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Board of County Commissioners
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PLANNING COMMISSION

MEETING RESULTS (UNOFFICIAL RESULTS)

Planning Commission (PC) Meeting
Thursday, March 16th, 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: BRIAN RISLEY, TOM BAILEY, SARAH BRITTAIN JACK, JAY CARLSON, BECKY FULLER, ERIC MORAES, BRYCE SCHUETTPELZ, AND BRANDY MERRIAM.

PC MEMBERS VIRTUAL AND VOTING: TIM TROWBRIDGE.

PC MEMBERS PRESENT AND NOT VOTING: CHRISTOPHER WHITNEY.

PC MEMBERS ABSENT: JOSHUA PATTERSON.

STAFF PRESENT: MEGGAN HERINGTON, JUSTIN KILGORE, CARLOS HERNANDEZ MARTINEZ, LEKISHIA BELLAMY, CHRISTIAN HAAS, RYAN HOWSER, MIRANDA BENSON, GAYLA BERRY, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

OTHERS PRESENT AND SPEAKING: SARAH OSTREM, NANCY SPAULDING, GREG WOLFF, KEN SIGENTHALLER, GERALD MCLAUGHLIN, JOE SQUATRITO, MATTHEW RUBASITCH, HANTS WHITE, MARTHA WOOD, STEVEN BOSCO, JACK HOLST, TED BRUNING, WILLIAM DAVIS, AND JULIE HAVERLUK.

1. REPORT ITEMS

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

Ms. Herington updated the board on posting and mailed notification internal procedure changes. She advised that there will be multiple Land Development Code amendments presented at the next hearing as non-action items.

Mr. Risley asked if staff intends to hear public input at both meetings?

Ms. Herington answered that she only expects public comment when voting is expected. The non-action items would be like a report item. This will be PCD staff's opportunity to gather thoughts and feedback.

Mr. Whitney stated he really appreciates the simplified notice language.

Mr. Risley thanked Ms. Herington for her enthusiastic review of processes and adjusting procedures when she finds room for improvement. He stated it was an excellent example of her leadership.

Mr. Kilgore advised the board that Mr. Trowbridge has joined the hearing online.

Mr. Risley established that Mr. Trowbridge will be a voting member and Mr. Whitney will observe the hearing but not vote.

Mr. Kilgore requested that agenda item 2C, P-23-001, to be heard as a regular item due to the significant public input received. He also advised the board that there is an added recommended condition for item 2D, VA-23-001.

Mr. Risley stated that when they get to that item on the agenda, he will ask if the item needs to be pulled and heard as a regular item or if Ms. Seago can just update the board on that added condition.

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

2. CONSENT ITEMS

A. Adoption of Minutes of meeting held March 2, 2022.

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

B. P2210

HOWSER

MAP AMENDMENT (REZONE) ROMENS REZONE

A request by Romens Living Trust for approval of a map amendment rezoning 36.5 acres from A-35 (Agricultural) to RR-5 (Residential Rural) to accommodate the future creation of seven (7) single-family residential lots. The property is located between the intersections of Hopper Road, Bradshaw Road, and Cleese Court. (Parcel No. 41000-00-075) (Commissioner District No. 2).

PC ACTION: FULLER MOVED / SCHUETTELZ SECONDED FOR APPROVAL OF CONSENT ITEM NUMBER 2B, P-22-010 FOR A MAP AMENDMENT (REZONE), ROMENS REZONE, 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).

IN FAVOR: BAILEY, BRITAIN JACK, CARLSON, FULLER, MERRIAM, MORAES, SCHUETTEL, TROWBRIDGE, AND RISLEY.

IN OPPOSITION: NONE.

COMMENT: NONE.

C. P231

BELLAMY

**MAP AMENDMENT (REZONE)
1825 SUMMIT DR**

A request by Steven and Jennifer Liebowitz for approval of a map amendment rezoning 5.23 acres from RR-5 (Residential Rural) to RR-2.5 (Residential Rural) to accommodate the future creation of two (2) single-family residential lots. The property is located at the northwest corner of the intersection of Old North Gate Road and Silverton Road. (Parcel No. 62040-01-018) (Commission District No. 1).

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

D. VA231

HAAS

**VARIANCE OF USE
FORD DRIVE ADDITIONAL DWELLING UNIT**

A request by Vertex Consulting Services for approval of a variance of use to convert an existing accessory living quarters into a second dwelling in the RR-2.5 (Residential Rural) district. The 2.89-acre property is located at the southwest corner of the intersection of Ford Drive and Milam Road. (Parcel No. 6214000026) (Commissioner District No. 1).

DISCUSSION

Ms. Fuller asked why this request wasn't presented by the applicant last fall [when going through the Accessory Living Quarters (ALQ) process]?

Mr. Carlson asked if PCD staff had requested to pull item 2D?

