EL PASO COUNTY
COLORADO

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EL PASO COUNTY PLANNING COMMISSION

MEETING RESULTS (UNOFFICIAL RESULTS)

Planning Commission (PC) Meeting
Thursday, August 3rd, 2023
El Paso County Planning and Community Development Department
2880 International Circle – Second Floor Hearing Room
Colorado Springs, Colorado

REGULAR HEARING, 9:00 A.M.

PC MEMBERS PRESENT AND VOTING: THOMAS BAILEY, BECKY FULLER, KARA OFFNER, WAYNE SMITH, TIM TROWBRIDGE, AND CHRISTOPHER WHITNEY.

PC MEMBERS VIRTUAL AND VOTING: SARAH BRITTAIN JACK AND ERIC MORAES.

PC MEMBERS PRESENT AND NOT VOTING: JEFFREY MARKEWICH.

PC MEMBERS ABSENT: JAY CARLSON.

STAFF PRESENT OR VIRTUAL: MEGGAN HERINGTON, JUSTIN KILGORE, GILBERT LAFORCE, ELIZABETH NIJKAMP, KARI PARSONS, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

OTHERS PRESENT AND SPEAKING: RUSSELL DYKSTRA, KYLE THOMAS, DREW BALSICK, TERRY STOKKA, AMY PHILLIPS, MATTHEW GRUBESIC. AND KIM GERBER.

1. REPORT ITEMS

The next PC Hearing is Thursday, August 17th, 2023, at 9:00 A.M.

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

3. CONSENT ITEMS

A. Adoption of Minutes of meeting held July 20th, 2023.

<u>PC ACTION</u>: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (8-0).

4. CALLED-UP CONSENT ITEMS – NONE.

5. REGULAR ITEMS

A. ID-23-004 PARSONS

SPECIAL DISTRICT SERVICE PLAN
FLYING HORSE NORTH METROPOLITAN DISTRICT NOS. 1-5

A request from PRI #2 LLC, Jeffrey Smith, and Flying Horse Country Club, LLC., for approval of a Colorado Revised Statutes Title 32 Special District Service Plan for the Flying Horse North Metropolitan District Nos. 1-5. The 910-acre area included within the request is zoned Planned Unit Development (PUD) and Residential Rural (RR-5) and is located southwest of the intersection of Hodgen Road and Black Forest Road. The proposed service plan includes the following: a maximum debt authorization of $450,000,000.00, a debt service mill levy of 50 mills for residential and commercial, and an operations and maintenance mill levy of 15 mills, for a total maximum combined mill levy of 65 mills.

The statutory purposes of the district include the provision of the following:
1) street improvements, safety protection;
2) design, construction, and maintenance of drainage facilities;
3) design, land acquisition, construction, and maintenance of recreation facilities;
4) mosquito control;
5) design, acquisition, construction, installation, and operation and maintenance of television relay and translation facilities;
6) covenant enforcement;
7) design, construction, and maintenance of public water including fire hydrant systems; and
8) sanitation systems.
(Parcel Nos. Multiple) (Commissioner District No. 1).

STAFF & APPLICANT PRESENTATIONS

Mr. Markewich asked for clarification regarding the responsibilities of the proposed Districts. Page 4 of the staff report states, *"District Nos. 2-5, in coordination with District No. 1, will finance the construction of the public improvements."*, but then also states, *"The applicant has indicated in their letter of intent that it is not practical or feasible for the Flying Horse Metropolitan District Nos. 1-3 to be burdened with additional debt incurred by the design, construction, and maintenance of the necessary infrastructure to serve the residential development."* Those statements seem contradictory.

Mr. Russell Dykstra, with Spencer Fane LLP, agreed that it is phrased awkwardly in the Service Plan. He stated that the first sentence refers to the proposed District Nos. 1-5 for Flying Horse North and the second sentence refers to the existing District 1-3 of Flying Horse which is within the City of Colorado Springs.

Ms. Fuller stated she's looking at the financial ability to discharge the debt. To estimate the sale of 50 $6 million homes in the next 6 years seems very aggressive. Page 33 of the staff report states, *"…the bond underwriter projects the potential ability of the Districts to discharge the proposed debt per the statutory requirement."* Is there market data to show the absorption of $6 million homes in El Paso County (EPC)?

