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Board of County Commissioners

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EL PASO COUNTY PLANNING COMMISSION

MEETING RESULTS (UNOFFICIAL RESULTS)

Planning Commission (PC) Meeting
Thursday, June 15, 2023
El Paso County Planning and Community Development Department
2880 International Circle – Second Floor Hearing Room
Colorado Springs, Colorado

REGULAR HEARING, 11:00 A.M.

PC MEMBERS PRESENT AND VOTING: SARAH BRITAIN JACK, JAY CARLSON, BECKY FULLER, ERIC MORAES, BRYCE SCHUETTPELZ, AND CHRISTOPHER WHITNEY.

PC MEMBERS VIRTUAL AND VOTING: NONE.

PC MEMBERS PRESENT AND NOT VOTING: WAYNE SMITH.

PC MEMBERS ABSENT: THOMAS BAILEY, JEFFREY MARKEWICH, BRANDY MERRIAM, KARA OFFNER, JOSHUA PATTERSON, AND TIM TROWBRIDGE.

STAFF PRESENT: MEGGAN HERINGTON, JUSTIN KILGORE, KARI PARSONS, LEKISHIA BELLAMY, MARCELLA MAES, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

OTHERS PRESENT AND SPEAKING: NONE.

1. REPORT ITEMS

A. Planning Department. Next PC Hearing is Thursday, July 6, 2023, at 9:00 A.M.

Ms. Herington thanked the board for their flexibility regarding this meeting's delayed start time.

Mr. Carlson recognized and welcomed Mr. Smith and Mr. Markewich (not in attendance) as new Associate Members. Mr. Whitney is now a Regular Member (formerly Associate), and Mr. Carlson's 2nd term as a Regular Member was approved.

2. Call for public comment for items not on hearing agenda. NONE.

3. CONSENT ITEMS

A. Adoption of Minutes of meeting held June 1, 2023.

PC ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (6-0).

**APPROVAL OF LOCATION
APPROVAL OF LOCATION FIBER OPTIC VIAERO**

A request by Viaero Fiber Networks for Approval of Location to allow for the placement of a fiber optic route in the El Paso County right-of-way. Conduit and fiber optic cable will be installed along Truckton Road, County Road 1, South Johnson Road, Gieck Road, Rush Road, Whittemore Road, Shear Road, Bowen Road, Bowen Lane, and South Harding Road (Commissioner District No. 4).

DISCUSSION

Ms. Fuller asked why projects of this type go before PC and BOCC for approval.

Mr. Kilgore explained that PC will be the final approval on this project.

Ms. Seago explained that State legislature requires it per State law. If PC disapproves the application, it will go to the entity responsible for financing the project, which will then vote to approve or disapprove it. They could move forward to approve despite PC disapproval if they choose. She doesn't know why that's the process.

Ms. Fuller thinks there is a flaw in the process. To apply and appear before the PC costs money. She asked if there was an advocacy group in the County that could investigate getting the law changed. She doesn't see the PC as being a deciding body and views this as a fake meeting to approve the application.

Ms. Seago stated she could raise that concern to the appropriate people. She reiterated that it is State law, and every PC in the State does this.

Mr. Kilgore added that appearing before the PC provides an avenue for the public to voice concerns.

Ms. Fuller asked if the public had ever opposed an Approval of Location project.

Ms. Seago and **Mr. Kilgore** responded that it has happened in the past.

PC ACTION: FULLER MOVED / MORAES SECONDED FOR APPROVAL OF CONSENT ITEM NUMBER 3B, FILE NUMBER U-23-001, FOR AN APPROVAL OF LOCATION, FIBER OPTIC VIAERO, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH THREE (3) CONDITIONS AND ONE (1) NOTATION. THE MOTION WAS APPROVED (6-0).