Mr. Risley explained that PCD staff advised of an added condition but did not recommend the item be pulled.

Mr. Whitney added that he also has a question for PCD staff.

Mr. Haas deferred to the applicant's representative for explanation behind not requesting the Additional Dwelling Unit (ADU) when they went through the ALQ process. He asked for Mr. Whitney's question so he could address that before bringing up the representative.

Mr. Whitney stated the staff report clearly stated there is a difference between an ALQ and an ADU. He noticed some of the comments were concerns that there will be creation of an entirely different environment. ALQ allows for parttime use of an additional building for a limited time, and ADU creates a building that is leasable or sellable and creates greater density. He stated ALQ is not such a big deal, but ADU is a change to the character.

Mr. Haas stated that the difference between ALQ and ADU is among the most frequently asked questions. An ADU suggests that the unit will be occupied permanently, be rentable, and increase density. An ADU could have a more intense use of water or other utilities and has the potential of separate utilities and address. Within ALQ, there is distinction between attached or detached. If the ALQ were to be detached, like it is with this application, and the applicant wants family to live there permanently, they would need to go through the Special Use application process. An ADU is only an allowed use by right in the A-35 zoning district. Anyone in any other zoning district that would like a detached rental unit on their property would need to go through this Variance of Use process.

Mr. Whitney supposed that the only other option would be to rezone for multi-family residences. While one wouldn't want to rezone to multi-family in an area like this, this request is still changing the character of the area.

Mr. Haas stated that in his research of the Master Plan, it is suggested that those who implemented the Master Plan were open to allowing ADU's as permanently occupied and rentable units in more zoning districts.

Mr. Carlson clarified that Mr. Whitney's initial comment indicated an ADU can be sold separately from the primary residence, but that is not allowed through this change of use.

Mr. Haas stated that is correct.

Mr. Whitney understood and was grateful for the clarification. He stated approval of this application would still increase density.

Mr. Kilgore added that PCD staff is currently researching ADU's and ALQ's partially because of information coming from the State level, and partially due to discussion with other neighboring communities. Both are becoming more popular. Concerns include additional resources being used and additional traffic being generated. PCD is in the process of conducting significant research on the topic.

Mr. Risley commented that perhaps there will be an upcoming LCD amendment.

Ms. Nina Ruiz, the applicant's representative with Vertex Consulting, answered the question regarding why the ADU variance was not requested at the time the ALQ affidavit was completed. She stated the applicant was not aware requesting a variance was an option. The initial primary residence on the property was not large enough for their growing family so they began the construction process on the second dwelling. They were only aware they could utilize the smaller dwelling for guest purposes.

Ms. Fuller stated the situation feels sneaky. It appears like the applicant requested a less intense use to get approved and now that it is approved, less than 6 months later, they are requesting a more intense use.

Ms. Ruiz stated she is sure that was not the applicant's intent to be sneaky. It is her understanding that when the applicant went to PCD, no one explained to them that a variance was an option. It's possible that PCD staff didn't realize the applicant would be interested in pursuing a variance request.

Ms. Fuller asked if Ms. Ruiz assisted the applicant with the ALQ process?

Ms. Ruiz stated she did not assist the applicant through that process. If she had, she would have advised the applicant of the variance option.

Ms. Seago explained the added condition's requirement that the applicant pay the El Paso County Road Impact Fee with the PCD Department no later than 10 days after BOCC approval. The reason this condition is attached to the variance request is that the structure is already built. Normally, this fee would be assessed at building permit.

Mr. Risley asked if the applicant had any comments or concerns regarding the added condition?

Ms. Ruiz stated there was no issue.

Ms. Fuller asked if there were any oppositions from neighbors for this request?

Mr. Haas answered that there were two letters of opposition received from neighbors and one from a Black Forest land-use committee.

PC ACTION: MERRIAM MOVED / BAILEY SECONDED FOR APPROVAL OF CONSENT ITEM NUMBER 2D, VA-23-001 FOR A VARIANCE OF USE, FORD DRIVE ADDITIONAL DWELLING UNIT, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH THREE (3) CONDITIONS AND THREE (3) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (8-1).

IN FAVOR: BAILEY, BRITTAIN JACK, CARLSON, MERRIAM, MORAES, RISLEY, SCHUETTPELZ, AND TROWBRIDGE.

IN OPPOSITION: FULLER.

COMMENT: MS. FULLER hopes the BOCC looks closer at this request and she regrets not pulling it to be heard as a regular item.

3. CALLED-UP CONSENT ITEMS

2C. P231

BELLAMY

MAP AMENDMENT (REZONE) 1825 SUMMIT DR

A request by Steven and Jennifer Liebowitz for approval of a map amendment rezoning 5.23 acres from RR-5 (Residential Rural) to RR-2.5 (Residential Rural) to accommodate the future creation of two (2) single-family residential lots. The property is located at the northwest corner of the intersection of Old North Gate Road and Silverton Road. (Parcel No. 62040-01-018) (Commission District No. 1).