Mr. Kyle Thomas, with D.A. Davidson & Co., answered that he does have absorption data in EPC, but he noted that the proposed community is unlike any other that currently exists. Since 2020, there was 1 home constructed over $3 million, so it's hard to show that specific absorption data. This will draw people from surrounding counties like Douglas County and a much larger trade area.

Ms. Fuller reiterated that only 1 home was constructed in the price range over $3 million in EPC. She asked about the same data from Douglas County and other surrounding areas. How are the applicants supporting the absorption of $6 million homes?

Mr. Thomas added that the absorption data is not what he comes up with, so the developer might be able to help with what the demand is and what they've heard from other developers.

Ms. Fuller stated that she understands that they use the information the developers give them and there's no reason to validate the info they're provided.

Mr. Drew Balsick, with Flying Horse North, explained that a lot of their numbers and estimates are based on the Ritz Residence and the hotel. There are 50 2.5-acre lots north of Cathedral Pines that are specific to the Ritz Residences which will sell for $2-$6 million per home. He stated that if one were to Google the Ritz Residence in Paradise Valley, for example, there are 4-6 plans selling at $4-$6 million. With 50 lots, there will be many custom builders and high-end homes.

Mr. Whitney asked for clarification of what Mr. Thomas meant by "trade area".

Mr. Thomas explained that he was referring to the area where people interested in purchasing within this community are currently living. When looking at that area, they evaluate what other properties would this community be competing with. Because of the Ritz and the draw of this community, that area is larger.

Mr. Whitney asked if that's what was meant when he said there's never been a development like this in EPC.

Mr. Thomas agreed and added that there's never been a community with the branding and hotel, possibly in all of Colorado. It's a unique offering. He referred to Paradise Valley in AZ as an example.

Mr. Trowbridge asked for more information regarding inflation risk analysis and bond percentages. It doesn't seem realistic to start at 5% and then go to 4% after just a few years.

Mr. Thomas stated that 5% and 4% were interest rates, not inflation. He stated he would address both interest and inflation. He explained that when putting together a financing plan, there are several unknowns, so they take a broad look at average historical rates. When a district is issuing up front and it doesn't have much credit quality, rates hover in the 5%-6% range. Once a project is built-out and becomes investment grade, rates are typically 3.5%-4%. This is why they decided to use 5% for the initial offering and 4% for the second offering. Regarding inflation, the St. Louis Fed posts a home price index which has shown an average annual inflation rate in EPC of 4.2% since the year 2000. They are using a 3% annual inflation rate in their estimate.

Ms. Fuller received clarification that Paradise Valley is located near Scottsdale, AZ. She asked for the average sale price for homes in Cathedral Pines.

Mr. Balsick answered that it's around $3 million. He also clarified that they do not currently have a branded hotel, but it's still the plan.

Mr. Whitney stated that part of the purpose of a special district is to provide recreational opportunities. He asked if the proposed golf course will be public, or if people will be paying taxes for a private facility.

Mr. Dykstra answered that Colorado law states Metropolitan District funds can only be used for public improvements. The golf course is going to be private, so no District funds will be used.

Mr. Whitney asked if District funds would be used for the hotel.

Mr. Dykstra stated the hotel will be private. The District will receive revenue from the hotel, but will not be financing it.

Mr. Bailey asked for the approval criteria to be presented. He stated that it is not the PC's responsibility to validate the numbers within the financial plan, but to ensure there's a reasonable possibility of financing. He stated that Mr. Thomas has told the PC that the proposed model suggests it is possible. He added that the developer is taking all the risk, not the County. He reminded the public that questions regarding the sketch plan, any potential amendments, or the approval process are not being analyzed during the Special District's consideration.

Mr. Whitney noted that there is 1 page of mandatory criteria and 1 page of discretionary criteria.

PUBLIC COMMENTS

Mr. Matthew Grubesic is opposed to the Special District. A comment was made that nothing is out there, but many people live in this rural area. He mentioned that Fitch has downgraded the debt (credit rating) in America. Fannie Mae and Freddie Mac have also had their credit ratings downgraded. Everything is inflated due to a cycle based on easy money and PPP money. He thinks the inflated prices for the proposed homes are unrealistic, especially in an area that will have an opportunity to golf for maybe 5 months of the year. He added that the public will not benefit. He reiterated that there has only been 1 new-construction home valued over $3 million in the last 3 years. He stated the type of debt and inflated housing is unsustainable. Prices in Paradise Valley have decreased because they aren't selling. Interest rates at 4% and 5% are unrealistic in the current economy. He stated that he isn't sure the proposal is a reality, even if the risk falls on the developer. He added that pavement and centralized water systems will not invigorate the aquifers. He heard that Cherokee Metro District will be putting "2 new straws" in the aquifer.