4. CALLED-UP CONSENT ITEMS. NONE.

5. REGULAR ITEM

**SPECIAL DISTRICT SERVICE PLAN
4-WAY COMMERCIAL METROPOLITAN DISTRICT**

A request by KO1515, LLC, for approval of a Colorado Revised Statutes Title 32 Special District service for the 4 Way Commercial Metropolitan District. The 67-acre area included within the request is zoned CS (Commercial Service) and is located directly west of the intersection of Highway 24 and Stapleton Road. The subject property encompasses land that is situated on the north and south side of Stapleton Road. The proposed service plan includes the following: a maximum debt authorization of \$36,685,000.00, a

debt service mill levy of 50 mills for commercial, a special purposes mill levy of 5 mills, and an operations and maintenance mill levy of 10 mills, for a total maximum combined commercial mill levy of 65 mills. The statutory purposes of the district include the provision of the following:

- 1) street improvements, safety protection;
 - 2) design, construction, and maintenance of drainage facilities;
 - 3) design, land acquisition, construction, and maintenance of recreation facilities;
 - 4) mosquito control;
 - 5) design, acquisition, construction, installation, and operation and maintenance of television relay and translation facilities;
 - 6) covenant enforcement;
 - 7) design, construction, and maintenance of public water including fire hydrant systems, and sanitation systems; and
 - 8) solid waste disposal.
- (Parcel No. 42000-00-399) (Commissioner District No. 2).

STAFF & APPLICANT PRESENTATIONS

Ms. Fuller asked for clarification on mill levies and if this area will be covered by two metro districts.

Ms. Parsons referred to the mill levy slide of the presentation. The property owners would pay the existing district and the proposed district. This would be an overlay district. The existing district will remain on the property. The proposed district would not overlay on the residential properties or other existing properties reflected in the district boundary image of her slideshow. Within this district, there would be an additional 65 mills on top of the 50 mills. The applicant's representative is prepared to explain why this is necessary.

Ms. Fuller questioned what the first district gets and why a second district is needed.

Ms. Brittain Jack asked if this was entirely a commercial district.

Ms. Parsons confirmed. There is no residential or multi-family currently. The financial plan is solely based on the 400,000 sq. ft. of commercial development.

Mr. Carlson asked why the sense of eminent domain was emphasized.

Ms. Parsons answered that eminent domain is within the district's statutory powers. However, the County has elected to require that the applicant go to the BOCC prior to exercising eminent domain as part of the public process.

Ms. Seago confirmed. The presentation continued.

Ms. Fuller asked for clarification on the overlay and relationship between the districts.

Ms. Alecia Corley, with Icenogle Seaver Pogue, P.C., explained that the proposed commercial district would build water and wastewater infrastructure and dedicate it to the existing 4-Way Ranch Metropolitan District No. 2 to provide service pursuant to an IGA between District Nos. 1 & 2.

Mr. Craig Dossey, with Vertex Consulting Services, clarified that three different districts are being discussed: 4-Way Ranch Metropolitan District No. 1 (existing), 4-Way Ranch Metropolitan District No. 2 (existing), and 4-Way Commercial Metropolitan District (proposed). District No. 1 and the Commercial District overlap. District No. 2 is the service provider for both District Nos. 1 & 2, and

through an IGA will be the service provider for the Commercial District. The proposed Commercial District is within District No. 1, which encompasses the residential PUD, but the Commercial District will not include any of that residential. The letter Ms. Parsons presented was a resolution approved by the residential board of directors of District No. 1.

Mr. Carlson asked if the water and sewer infrastructure built by the Commercial District would serve the residential area as well as the commercial development.

Mr. Dossey stated it could in theory. The commercial is large-acre. It was mentioned earlier that they may drill wells. At the time the Service Plan was written, they were fighting with District No. 2 to provide a commitment letter for the commercial development. They now have that commitment letter, so a water line will be extended and there will not be any wells drilled. The service must be provided by District No. 2 via an IGA with District No. 1. The presentation continued.

Mr. Whitney asked for clarification on the purposes of District Nos. 1 and 2.

Mr. Dossey answered that District No. 1 was created to service the residential and the subject commercial area within the PUD. District No. 2 was created to provide the services. He explained that District No. 1 was the funding entity while District No. 2 was the management entity.