STAFF PRESENTATION

Mr. Carlson asked El Paso County Department of Public Works' review engineer, Carlos Hernandez Martinez, if it was required that the property access onto Summit Dr.?

Mr. Hernandez Martinez answered that the preference is to have this property access onto Summit Drive.

Ms. Merriam asked if an additional driveway will be required since there are already three existing driveways accessing Summit Dr. How many more driveways are going to be allowed, especially when the density is increasing?

Ms. Bellamy stated that would be part of the future process.

Mr. Hernandez Martinez answered that would be part of the platting process and an additional driveway would be allowed. The property owners could later request a secondary driveway access permit, which has its own set of requirements.

Mr. Risley asked how many driveway access permits currently exist on this property?

Mr. Hernandez Martinez answered that there are no current driveway permits.

Mr. Risley clarified that for the existing 5-acre lot, there are no driveway permits?

Mr. Hernandez Martinez stated that is correct.

Mr. Whitney asked Ms. Bellamy for more information regarding an existing lot to the east of this property that is zoned RR-2.5. Is that property also surrounded by 5-acre lots?

Ms. Bellamy answered that she found 1 parcel across Roller Coaster Road that is zoned RR-2.5.

Mr. Whitney thanked Ms. Bellamy for the information, stating the original report of this request described the property as surrounded by RR-5. He agrees that information is relevant.

Mr. Bailey clarified that there may be a reasonable explanation as to why there are no current driveway access permits onto Summit Road. He is sure there could be several other driveways in the area that were built before the existing driveway access fees were charged.

Ms. Bellamy agreed and confirmed.

APPLICANT PRESENTATION

Mr. David Gorman, the applicant's representative with Monument Valley Engineering, presented the first page of the Overlook Estates covenants (EXHIBIT A) following his full presentation. He explained that the covenants this parcel adheres to would allow for replat if rezoning is approved through the County. He stated this allowance is not the case everywhere; Sun Hills subdivision has covenants that would prohibit replating of lots.

PUBLIC COMMENT

Ms. Sarah Ostrem (online) is opposed to this application. She doesn't understand why rezoning would be allowed. She thinks that if the owner wanted to live on 2.5 acres, they should have bought a property zoned RR-2.5. She likens this request to driving down the road and telling an officer they should be allowed to drive 100 mph while everyone else must drive 55 mph.

Ms. Nancy Spaulding (online) is opposed to this application. She disagrees that higher housing capacity is needed in this area. She thinks that notion is “a city thing” coming from the density provided in Flying Horse. She likes being in her little pocket of land and would like it to stay that way. Even though traffic is only estimated to increase 10 additional trips per day, that is not considering the Discovery Canyon Campus south of this area. She says that while there may be growth around their neighborhood, they do not want to increase the growth within where they live.

Mr. Greg Wolff is in support of this application. He has lived in the area over 30 years and has seen a lot of growth. He is a Realtor. Overlook Estates is a perfect transition point when considering the outskirts of Colorado Springs. When Mark Gebhart was employed with the County, he said that one house on 5 acres was a waste of space. When looking at Discovery Canyon, he thinks it makes sense to transition to RR-2.5. He thinks home values will only go up. He thinks a 2.5-acre lot in Overlook Estates could be sold for \$400,000-\$425,000. The value of Sun Hills is the 5-acre lots in a covenant-controlled area. One of the letters of opposition stated that one main street on the south side of the neighborhood is higher. He stated he drove out there with an altimeter and determined that there is a 160' difference between the valley and the ridge. The values will go up. Small acreage towards the front would be a good transition.

Mr. Sigenthaler is opposed to this application. He believes that even if there has been change in the area, not all the change may have been good. He does not support breaking 5-acre lots into smaller parcels for financial gain. He doesn't know how enough wells will be allowed to support increasing density. He doesn't think this will be a one-time thing.

Mr. McLaughlin is opposed to this application. He discussed the criteria of approval versus the applicant's letter of intent (LOI). If subdivision of these 5-acre lots is allowed, that will result in significant change restricted in LDC 5.3.5(B). If the number of lots is doubled, the overall character will not be maintained as stated in the Master Plan Land-Use goal LU3. The LOI quotes a goal to meet transition requirements, but there does not need to be further transition than what's already there. He stated the LOI mentions a transportation corridor, the water plan, and expected growth. He thinks this zone change will set a precedent. It was mentioned in the presentation that there were multiple letters of support, but (in EDARP) there are currently 55 letters in opposition and 1 letter of support.

