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## **EL PASO COUNTY PLANNING COMMISSION**

### **MEETING RESULTS (UNOFFICIAL RESULTS)**

Planning Commission (PC) Meeting  
Thursday, May 18<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:** TOM BAILEY, JAY CARLSON (EXCUSED AFTER ITEM 4B), TIM TROWBRIDGE, BECKY FULLER, ERIC MORAES, KARA OFFNER, AND CHRISTOPHER WHITNEY.

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

**PC MEMBERS PRESENT AND NOT VOTING:** NONE.

**PC MEMBERS ABSENT:** SARAH BRITTAIN JACK, JOSHUA PATTERSON, BRYCE SCHUETTPELZ, AND BRANDY MERRIAM.

**STAFF PRESENT:** MEGGAN HERINGTON, JUSTIN KILGORE, MINDY MADDEN, RYAN HOWSER, CRISTEL MADDEN, ED SCHOENHEIT, CHARLENE DURHAM, JEFF RICE, KYLIE BAGLEY, KELLY HILLS, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

**OTHERS PRESENT AND SPEAKING:** LINDA SPUR, JIM WHITE, AND ELIZABETH MCCOY.

#### **1. REPORT ITEMS**

**A. Planning Department.** The next PC Hearing is Thursday, June 1<sup>st</sup>, 2023, at 9:00 A.M.

**B. Designation of Officers.**

**PC ACTION:** TROWBRIDGE MOVED / MORAES SECONDED TO NOMINATE BAILEY AS CHAIR AND CARLSON AS VICE-CHAIR OF THE PLANNING COMMISSION. THE MOTION WAS APPROVED (7-0)

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

#### **2. CONSENT ITEMS**

**A. Adoption of Minutes of meeting held May 4<sup>th</sup>, 2023.**

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

**B. P2219**

**BAGLEY**

**MAP AMENDMENT (REZONE)  
6385 VESSEY ROAD REZONE RR-5 TO RR-2.5**

A request by SMH Consultants for approval of a map amendment (rezoning) from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The 14-acre property 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. 52060-00-065) (Commissioner District No. 1).

**PC ACTION: THIS ITEM WAS CALLED-UP TO BE HEARD AS A REGULAR ITEM.**

**C. PUDSP227**

**PARSONS**

**PUD/PRELIMINARY PLAN  
FOURSQUARE AT STERLING RANCH PUD PRELIMINARY PLAN**

A request by Classic SRJ Land, LLC, for approval of a combined planned unit development and preliminary plan to create 158 single-family residential lots in one phase. The 36-acre property is zoned RR-5 (Residential Rural) and is located east of Vollmer Road and adjacent to the north of the future Briargate Parkway/Stapleton Road extension. The PUD/preliminary plan is within the approved Sterling Ranch Sketch Plan area. If the request for a PUD/preliminary plan is approved, the applicant will be required to obtain final plat approval prior to the issuance of any building permits on the property. (Parcel Nos. 52000-00-552, 52000-00-553, and 52330-00-016) (Commissioner District No. 2).

**PC ACTION: THIS ITEM WAS CALLED-UP TO BE HEARD AS A REGULAR ITEM.**

**3. CALLED-UP CONSENT ITEMS**

**2B. P2219**

**BAGLEY**

**MAP AMENDMENT (REZONE)  
6385 VESSEY ROAD REZONE RR-5 TO RR-2.5**

A request by SMH Consultants for approval of a map amendment (rezoning) from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The 14-acre property 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. 52060-00-065) (Commissioner District No. 1).

**STAFF PRESENTATION & APPLICANT PRESENTATION**

**Mr. Moraes** asked for Ms. Bagley's analysis of how the forested area, designated a key area in the Master Plan, will be impacted. The Master Plan says that any redevelopment in this area should be of lesser intensity to mitigate impacts.

**Ms. Bagley** answered that there is a small group of trees on the property which will remain. Many of this property's trees burned down in the Black Forest Fire. A minor subdivision

application has also been submitted for review, anticipated to be heard on 7/6/2023. If the rezone is approved, they are proposing to subdivide their parcel into three lots which range from 4 to 5 acres. Their proposal maintains a rural nature.

**Mr. Moraes** asked if there were other properties in the area that are under 5 acres.

**Ms. Bagley** stated that is correct. She referenced an area map.

**Mr. Bailey** clarified that even if they are under 5 acres, they are still zoned RR-5. Any properties in this area that are under 5 acres were a result of the previous zoning regulations. He asked if a rezone was the only avenue available to subdivide this parcel.

**Ms. Bagley** stated that is correct. A rezone is the only way this property owner could subdivide into 3 lots because their parcel is less than 15 acres.

**Ms. Fuller** asked if the applicant could request to subdivide to 5 lots if the rezone is approved.

**Ms. Bagley** answered that 5 lots would meet the minimum 2.5-acre standard; however, they have already applied to subdivide to 3 lots. They are scheduled to appear before PC on 7/6/2023.