Mr. Whitney stated that it seems both Districts seem unable to fulfill their pieces of the puzzle. Will this third District fill the holes?

Mr. Dossey confirmed and added that development has not proceeded as anticipated in District No. 1. The reason the PUD was abandoned was because it never "got off the ground". Revenue is not coming in to finance the construction of this infrastructure. He stated that this application is the product of litigation between the current property owner and District No. 2 to ensure they provide service through the IGA with District No. 1.

Mr. Whitney asked what District No. 2 would do with the infrastructure dedicated to it by the proposed district. To whom will they provide services?

Mr. Dossey answered that District No. 2 will own and maintain the infrastructure. This would include water, wastewater, and detention ponds. The IGA that exists between them (District No. 2) and District No. 1 is their funding mechanism.

Mr. Whitney asked what District No. 1 is getting from the creation of the proposed Commercial District that allows them to be "tagged twice".

Mr. Dossey answered that the benefit District No. 1 gets is that they do not need to finance these improvements. The residents of District No. 1 will not be saddled with financing the improvements needed for the commercial development. He stated that he spoke with the president of District No. 1 to get a letter of support, but he couldn't get that letter because they only meet once a year due to limited budget. He stated that if they were able to have an additional meeting, he thinks they would have gladly provided a recommendation letter.

Mr. Carlson asked if the residents of District No. 1 would still be funding the infrastructure over the years in addition to the mill levy that the residential district has applied.

Mr. Dossey responded that the debt will only be paid back by the development that happens within the Commercial District's boundaries.

Mr. Carlson stated he understood, but added the water and sewer will be provided to the entire area.

Mr. Dossey replied that it could potentially, but there is no IGA in place that requires the Commercial District expand to provide infrastructure to the residential. The infrastructure will likely need to go through the residential, where none currently exists, but that will need to be coordinated with District No. 2. District No. 1 could potentially be part of that process if they desire to tie into the infrastructure. The layout has not been designed yet and will happen during the subdivision and/or commercial development phase. In the future, District No. 2 could choose to use the infrastructure dedicated to them (by the Commercial District) to provide service to District No. 1.

Ms. Fuller clarified that District No. 1 will get the benefit of not having to build any infrastructure for the commercial development while also receiving tax money from people that get nothing from District No. 1. From her perspective, this does not meet the spirit of the County model for service plans, which caps at 65 mills. The next buyer won't realize what happened here. Generally, commercial property has higher property taxes anyway. This proposal seems unfair.

Mr. Dossey stated that if it were not for the subject property being located within District No. 1, they would not have an IGA whereby an existing district that has an obligation to provide service *could* provide service to the subject property. If they weren't located within District No. 1, the Commercial District would need to provide their own water supply treatment system and wastewater treatment system. With the proposal, the Commercial District will design those improvements, construct them, and then turn them over to District No. 2. If this property doesn't have that ability, the cost will go through the roof and there would be a proliferation of even more systems which would go against the County's Master Plan and Water Master Plan. He stated that this proposal would tie into an existing system which is served by District No. 2.

Ms. Fuller responded that District No. 1 has agreed to provide the infrastructure as part of the original approval.

Mr. Dossey stated they do not have the financial ability to provide it.

Ms. Fuller replied that when District No. 1 was approved, it was in the original agreement that they would provide infrastructure to the entire area within that boundary.

Mr. Dossey stated that was correct.

Ms. Fuller continued by stating that now they want to change the boundary but the financing gets messed up if the Commercial District area is pulled out. The situation feels weird to her.

Mr. Dossey stated this is a product of a failure to proceed as it was planned. He stated that he worked on the PUD when he worked with EPC back in 2008, which shows how long the PUD has been sitting out there. The PUD has since been changed because it was very restrictive.

Mr. Carlson asked if the mill levy would exist for 30 years on this property or if it would stop when the infrastructure is handed over to District No. 2.

Mr. Dossey stated that it only burdens the commercial development (currently one owner), not the residential.