Mr. Squatrito is opposed to this application. Approval would set a precedent and adversely affect all properties currently zoned RR-5. The applicant's LOI makes broad assertions that they meet criteria, but he argues against that. He stated this rezone would result in a significant change to the density of the area. This would result in a negative impact and a material change of the surrounding character. There is no need to rezone for the general health, welfare, or safety of the community. If approved, the PC and BOCC should anticipate many follow-up rezoning actions which will have an overall negative impact. Properties in this area are on well and septic. If rezoning of the area is allowed, that potentially doubles the number of wells. That would put pressure on the Dawson Aquifer and put existing wells at risk. There will be increased traffic and population density affecting the character and infrastructure of this area.

Mr. Rubasitch is opposed to this application. He presented an updated Water & Wells Committee report (EXHIBIT B). He believes the new Master Plan encroaches upon rural environments with its removal of the Black Forest Preservation Plan (BFPP). The BFPP's intent

since the 1970's was to ensure the aquifers would maintain existing wells on 5-acre properties while sustaining the surrounding environment and wildlife. He stated that he has asked the BOCC when the BFPP was removed from the Master Plan, who voted in favor of its removal, and why it was removed, but never received an answer. He asked if the change was done legally? He stated that 3 of the 5 Commissioners, Geitner, Bremer, and Williams, receive over 30% of their campaign contributions from the same developers that wanted the BFPP removed. He asked if that was a conflict of interest? He asked if the Commissioners should recuse themselves when voting on applications by those developers? He stated 90% of applications are approved and that current residents are not being heard when they express concerns about congestion, crime, or water. Comm'r Williams recused herself from the Flying Horse North Sketch Plan. He hopes that it is taken into consideration that he does not feel represented yet a small group of developers is. He quoted the bylaws of the BOCC regarding conflicts of interest.

Ms. Seago clarified that the BFPP and all small area plans of El Paso County were repealed and replaced by Your El Paso County Master Plan. The BOCC is not the body who approves the Master Plan, the PC is. The BOCC does not vote on the Master Plan.

Mr. Rubasitch attempted to continue speaking about the depth of wells but was asked to cease by Mr. Risley due to exceeding allotted time and his comments not addressing the criteria of approval for this application.

Mr. White is opposed to this application. He noted that there are currently 55 letters of opposition and only 1 to support. Practical precedent in the area is that if someone wants to build a second dwelling, it is only used parttime by immediate family (ALQ). There are 0 examples of a person rezoning in this area and for this reason. He knows of at least 5 people that went through the process for an ALQ. He quoted a legal proceeding, Holly Development v. Board of County Commissions (1959), that "*Amendment to zoning ordinance should be made with caution and only when changing conditions clearly require amendment.*" Also, "*When a general zoning ordinance is passed, those who buy property in zoned districts have the right to rely upon the rule of law that the classification made in the ordinance will not be changed unless the change will be required for the public good.*" He pointed out that Mr. Wolff, in favor of this application, was denied rezoning of his parcel twice in the past. There is no evidence with this request varies from Mr. Wolff's denied requests other than the physical location. Any perceived issue regarding transition would have been evaluated and dealt with during the City's Flying Horse planning process that already took place and is irrelevant to the established neighborhoods today. The existing community is in place; no transition is required now. He quoted a Guidance Manual by Donald Elliot that used King's Mill Homeowners Assoc. v. City of Westminster (1976) as a citation, that "*Spot zoning is prohibited in Colorado on the theory that a local government cannot act merely to benefit a single landowner, but must act to benefit the general public.*"

Ms. Wood is opposed to this application. She stated she does not oppose changes that benefit the community, but this change will only benefit one individual. Flying Horse and the City's density has moved north. Existing residents of this community do not want to transition to smaller lots. She stated they successfully opposed a path from Flying Horse to Fox Run Park because they do not want people cutting through their neighborhood. The proposed rezone only benefits one person and will open the opportunity to more density.

Mr. Bosco is opposed to this application. He thinks approval will set a precedent.

Mr. Holst is opposed to this application. He stated that Mr. Wolff attempted a zoning change in 2014, was heard before the PC, and was denied twice. If those two requests in the same area were denied, why should this one be approved? He thinks this will be spot zoning. He also agrees with the concerns raised regarding water.

Mr. Bruning is opposed to this application. He stated that the criteria of approval and/or other individuals speaking have mentioned a change in the neighborhood, but this contiguous neighborhood of RR-5 properties has not changed since 1955. There may be change across the street or change in the entire city/county, but this neighborhood has not changed. Old North Gate Rd is the transition zone. The one example mentioned of an RR-2.5-acre lot 8-10 lots away is an anomaly that no one remembers how it happened. He does not agree with the claim of compatibility between RR-5 and RR-2.5.