Mr. Terry Stokka stated he is representing the Friend's of Black Forest and Black Forest Land-Use Committee. He stated he is not opposed to the Metropolitan District as a whole, just certain elements of the proposal. The costs are not reasonable. He thinks the Service Plan needs to be returned to the applicant for updating and realism. He questions why the Special District is being proposed prior to rezoning. He believes the request is unreasonable regarding both bonds and repayment when compared to the industry standard from the Colorado Association of Homebuilders. He requested corrections to the LOI for home value consistency. The LOI includes a golf clubhouse, a fitness center, and a convention center. He doesn't think those should be included in the Metro District if not all residents will use them but should be privately funded. The LOI mentions road issues, but there is no budget or timeline for expanding Highway 83 or Black Forest Road. The applicant stated the open space exceeds requirements, but they included the private golf course, which is not natural vegetation for wildlife or available to the public.

Ms. Amy Phillips spoke in opposition. She questioned the validity of the need for services. She stated the existing residents and the County projection, if adhering to the Master Plan, does not need the proposed services in this rural area. The existing residents do not need or want a hotel or a large commercial center like The Promenade. It was acknowledged in the past that the sketch plan deviated from the Master Plan in many ways. It was also mentioned that a sketch plan approval did not guarantee a rezoning or special district approval. She stated that to argue there is a future need for this special district because there is an approved sketch plan goes against the Master Plan. She thinks the creation of this Special District will shift a large portion of the financial burden of this project onto taxpayers.

Ms. Kim Gerber currently lives in Flying Horse North. She asked when in the process the need for services becomes validated. She asked how she could obtain more information about the proposal. The application states there's a need, but she would like to see how that is supported beyond the developer's perception.

Mr. Bailey asked how anyone quantifies a need to move to a certain area. He stated the property owner, the developer, wants to do something, so that is the underlying need.

Ms. Gerber clarified that *"There is sufficient existing and projected need…"* within the mandatory criteria is referring to the property owners need, not the County's need.

Mr. Bailey confirmed.

Ms. Gerber stated that is contradictory to what other residents believe. She stated that her need is for the developer to keep the original proposal of 300 residents in the total area instead of over 900.

DISCUSSION

Mr. Whitney stated that a main concern regarding the mandatory criteria is that there does not appear to be a current need for this Service Plan, and the project seems to create the need. What is the definition of need for the purpose of this criteria?

Ms. Herington stated that she's not sure she or Mr. Kilgore can answer that question. Need is subjective. The review criteria in the Land Development Code can be subjective. PCD staff relies heavily on the information provided by the applicant. It's the responsibility of the PC and BOCC to determine how the review criteria is being met or not.

Ms. Parsons emphasized that the full language of the first mandatory criteria is *"There is sufficient existing and projected need for organized service in the area to be served by the proposed special district."* That does not include the needs of the adjacent properties or nearby residents of the proposed district. The EPC Service Plan model and policy require an underlying land-use on which to base the service plan. In this case, that underlying land-use is the approved sketch plan. Typically, a special district is proposed and formed after sketch plan to get the general numbers for the proposal. This is done before the zoning stage in case they don't get the financing needed to move forward. For clarification, she added that per LDC Chapter 4.2.6(F)(8)(a) open space can be either public or private.

Mr. Dykstra clarified that in the financing plan, the number of sites in the $3-$6 million range has been discussed, but there are also 800 units at $1.5 million. That should relieve those thoughts that all of this is dependent on $3-$6 million homes. The Colorado Golf Club south of Parker has 114 units that average $2.88 million. He thinks their proposal is reasonable. Regarding inflation rates and interest rates, they are discussing municipal bonds that are double tax exempt. That's why the interest rates are lower and why they used the inflation factor that they did. If they don't ultimately have the revenue to support the debt, the bond capacity is reduced, and the difference is up to the developer to pay for the difference. The proposed mills will not be applied to any existing residences. All District info will be disclosed to incoming purchasers before they sign a contract; no one will be surprised. He reiterated that the district will not pay for the golf course or clubhouse. This is referred to as a parameter service plan, meaning it sets the boundaries that the Metro District can operate within regarding debt, mill levies, and the type of improvements that can be built. This does not limit or guarantee future land-use zoning.