**Ms. Fuller** asked why the rezone and subdivision proposals didn't come together.

**Ms. Bagley** answered that they would not meet the minimum lot size until the rezone is approved.

**Ms. Fuller** asked if there is any protection to the neighbors that this only be divided into 3 lots.

**Ms. Bagley** stated there would be nothing prohibiting the applicant from requesting 5 lots.

**Mr. Bailey** stated he was more comfortable with this proposal knowing that there is already an application submitted for a minor subdivision to 3 lots.

**Mr. Carlson** asked if there was another other way to subdivide to 3 lots, perhaps a variance?

**Ms. Herington** asked Ms. Bagley what the proposed sizes of the lots would be.

**Ms. Bagley** answered that one is 4 acres, one is 4.3 acres, and one is 5.3 acres.

**Ms. Herington** stated that they may have been able to do a lot size variance, but there are 2 lots less than 5 acres. It may have been the staff's determination that it be more appropriate to pursue a rezone instead of seeking variance.

**Ms. Seago** added that there is a process for administrative relief for up to 20% reduction in lot size; however, to seek that variance, the applicant must show a hardship. That may have been a factor.

**Mr. Trowbridge** commented that the minor subdivision application will be coming to the PC. They can remember this conversation if the applicant tries to change their proposal.

**Mr. Bailey** reiterated that the request for a minor subdivision has already been submitted.

**Mr. Kilgore** mentioned that it is within the board's authority to recommend an added condition that subdivided lots be limited to a certain size. He suggested discussing that with the applicant.

**Ms. Seago** recommended giving the applicant the opportunity to address comments that have been made. She also affirmed Mr. Kilgore's remark. She has seen it done in the past that something be rezoned to a less dense zone district but have an interim limit on the lot sizes. She doesn't think it's a great approach philosophically, but it is legally supportable.

**Mr. Moraes** stated that he is less concerned about the lots less than 5 acres. If this rezone is approved, the 5.3-acre lot could potentially come back to request further subdivision. If the current owner of the 5.3-acre lot were to sell it in the future, the next owner could split it. He is concerned that this could potentially result in 4 homes on 14 acres, quadrupling the current intensity, when the Master Plan says any redevelopment of this area *should* be of lower intensity.

**Mr. Carlson** asked Ms. Seago if they could suggest a condition that the applicant abide by the sizes of lots within the application that has already been submitted for the minor subdivision.

**Ms. Seago** recommended addressing the concern by imposing a minimum lot size rather than binding it to an application that is still in review. If the condition for this rezone is that there be a minimum lot size of 4 acres, then the 5-acre parcel could not be further subdivided.

**Mr. Brett Louk**, with SMH Consultants, stated that he discussed the concern with the owner. He stated they would be agreeable to the condition that no lot be smaller than 4 acres.

**Ms. Seago** restated a question that was asked by the audience. The question was, "Why does it need to be rezoned if the Planning Commission is leaning toward setting a minimum lot size of 4 acres?". The answer would be that the current zoning is RR-5 which has a minimum lot size of 5 acres. The next step down in terms of El Paso County zone districts is RR-2.5 which has a minimum lot size of 2.5 acres. However, the owner has indicated they are willing to accept a restriction to that RR-2.5 zoning that no lot in this subdivision will be less than 4 acres.

**Ms. Herington** suggested this item be heard as a regular item if citizens wish to speak.

**Mr. Bailey** stated that he provided the opportunity earlier, so he believes that requirement has been satisfied.

**Mr. Trowbridge** suggested this item be treated as a Regular Item.

## **PUBLIC COMMENT**

**Ms. Linda Spur** lives in the area and has concerns about the proposal. She is concerned about water. She would prefer to see a variance instead of a rezone. This would add to traffic. If a road needs to be added for access, that will further reduce the lot sizes.

## **DISCUSSION**

**Mr. Moraes** asked Ms. Bagley to address when water sufficiency and traffic are evaluated.

**Ms. Fuller** asked for the criteria of approval to be displayed.

**Ms. Bagley** pulled up the criteria and answered that water and traffic are both reviewed during the subdivision process.

**Mr. Louk** stated the applicant had no further comments and is agreeable to the added condition.

**Ms. Fuller** stated she believes the concerns will be resolved with the added condition. The PC appreciates public comments. The approval criteria is displayed to show what the PC must consider. She believes that this application will meet the spirit of RR-5 even though the zoning is changing. She is in favor of the proposal.

**Mr. Moraes** added that each stage of the process has its own approval criteria. He also appreciates public comment because neighbors often bring up unique facts of what's going on in the area. The neighbors are the boots on the ground. Those concerns can receive extra attention because they were brought up by the public.

**Mr. Bailey** commented that the applicant also has the opportunity to hear those concerns and be open to compromise, so everyone is satisfied.