Mr. Davis is opposed to this application. He lives immediately adjacent to the subject property. He is not opposed to the thought of the Liebowitz's subdividing *their* property, but he cannot imagine the entire neighborhood being subdivided as a transition zone. He is very concerned about the water sufficiency in the area. He recently had to replace his well so that it is drilled deeper but even that supply is iffy.

Ms. Haverluk is opposed to this application. She doesn't want a precedent set. She is also concerned about the additional well and septic. One property doing it is one thing, but once anyone in this neighborhood can do it, the water table will be affected. She also mentioned the increase in transportation if the entire neighborhood subdivided.

Mr. Gorman, the applicant's representative, responded to comments regarding water. He stated the LDC allows for the use of wells on 2.5-acre lots. The owners have already gone to the water court. He stated that the previous attempts to rezone in the area were done under a previous Master Plan. This request is being done under guidance of a revised Master Plan. He pointed out that while there are smaller lots south, within the City, there are also 1-acre lots to the west in the County. He thinks this corridor is appropriate for smaller lots.

Ms. Liebowitz, the applicant, stated that in her review of the opposition, the main concerns were water, traffic, and precedence. Recently, an Overlook Estates property owner completed a variance of use project to construct a second home on their property which borders Sun Hills. That second dwelling is currently occupied by a family member but is a totally second residence. She stated that property owner submitted a letter of opposition to this project stating they would be tempted to rezone as well and sell that second home separately. She states that the precedence of two homes on one lot has already been made. While a second dwelling on a single lot is an option they could already pursue, she is looking to increase her property value by rezoning.

Mr. Liebowitz, the applicant, listed the main concerns of traffic, water, wells, land value, precedence, and quality of life. He stated that most of those concerns are from residents of Sun Hills subdivision, which they are not a part of. Overlook Estates is comprised of themselves and 13 neighbors, and is situated between Flying Horse (in the City) to the south and Sun Hills to the north. Overlook Estates has different covenants than Sun Hills which allows subdivision of lots. Regarding traffic concerns, he stated most Overlook Estates residents access directly onto

Old North Gate Rd. Some residents access Summit Drive to Silverton, but most traffic on Silverton comes from residents of Sun Hills. EPC Public Works is already looking into the traffic on Silverton. Part of their preparation for this process was obtaining a second well decree for a potential second residence. A Judge issued that decree. Sun Hills is already bordered by higher density lots. RR-5 and RR-2.5 have the same intent of low density, single-family, rural residential. As applicants, they believe they have followed guidelines and regulations, and have gone above and beyond by ensuring they do not adversely affect water supply or quality of life.

Ms. Seago added that covenants are private property restrictions and are not enforced by or binding upon the County. Overlook Estates' covenants allowing subdivision is not relevant to the County's discussion either for or against. Water is reviewed at final plat if rezoning is approved. Any decree is reviewed at that time to determine adequate legal water supply.

DISCUSSION

Ms. Fuller thanked those members of the public whose comments were relevant to the approval criteria. She encourages anyone who wished to speak when this goes to BOCC focus on review criteria. She sees this request as spot-zoning. She thinks the request has the potential of causing a domino effect in the area and could result in significant change to the neighborhood. While it is true that a variance for a second dwelling could be obtained on the property, that is different from splitting this lot into two. She stated fewer people are able to afford constructing a second residence as opposed to zoning and subdividing to sell. She does not think this area has experienced any change. This property is in the middle of the neighborhood. She does not think this rezone is compatible to the area around it.

Mr. Carlson agreed with Ms. Fuller's comments and addressed the comment that this is a transition area. He disagrees. He thinks transition areas are needed when large tracts of land are being developed up against areas like this. He does not agree with the idea of going into an existing neighborhood to create a transition area where none existed before. He believes the RR-5 zoning type is under attack in the County. He thinks this neighborhood should be preserved.

Ms. Merriam stated that the people she knows that live on 5 acres have horses, which was not discussed. She thinks RR-5 and RR-2.5 each have a different look and feel to them.

Mr. Trowbridge agreed the previous comments. He does not see this as a compatible rezone.

Mr. Bailey stated each application is judged against the merits of established criteria. Latitude is limited. He believes private property rights are important, so he is struggling with this decision. This process is quasi-judicial, not democratic. He added that when trying to persuade someone that your position is correct, the method matters. Accusing the decision makers of being corrupt or less intelligent than you is not an effective method. The role of the Planning Commission is to consider the specific criteria of approval. The Planning Commission is a board of citizen volunteers. The elected officials are different. Accusatory speech at the BOCC hearing might cause them to discount your argument. Your opinion of corruption is not relevant to this application's criteria of approval. Also, depth and number of wells will be relevant at a later stage of the process.

Ms. Fuller agreed that Mr. Bailey often votes in favor of private property rights. She agrees that anyone who owns property has the right to ask if they can change the zoning, but it is within the Planning Commission's ability to say no.

