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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
CRAIG DOSSEY, EXECUTIVE DIRECTOR

Planning Commission Meeting  
Thursday, February 4, 2021  
El Paso County Planning and Community Development Department  
200 S. Cascade Ave – Centennial Hall Hearing Room  
Colorado Springs, Colorado

**REGULAR HEARING**  
**1:00 p.m.**

**PRESENT AND VOTING: BRIAN RISLEY, TOM BAILEY, TIM TROWBRIDGE, BECKY FULLER, JAY CARLSON, JOAN LUCIA-TREESE, AND ERIC MORAES**

**PRESENT VIA ELECTRONIC MEANS AND VOTING: THOMAS GREER AND GRACE BLEA-NUNEZ**

**PRESENT AND NOT VOTING: NONE**

**ABSENT: SARAH BRITTAIN JACK**

**STAFF PRESENT: CRAIG DOSSEY, NINA RUIZ, TRACEY GARCIA, ELENA KREBS, RYAN HOWSER (VIA REMOTE ACCESS), JACK PATTON (VIA REMOTE ACCESS), DANIEL TORRES (VIA REMOTE ACCESS), AND EL PASO COUNTY ATTORNEY LORI SEAGO (VIA REMOTE ACCESS)**

**OTHERS SPEAKING AT THE HEARING: DANIEL NIEMAN, DEBRA EILAND, STEVE SWANSON, CECIL SMISCHMY, WADE WILSON, TERRY REGEL, GARY CRANE**

**Report Items**

**1. A. Report Items -- Planning and Community Development Department – Mr. Dossey -- The following information was discussed:**

- a) The next scheduled Planning Commission meeting is for **Thursday, February 18, 2021 at 1:00 p.m.**



- b) **Mr. Dossey** gave an update of the Planning Commission agenda items and action taken by the Board of County Commissioners since the last Planning Commission meeting.
- c) **Mr. Dossey** announced that he will give his Annual Report at the February 18, 2021 hearing.
- d) **Mr. Dossey** gave an update on the Master Plan process and timeline. The Plan is in review by staff currently and soon by the Master Plan Advisory Committee.

**B. Public Input on Items Not Listed on the Agenda – NONE**

**CONSENT ITEMS**

- 2. A. **Approval of the Minutes – January 7, 2021**  
The minutes were unanimously approved as presented. (9-0)

**B. SF-20-007** **HOWSER**  
**FINAL PLAT**  
**THE RESERVE AT CORRAL BLUFFS FILING NO. 3**

A request by Corral Ranches Development Company for approval of a final plat to create six (6) single-family residential lots and one (1) tract. The 59.95 acre property is zoned RR-5 (Residential Rural) and is located on the east side of Hoofprint Road, approximately one-quarter of a mile south of Blaney Road and one-half mile east of Meridian Road and is within Sections 31 and 32, Township 13 South, Range 64 West of the 6th P.M. (Parcel Nos. 43310-00-023, 43310-00-025, and 43320-00-016) (Commissioner District No. 2)

**PC ACTION: CARLSON MOVED/LUCIA-TREESE SECONDED FOR APPROVAL OF CONSENT/MOVED TO REGULAR ITEM NUMBER 2B, SF-20-007, FOR A FINAL PLAT FOR THE RESERVE AT CORRAL BLUFFS FILING NO. 3 UTILIZING RESOLUTION PAGE NO. 19, CITING 20-004 WITH TWELVE (12) CONDITIONS AND TWO (2) NOTATIONS WITH A FINDING OF WATER SUFFICIENCY FOR QUALITY, QUANTITY, AND DEPENDABILITY AND THAT THE ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED UNANIMOUSLY (9-0).**

**C. SF-20-008** **HOWSER**  
**FINAL PLAT**  
**THE RESERVE AT CORRAL BLUFFS FILING NO. 4**

A request by Corral Ranches Development Company for approval of a final plat to create five (5) single-family residential lots. The 26-acre property is

zoned RR-5 (Residential Rural) and is located on the east side of Hoofprint Road, approximately one-quarter of a mile south of Blaney Road and one-half mile east of Meridian Road and is within Sections 31 and 32, Township 13 South, Range 64 West of the 6th P.M. (Parcel Nos. 43310-00-023 and 43320-00-016) (Commissioner District No. 2)

**PC ACTION: FULLER MOVED/LUCIA-TREESE SECONDED FOR APPROVAL OF CONSENT/MOVED TO REGULAR ITEM NUMBER 2C, SF-20-008, FOR A FINAL PLAT FOR THE RESERVE AT CORRAL BLUFFS FILING NO. 4 UTILIZING RESOLUTION PAGE NO. 19, CITING 20-005 WITH ELEVEN (11) CONDITIONS AND TWO ( ) NOTATION WITH A FINDING OF WATER SUFFICIENCY FOR QUALITY, QUANTITY, AND DEPENDABILITY AND THAT THE ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED UNANIMOUSLY (9-0).**