**PC ACTION: FULLER MOVED / CARLSON SECONDED TO RECOMMEND APPROVAL OF CALLED-UP CONSENT ITEM NUMBER 2B, P-22-019 FOR A MAP AMENDMENT (REZONE), 6385 VESSEY ROAD REZONE RR-5 TO RR-2.5, MODIFYING THE RESOLUTION ATTACHED TO THE STAFF REPORT TO ADD A THIRD CONDITION FOR 4-ACRE MINIMUM LOT SIZE, RESULTING IN THREE (3) CONDITIONS AND ZERO (0) NOTATIONS, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

**2C. PUDSP227**

**PARSONS**

**PUD/PRELIMINARY PLAN  
FOURSQUARE AT STERLING RANCH PUD PRELIMINARY PLAN**

A request by SMH Consultants for approval of a map amendment (rezoning) from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The 14-acre property 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. 52060-00-065) (Commissioner District No. 1).

**STAFF PRESENTATION & APPLICANT PRESENTATION**

**Mr. Trowbridge** mentioned that he emailed PCD staff to request they discuss the density of the application and the appropriateness of Tract H, which is a full-scale detention pond. While the applicant has the right to include the tract, he doesn't think it should be part of the computation for density. He is requesting that staff address density and how the proposal fits within the sketch plan.

**Mr. Howser**, filling in for Ms. Parsons, referred to a slide in the presentation. He stated after calculating what the gross density would be in the subject area if Tract H were not included, it would be 6.8 dwelling units per acre (du/ac), which satisfies the sketch plan's 5-8 du/ac identification.

**Mr. Trowbridge** asked why it was appropriate for Tract H to be included in this preliminary plan when it is from a separate area across a proposed road that has a different density.

**Mr. Howser** stated that if the applicant were to later propose subdivision of Tract H, it should meet the lower density identified on the sketch plan as 3-5 du/ac (yellow on the sketch plan). He reiterated that if Tract H were removed from the calculation, this proposal would still meet the 5-8 du/ac identified as the orange section of the sketch plan.

**Mr. Trowbridge** stated including Tract H raised a red flag for him. By including Tract H, the area increased by 44%. He doesn't understand why that is allowed to be pulled into this proposal.

**Mr. Howser** apologized for the confusion.

**Mr. Trowbridge** asked for an explanation of the difference between gross and net density.

**Mr. Howser** explained that net density is used when trying to get an evaluation after everything else is removed. Just dwelling units and acreage, excluding the roadways, open space, etc. In some cases, it may be beneficial to consider net density, but there wouldn't be houses without roads. Landscaping and open space is required for a subdivision, so it doesn't make sense to exclude those in the calculation. In this proposal, it is relevant to include Tract G (which is within the proposed residential) in the calculation of overall density of this development because it is clearly part of the development and is ancillary to the residential use. Excluding all roads and open space would be disingenuous. He does understand why it would make sense to exclude Tract H. It's within a different density of the sketch plan.

**Mr. Trowbridge** stated that when he removed Tract H, he calculated a gross density of 6.2 du/ac. When he removed both tracts as well as public rights-of-way, he calculated a net density of 8.4 du/ac, which made him think this proposal didn't meet the requirements of the sketch plan. He now understands that the gross density is the controlling factor. He mentioned that he had an issue with the staff analysis regarding the open space calculation. He stated stormwater facilities should be excluded from open space calculation if they are more than 10% of the required open space. He believes Tract H should be excluded from that calculation.

**Mr. Rice**, with Public Works Engineering, explained that because Tract H provides drainage facilities for this proposed subdivision, it is required to be platted and addressed for ownership and maintenance. Including Tract H in this preliminary plan sets the stage for when the final plat is completed, it would be included for ownership and maintenance by the metro district.

**Mr. Bailey** expressed gratitude for the explanation. He commented that he believes within a PUD sketch plan, an applicant can choose to develop as they see fit, so including Tract H in this application may just be how it works out like for engineering reasons.

**Mr. Carlson** asked for clarification regarding the executive summary of the staff report mentioning the preliminary plan includes 158 single-family residential units on 13.5 acres. Does that exclude roads?

**Mr. Trowbridge** stated that it excludes the roads.

**Mr. Kilgore** advised Mr. Bailey that Ms. Benson will add Mr. Trowbridge's email to the PIO folder so it can be presented to the board.

**Mr. Carlson** asked for clarification on whether Tract H will need to be rezoned later. Could they move the detention pond somewhere else and develop Tract H at the 5-8 du/ac density?

**Mr. Rice** stated that it is unlikely this pond will be moved or changed based on the amount of improvement being designed to go there and the need to detain flow before it reaches Sand Creek.

**Mr. Bailey** asked for confirmation that if the applicant uses Tract H in this calculation of density, they cannot use it again in a later application.

**Mr. Howser** stated that is correct. He added that if they later proposed residential in the tract, it would still have to be consistent with the sketch plan unless they request an amendment.

**Mr. Trowbridge** stated that he had assumed the detention facility in the tract was meant to serve a broader area. He understands that the applicant is doing it now for timing and to meet the need to get this in place.

**Ms. Shagin**, with NES, stated that she agrees with the assessment of the net density and added that without Tract H, the application still meets the PUD requirements for open space.