Mr. Whitney would not be in favor of this application. He agrees with the comments made by the other PC members. He agrees that the 5-acre zoning type is under attack. People who live on 5 acres do so because they want to live on and around 5-acre lots.

Mr. Moraes addressed a question made by one member of the public, asking what is the point of zoning laws. He stated that any landowner has the right to ask for a rezoning. During the process with PCD staff, rezone requests like industrial in the middle of suburban are likely going to receive advisal that they are not likely going to be approved. However, the property owner has the right to ask. At some point, this was all one piece of land that has been subdivided. The land most people are living on now was something else before. He reiterated the approval criteria at the rezoning stage. Surrounding neighbors are the boots on the ground, so he appreciates neighbors attending these public hearings. He reiterated that the PC approved the Master Plan and part of that resolution to adopt stated the small area plans were rescinded. Many of their goals may be incorporated into the new Master Plan. He does not think this application is compatible with the surrounding area.

PC ACTION: CARLSON MOVED / FULLER SECONDED FOR DISAPPROVAL OF CALLED-UP CONSENT ITEM NUMBER 2C, P-23-001, FOR A MAP AMENDMENT (REZONE), 1825 SUMMIT DRIVE, CITING THAT THE APPLICATION DOES NOT MEET THE REQUIREMENT OF COMPATIBILITY TO EXISTING USES AND ZONING IN ALL DIRECTIONS, AND THAT THIS ITEM BE FORWARDED AS A RECOMMENDATION OF DISAPPROVAL TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED (7-2).

IN FAVOR: BAILEY, CARLSON, FULLER, MERIAM, MORAES, RISLEY, AND TROWBRIDGE.

IN OPPOSITION: BRITTAIN JACK AND SCHUETTPELZ.

COMMENT: MS. BRITTAIN JACK mentioned private property rights being a large part of her vote against the motion. It is not illegal to make money. It is not illegal to be a developer. She stated the County needs to grow and needs affordable and attainable housing. MR. SCHUETTPELZ also mentioned private property rights. He also believes RR-2.5 is compatible with RR-5 because they are in the same Large Lot Residential Placetype of the Master Plan.

4. REGULAR ITEMS. NONE.

MEETING ADJOURNED at 11:23 A.M.

Minutes Prepared By: Miranda Benson

Exhibit A

160058

BOOK 1814 PAGE 530

JUL 12 1960

DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

WHEREAS The undersigned, OVERLOOK ESTATES, INC. is the owner of the following-described property, to-wit:

Overlook Estates according to plat thereof in Plat Book B-2 at Page 73 of the El Paso County, Colorado public records, and

WHEREAS it is the desire of the undersigned to establish restrictions and protective covenants applicable to and for the benefit of all of the above-described real property:

NOW, THEREFORE, THESE PROTECTIVE COVENANTS AND RESTRICTIONS:

For and in consideration of the premises and in further consideration of the declarations herein set forth and in further consideration of the future purchases and transfers of real estate lying within the above-described tracts, it is hereby declared that all of the above-described real property is and shall be used, held, transferred and conveyed subject to the following restrictions and protective covenants, to-wit:

PART A.

A-1. LAND USE, BUILDING TYPE AND OCCUPANCY. The land contained herein shall be used for residential purposes. No building shall be erected, altered, placed or permitted to remain, except detached, single-family dwellings not to exceed 35 feet or two stories in height. Private garages, private stables and guest houses may be permitted in accordance with restrictions hereinafter set forth, except that one tract may be used as a site for a community club for the use and benefit of all of the tracts in said subdivision, subject to approval of the Architectural Control Committee.

* A-2. SUBDIVISION. Five acres shall be the minimum sized building site, provided, however, that in the event all or a portion of the subdivision should be rezoned by the appropriate zoning authority so as to allow smaller building sites, then such zoning shall control as to any portion so rezoned, provided further that in no event shall any building site be less than one acre in size. *

Exhibit B

Significant Facts About the Denver Basin and Individual Wells

Compiled by the Black Forest Water & Wells Committee

February 2023

Water is a very precious and limited resource in Colorado

Black Forest gets an average of 18 inches of precipitation per year – 88 inches of snow

Colorado Springs gets 15 inches of precipitation – 35 inches of snow

The Denver Basin is a giant bowl stretching from Greeley in the north to Colorado Springs in the south

The basin extends from the front range out to Limon

The basin is actually four bowls inside each other representing four separate aquifers

The aquifers are the Dawson (top,) Denver, Arapahoe and Laramie-Fox Hills (bottom.)