**D. SF-19-021**

**RUIZ**

**FINAL PLAT  
THE GLEN AT WIDFIELD SUBDIVISION FILING NO. 10**

A request by the Glen Investment Group No VII, LLC, for approval of a final plat to create 40 single-family residential lots. The 10.471 acre property is zoned RS-6000 (Residential Suburban) and CAD-O (Commercial Airport Overlay) and is located west of Marksheffel Road, east of Powers Boulevard, and both north and south of Peaceful Valley Drive and within Section 22, Township 15, Range 65 West of the 6th P.M. (Parcel Nos. 55223-00-001 and 55272-00-004) (Commissioner District No. 4)

**PC ACTION: TROWBRIDE MOVED/MORAES SECONDED FOR APPROVAL OF CONSENT/MOVED TO REGULAR ITEM NUMBER 2C, SF-19-021, FOR A FINAL PLAT FOR THE GLEN AT WIDFIELD SUBDIVISION FILING NO. 10 UTILIZING RESOLUTION PAGE NO. 19, CITING 20-006 WITH SEVENTEEN (17) CONDITIONS AND TWO (2) NOTATION WITH A FINDING OF WATER SUFFICIENCY FOR QUALITY, QUANTITY, AND DEPENDABILITY AND THAT THE ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED UNANIMOUSLY (9-0).**

**Note for the Record: Mr. Risley and Mr. Greer both stated that they had reviewed the testimony previously presented in the first portion of the hearing on January 7, 2021 and felt they were sufficiently informed to participate and vote on this item.**

## Regular Items

### 3. VA-18-005

RUIZ

#### VARIANCE OF USE ROCKY TOP CAMPGROUND

A request by G&D Enterprise, Corp., for approval of a variance of use to legalize an existing Recreational Vehicle Park, Recreation Camp, and Automobile and Boat Storage Yard. The 9.32 acre property is zoned C-2 (Commercial) and is located northeast of the Highway 24 and Lucky 4 Road intersection and within Section 9, Township 13, Range 68 West of the 6th P.M. (Parcel No. 83092-00-011) (Commissioner District No. 3)

(Item continued from January 7, 2021 Planning Commission Hearing)

**Ms. Ruiz** gave a brief overview of the project, as well as a summary of the last hearing.

**Ms. Seago** – The Planning Commission members did receive additional documentation by PCD staff yesterday afternoon. At the previous hearing, the Planning Commission closed the public comment portion of the hearing, so it is my recommendation that this information not be considered. The information, however, will be forwarded to the Board of County Commissioners for their consideration.

**Mr. Daniel Nieman** gave his presentation on the changes presented for consideration. Dumpsters were reduced from five to three and have been made bear proof. RVs must be 2004 and newer which will eliminate those older models. We changed our fencing to opaque along the perimeter of the property. The internal driveways have been improved with asphalt over time when there has been extra asphalt from companies in the area. We've added concrete blocks to help with erosion based on an engineer's recommendation. We are asking to continue operation as it was for 70 years. We are withdrawing the request for outside storage of automobiles, boats, and RVs.

**Mr. Carlson** – The last time there was question as to how many camp sites were approved in 1972 and how many you have now. **Mr. Nieman** – The Assessor's site shows we are approved for 72 sites. We are at 60 sites currently. Lots have gotten larger to accommodate larger RVs.

**Ms. Debra Eiland** – There are nine criteria that we will speak to. The proposed use is compatible to the surrounding area. **Mr. Nieman** or a caretaker will be on-site at all times to ensure safety and cleanliness. There are campground rules in place that speak to noise curfew and generators are not allowed at any time. There are homes on the western boundary, but the northern and eastern sides are vacant properties. The fencing will be replaced to 6' opaque fencing as required. There will be site development plan submitted along with a drainage report and