#### **NO PUBLIC COMMENT OR FURTHER DISCUSSION**

**PC ACTION: MORAES MOVED / FULLER SECONDED TO RECOMMEND APPROVAL OF CALLED-UP CONSENT ITEM NUMBER 2C, PUDSP-22-007 FOR A PUD/PRELIMINARY PLAN, FOURSQUARE AT STERLING RANCH PUD, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH ELEVEN (11) CONDITIONS AND THREE (3) NOTATIONS, WITH A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

#### **4. REGULAR ITEMS**

##### **A. PUDSP229**

**HOWSER**

##### **PUD/PRELIMINARY PLAN WATERSIDE**

A request by Lake Woodmoor Holdings, LLC, for approval of a map amendment (rezoning) from R-4 (Planned Development) to PUD (Planned Unit Development) and a preliminary plan for 52 single-family attached (townhome) lots and six (6) tracts. The 7.53-acre property is located on the east side of Woodmoor Drive, approximately one-half of a mile north of Highway 105. The applicant is requesting the PUD development plan be approved as a preliminary plan and a finding of sufficiency with regards to water quality, quantity, and dependability. If approved, the applicant will be required to submit and receive approval for final plat applications prior to issuance of any building permits on the site. (Parcel Nos. 71114-04-112 through 71114-04-194 (83 total parcels)) (Commissioner District No. 1).

#### **STAFF PRESENTATION & APPLICANT PRESENTATION**

**Mr. Moraes** read a statement from the staff report: "During peak school hours the street connections through the project will provide an alternative to existing background traffic that is currently turning onto Woodmoor Drive using the "Barn"/north school access." He asked what that meant.

**Ms. Durham** answered that it is a quote from the TIS. She referenced a photo of the slideshow to point out the Barn access and how it lines up with the school access. Her understanding is that if traffic from the school causes that access point to become congested, people can travel further along the internal road to access Woodmoor Drive at the second access point.

**Mr. Moraes** asked if the HOA could limit access to that road since it is a private road.

**Ms. Durham** stated that if they found it to be a nuisance, they could put in a gate or something.

**Mr. Moraes** asked if there had been any discussion about improvements to the shared driveway with The Barn and the southern townhomes.

**Ms. Durham** answered not at this stage. That may be discussed at final plat.

**Mr. Moraes** stated that he is concerned that he can foresee an HOA deciding they don't want people going through there anymore after having to do repairs. The presentation continued.

**Mr. Moraes** asked how much of the designated no-build area was actually in the water.

**Mr. Swensen**, with NES, answered anywhere from 30% to 50%. He added that it would be nice to designate that area as no-build to preserve the views.

**Mr. Trowbridge** asked if there was no access to Woodmoor Drive at the hammerhead due to its spacing with the Deer Creek Road intersection.

**Mr. Swensen** stated that is correct. He stated they wanted to minimize the access points to Woodmoor Drive. He added that the hammerhead is one of their PUD modifications. It does meet the fire turnaround requirements. Emergency services has reviewed the plans.

**Mr. Moraes** stated that when he saw the 4 requested PUD modifications, he reviewed the development standards and requirements. He stated that he can infer why the roads need to be narrower due to the walking path, but he doesn't see justification for the hammerhead. If a cul-de-sac were used instead, there would likely be more open space. After reviewing the Letter of Intent, he still doesn't see justification.

**Mr. Swensen** responded that a cul-de-sac would give more paved open space. The reason they pursued a PUD was to allow a more tailored approach. The hammerhead is how the proposal would lay out best while providing the density to make the project viable and preserving the open space that's more valuable. Because they couldn't connect with Deer Creek Road, they couldn't line buildings along both sides of the internal road.

**Mr. Moraes** stated that he understands that reasoning, but viability isn't one of the approval criteria for a modification of the development standards. He reiterated that he understands the reason for the narrower roads, but he doesn't see the justification for the hammerhead.

**Mr. Bailey** asked if making these internal roads private instead of public made a difference in meeting the justifications that Mr. Moraes mentioned.

**Ms. Durham** answered that in reviewing that modification, making it a private road gives them more leniency. The only thing being accessed off that road will be the 4 units, so it will have minimal traffic. They ensured that they had the fire department's approval. She also considered that they are limiting access to the public roads. The hammerhead seemed a viable situation with the layout provided. She doesn't see an issue with allowing it.

## **PUBLIC COMMENT**

**Mr. Jim White** stated many of the issues raised at the community meeting were not addressed. He is concerned about traffic because traffic outside the school there is horrible during pick-up and drop-off times. The turn lane used by people getting their kids from school can be backed up for a block and a half. Deer Creek Road to Monument Hill Road is full of potholes. He doesn't think the estimated traffic out of the development is accurate. He is also concerned about water. He stated that everyone that uses Woodmoor Water & Sanitation District pays an additional \$35 fee per month for future water. He stated there's no way water can be guaranteed for 300 years. He thinks people are choosing to ignore a severe water crisis. He stated there is a difference between R-4 and PUD because the majority of the Woodmoor area is .5 and 1-acre lots.

