

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

PLANNING COMMISSION

MEETING RESULTS (UNOFFICIAL RESULTS)

Planning Commission (PC) Meeting
Thursday, May 4, 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: TOM BAILEY, SARAH BRITAIN JACK, JAY CARLSON, TIM TROWBRIDGE, BECKY FULLER, ERIC MORAES, AND CHRISTOPHER WHITNEY.

PC MEMBERS VIRTUAL AND VOTING: NONE.

PC MEMBERS PRESENT AND NOT VOTING: KARA OFFNER.

PC MEMBERS ABSENT: JOSHUA PATTERSON, BRYCE SCHUETTPELZ, AND BRANDY MERRIAM.

STAFF PRESENT: MEGGAN HERINGTON, JUSTIN KILGORE, KYLIE BAGLEY, LUPE PACKMAN, GILBERT LAFORCE, LEKISHIA BELLAMY, CRISTEL MADDEN, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY LORI SEAGO (ONLINE).

OTHERS PRESENT AND SPEAKING: CAREY JONES, BOB HORNE, JACK TUBBS, AND RICHARD MINGO.

1. REPORT ITEMS

A. Planning Department. Next PC Hearing is Thursday, May 18, 2023, at 9:00 A.M.

Ms. Herington advised the board that the next meeting will be their annual meeting and will include training by Ms. Seago in addition to any regular items on the agenda.

Mr. Kilgore added that the designation of officers will take place at the annual meeting.

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

2. CONSENT ITEMS

A. Adoption of Minutes of meeting held April 20, 2023.

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

B. SF2136

BAGLEY

FINAL PLAT LATIGO TRAILS FILING NO. 9

A request by Drexel, Barrell & Co. for approval of a final plat to create 39 single-family residential lots. The 106-acre parcel is zoned RR-2.5 (Residential Rural) and is located 3/4 of a mile west of Eastonville Road, one mile east of Meridian Road, and one mile south of Latigo Boulevard. (Parcel No. 4200000345) (Commissioner District No. 2).

PC ACTION: THIS ITEM WAS PULLED TO THE CALLED-UP CONSENT CALENDAR.

C. MS204

BELLAMY

MINOR SUBDIVISION KINCH SUBDIVISION

A request by Paul and Amy Kinch for approval of a minor subdivision creating four residential lots. The 29.12-acre property is addressed as 10805 Milam Rd and zoned RR-5 (Rural Residential); located north of the intersection at Old North Gate Road and Milam Road. (Parcel No. 6224000011) (Commissioner District No. 1).

PC ACTION: THIS ITEM WAS PULLED TO THE CALLED-UP CONSENT CALENDAR.

3. CALLED-UP CONSENT ITEMS

2B. SF2136

BAGLEY

FINAL PLAT LATIGO TRAILS FILING NO. 9

A request by Drexel, Barrell & Co. for approval of a final plat to create 39 single-family residential lots. The 106-acre parcel is zoned RR-2.5 (Residential Rural) and is located 3/4 of a mile west of Eastonville Road, one mile east of Meridian Road, and one mile south of Latigo Boulevard. (Parcel No. 4200000345) (Commissioner District No. 2).

STAFF PRESENTATION & APPLICANT PRESENTATION

Mr. Trowbridge asked for clarification regarding the water report. He thinks there may be a discrepancy between the Letter of Intent and the County Attorney's finding.

Ms. Bagley read the County Attorney's finding in the staff report, which reflects 12 acre-feet per year. She believes the updated request should have been uploaded to EDARP.

Mr. Trowbridge stated he did not see an updated Letter of Intent as of 5/3/2023.

Ms. Seago (online) added that she completed the water review for a total subdivision demand of 12 acre-feet, not 13. She did not require the applicant to update their Letter of Intent, she required an update to the Water Supply Information Summary.

Mr. Bailey asked if the water summary had been updated in the records.

Ms. Bagley stated it has been. Full staff presentation began.

Mr. Bailey requested Mr. LaForce provide more information regarding the proposed roadway.