Mr. Bailey added that the requested special district service plan provides the mechanism for the funding, which provides the certainty to move forward with the project. He also clarified that while district money will not go towards building the hotel or golf course, those amenities are within the district boundaries so their tax revenue will pay towards the bond debt service.

Mr. Dykstra confirmed and added that commercial property benefits the residential because it lowers their tax burden for roughly the same infrastructure.

Mr. Markewich reiterated that the hotel, golf course, and clubhouse will be built using private funds. He asked if the convention center would also be private.

Mr. Dykstra stated that was uncertain. As they do further analysis, they will determine whether that will be public or private. Legally, the district cannot and will not pay for a private facility.

Mr. Markewich clarified that existing Flying Horse North residents will not be subject to these proposed districts. He asked at what point properties would be subject to the additional mill levy.

Mr. Dykstra answered that will take place once the district is organized. The next step after the BOCC hopefully approves the service plan will be to go before the District Court. There will then be an election in November. After that election, the Metro District will officially be in place.

Mr. Markewich asked if the existing Flying Horse North residents that are not within the Metro District will have access to the amenities being discussed.

Mr. Dykstra answered that they would have access to all public facilities.

Mr. Bailey clarified that the additional mill levies will only apply to those who buy within the district boundaries and there are currently no residents within the proposed boundaries.

Mr. Dykstra confirmed.

Mr. Whitney clarified that the starting date is after the election. Anyone who buys a home within the area after that will be subject to the metro district.

Mr. Dykstra confirmed.

Mr. Markewich asked how many existing residents in Flying Horse North will be excluded from the metro districts.

Mr. Dykstra answered that there are 81 current residents.

Ms. Offner asked how they plan to pay back the debt if the market shifts and they aren't able to charge $3-$6 million or sell as many $1.5 million homes as they anticipate.

Mr. Dykstra answered that the 50 mills are static and will generate a set amount on each home. At the time they go to the bond market, the bond analysis run by D.A. Davidson & Co. will be based on the actual market rate at the time of issuance. That projects the number $350, $375, or $450 million, etc. The risk that revenue from the 50 mills isn't sufficient to pay the bonds falls on the bond holders as of the date of issuance. The District's responsibility is to impose and collect the 50 mills. Any revenue that generates is paid to the bond holders.

Ms. Fuller asked what would happen if the market hypothetically valued the homes at $700,000 each. If that results in a debt of $250 million instead of $450 million, would that mean the planned infrastructure may not happen, would the cost be added to the home prices, or would it kill the development?

Mr. Dykstra explained that the district can only finance what its debt mill levy, and in this case its RSF, will generate to repay that bond. When the bonds are issued, there is extensive examination by the bond holders and bond buyers to analyze if the projected numbers are realistic. That is built into the interest rate calculation. If there's a difference, that delta will be paid by the developer.

Ms. Fuller asked if there was any government guarantee on the bond that is sold.

Mr. Dykstra answered that it is only a relationship between the bond holder and the district.

Ms. Fuller asked if the bond buyer would have the data that the public is asking for. She thinks that when only 1 new construction home has been sold for over $3 million, comparing this area to Scottsdale, AZ is a big stretch. The data isn't suggesting a $3-$6 million home market is reasonable. She asked how they balance that with their ability to discharge the indebtedness on a reasonable basis. She thinks that even if all homes were to sell for $1.5 million, they would lose 20% of their anticipated value to pay the bonds back. It doesn't make sense to her.

Mr. Dykstra reiterated that they are building the framework and setting the parameters ($450 million) based on the projections that they're using at this time and the knowledge they have now. Their projected financing plan shows they can discharge that debt. If those final dollar amounts are different and they're looking at $350 million, at the time it's issued, it will be analyzed accordingly to ensure they can discharge that debt. He stated that given the assumptions they have available at this early stage, the financing plan indicates they can discharge the debt.

Ms. Fuller asked what it would mean if the County approved a maximum debt of $450 million but they could only get $350 million.

Mr. Dykstra stated that right now they need to demonstrate that the infrastructure and financing can be repaid using the projections they're looking at today. It could also be hypothesized that the market rate could go 20% higher instead of lower.