**Ms. Elizabeth McCoy** stated that when Palmer Ridge High School was built 10 years ago, they promised that traffic wouldn't be affected, and they would make repairs to Deer Creek West. The road may be designated a low-speed road, but as people travel downhill, it becomes a high-speed road. There are no sidewalks and kids traveling to school are not safe. She has experienced the traffic when trying to drop her kids off at school, which is horrible. Parking is also an issue. The hammerhead does not match the Woodmoor design; there are cul-de-sacs everywhere. She has concerns about water because this is the first time she has been on every-other-day watering restrictions. Why is Woodmoor Water telling the PC they have plenty of water when they are telling the residents that they don't? This area doesn't pass mill-levies for the schools, so the schools are overcrowded. Adding more houses will be overwhelming.

**Mr. Swensen** stated the TIS assessed school traffic and identified that the morning peak time was the only area of conflict but would not overburden the roadways. The traffic report does not assume one trip per day, but seven. He pointed out that what is currently being proposed is less than what is already approved. He stated that the applicant is working with the Woodmoor Improvement Association to advance a Safe Routes to School plan that will link trails and sidewalks in the area. Regarding water, the applicant is paying \$370,000 in supplemental water fees to the district in addition to a \$20,000 fee per unit. There is an overall water issue, but there is sufficient water for this development. There is also a housing crisis. He added that it was not assumed people would be exiting Woodmoor Drive to use the internal road to get back onto Woodmoor Drive. The Lake Woodmoor subdivision, 1.6 du/ac, is within R-4 and has a tighter density than the Woodmoor Oaks subdivision, but also has open space. An area south of Deer

Creek Road called toboggan hill and was made possible due to the PUD style of zoning. There are denser housing areas which keep open spaces preserved.

## **DISCUSSION**

**Mr. Moraes** asked if the traffic study considers movement of the intersection, or does it also consider the queuing that happens for a school.

**Ms. Durham** answered that when a school is in the area, the traffic study considers a third peak hour, to include the afternoon school pick-up. The study considers a morning time, which indicated an overlap between people leaving for work and kids being dropped off at school, a mid-afternoon time, and an evening time.

**Mr. Moraes** asked if the study only considered turning movements.

**Ms. Durham** answered that it considers the entire scenario. Schools present a unique situation.

**Mr. Moraes** asked if Ms. Durham could elaborate on an anticipated project on Deer Creek West.

**Ms. Durham** stated she knows there is a project, but she doesn't know what stage it is in.

**Mr. Moraes** stated that he was concerned that proposed upgrades to a road in the area did not include sidewalks. He thinks that concern should be presented to Public Works. He asked if there would be a crosswalk in this area. He is concerned kids will cross directly to the school.

**Ms. Durham** answered that there would be a crosswalk as part of the Safe Routes to Schools project, but she thinks it will be south of the school. She thinks there is also a crosswalk at the northern end of Woodmoor.

**Mr. Moraes** asked for further explanation of the 300-year water review process.

**Ms. Seago** explained that there is no guarantee that water will be available for 300 years. What is required by the LDC, and what is reviewed when determining water sufficiency, is whether or not (in this case) the central water provider owns sufficient water rights to serve the subdivision for 300 years. This is colloquially called a paper water review. Any renewable water rights as well as ground water rights owned by the district are reviewed. She also reviews current commitments that the district has to serve existing developments, and whether they will have the additional water right to serve the proposed development. In her review of the documents provided by the State Engineers Office, the water district, as well as the applicant, she determined that they do own or have control of enough water rights to serve the anticipated water demand of this development for 300 years. However, there is never a guarantee that they will be able to do so.

**Mr. Moraes** clarified that water rights were determined by acre-feet.

**Ms. Seago** stated that is correct.

**Mr. Bailey** expressed gratitude for the explanation and added that El Paso County's 300-year rule is 3x the state mandated requirement.

**Mr. Trowbridge** added that the State of Colorado owns all the water in the state. Every drop of rain that falls in the state belongs broadly to the people of Colorado and the State Engineers Office is the executive agency that does all the controlling of the water rights. El Paso County is unique in that it requires a 300-year paper supply of water. He mentioned that all supporting documentation regarding traffic is available on the EDARP website.

**Ms. Fuller** mentioned that some of the concerns regarding water should be brought up with the Woodmoor Water & Sanitation District. She stated that she understands the rush of traffic that happens around schools, but this development is not adding to that; it's normal for any school.

**PC ACTION: CARLSON MOVED / TROWBRIDGE SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 4A, PUDSP-22-009 FOR A PUD/PRELIMINARY PLAN, WATERSIDE, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH SEVEN (7) CONDITIONS AND TWO (2) NOTATIONS, WITH A RECOMMENDED FINDING OF WATER SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (6-1).**

**IN FAVOR:** BAILEY, CARLSON, FULLER, OFFNER, TROWBRIDGE, AND WHITNEY.

**IN OPPOSITION:** MORAES.

**COMMENT:** MR. MORAES stated that he thinks it is generally a good proposal, but he doesn't think the application meets the justification for a modification of the development standards for the use of a hammerhead. He also has reservations regarding private roads that could get closed off in the future.