stormwater report as required. There is an adjudicated well on the property. The motel was built in 1947, the RV park and campground was built in 1950. The campground and RV park is a far less invasive use than any of the other uses allowed in the zone district. The argument that the property values around the campground will be devalued is incorrect. It's been zoned C-2 for many years. We are asking for 60 RV/trailer sites and 8 tent sites. Improvements to the site are happening for the residents as well as for the visual impact for the neighbors. The proposed use will comply with all regulations of the Land Development Code and all County, State and Federal regulations except those portions varied by the action. The proposed use will not adversely affect wildlife or wetlands. The expansion of the campground happened before **Mr. Nieman** owned it. The RV storage did happen with **Mr. Nieman** and that was wrong. I can assure you that if this variance is approved, he will comply with everything that is required of him. He has closed all of the RV storage lots. All campground activities will be conducted on-site. Entry to and exit from Highway 24 and separated a reasonable and safe distance from the Highway by a gravel road. The west property boundary is screened by opaque privacy fence. All lighting will be shielded from neighboring properties and equipped with dusk-to-dawn sensors. The site plan will show the layout of the lighting, landscaping, lot and tent site placements, etc. Emergency vehicles have no issues accessing this property. There is a 10 mph speed limit throughout the park. There is a fenced dog park. There was great delay in getting the item to hearing due to staff turnover with PCD. The strict application of any of the provisions of the LDC would result in peculiar and exceptional practical difficulties or undue hardship on the owner of the property. He had no knowledge that the campground had been expanded and that it was a legal non-conforming use. It was represented to him that RV storage had occurred and was acceptable. He has withdrawn the RV storage. He only wants to continue the campground and hotel. It will strip away his investment and take away his business if this is not approved.

**Ms. Ruiz** had an opportunity to respond to the applicant's presentation. The fencing that they have proposed will meet the LDC requirements. If you make a motion today for approval or denial that it include the revision cited in the site plan and letter of intent. With regard to the timeline and staff response, EDARP keeps a time stamp of everything that occurs with a project. We have had some staff turnover, but I did find that the delays in the project were due to the applicant being unresponsive and not due to staff delays. There were many large gaps of time where PCD was waiting on them to respond. Staff took two months to complete a review at one time when we were extremely short staffed, but for the most part the delay has not been a staff issue. At one point we waited over 7 months to receive a resubmission. **Mr. Risley** – So in a 34 month process, there was about 17 months of delay from the applicants. **Ms. Ruiz** – That is correct.

**Mr. Trowbridge** – We did not get a revised staff report. **Ms. Ruiz** – Because we didn't get their revisions until this week, there was no revised staff report. We

would ask that you revise Condition #4 and make sure that your motion refers back to their revised site plan, and letter of intent.

**Ms. Fuller** – Are they expanding the footprint over what was already there? The location by Lucky Ford is a new location correct? It appears that it grew from the legal non-conforming. **Ms. Ruiz** – They are not proposing to adjust that site for RV storage, it will just not be used as RV storage any longer. **Mr. Nieman** – It's a gravel area that is vacant now. The camp sites by Lucky Ford relocated because of soil issues. I defined the sites better.

**Ms. Fuller** – Were the RV sites to the east always located there? **Mr. Nieman** – I've not made any changes to those sites.

**Mr. Carlson** – In the last hearing, you said if this variance is not approved, that it would go back to the campground and the non-conforming use and the number of sites in 1972. **Ms. Ruiz** – He stated that the RV spaces are larger now so the total number of sites is actually less. In order to maintain the legal nonconforming status the number of spaces and area being utilized would need to be the same or lesser.

**Mr. Carlson** – If this is not approved, they are still able to operate a campground there? **Ms. Ruiz** – Yes, they are.

**Mr. Bailey** – What do we have that defines the pre-1972 area that is allowed to be used for camping? **Ms. Ruiz** – We would rely on historical aerial pictures as well as what the historic Assessor records.

**Mr. Trowbridge** – Would it be staff's responsibility to provide that to the applicant? **Ms. Ruiz** – We could provide the aerial images for them to prepare their site plan accordingly.

**Ms. Fuller** – What would it take for us to look at those aerials? **Ms. Ruiz** – It wouldn't be something we could provide you today.

**Mr. Carlson** – The applicant mentioned that they had 72 campsites. Do you agree with that? **Ms. Ruiz** – Yes, based on the Assessor's record.

**IN FAVOR: NONE**

**IN OPPOSITION:**

**Mr. Cecil Smischmy** – I am a managing partner of Lucky Ford. I disagree with Appendix A of the applicants' handout. The owner installed a drain that redirected stormwater that historically flowed down the westside of the road. My father bought Lucky Ford ranch in 1947. Lucky Ford Road was there at that point. My father maintained that road until he died and then I maintained it after. The pipe was installed and directed the stormwater across and down toward the highway. Those pipes disappeared after he purchased the property and now the stormwater

is causing erosion. I own land on three sides of his property. We have had multiple incidents of trespassers from his property. We will not be asking for them to leave, we will call the sheriff's office. We have had enough invasion on our land. I hope you will do the right thing.