Ms. Fuller asked what the absorption rate is for $1.5 million homes in the subject area.

Mr. Thomas answered that the absorption rate is about 75 units per year at that price point.

Mr. Whitney asked if Mr. Dykstra believes their assumptions are reasonable.

Mr. Dykstra stated he does think they're reasonable. He stated he lives in Douglas County right on the other side of the El Paso County line. He is on a well and he understands those concerns. Where he lives, there are projects averaging between $1.5-$2 million per unit that are selling well.

Mr. Whitney asked if there's any scenario or reason that they would put together a service plan with unreasonable assumptions.

Mr. Dykstra stated, "not really". He stated that they want to make sure the framework that they're building in the service plan is at a level that will allow them to maximize the financing available to the development. They are aware that those numbers fluctuate each year.

Mr. Trowbridge asked what percentage of the debt repayment the 7% retail sales fee accounts for.

Mr. Thomas answered that there are three general areas that the total revenue is being generated from: mill levy revenue, retail sales revenue, and a lodging component. The total revenue from the mill levy is $485 million, retail sales is $130 million, and lodging is $130 million.

Mr. Trowbridge thanked the members of the public who came to speak. He reiterated that EDARP has all the project information.

Mr. Bailey presented an analogy. When people decide to build on their property, they go through a process to determine what kind of house they can afford. They use the best info they have available before starting construction. That includes how much the bank will loan them and what they can afford to pay back. There are checks and balances along the way. The bank will not loan someone $1.5 million to build a $150,000 house. That is also reflected in this scenario. The landowner is looking at how they afford to raise the funds to build what they want on their property. Because the mechanism for paying the debt on these bonds is through the collection of property tax, the County owns that process and can authorize a special district to take on those governmental responsibilities. The County is not guaranteeing anything but is laying out the parameter the landowner can use to acquire funding for their vision. Other taxpayers in the County are not forced into this, only those who purchase land, play golf, or choose to stay a night in this hotel within the district boundaries. He thinks the assumptions made in the financial plan are reasonable. He thinks the need is identified in the sketch plan. He thinks the criteria has been met.

Ms. Fuller agreed that she thinks the first 3 criteria have been met but she is struggling with criteria number 4. They are proposing 900 homes being absorbed in 6 years (average 150/year) at over $1.5 million/unit in a market where the historic average has been 75 homes/year sold in that price range. She doesn't think it's reasonable. She thinks they should be asking for a different amount. They're asking for special rights allocated with the special district, but she doesn't see a reason that this should be treated as such a magical place that it will absorb twice the average rate as the rest of the entire County. She is not in favor of the proposal.

Ms. Brittain Jack stated she would be in support of the proposal.

<u>PC ACTION</u>: OFFNER MOVED / BRITTAIN JACK SECONDED FOR APPROVAL OF REGULAR ITEM NUMBER 5A, FILE NUMBER ID-23-004 FOR A SPECIAL DISTRICT SERVICE PLAN, FLYING HORSE NORTH METROPOLITAN DISTRICT NOS. 1-5, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH SEVEN (7) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (5-3).

IN FAVOR: BAILEY, BRITTAIN JACK, OFFNER, SMITH, AND WHITNEY.
IN OPPOSITION: FULLER, MORAES, AND TROWBRIDGE.
COMMENTS: MS. FULLER did not think the application met mandatory criteria number 4 ("That the area to be included in the proposed Special District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.") They are proposing 900 homes being absorbed in 6 years (average 150/year) at over $1.5 million/unit, 50 of those homes between $3-$6 million, in a market where the historic average has been 75 homes/year sold over $1.5 million, and only 1 sold over $3 million. **MR. WHITNEY** voted aye due to the statutory regulations but is not morally happy with it. This is a contentious project. He thinks they met mandatory criteria number 4 "highly shakily". As a structure or framework, he's okay with the service plan, but he knows it will change many times. **MR. TROWBRIDGE** agreed with Ms. Fuller. He doesn't think the proposal meets mandatory criteria 3 or 4. He doesn't think the assumptions are reasonable. **MR. MORAES** agreed with Ms. Fuller regarding the financial ability to discharge the proposed indebtedness on a reasonable basis.

MEETING ADJOURNED at 11:00 A.M.

Minutes Prepared By: Miranda Benson