**B. LDC231**

**MADDEN**

### **EL PASO COUNTY LAND DEVELOPMENT CODE AMENDMENT PERSONAL GREENHOUSES**

A request by the El Paso County Planning and Community Development Department to amend Chapter 5 of the El Paso County Land Development Code (2022) as it pertains to personal greenhouses. The proposed revisions, in their entirety, are on file with the El Paso County Planning and Community Development Department. (All Commissioner Districts).

#### **STAFF PRESENTATION & DISCUSSION**

**Mr. Carlson** asked for clarification regarding the exclusion of marijuana. He asked if people could grow their own personal marijuana in the greenhouse.

**Mr. Trowbridge** asked when a building permit is currently required to build a greenhouse.

**Ms. Madden** answered Mr. Trowbridge. Any structure over 200 sq. ft. requires a building permit. The Agricultural (Ag) Exemption would bypass that requirement unless someone included electrical or plumbing. Ag Exemption already exists in the Land Development Code (LDC) but doesn't currently apply to greenhouses.

**Ms. Seago** answered Mr. Carlson. There is a use defined in the LDC, "personal cultivation of marijuana". She read the use-specific standards found in the LDC under 5.2.33(B) and (C). *"(B) Located in Primary Residence. Personal cultivation of marijuana may only occur in the primary*

*residence of the patient, caregiver or person over 21 years old, or in an accessory structure on the same property. (C) Location within Primary Residence. All personal cultivation of marijuana must occur in a separate, enclosed, locked space, not to exceed 150 square feet for a single-family dwelling or 100 square feet for all other dwelling units, within the dwelling unit or accessory structure.”* Marijuana could be grown in a personal greenhouse if it meets those criteria.

**Mr. Bailey** asked why the Ag Exemption would then exclude marijuana.

**Mr. Trowbridge** thinks the Ag Exemption should be revised to say marijuana is prohibited *except* as specified under LDC 5.2.33.

**Ms. Seago** clarified that the reason they decided to exclude the intended use of growing marijuana from the Ag Exemption from the Building Code was because they wanted to ensure buildings used for the cultivation of marijuana, which often require electrical and plumbing, met Building Code standards.

**Mr. Carlson** stated he thinks the mention of marijuana should be removed altogether. If it remains a requirement to get a building permit for structures including electrical or plumbing, then that takes care of the concern.

**Mr. Trowbridge** clarified that the prohibiting of marijuana only falls under the Ag Exemption from the Building Code. The proposed change isn't talking about all greenhouses, just ones that are larger than 200 sq. ft. and are seeking an exemption from the Building Code. The proposed amendment says that you can't get the Ag Exemption if you're going to grow marijuana. He understood from Ms. Seago's comment that someone wouldn't be able to grow marijuana in an Ag Exempt structure anyway because it's either not in the principal residence or it's not in its own dedicated grow structure. But someone could build a small, 50 sq. ft. greenhouse to grow personal marijuana in addition to the larger structure they seek an Ag Exemption for.

**Ms. Seago** stated that is correct and continued by saying the marijuana provisions of the LDC do allow the cultivation in a portion of the accessory structure so long as that portion is no larger than 100 sq. ft. Under the proposed amendment, an accessory structure that includes a portion dedicated to marijuana (no greater than 100 sq. ft.) and is overall greater than 200 sq. ft. would require a building permit.

**Mr. Bailey** stated he thinks that discussion clarifies why growing marijuana is not allowed when seeking an Ag Exemption.

**Mr. Carlson** wonders why the proposed amendment wants to prohibit the cultivation of marijuana in an 800 sq. ft. greenhouse that would otherwise be eligible for the Ag Exemption if that person is willing to haul water to it, etc.

**Ms. Madden** referenced an email correspondence between herself and Ms. Seago where Ms. Seago did not consider the personal cultivation of marijuana as meeting the definition of agricultural use. She reiterated that people do not have to pursue the Ag Exemption, it is just an option. They can build a greenhouse as large as their zoning district allows. There are

standards to build a greenhouse and then there are further requirements if someone wants to seek the exemption.

**Ms. Herington** was excused from the meeting at this time.

**Mr. Carlson** reiterated that he thinks the exclusion of marijuana should be removed.

**Ms. Offner** mentioned that it does say later in the LDC that it's allowed if it meets the criteria listed in 5.2.33.

**Mr. Bailey** stated the prohibition would only apply to structures seeking an exemption from the Building Code, not all greenhouses. He asked for the opinion of a Regional Building employee.

**Mr. Jay Eenhuis**, with Regional Building, stated his department wouldn't care if the subject language was included or not. If someone wants to grow marijuana in an accessory structure less than 200 sq. ft., it's already exempt from needing a building permit. Regional Building is currently seeing greenhouses that exceed 200 sq. ft. constructed with bent PVC and plastic sheeting laid over it, which is not considered conventional construction. At that point an engineer needs to sign off on the plans. What someone does within the greenhouse is not up to their department, they leave that up to the County. He personally thought greenhouses were already included under the Ag Exemption.