Mr. LaForce stated the Preliminary Plan was already approved for this area and the applicant is following what was already approved.

Mr. Bailey asked where that road will lead, or where will it connect.

Mr. LaForce indicated the road will extend from the west (where the road currently exists) through the proposed lots, and eventually connect to the existing road that leads north. The road that is being extended is internal. There will be future filings to the east that will connect to Eastonville. The presentation continued.

Mr. Trowbridge stated his understanding is that the water is being provided by an adjacent metro district, not on-site wells.

Ms. Bagley stated that is correct and the metro district provided commitment letters.

Mr. Carlson asked how someone might oppose the finding of sufficiency. He noted that Mr. Jones' emailed opposition presents information that might contest that finding.

Ms. Seago stated that the reviews completed by the County Attorney's Office and State Engineer's Office provide evidence and information to be considered. It is the responsibility of the PC and BOCC to determine the weight of that information along with evidence that may be provided from others which may contradict those recommendations. It is up to the board to determine if the applicant has provided enough evidence of an adequate water supply.

Mr. Carlson asked the applicant's representative if anything had changed since a past project was turned down for not meeting water sufficiency in the past.

Mr. Tim McConnell, with Drexel, Barrel & Co., deferred to the owner to answer that question as he was not aware of a past denial. He added that the water rights for the projects were turned over to Meridian Service Metro District. The water is sent from this property to their metro district, it's treated, then sent back to the Latigo area for use.

Mr. Robert Irwin, owner, stated he is not aware of any denial. He added that the water allocated to this project was from the property itself, then conveyed to Meridian for treatment. It was ensured that the water was sufficient at that time and for future filings.

Mr. Carlson stated that saw the staff report mention a preliminary plan for 247 lots in 2001 was turned down for not having a finding of water sufficiency.

Mr. Bailey clarified that the staff report states that at the time of the preliminary plan in 2001, there was no finding of sufficiency regarding water. He asked for Ms. Seago to clarify.

Mr. Irwin stated that the preliminary plan in 2001 was approved and there have been multiple filings built since that time. He stated the water is sufficient and has already been reserved. The owner of Falcon Latigo has purchased the water taps. There was a purchase of 292 taps, of which 177 remain, and are available to be allocated to this and future projects.

Mr. Bailey asked Ms. Seago to clarify. He stated that it looks like the preliminary plan in 2001 was approved without a finding of water sufficiency. Applicants have the *choice* to request a finding of water sufficiency at the preliminary plan stage, however, it *must* be determined by the final plat stage.

Ms. Seago stated Mr. Bailey's comments were correct. She looked at documents from the preliminary plan and noted that there is a letter from her office stating a finding of water sufficiency could not be made with the information provided with the preliminary plan. That does not mean the preliminary plan was unable to move forward. The applicant may show sufficiency at final plat.

Mr. Irwin added to Ms. Seago's remarks that his understanding was that more information was needed from the state at that time.

Mr. Carlson thanked everyone for the clarification and reiterated his understanding that the preliminary plan was approved, but the finding of water sufficiency was deferred to a later date.

PUBLIC COMMENT

Mr. Carey Jones currently lives in Latigo Trails. He is opposed to this filing. He is opposed to the increase in traffic. He stated the road has been a dead-end cul-de-sac for several years. He is also opposed due to concerns for water. He stated Meridian Service Metro District's numbers don't add up. In their reports, they include future wells that they don't have permitted. If those are removed, they would not be able to provide water to the already approved projects for the 300-year time period required. He stated they are already over-appropriated. Water is his biggest concern.

DISCUSSION

Mr. Carlson asked for Ms. Seago to respond to Mr. Jones' document that states the finding of sufficiency relies on wells that are not in existence at this time.

Ms. Seago replied that she does not have the documents Mr. Jones provided to the board. (A copy of Mr. Jones' document was then emailed to Ms. Seago.)

Mr. Whitney added that he doesn't understand how it can be reconciled that a finding of sufficiency is being declared when there is evidence that the finding of sufficiency is based on future, potential water. He is unsure whether the finding of sufficiency can be relied on.

