. From her conversations with BFFPD, they weren't often responding to those requests. PCD would then move forward with the application. The Chief is now saying that he will provide a blanket statement that he is putting online and he's specifically saying that he will not be making comments. PCD now knows that for this specific Fire Protection District, they will only have this blanket comment. This is a change to the PCD process.

Ms. Brittain Jack asked if local codes like the LDC can supersede the IFC.

Ms. Herington stated that the BoCC adopts the IFC via resolution and they're working on an update currently. She stated that when the LDC is updated next year, PCD needs to pay attention to this section to decide what should be in it. There are currently parts of the LDC that reference the IFC but maybe not the most updated version.

Ms. Seago added that the IFC is a model code and does not have regulatory authority unless/until it's adopted by a state or local government with the authority to adopt a fire code. It's a model code that was developed by experts in the field and then made available to those who wish to adopt a fire code. Until adoption by the BoCC, it did not have any authority, superseding or otherwise, standing on its own. When adopted by an agency, it can be adopted with amendments, additions, or deletions.

Mr. Markewich asked if other Fire Protection Districts have had any issues with this waiver in the past? Do other districts agree with or disagree with allowing it?

Ms. Herington answered that all the other larger Fire Protection Districts that see major developments are reviewing the plans and commenting specifically. She has had conversations with multiple fire chiefs and they all have different opinions on what should be required regarding cisterns and access width. One chief could say the cistern should be required and another will tell you it's not going to do any good. She believes the IFC allows for the application of alternatives.

Mr. Bailey asked if Ms. Ruiz' EDARP search (that showed 100% of Minor Subdivisions were exempt from meeting these requirements of the LDC) was limited to the Black Forest area.

Ms. Ruiz stated her search results were for all Minor Subdivisions.

Mr. Bailey stated that it can be assumed that there is some variance in some fire districts where these things were not required in Minor Subdivisions.

Mr. Whitney reiterated that in the past, no comment received was deemed assent. Now, for BFFPD, silence is not deemed assent. PCD should refer to the statement on their website that states they don't believe they have the authority to say anything so they're not going to make comments.

Ms. Herington stated that is her understanding and her experience of how it was treated in the past. When PCD would send an email to the fire department but they didn't respond or would

respond that they have no comment, it became a discussion regarding how closely they were reviewing the plans. Now, specific to BFFPD, they are only going to provide the blanket statement.

Mr. Whitney wonders if this situation is a “one-off”. Procedurally, if PCD asks for comments but doesn’t receive any, the application presses on under the theory that they’re not objecting.

Ms. Herington agreed that that is her understanding.

Mr. Howser agreed with Ms. Herington and added that in the past, a lack of response was treated as “no issues”. That is what is different today. He answered Ms. Fuller’s question from earlier: The southern portion of the lot, from lot-line to improvements, would measure 2.3 acres. From lot-line to the center of the proposed easement, it would measure 2.57 acres.

Ms. Merriam noted that the applicant presented a letter indicating the fire risk as low, which she finds relevant. She is in support of the waivers. Mr. Ruiz then completed her presentation.

NO PUBLIC COMMENTS

NO FURTHER DISCUSSION

PC ACTION: MERRIAM MOVED / MORAES SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 5A, FILE NUMBER P234 FOR A MAP AMENDMENT (REZONE), FAIRYTALE ACRES, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (9-0).

PC ACTION: TROWBRIDGE MOVED / WHITNEY SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 5B, FILE NUMBER MS236 FOR A MINOR SUBDIVISION, FAIRYTALE ACRES, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH EIGHT (8) CONDITIONS, TWO (2) NOTATIONS, TWO (2) WAIVERS, AND A RECOMMENDED FINDING OF SUFFICIENCY WITH REGARD TO WATER QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (9-0).

6. NON-ACTION ITEMS – NONE.

MEETING ADJOURNED at 10:05 a.m.

Minutes Prepared By: Miranda Benson