**Mr. Bailey** stated he's starting to think the exclusion of marijuana cultivation isn't needed.

**Mr. Moraes** stated his understanding that anything under 200 sq. ft. is not a problem. Between 200 and 1,000 sq. ft. is where the potential of an Ag Exemption becomes relevant. The current proposal states that a greenhouse under 1,000 sq. ft. can be exempt from the Building Code, until you decide to put marijuana in it.

**Mr. Whitney** clarified that it can be done, they're just not eligible for the Ag Exemption.

**Ms. Offner** asked when the 100 sq. ft. specification mentioned by Ms. Seago becomes relevant.

**Mr. Trowbridge** thinks that you can build an accessory greenhouse for marijuana of 100 sq. ft., but it needs to meet the Building Code. Is that correct?

**Ms. Madden** stated that was not accurate. Structures under 200 sq. ft. would not need a building permit or an Ag Exemption, even if they want to grow marijuana.

**Mr. Trowbridge** clarified that is what is already allowed. What is being considered with this LDC amendment is an exemption from the Building Code for personal greenhouses. To be eligible for that exemption, the County is excluding buildings you intend to use for marijuana. By approving this amendment, the Planning Commission is agreeing that someone shouldn't be allowed to grow marijuana in a building greater than 200 sq. ft. that was exempted from the Building Code.

**Mr. Bailey** further clarified that the Ag Exemption was more restrictive than regular standards. Even if they designate a separate 100 sq. ft. section that could be locked, and even if it says

that's allowed in other places of the LDC, this proposal says that to be eligible for an Ag Exemption, you cannot grow marijuana in the structure.

**Mr. Carlson** thought he heard Ms. Seago say earlier that it would be allowed to grow marijuana in up to a 1,000 sq. ft. greenhouse with the Ag Exemption regardless of designating a separate 100 sq. ft. or not. He doesn't understand why the County is putting the restriction on marijuana. He thinks it should meet the criteria of agricultural use because it is a plant like any other.

**Ms. Fuller** clarified that this proposal would allow greenhouses up to 1,000 sq. ft. to be built without building permits and would exclude the cultivation of marijuana. If a residence that includes one of these accessory structures is sold, and the next owner puts marijuana in it, does the new owner need to seek a retro-active building permit? How would this be enforced?

**Ms. Madden** explained that an affidavit that permits inspection would be completed and recorded with the Clerk & Recorder. There is an exemption process in place for other Ag structures. Code Enforcement is complaint based. If there is a complaint, Code Enforcement would initiate a case and reach out to the owner to conduct an inspection to confirm compliance.

**Ms. Fuller** asked if the next owner would find the recorded affidavit through a title search.

**Ms. Madden** stated she wasn't sure but stated the seller should provide the new owner with that information.

**Ms. Seago** stated she read through the current use-specific standards in the LDC relating to the existing Ag Exemption from the Building Code, regardless of personal greenhouse or not, and there are already use-specific standards in section 5.2.5. Those provisions already state in paragraph D, subsection 3, that marijuana related uses are prohibited in an Ag structure that was exempted from the Building Code. It's already part of the LDC under the broader definition of the Ag Exemption. By prohibiting it in the subcategory of greenhouses, it is consistent with the rest of the LDC.

**Mr. Whitney** said he is more comfortable leaving the language restricting marijuana in the proposed amendment to greenhouses now that it is clear the Planning Commission is not making the arbitrary decision to restrict it where it would be allowed otherwise. This language does not add or restrict anything, it is just consistent.

**Mr. Trowbridge** read the proposed LDC amendment changes for clarity.

**Mr. Bailey** added that this will go to the BOCC who will ultimately approve the amendment, and they can further discuss the policy of excluding marijuana from the Ag Exemption if they so choose.

**Mr. Carlson** stated he felt comfortable leaving the language as presented after the discussion.

**Ms. Madden** added that a driving force behind the Ag Exemption section of the LDC that Ms. Seago referenced, adopted in 2019, was an overwhelming number of illegal marijuana growing sites in the County. People were able to come into PCD, sign one paper, and get an Ag

Exemption. There was an increase in illegal marijuana growing sites. This resulted in the BOCC adopting the language in the LDC as it is now.

### **NO PUBLIC COMMENT**

**PC ACTION: TROWBRIDGE MOVED / WHITNEY SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 4B, LDC-23-001, FOR A LAND DEVELOPMENT CODE AMENDMENT, PERSONAL GREENHOUSES, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH NO ADDED CONDITIONS OR NOTATIONS, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

**Mr. Carlson** was excused from the meeting. The number of voting members is now six.

**C. LDC232**

**MADDEN**

### **EL PASO COUNTY LAND DEVELOPMENT CODE AMENDMENT CARPORTS**

A request by the El Paso County Planning and Community Development Department to amend Chapters 1 and 5 of the El Paso County Land Development Code (2022) as it pertains to carports. The proposed revisions, in their entirety, are on file with the El Paso County Planning and Community Development Department. (All Commissioner Districts).