Garden of the Gods and Red Rock Open Space are edges of the bowls sticking up out of the ground

State water officials believe the four aquifers are sealed from each other

Tests in one area from an Arapahoe well affected the adjacent Denver and Dawson aquifer

No one knows for sure how much the aquifers are sealed from each other

Drilling logs do not show a clear, impermeable boundary between aquifers

If these bowls are being recharged at all, it is a slow process over generations of time

Only a little over half of the Denver Basin water can be economically removed

Through continuous, long-term use, a well becomes less and less efficient

After several years, it is not economical to pump because of decreasing output

A local well-driller with 30 years of experience said the geology of the Denver Basin is not unified or homogeneous

Basin has multiple interlocking and overlapping layers of sand, gravel, sandstone and claystone

Wells 1/4 mile apart can produce widely varying amounts of water

Wells only 200 feet apart can have widely different static levels

Having a water allocation or water right is no guarantee of actual amount of water

“Paper water does not equate to wet water”

Water use in the Denver Basin is 62% agriculture, 20% municipal and 12% domestic (private wells)

For residential households in the Black Forest, the State of Colorado considers water use as follows

An acre foot of water is 326,500 gallons which is 1 acre (about a football field) 1 foot deep in water

The average household uses 0.35 acre-feet of water per year. This is 313 gallons per day.

90% of the water used in a household is returned into the ground via the septic system

Just 10% is actually consumed or evaporated into the air

15% of the water used for watering gardens and lawns is returned into the ground

85% of irrigation water is evaporated into the air and not soaked into the ground

100% of the water used for animal watering is consumed and none is returned into the ground

Colorado Springs gets water from the Arkansas River and from snow runoff on the Western Slope

Water piped from the Western Slope through Twin Lakes near Buena Vista and into Arkansas River

A secondary pipeline comes over the front range just south of the Air Force Academy

Southern Delivery System (SDS) is a 24-inch waterline from Pueblo Reservoir to Colorado Springs

At present, Colorado Springs Utilities has water rights and supplies above the current demand

CSU also has extensive Denver Basin water rights

CSU policy is not to use Denver Basin aquifer water except in an emergency

Annexed developments surrender their water rights to CSU except for golf courses and ponds

Flying Horse and Flying Horse North water their golf courses with aquifer water

Wolf Ranch created Wolf Lake (6 acres) with aquifer water

So far, Colorado Springs Utilities has not provided water to anyone outside the city limits

The city is considering providing water to entities outside the city limits

Providing water this way would be a revenue boost to Colorado Springs Utilities

Colorado Springs uses 40 million gallons per day in the winter and 100 million gpd in the summer

Thousands of homeowners rely on Denver Basin water for their homes

The Denver Basin has well over 100,000 wells, but the exact number difficult to find

El Paso County alone has over 22,000 private wells

Highlands Ranch in Denver (100,000 residents) uses Denver Basin water for 10% of its needs

70% of water used in the South Denver metro area is groundwater

Castle Rock, Parker and other municipalities use Denver Basin water

Water levels in the Denver basin are declining in several areas

Around the city of Castle Rock some wells have been declining up to 30 feet/year

The Denver basin is thinner in the Castle Rock area

The Castle Rock area has a huge number of Denver basin wells

Fortunately, according to a local well driller, Black Forest wells have been holding quite steady for many years

The Dawson aquifer is much thicker in the Black Forest than further north

The State of Colorado Division of Water Resources allocates how much water anyone can pump

The state has models that tell the thickness of the aquifer at any given location

The decree takes the thickness of the aquifer (feet) times the acreage = acre-feet

This is called the saturated thickness

The state considers 0.2 or 1/5 of each cubic foot to be water

Acre-feet X 0.2 = acre-feet of water available

Water allowed per year is available water divided by 100 for 100-year duration of aquifer

Figure is again divided by 3 for 300-year rule

About 40% of the water is not economically able to be extracted because the pumping rate

declines with pumping and makes it too expensive and unproductive to keep pumping

Amount of water allocated for pumping is based on 1985 geological model

The amount assumes pumping the aquifers dry in 100 years

The 100-year rule was initiated in 1973

We are 46 years, almost halfway, into the 100 years toward "dry" wells in many parts of the state

El Paso County initiated a 300-year rule in 1986 to extend available water for private wells in the county

El Paso County permits only 1/3 of the state allocation per year

Theoretically the 300-year rule should provide water for two more centuries

The 300-year rule was challenged in the Colorado Supreme Court but was upheld for El Paso County

In spite of the 300-year rule, all of the northern El Paso County water providers need more water

Water providers were told they had enough water for their developments

Continuous pumping is resulting in diminishing returns from well production

Woodmoor Water says well that formerly pumped 100 gpm only pumps 40 gpm now

Monument, Palmer Lake, Woodmoor, Tri-View, Meridian Ranch, Paint Brush Hills and Falcon need more water

Several of these water providers have purchased additional water rights on ranches south of Colorado Springs and near Leadville

Access to that water not available at this time

Without renewable water rrbn development south of Black Forest will potentially use huge amounts of Denver Basin water

Sterling Ranch, The Retreat at TimberRidge and The Ranch will total 7400 homes

The entire Black Forest has 6600 homes with private wells by comparison

These developments are currently planning to use Denver Basin water from the Black Forest

Insufficient groundwater exists under these developments to serve all the homes

Water rights on Sundance Ranch, Flying Horse North, High Forest Ranch, Bar-X Ranch and McCune Ranch purchased to provide more water

A potential annexation plan may mean some of these developments will use city water

Unintended consequence of annexation may be developments with small urban lots

Development requirements in Colorado Springs city limits have been more stringent than for rural developments, resulting in higher building costs.