Mr. Trowbridge stated Mr. Jones presented information in addition to what has been provided in the staff's report. Mr. Jones' analysis looks at current plus future demand, but that's a question for the future. If there is water available now for this final plat, then questions about future demand will happen later. He mentioned Ms. Seago's earlier comment that additional information can be weighed at each individual's discretion.

Mr. Bailey thanked Mr. Trowbridge for that point. He added that the board has been presented with competing evidence and it is the board's responsibility to decide if more weight is placed on the County and State offices or on Mr. Jones' analysis.

Mr. Whitney responded to the explanation of the evaluation of current vs. future demand. He stated he would be comfortable with the finding of sufficiency if what they're looking at is current sufficiency for the current proposal.

Mr. Bailey stated that the State water board and the evidence provided by this process of review had determined a finding of sufficiency. There is often additional information or concern raised by the public that must be weighed along with the applicant's rights and the rights of those already in the community.

Mr. Whitney added that his concern was that there seems to be competing conclusions about the present availability of water.

Mr. Bailey stated that Mr. Jones would probably say there are competing conclusions in his mind and possibly some of the neighbors, but it is the facts that must be considered.

Mr. Carlson asked for clarification. If the finding of sufficiency only considers what water that is there today, it appears that the numbers (published by Meridian Service Metro District) are also taking into consideration the production of future wells. Should Mr. Jones elaborate?

Mr. Bailey stated it may be more appropriate for Ms. Seago to elaborate. He added that the way the State and County assess this topic is based on water rights, not what is actively being pumped. The calculation of future availability, for the 300 years required by the County, is separate.

Ms. Seago stated that is correct. Her evaluation is in regard to water rights currently under the control of the providing entity and whether or not that is sufficient to meet current demand as well as the additional proposed demand from the new development.

Mr. Carlson brought up that the document provided by Mr. Jones stated the calculation provided by the metro district includes their future wells when determining their 300-year availability. Mr. Jones removed those future wells.

Mr. Moraes noted that Mr. Jones numbers are attributed to a Water Resources Report by Tech Contractors in 2022. Where did that table come from? He doesn't see that in staff's report.

Ms. Seago answered that the table was pulled from the Water Resources Report submitted by the applicant. It is in EDARP under the document entitled "Water Resources Report". Tech Contractors is the name of the company that completed the report.

Mr. Bailey asked Ms. Seago if that was the report she reviewed when making her finding.

Ms. Seago stated it was.

PC ACTION: TROWBRIDGE MOVED / BRITAIN JACK SECONDED FOR APPROVAL OF CALLED-UP CONSENT ITEM NUMBER 2B, SF-21-036, FOR A FINAL PLAT, LATIGO TRAILS FILING NO. 9, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH SEVEN (7) CONDITIONS AND ONE (1) NOTATION, 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).

2C. MS204

BELLAMY

**MINOR SUBDIVISION
KINCH SUBDIVISION**

A request by Paul and Amy Kinch for approval of a minor subdivision creating four residential lots. The 29.12-acre property is addressed as 10805 Milam Rd and zoned RR-5 (Rural Residential); located north of the intersection at Old North Gate Road and Milam Road. (Parcel No. 6224000011) (Commission District No. 1).

STAFF PRESENTATION & APPLICANT PRESENTATION

Mr. Bailey asked Ms. Packman to address the public's concerns regarding drainage.

Ms. Packman stated she can speak to the drainage report, but not to what previously existed on the property or what has been done since the report. The drainage report shows historic patterns. The future patterns should not be much different. The creation of lots will not change drainage patterns in any way.

Mr. Trowbridge mentioned the lot's unusual shape. He asked if the flag was part of the lot or if it was an easement for the road.

Mr. Hannigan, with Hannigan & Associates, answered that the flag was part of the lot.

Mr. Trowbridge asked if the existing road was there due to an easement that was granted.

Mr. Hannigan answered that Sierra Ridge Trail is a dedicated public road that goes east from Milam Road to serve the subdivision to the north. It will also serve this subdivision. There is another access to the subdivision further east.