### **STAFF PRESENTATION & DISCUSSION**

**Mr. Trowbridge** asked if the reason for the 5-foot setback limit combined with the specification on side walls was to ensure visibility while driving.

**Ms. Madden** stated that was correct. Protection for the sides of vehicles was suggested by people getting Code Enforcement complaints. Hail, for example, does not always fall straight down. The presentation continued.

**Mr. Whitney** provided a hypothetical example. If someone were to have a one-car garage that has a single lane of paved driveway, and they put gravel next to the driveway, would they be allowed to put a carport over the graveled area so that they're not blocking access to their own garage?

**Ms. Madden** answered that if the carport is over the driveway, it would be allowed to extend into the easement and side-yard setbacks under this amendment. If the carport was put solely over the gravel drive and was not accessed by the approved access, that would not be allowed.

**Mr. Whitney** clarified that he was talking about if someone were to put gravel 4 feet to the side of their approved driveway.

**Ms. Madden** referenced pictures in her presentation. She stated that would not be allowed because they would have to drive over the curb to access the carport.

**Mr. Bailey** asked if it would be allowed if it were pushed further back from the street.

**Mr. Whitney** asked if it would be allowed if it were further back, flush with the garage. If the person used the approved concrete driveway but then pulled under the carport instead of into the garage, would that be allowed?

**Ms. Madden** stated that based on recommendations she received, that would not be allowed.

**Mr. Trowbridge** asked why prohibited materials needed to be listed when the list of approved materials is provided.

**Ms. Madden** explained that from a Code Enforcement standpoint, listing prohibited materials specifically is easier to enforce. This would deter people from building a 95% wood carport and then putting canvas on the sides.

**Mr. Trowbridge** expressed understanding. He then asked about the materials that were allowed. Would asphalt shingles be allowed? He does not see them on the approved list.

**Ms. Madden** answered that roofing materials were not included in construction materials. She stated they could add language to address roofing materials, but the proposed amendment as it is presented only covers the materials of the main structure.

**Mr. Trowbridge** asked if the roof is not part of the main structure.

**Ms. Madden** stated that it is, but she meant the proposed amendment is addressing the frame of the carport.

**Mr. Trowbridge** understood the explanation, but stated the amendment seems to be referring to all materials of the carport.

**Ms. Madden** stated she can add a section to address roofing materials.

**Mr. Bailey** added that he thinks most carports will be prefabricated kits.

**Ms. Fuller** doesn't like that the proposed amendment would prohibit people from putting a carport next to their driveways as Mr. Whitney described. That placement seems logical to her. To prohibit that doesn't seem like it was the intention of the LDC amendment. To add that the carport may be adjacent to the attached garage seems appropriate.

**Ms. Madden** thanked the board for the comments. She will look at adding language that allows a carport directly adjacent to an approved driveway access.

**Mr. Bailey** clarified that a site plan is required for a carport and would catch that people aren't going to enter on their driveway and then make an immediate turn to drive across the front yard.

**Mr. Trowbridge** reiterated that would be the reason it should be adjacent to an existing garage.

**Mr. Moraes** asked if carports counted in the maximum lot coverage percentage.

**Mr. Kilgore** answered that if a structure doesn't need a building permit, there is no way for PCD to track it. If a site plan comes through that has small lot with a house, barn, carport, greenhouse, etc. PCD staff, either planners or front counter, would see if a lot is getting close to their allowed coverage to evaluate their percentage.

**Mr. Trowbridge** added that he thinks it would only increase their imperviousness if it were *not* over the existing driveway.

**Ms. Fuller** asked if existing language would help staff enforce the spirit of the proposed change.

**Mr. Bailey** asked if the existing lot coverage standards would give PCD enough leverage to enforce.

**Mr. Moraes** thinks an issue would only arise with lot coverage if the carport was not proposed over an existing driveway. The water would go to the side instead of being immediately absorbed.

**Ms. Madden** clarified that the proposed carport amendment was meant to target lots less than half an acre. Areas that have bigger lots will not likely have an issue meeting setbacks. She stated she would work on making the suggested change regarding a carport allowed to be placed adjacent to an existing garage or approved driveway access.

#### **NO PUBLIC COMMENT**

**PC ACTION: TROWBRIDGE MOVED / MORAES SECONDED TO RECOMMENDED APPROVAL OF REGULAR ITEM NUMBER 4C, LDC-23-002, FOR A LAND DEVELOPMENT CODE AMENDMENT, CARPORTS, MODIFYING THE RESOLUTION ATTACHED TO THE STAFF REPORT, ADDING THE SUGGESTIONS DISCUSSED, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (6-0).**

#### **5. NON-ACTION ITEMS**

##### **A. Work Session with Lori Seago**

Annual training regarding quasi-judicial processes, ex parte, and ethics.

**MEETING ADJOURNED** at 12:18.

**Minutes Prepared By:** Miranda Benson