Developers have leapfrogged over Banning-Lewis Ranch into the county because of stringent city requirements

Resulting developments often use Denver Basin water instead of renewable city water

New cooperative agreement will require city standards for county urban developments

Cherokee Metropolitan District has obtained significant water rights in the Black Forest

Sundance Ranch, Flying Horse North, Shiloh Ranch and County Line Road water rights were purchased

State granted permission to pump 1246 acre-feet of Dawson water per year from 23 well sites

Cherokee has permission to pump a total of 3708 acre-feet of water per year from all 4 aquifers

Compared to rural, residential development, this is 10 times as much water use as for 5-acre lots

All the well sites are on the property boundaries so half of the water pumped belongs to neighbors

The water is being piped to supply 18,000 customers in southeast Colorado Springs

Cherokee Metro has committed 2025 af/yr of water to Sterling Ranch

This is 1.8 million gallons of water per day.

Cherokee Metro District wells already drilled are not producing significant water

Only 4 wells have been drilled to date

One Denver well drilled to 1970 feet (12-inch bore) and produced only 50 gpm

One Arapahoe well drilled to 2520 feet (12-inch bore) and produced 450 gpm

One Dawson well drilled to 1044 feet (12-inch bore) and produced 68 gpm

A second Dawson well drilled to 1030 feet (12-inch bore) and produced 65 gpm

The two Dawson wells do not even have a pump installed and are not producing

These wells cost around \$750,000 to drill

Three of these four wells are producing very poorly

These wells suggest that commercial extraction may not be productive or economical

Transmissivity or flow of water back and forth underground may not be very rapid

Clay and sandstone don't allow water to flow laterally very easily

Water seems to be located in "pockets" within clay and sandstone layers

"Pockets" of water sufficient for private wells but not for commercial extraction

Water seems to not flow back into large wells fast enough to produce profitable results

This is an excellent example of "paper water may not equal real water."

Loop proposal suggested in late 2021 to pipe SDS water north through Cherokee Metro pipeline

Cherokee Metro pipeline currently carries water from Sundance Ranch to SE Colorado Springs

Cherokee Metro would get SDS water in exchange for CSU using Cherokee pipeline

Cherokee wishes to be absorbed into CSU but high debt is stumbling block

Pipeline would be extended from Sundance Ranch to Monument and Palmer Lake

Branches could bring water to Falcon, Meridian Ranch and Paint Brush Hills

Pipeline would also provide water for Sterling Ranch, TimberRidge and the Ranch

Renewable water would be provided to northern water providers to save Denver Basin water

Wastewater would be piped south to connect to CSU wastewater system along I-25

Estimated cost around \$134 million

Falcon Area Water Authority (FAWA) is planning a huge water project in Black Forest

Project will pipe water from 27 sites to Falcon and Sterling Ranch area

Water coming from High Forest Ranch (7), Bar-X Ranch (16) and Winsome (4) sites

Water rights granted for 1270 acre-feet/year to be pumped

FAWA officials say more water rights are for sale in the Black Forest

Remains to be seen if "paper water equals wet water"

Future Potential Uses of Denver Basin Water

A developer has obtained rights to 39,000 acre-feet of water per year from Greenland Ranch

Greenland Ranch is a conservation easement between Monument and Castle Rock

Greenland Ranch has thousands of acres of native grassland

Conservation easement will not be developed but will remain as open space

Front Range Water Company (Sun Resources) is proposing a 24-inch pipeline to Denver

Placed in perspective, this is 35 million gallons of water per day they are allotted.
This water would be pumped to an eastern Denver suburb
Adjudicating a well means legally obtaining the water rights under your property.

Adjudicating has little value unless a high water user is near your property
If the high water user affects your well, you may sue for damages
Without water rights, private wells are considered exempt wells with no rights
Adjudicating will cost \$500-1000 in attorney fees and will take up to 6 months

**Common Sense Principles That SHOULD Logically
Govern Water Use in the Denver Basin**

The Dawson aquifer should only be used for private wells

**All wells, including commercial wells, should be sited well away
from property boundaries**

**All urban density developments should be required to use
renewable water only**

Paper water does not equal real water

Matthew R