Mr. Trowbridge clarified that will be called Kinch Court. He asked about that easement.

Mr. Hannigan stated it is a public right-of-way that was dedicated on the plat of Timber Ridge.

Mr. Carlson asked for Mr. Hannigan to address the drainage concerns from neighbors. He asked if there is a willingness to accommodate what might occur with extra water coming their way.

Mr. Hannigan stated the drainage study indicated that was not the case. He stated they cannot release water at an increased flow from historic rates. He stated there is no drainage basin required in the area. He doesn't know exactly what the problem is.

PUBLIC COMMENTS

Mr. Bob Horne is an adjacent neighbor. He supports the 5-acre lots but is concerned about the runoff of water once driveways and houses are developed and trees are removed. The terrain is hilly. He is asking for consideration and mitigation with development. He referenced photos that he submitted for the record and described drainage issues that resulted from landscaping of the existing house on lot 1.

Mr. Jack Tubbs is an adjacent neighbor. He also appreciates the proposal of 5-acre lots but is opposed to the proposed access off Sierra Ridge Trail to the subdivision. He stated the drainage easement of the proposed road would impact his driveway and his existing gate, cutting him off from Sierra Ridge Trail. He stated there would be a significant drop in terrain where they are proposing a road which will impact drainage. He also mentioned that he heard there may be a cell tower in the southwestern lot that would need access along that road.

Mr. Richard Mingo is an adjacent neighbor. He wanted to comment on the setbacks and CC&Rs as well as the drainage. He appreciates the same sized lots and keeping the same character as the surrounding area. He was told the County impacted what was included in the CC&Rs. Setbacks of 25 feet are proposed, but the surrounding Sierra Ridge lots have setbacks of 35 feet and 90 feet. He stated the drainage between lots one and 2 will drain into his lot. There are currently two drainage easements on his lot that will already impact his ability to build in the future. He is concerned that an increase in drainage will further restrict his building area.

Mr. Hannigan addressed the comments of the drainage easements on Mr. Mingo's lot. Those drainage easements were platted on the original lot. Drainage between lots 1 and 2 is utilizing those drainage easements per the intent of their plating. No additional drainage generated from this project will exceed their approved capacity. Regarding the proposed road, Kinch Court is going to be constructed within the already dedicated public right-of-way. The Tubbs can access that road if they choose. Nothing the applicant is proposing would be outside the boundaries of what the County permits. He is not aware of where the Tubbs driveway is currently located. He stated he would give the neighbors his contact info so they can look at ways to resolve their concerns.

DISCUSSION

Mr. Trowbridge asked what type of drainage would be put in place with the construction of Kinch Court. Would that drainage connect into what runs along Sierra Ridge or to a drainage basin?

Mr. Hannigan stated he does not know of a storm drain, but the original Timber Ridge subdivision accounted for this right-of-way and drainage. The construction of Kinch Court is in accordance with County regulations and those plans were submitted as part of this request.

Ms. Fuller asked if Mr. Hannigan was saying the Tubbs would need to build a new driveway to access this road?

Mr. Hannigan said they wouldn't necessarily need a new driveway if they already have one. He doesn't know where their driveway currently is. They have the right to access the new road.

Ms. Fuller stated she is concerned about the negative consequence regarding Kinch Court.

Mr. Bailey clarified that the right-of-way already exists, and Kinch Court will be constructed in that existing right-of-way.

Ms. Packman agreed and added the road will be contained within that existing right-of-way. It will not be built on any private property. If a neighbor has a driveway next to an existing County right-of-way, that's not part of the engineering review.

Mr. Bailey added that the right-of-way pre-dates this application and has been known.

Ms. Packman agreed and said the right-of-way is already there, the road would be built within.

Mr. Trowbridge stated that the driveway access permit should have taken the right-of-way into account to prevent this conflict.

Ms. Packman stated the County checks the culvert access and site distance but does not check location of private property boundaries. The County checks anything touching public right-of-way, but anything within the private property boundary is not overseen by the County.