Mr. Carlson asked if this property would need to make payments for all those years even if there is no infrastructure.

Mr. Dossey answered that the infrastructure would be developed up front to provide service to the commercial development. The commercial development is currently moving forward.

Mr. Whitney clarified that Mr. Dossey is implying that the rationale behind the proposed Commercial District is because District No. 1 failed. They have never been able to build the infrastructure required.

Mr. Dossey added that District No. 1 currently does not have the financial ability and cannot take on more debt to extend it to the commercial area of the district.

Ms. Brittain Jack clarified that the rezoning of this area was approved by the BOCC last year.

Mr. Dossey confirmed and added that the zoning meets the criteria of the Master Plan.

Ms. Brittain Jack further clarified that the residential area will be the “winner” in this scenario because they are not burdened with increased taxes. The commercial will pay for all of this.

Mr. Dossey stated that he thinks District No. 1 will be obligated on some traffic improvements. They are so far behind in terms of improvement that the infrastructure provided by the Commercial District will likely be done first. Ms. Brittain Jack’s assessment might be true.

Ms. Brittain Jack asked if the commercial is all “KO” is going to build.

Mr. Dossey confirmed.

Mr. Carlson clarified that the original mill levy on the residential contemplated establishing water and sewer facilities.

Mr. Dossey confirmed.

Mr. Carlson further clarified that District No. 1 will not get a discount if the Commercial District moves forward. There will be an additional 50 mills on the commercial property.

Mr. Dossey stated that there is only one property owner and they plan on developing this themselves. They are prepared to pay the additional mills for their own district just to move forward with their vacant property.

Mr. Carlson asked for clarification about the estimated cost of \$1.4 million for water and sewer.

Mr. Dossey clarified that all utilities will be around \$28 million. He referenced page 72 of the PC Staff Report packet. The infrastructure is essentially one line going in and out.

Mr. Carlson asked if that would include treatment facilities.

Mr. Dossey stated that District No. 2 has an IGA with Woodmen Hills to provide treatment and District No. 2 is obligated to provide treated water. They initially considered an onsite septic because a wastewater line does not currently exist, but it will eventually tie into a central line.

Ms. Fuller asked if the repayment of the Commercial District’s debt will include the “double dip” for District No. 1.

Mr. Mike Sullivan, with Piper Sandler, answered that it only includes the 50 mills for the Commercial District.

Ms. Fuller reiterated that it doesn’t include what they’re paying for District No. 1.

Mr. Sullivan stated that mill levy is not supported by the debt issuance coming out of the Commercial District.

Ms. Fuller asked if they will be able to afford the new mill levy on top of the one for service they're not receiving.

Mr. Sullivan asked if Ms. Fuller was talking about District No. 1. She was. He then stated they did not analyze District No. 1's debt capacity, only that of the Commercial District. They did include the amount paid to District No. 1 in that analysis.

Mr. Whitney clarified that the residential properties are not paying for any of this.

Mr. Dossey confirmed.

Mr. Whitney further clarified that once built, District No. 2 will have the infrastructure dedicated to them and will provide the service for financial gain.

Mr. Dossey confirmed.

Mr. Whitney then stated that there is only one tenant on the commercial development on the hook for this cost, so it's going to be assumed that they heavily develop the property.

Mr. Dossey agreed and stated he thinks there is a huge need for commercial service-type entities on Highway 24.

Mr. Whitney thinks this is a gamble. This is a lot of money for one owner-developer.

Mr. Dossey stated the owner is looking at other developments. He mentioned the one near Meadowlake Airport and Curtis Road, and stated that along Highway 24 is the next major commercial and industrial corridor. The owner is willing and prepared to put in the money.

Mr. Carlson asked for further clarification on who provides treatment for the water and sewer.

Mr. Dossey explained that District No. 2 is obligated to provide wastewater and domestic water service through an IGA with District No. 1. The wastewater will make its way to and be treated by the Woodmen Hills plant.

Mr. Carlson asked if the 50 mills included creating water filtration and sewage treatment.

