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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, July 6<sup>th</sup>, 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, JAY CARLSON, BECKY FULLER, KARA OFFNER, BRYCE SCHUETTEL, AND CHRISTOPHER WHITNEY.

**PC MEMBERS VIRTUAL AND VOTING:** NONE.

**PC MEMBERS PRESENT AND NOT VOTING:** JEFFREY MARKEWICH AND WAYNE SMITH.

**PC MEMBERS ABSENT:** BRANDY MERRIAM, ERIC MORAES, AND TIM TROWBRIDGE.

**STAFF PRESENT:** MEGGAN HERINGTON, JUSTIN KILGORE, RYAN HOWSER, ASHLYN MATHY, KYLIE BAGLEY, ED SCHOENHEIT, JEFF RICE, GILBERT LAFORCE, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

**OTHERS PRESENT AND SPEAKING:** BRETT LOUK, TIM MURPHY, ERIN DURAN, SARAH COLE, HILARY BRENDEMUHL, AND BILL BRENDEMUHL.

**1. REPORT ITEMS** – The next PC Hearing is Thursday, July 20<sup>th</sup>, 2023, at 9:00 A.M.

**Ms. Herington** updated the PC of the revised public notice procedures. Notifications will now be sent to property owners within 500 feet and will be sent after the submittal of the application. This will result in the information being more accessible to the public. Certified bulk mailing certificates will replace the certified mailing (green card) requirement. She also advised the board that Mr. Gilbert LaForce was promoted to EPC Public Works Engineering Manager.

**Mr. Whitney** asked for clarification on certified bulk mailing certificates.

**Ms. Herington** explained that the USPS certifies how many letters were sent in a bulk mailing. The applicant will submit a list of who the letters were sent to.

**Mr. Kilgore** advised the board that the applicant for agenda item 3D, VR-21-014, has requested a continuance. Also, the advertisement for PC vacancies closes 7/12/2023.

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

3. **CONSENT ITEMS**

A. **Adoption of Minutes** of meeting held June 15<sup>th</sup>, 2023.

**PC ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (7-0).**

B. **VR-22-013**

**MATHY**

**VACATION AND REPLAT  
1384 BUCKWOOD LANE**

A request by Murphy's Custom Homes for approval to Vacate and Replat one (1) residential lot into four (4) residential lots. The 3.81-acre property is zoned RR-0.5 (Residential Rural) and is located at the northwest terminus of Buckwood Lane, approximately one-tenth of a mile from the intersection of Buckwood Lane and Fawnwood Road. (Parcel No. 7111101042) (Commissioner District No. 1).

**PC ACTION: ITEM 3B WAS PULLED TO THE CALLED-UP CONSENT CALENDAR (MOVED TO AGENDA ITEM 4).**

C. **CR-22-001**

**BAGLEY**

**MAP AMENDMENT (REZONE)  
11745 OWL PLACE COMMERCIAL REZONE**

A request by Baseline Engineering for approval of a Map Amendment (Rezone) of 4.61 acres from RR-5 (Residential Rural) to CS (Commercial Service). The property is located at 11745 Owl Place, directly southwest of the intersection of Meridian Road and Owl Place. (Parcel No. 5301001015) (Commissioner District No. 2).

**NO PUBLIC COMMENT OR DISCUSSION.**

**PC ACTION: CARLSON MOVED / SCHUETTELZ SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3C, FILE NUMBER CR-22-001, FOR A MAP AMENDMENT (REZONE), 11745 OWL PLACE COMMERCIAL REZONE, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH THREE (3) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

D. **VR-21-014**

**BAGLEY**

**VACATION AND REPLAT  
VILLA CASITAS FILING NO. 4**

A request by Jesus Barron for approval of a 5.80-acre Vacation and Replat illustrating a vacation of one single-family residential lot and platting into one (1) single-family lot which will include a portion of County right-of-way. The property is zoned RR-5 (Residential Rural), and is located at 10015 Calle Bernardo Point, directly south of the intersection of Calle Bernardo Point and La Piedra Point. (Parcel No. 5735004001) (Commissioner District No. 4).

**THE APPLICANT REQUESTED A CONTINUANCE. NO PUBLIC COMMENT OR DISCUSSION.**

**PC ACTION: FULLER MOVED / CARLSON SECONDED TO CONTINUE CONSENT ITEM NUMBER 3D, FILE NUMBER VR-21-014, FOR VACATION AND REPLAT, VILLA CASITAS FILING NO. 4, TO A DATE CERTAIN OF JULY 20, 2023. THE MOTION WAS APPROVED (7-0).**

**E. MS-22-008**

**BAGLEY**

**MINOR SUBDIVISION  
IVILO MINOR SUBDIVISION**

A request by Pawel Posorski for approval of a 14-acre Minor Subdivision illustrating three (3) single-family lots. The property is zoned RR-2.5 (Residential Rural) and is located 0.37 miles west of the intersection of Vessey Road and Black Forest Road and 0.15 miles south of the intersection of Vessey Road and Pine Castle Drive. (Parcel No. 5206000065) (Commissioner District No. 1).

