Planning and Community Development Department

Craig Dossey, Executive Director

To: Board of County Commissioners

 Mark Waller, Chair

From: Mindy Madden, Code Enforcement Supervisor

 Craig Dossey, Executive Director

Re: APPCE-20-003

 Parcel No. 6207200017

Subject: Appeal of a decision made by the Executive Director of Planning and Community Development to issue an executive determination to authorize the Office of the County Attorney to proceed with litigation

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| **OWNER:** | **REPRESENTATIVE:** |
| Western Museum of Mining and Industry125 North Gate BoulevardColorado Springs, CO 80921 | Grant Dewey125 North Gate BoulevardColorado Springs, CO 80921 |

**Issue:**

An appeal by Grant Dewey, on behalf of the Western Museum of Mining and Industry (WMMI), of a decision made by the Executive Director of the Planning and Community Development Department (PCD) to issue an executive determination authorizing the Office of the County Attorney (OCA) to proceed with litigation pursuant to Section 11.3.2 (A) of the El Paso County Land Development Code (2020). The 28.39-acre property is zoned RR-5 (Residential Rural) and is located southeast of the Interstate 25 and the North Gate Boulevard interchange.

**Procedure:**

Staff shall first present the item and provide testimony and evidence. The appellant(s) shall then be given an opportunity to address the Board of County Commissioners (Board) and present any testimony and/or evidence. The Board may then ask any final questions of staff or the appellant(s) prior to rendering a decision.

The Board, in considering the testimony and evidence presented by both staff and the appellants shall either:

* Move to deny the appeal, thus affirming the decision of the PCD Executive Director; or
* Move to approve the appeal, thus overturning the decision of the PCD Executive Director.

**Executive Summary:**

On December 12, 2017, the Board approved amendments to Chapter 11 of the Land Development Code removing the requirement for a show cause hearing before the Board prior to authorizing the OCA to pursue legal action. The amendments instead allow for the PCD Executive Director to issue an executive determination to authorize the OCA to pursue legal action. The amendments provide procedures for appeals of the executive determination to be heard before the Board.

Section 11.3.2 (A) of the Land Development Code states:

*“The PCD Director shall mail the executive determination to the alleged violator in the same manner as the notice of violation. The executive determination shall specify the nature of the violation, and provide ten (10) days after the date of the executive determination for the alleged violator to request an appeal, at no cost to the alleged violator, to the BoCC prior to the OCA pursuing remedies under Parts (D)(2) or (3).*

*The executive determination shall state that the alleged violator may appeal the PCD Director’s decision to the BoCC. The alleged violator must submit an appeal in writing to the PCD Director. Any written appeal must be received by the PCD Director within ten (10) days after the date of the executive determination. Any such appeals received beyond ten (10) days shall be deemed untimely.”*

**Background:**

In July 2014 and July 2015, PCD approved temporary use permits to allow for the WMMI to hold Tiny House Jamborees. Attendance for the events exceeded 15,000 people, resulted in significant traffic issues. A complaint was received on June 11, 2019 from the County Engineer about a Celtic Festival scheduled to take place at the WMMI on June 14-16, 2019. The County Engineer had traffic related concerns about the event taking place. Approval to hold the Celtic Festival had not been issued by PCD and such use is not an allowed use in the RR-5 zoning district. A courtesy email was sent to the organizer of the Celtic Festival as well as to the main email address found online for the WMMI to inform them that zoning approval to hold the event had not been obtained and that the use was not allowed in the RR-5 zoning district.

On August 7, 2019, Code Enforcement staff received information from the County Engineer that the WMMI had continued to advertise and hold events on the property that were unrelated to the museum activities, such as an Indie Festival, Oktober Fest, farmer’s markets, etc. On August 14, 2019, a notice of violation was issued for violations of Table 5-1 Principal Uses and Table 5-2 Accessory Uses of the Land Development Code (LDC); specifically, for operating outdoor concerts, outdoor amusement centers, flea markets, and agritainment activities in the RR-5 zoning district. On August 20, 2019, Code Enforcement staff was contacted by Grant Dewey, Executive Director of the WMMI, who believed the WMMI had an exemption to hold events on the property and said that the WMMI had been holding events for more than a decade.

A rezone of the property from A-4 (Agricultural) to A-5 (Agricultural), as well as an approval of location, for a museum was approved on May 1, 1975 (reference attached File No. P75002Z and File No. AL75-3). The Land Development Code in 1975 defined a museum as “a building in which works of artistic, historical and scientific value are cared for and exhibited”. The A-5 zoning district was changed to become the present day RR-5 zoning district. A museum, a new use, would not be an allowed use today in the RR-5 zoning district. The events being held at the WMMI are unrelated to the museum activities and the WMMI does not have a legal non-conforming use to authorize holding the events.

An Early Assistance meeting was held with PCD staff and representative(s) from the WMMI on October 10, 2019. The events, excluding events related to the museum, being held at the WMMI were classified as a “business event center” which is not an allowed use in the RR-5 zoning district. A business event center would be allowed in zoning districts such as the commercial zoning districts and as a special use in the forestry and agricultural zoning districts. Application for a variance of use was not made by the WMMI, resulting in a new notice of violation on April 4, 2020, to include the violation of operating a business event center in violation of the LDC.

An executive determination was issued on June 10, 2020, as a result of the WMMI failing to submit a complete variance of use application. A request by the WMMI to appeal the executive determination was received on June 19, 2020.

**Recommendation:**

Staff recommends the Board deny the request for an appeal and affirm the decision of the PCD Executive Director to issue an executive determination to authorize the OCA to proceed with litigation.

**Attachments:**

Vicinity map

Chronology Report

Executive Determination

Appeal Request

Notice of Appeal Hearing

File No. P75002Z

File No. AL-75-3

Other