Mr. Dossey stated he does not have an answer for that. He is not privy to the IGA. He stated that without District No. 2's service, the commercial development would likely not happen.

Mr. Carlson asked if the commercial property would have to provide water for themselves until District No. 2 comes up with the money to provide the service.

Mr. Dossey clarified that District No. 2 has already provided a commitment letter regarding water for the first site development plan. They will provide their own on-site wastewater via septic. The first developments are anticipated to be low water users like mini and RV storage.

Ms. Parsons advised the board that the applicant has requested a revised condition of approval number 1. She read, *"As stated in the proposed service plan, the maximum combined mill levy shall not exceed 65 mills for any property within the 4-Way Commercial Metropolitan District, with no more than 50 mills devoted to commercial debt service, no more than 10 mills devoted to operations and*

maintenance, no more than 5 mills for special purpose, all subject to Assessment Rate Adjustment, unless the District receives Board of County Commissioner approval to increase the maximum mill levy.” The part “all subject to Assessment Rate Adjustment” was added.

Ms. Corley explained that the language was added to match the language in the model service plan.

Ms. Seago added that a couple years ago, the Gallagher Adjustment was removed in Colorado. Old service plans used to allow for the mill levy to be adjusted to compensate for the effects of applying the Gallagher Adjustment to property tax. It would make up for any shortfalls that the Gallagher Adjustment would cause. Now that the Gallagher Adjustment has gone away, they have removed that definition from the model service plan and inserted the phrase Assessment Rate Adjustment. Its definition is like a Gallagher Adjustment. It’s conditional. Assessment Rate Adjustment means that if after the service plan is approved, Colorado law changes with the assessment of property and again allows you to adjust the mill levy based on property tax adjustments. They can do that without appearing again before the BOCC to ask to increase their mill levy.

Mr. Carlson clarified that it would be increased by whatever the State decided.

Ms. Seago stated that is correct and added that if the State applies something like the Gallagher Adjustment to property tax collection, this district will be allowed (under the Assessment Rate Adjustment) to adjust their mill levy rate to compensate for any loss in property tax value that *may* occur due to any future State law.

Mr. Carlson asked where the language the applicant is trying to match is located.

Ms. Seago answered that the original language is found in the model service plan. They are asking that the condition of approval found in the resolution match what is found in the model service plan that that is being considered.

Mr. Dossey stated that if it were not for the current owner-developer, this property would not get developed. District No. 1 would fight disconnection of this property because it’s currently generating revenue for them. He stated that if it weren’t for the current owner creating their own district to take on the burden, this property would likely become sterile because it’s subject to the existing District No. 1 mill levy and they’re not going to let the property leave their district.

Mr. Whitney asked if Ms. Seago’s comments meant “no harm, no foul” regarding the added verbiage that is found in the model service plan.

Ms. Seago confirmed.

NO PUBLIC COMMENT OR FURTHER DISCUSSION

PC ACTION: SCHUETTELPELZ MOVED / BRITAIN JACK SECONDED FOR APPROVAL OF REGULAR ITEM NUMBER 5A, FILE NUMBER ID-23-001, FOR A SPECIAL DISTRICT SERVICE PLAN, 4-WAY COMMERCIAL METROPOLITAN DISTRICT, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH THE AMENDED SEVEN (7) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (5-1).

IN FAVOR: Ms. Brittain Jack, Mr. Carlson, Mr. Moraes, Mr. Schuettpelz, and Mr. Whitney.

IN OPPOSITION: Ms. Fuller.

COMMENT: Ms. Fuller's earlier comments included: This does not meet the spirit of the County model for service plans, which caps at 65 mills. The next buyer won't realize what happened here. When District No. 1 was approved, it was in the original agreement that they would provide infrastructure to this area within that boundary. She added that she may feel differently if the property was removed from within District No. 1. The fact that there is one owner does not make a difference.

MEETING ADJOURNED at 12:08 p.m.

Minutes Prepared By: Miranda Benson