Mr. Bailey clarified that the Tubbs' driveway permit would have been considered with the existing right-of-way in place. Conflict would have been identified as part of the process by the County.

Ms. Packman stated she doesn't know if their driveway was permitted, but if it was, the driveway permit process reviews where the proposed driveway connects to the public road. Inspectors do look at those details first before going out to the site.

Ms. Fuller added that she would hope the County would protect an applicant from making that error if they weren't aware of a dedicated future public right-of-way.

Mr. Hannigan stated he was not suggesting the Tubbs should or need to move their driveway, he was just saying they can access the new right-of-way if they'd like.

Ms. Herington suggested pulling up a better aerial view of the area.

Mr. Bailey added that when right-of-way was dedicated and where the neighbor's driveway is located are outside the scope of this application. Public Works confirmed the right-of-way exists and the future road will be contained within that existing right-of-way. While the board is sensitive to the neighbor's concerns, and it's important the applicant is aware of those concerns, the PC should be cautious of straying from the criteria of approval when making its consideration.

Mr. Whitney addressed the comment that this will cut off Mr. Tubbs' access to his property. Is that true?

Mr. Hannigan stated they would look at that once an image was available. He clarified that the intention of his comment was only to suggest they *could* access the new road.

Mr. Whitney stated that while that may be true, is it Mr. Tubbs' financial responsibility to construct a new driveway if his access to Sierra Ridge is blocked?

Mr. Hannigan stated they were not trying to cut off his access.

Ms. Herington asked for a pause in the discussion so that the driveway permit for the subject property and an aerial image could be brought before the board. Image was displayed. She then read the language on the approved driveway permit. "Driveway alignment subject to change based on future development." When the driveway access permit was approved for that lot in 2008, there was discussion with the current owners that their driveway may be impacted by the development of the future right-of-way. The permit can be provided to the current owners if they don't have it.

Mr. Bailey reiterated that the right-of-way existed when the driveway was permitted. The alignment of the right-of-way has nothing to do with this subdivision application.

Mr. Hannigan added that he would be happy to work with the Tubbs.

Ms. Fuller reiterated that the County has determined that the drainage is adequately addressed.

Ms. Packman confirmed. The road will be built to County standards with ditches along the sides and a culvert so water flows under.

Ms. Fuller asked about the drainage of the newly created lots.

Ms. Packman stated drainage would follow historic patterns. Homes will be built in the future, but the requirement will be that drainage follows historic drainage patterns.

Ms. Fuller asked if drainage was addressed at the building permit stage.

Mr. LaForce answered that the topography is not currently being disturbed. Later, a site plan will be routed from the Regional Building Department to PCD to review where a potential house is located, its grading, and how drainage is impacted. Commonly, the landowner can change the internal grading of their lot but cannot change where the flow enters or exits their property.

Mr. Carlson asked if the drainage plan was automatically approved because they are not proposing to change the topography.

Mr. LaForce stated that is not the case. They evaluate the amount of disturbance and if a detention pond will be required. If there is an increase in flow due to imperviousness from a house, the engineer will review if a detention pond is needed, if the conveyance path downstream is sufficient,

or if improvements are needed. In this scenario, there is already a drainage easement. He would assume the engineer analyzed that conveyance path to determine it had adequate capacity.

Mr. Carlson asked about the current status of historic patterns. If the neighbor says the historic pattern is flooding his house right now, how is that addressed?

Mr. LaForce answered that typically, plat notes are created that advise the owner it is their responsibility to address drainage within their lot. Building sites are typically elevated so runoff does not enter the structure. It should have been addressed during the building process.

PC ACTION: FULLER MOVED / MORAES SECONDED FOR APPROVAL OF CALLED-UP CONSENT ITEM NUMBER 2C, MS-20-004, FOR A MINOR SUBDIVISION, KINCH SUBDIVISION, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH SEVEN (7) CONDITIONS AND ONE (1) NOTATION, 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. REGULAR ITEMS. NONE.

5. NON-ACTION ITEMS. NONE.

MEETING ADJOURNED at 10:36 A.M.

Minutes Prepared By: Miranda Benson