**NO PUBLIC COMMENT OR DISCUSSION.**

**PC ACTION: FULLER MOVED / CARLSON SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3E, FILE NUMBER MS-22-008, FOR A MINOR SUBDIVISION, IVILO MINOR SUBDIVISION, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH EIGHT (8) CONDITIONS, TWO (2) NOTATIONS, ONE (1) WAIVER, AND A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

**F. MS-22-005**

**BAGLEY**

**MINOR SUBDIVISION  
OWL RIDGE MINOR SUBDIVISION**

A request by SMH Consultants for approval of a 27-acre Minor Subdivision illustrating two (2) single-family lots. The property is zoned RR-5 (Residential Rural) and is located at 18885 Brown Road, adjacent to the intersection of Brown Road and Running Horse View. (Parcel No. 5100000447) (Commissioner District No. 1).

**DISCUSSION**

**Ms. Fuller** asked how the shape of this property came to be.

**Mr. Brett Louk**, with SMH Consultants, answered that when the current owner bought the land, the shape was already established. His parents own the adjacent lot to the east. The flag on the west side is a driveway to his parents' house.

**PC ACTION: SCHUETTELZ MOVED / OFFNER SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3F, FILE NUMBER MS-22-005 FOR A MINOR SUBDIVISION, OWL RIDGE MINOR SUBDIVISION, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH EIGHT (8) CONDITIONS, ONE (1) NOTATION, ONE (1) WAIVER, AND A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

G. SF-22-009

HOWSER

**FINAL PLAT  
WINSOME FILING NO. 3**

A request by Winsome, LLC, for approval of a Final Plat to create thirty-eight (38) single-family residential lots and five (5) tracts. The 349.47-acre property is zoned RR-5 (Residential Rural) and is located at the northwest corner of Hodgen Road and Meridian Road. (Parcel Nos. 5124000003, 5124000004, 5100000524, and 5100000526) (Commissioner District No. 1).

**DISCUSSION**

**Mr. Whitney** stated his concern regarding the water finding. The State Engineer stated there is an adequate water sufficiency but also stated that it's unknown how long the water will be in the Denver Basin. Therefore, they suggested that the County might want to consider requiring the applicant to provide a permanent water supply for whenever that may be. Ms. Seago's office correctly relies in part on the finding of the State Engineer to determine water sufficiency, but then there's a plat note that essentially says, "but don't count your chickens" because if the water isn't there, they reserve the right to amend or withdraw the recommendation of sufficiency. It's there today but it may not be there tomorrow. He finds this concerning, but he's not sure what the answer may be.

**PC ACTION: FULLER MOVED / CARLSON SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3G, FILE NUMBER SF-22-009 FOR A FINAL PLAT, WINSOME FILING NO. 3, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH TEN (10) CONDITIONS, THREE (3) NOTATIONS, AND A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

H. SF-22-039

HOWSER

**FINAL PLAT  
TERRA RIDGE NORTH**

A request by Phillip S. Miles and Jennifer Miles for approval of a Minor Final Plat to create eleven (11) single-family residential lots and to replat two (2) existing single-family residential lots to accommodate the dedication of land for right-of-way. The 39.72-acre property is zoned RR-5 and RR-2.5 and is located approximately three-quarters of a mile south of the intersection of Black Forest Road and Hodgen Road. (Parcel Nos. 5129300002, 5129302011, and 5129302012) (Commissioner District No. 1).

**NO PUBLIC COMMENT OR DISCUSSION.**

**PC ACTION: CARLSON MOVED / SCHUETTELZ SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3H, FILE NUMBER SF-22-039, FOR A FINAL PLAT, TERRA RIDGE NORTH, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH EIGHT (8) CONDITIONS, THREE (3) NOTATIONS, AND A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

#### 4. CALLED-UP CONSENT ITEMS

3B. VR-22-013

MATHY

#### VACATION AND REPLT 1384 BUCKWOOD LANE

A request by Murphy's Custom Homes for approval to Vacate and Replat one (1) residential lot into four (4) residential lots. The 3.81-acre property is zoned RR-0.5 (Residential Rural) and is located at the northwest terminus of Buckwood Lane, approximately one-tenth of a mile from the intersection of Buckwood Lane and Fawnwood Road. (Parcel No. 7111101042) (Commissioner District No. 1).

#### STAFF & APPLICANT PRESENTATIONS

**Mr. Bailey** reiterated that the Criteria of Approval from the LDC is what the PC uses to make a recommendation to the BOCC. The presentation continued.

**Mr. Whitney** asked the applicant if they anticipated any issues with the concerns submitted by CPW regarding fencing and the removal of trees.

**Mr. Tim Murphy**, owner/applicant, replied that he met with CPW last week and they discussed the removal of dead trees. There were also fences on the property that needed to be removed due to non-compliance with Woodmoor. That has all been cleaned up.

**Mr. Schuettpelz** mentioned that this property consisted of 4 lots previously. He asked if Mr. Murphy's proposal was identical to the way the property looked in 2010?

**Mr. Murphy** confirmed. It will look like it did in 2010 and 1963.

#### PUBLIC COMMENT

**Ms. Erin Duran** stated she would be addressing Criteria of Approval numbers 1, 3, 6, and 7. She lives adjacent to the subject property. When making her purchase, she was told by a realtor that the area was not a vacant lot to be developed. She stated that she and other neighbors requested Woodmoor Improvement Association (WIA) and the Architectural Control Committee (ACC) deny this proposal, but they did not. She thinks WIA would not deny the request because the BOCC makes the ultimate decision. When she and others moved into the neighborhood, the subject property was a single lot. She sees wildlife on the property. She stated that geological hazards, traffic and congestion, and soils and drainage were all sited as concerns during the application review process. She stated those concerns were also mentioned in 2010 when it was merged.

**Ms. Sarah Cole**, on the phone, lives adjacent to the subject property. She stated that the sliver of land added to "Lot 4A" was from their property. She has documents from that application process, which happened in 2010. The previous owner listed concerns from the Tri-Lakes Comprehensive Plan: erosion and steep topography (up to 40%) make this area difficult to build on, the roadway system is inadequate for additional population, and stated County services like police are inadequate for the existing population. She stated that the rationale cited in 2010 is still valid today.

**Ms. Hilary Brendemuhl** lives adjacent to the subject property. She stated the former owner of the property was concerned about preserving the area, which is why they combined the four lots into one. She was also told by a realtor that this lot would not be further developed. On page 5 of the staff report, it says *"New developments are to be expected, however at this point no development is proposed at the current vacant lots being created with this project."* The applicant indicated that they plan to build three additional homes during their presentation. On page 2 of the staff report, in the approval criteria, it says *"Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the replat has been resolved."* Mr. Murphy shared a letter from the HOA, but she questions the permission that has been given. When the lot was combined, it only required one access point, soils test, etc. The HOA allowed access points to the three proposed lots and there are now prospective driveways (which she referenced in her slideshow). Trees and foliage that help with erosion were removed. The HOA Board of Directors has a history of making arbitrary and capricious decisions.

**Mr. Bill Brendemuhl** lives adjacent to the subject property. He stated he was a real estate-related attorney. He questions if undoing the previous owner's replating will set an unintended precedent. He found examples of people combining lots to expand, but he did not find examples of people dividing their large lots. He does not think this proposal complies with the CC&Rs. Woodmoor HOA follows the Colorado Common Interest Ownership Act (CCIOA) which states in Section 38-33.3-217 Amendment of declaration, that *"(a), the declaration, including the plats and maps, may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated..."* He does not have a record of their HOA following that procedure for this proposal. He stated that he participated in meetings with WIA and ACC after seeking the services of a land-use attorney, but after their presentation of where the HOA was overstepping, they never heard back from the attorney. The only response he or the attorney received was that WIA approved it. He has concerns about the geological report available on the EDARP website. There are problems with the soil, drainage, and slope. The engineer from the Colorado Geological Survey recommended that a plat note be added to require lot-specific soils and foundations investigations before development of the lots. The plat attached to the staff report does not include that recommendation. The Geological Survey also states it's critical that all recommendations made by the Geotechnical Engineer be followed when developing the property. He wants to ensure there are safeguards built-in to review any successive development. He also mentioned that there is a Deed of Trust put on the property but no signage block on the plat for the trust holder to sign.

**Mr. Bailey** noted that many concerns mentioned were between the property owners and their HOA.

**Mr. Murphy** replied to the comment that the previous landowner wanted to keep the land a certain way. He stated that he checked, and there are no deed restrictions. He added that the wife was planning to do the same thing but didn't want to go through the process. Regarding the engineering comments, he stated that the issues can be mitigated with proper planning, engineering, and construction. There will be engineer-designed foundations and drainage for all future homes.

**Mr. Bailey** added that this is a multi-step process. Vacation and Replat is the first step. There will be subsequent site plan reviews, etc., before a house is built.

## **DISCUSSION**

**Ms. Fuller** noted that the opposing public comments involved the last criteria of approval regarding the CC&Rs. However, Mr. Murphy has a letter from the HOA stating he complies. In her opinion, he has met that criterion. She suspects the lots were combined in part for tax purposes. This area is zoned RR-0.5 so anyone who exceeds a 1-acre lot that meets the criteria or approval, could divide their lot. She often hears that a realtor told someone “That will never be developed”, but the reality is that this parcel exceeds 2 acres in RR-0.5 zoning and *can* be divided into smaller lots. She believes the criteria is being met and she is in favor of the application.

**Mr. Whitney** agreed with Ms. Fuller’s comments and added that the neighbors have an issue with the actions of the HOA. That issue is not in this review criteria.

**PC ACTION: FULLER MOVED / BRITAIN JACK SECONDED FOR APPROVAL OF CALLED-UP CONSENT ITEM NUMBER 3B, FILE NUMBER VR-22-013, FOR A VACATION AND REPLAT, 1384 BUCKWOOD LANE, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH SEVEN (7) CONDITIONS, ONE (1) NOTATIONS, AND A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

**5. REGULAR ITEMS – NONE.**

**6. NON-ACTION ITEMS – NONE.**

**MEETING ADJOURNED** at 10:14 A.M.

**Minutes Prepared By:** Miranda Benson