**Mr. Wade Wilson** – I am the first house on Lucky Ford Road. I am directly across from the camp sites and tent sites. The tent sites were not there three years ago. I have a special relationship with Rocky Top. We've spent many nights there. We are not wanting to put him out of business, we just want him to do things correctly. You could put up a 26' fence and it wouldn't matter. The elevation allows us to see right into the park. I appreciate that the RV storage is gone. The tent site is horrible. I've been there the least amount of time but I've noticed the most change. He is coming to ask for forgiveness instead of doing it the right way.

**Mr. Terry Regel** – We have lived there for two years. I was so involved in talking to County Commissioners that we formed a group of citizens/homeowners right after **Mr. Nieman** moved in. I went down to Regional Building and took a petition to show what was happening at the campground. We showed pictures to Code Enforcement. We were told there was going to be a hearing about this property. A year and a half later, none of the problems have been taken care of. Nothing has been permitted. We have a cease and desist order and nothing has stopped.

**Mr. Gary Crane** – I still have real concerns regarding health and safety on the site. **Mr. Nieman** says he wants to be a good neighbor. I would suggest an outreach to the neighborhood to get feedback and you continue to make changes that are permitted. I'm a licensed contractor and I read the permitting records. I can't believe there have been no permits pulled for all the work that has been done. To have a good relationship, the prevailing need is trust. Trust that the work has been done or promised to be done will be done with permit and integrity so that the neighborhood can be proud of it. You violated that trust **Mr. Nieman**. I ask that the County, and Code Enforcement and **Mr. Nieman** work together on the issues.

**Mr. Steve Swanson** – I did some checking with the health department as to septic permits. They provided me two permits. One in 1985 and a major repair permit in 1987. I found that the permit in 1985 was approved for a 2-bedroom apartment and a single unit. That is what is attached to the septic permit. There are 15 rooms in the hotel. That in itself is an overload. In 2017, it was designed for 25 RVs. There are 40 RVs at the top of the property. He's proposing 60 RVs. Where does the sewage from the other RVs go? There's no septic system on record for that. There are electrical pedestals that weren't permitted.

**Mr. Nieman** had an opportunity for rebuttal. One of the big things that stuck out to me is the permit for the major repair. The County vendor approved contractor came out and approved the additional 25 sites. In 2018, there was another 2250 wastewater system put in. It was engineered and accommodates the other sites that were added. The records are out there. I have added \$80,000 worth of

improvements to address the wastewater. I inherited employees that worked with the previous owners. I don't have perfect knowledge of tent sites, so I've placed them where there is the least amount of soil erosion impacting those sites. A contractor was hired to grade Lucky Ford Road in 2002. Somewhere after 2002, someone install that diverter pipe. So now the road doesn't need to be graded any more. We started soil mitigation with block walls to divert that water, but that doesn't need a permit. I hire out the work and rely on the County approved contractors to work with Regional to get permits. Maintenance does not require permits either. We haven't done anything different than soil mitigation since I purchased the property. We are asking that we operate since 1950.

**Mr. Risley** – You indicated that you want to operate this the same as 1950 and yet you installed a wastewater system. Did you pull permits? Why are they not on record? **Mr. Nieman** – There is a permitted septic system that was done in 2018. We had the same engineer, the same contractor, and an inspection done. I relied on the contractor to pull those permits.

**Ms. Eiland** – This was included in the exhibits in the last hearing. This is an email from **Mike McCarthy**, from El Paso County Health. The permit did not appear online. Mr. McCarthy's response was that he was not aware of the OWTS. There is not a requirement for oversight from the EPC Public Health. We were assuming there was no further requirement. We will provide this to **Mrs. Garcia** for the record.

**Ms. Eiland** – **Mr. Nieman** purchased this property to run it as it was when he purchased it in 2017. Asking him to reduce the capacity or the operation to pre-2017 levels, he will be penalized for the work he has done and the purchase price he paid in 2017. I ask that you consider this in your deliberations.

## **DISCUSSION:**

**Ms. Fuller** – I actually feel bad for **Mr. Nieman**. He is a victim of not doing due diligence. There were a lot of uses and he was a naïve buyer. I don't think that meets a hardship. It was a bad business decision made. He has a case to be filed against the seller, but I don't think we've had demonstration of hardship or exceptional difficulties. I wish that we had been able to see what that non-conforming footprint looked like, but I'm really happy that the storage is gone. I will be a no vote today.

**Mr. Bailey** – I appreciate those comments, but I disagree. I want to be sure that we get a different perspective on record. It seems to me that there has been in the hearings a lot of people asking **Mr. Nieman** to be a good neighbor. I hear we are all for private property except when it's in my back yard. People have moved into an area, been there for many years, buy the lot next door and look over the fence and say what part of that don't I like. If all we look at is what **Mr. Nieman** has done in the last several years, we have to remember what was there before.



This use has been there much longer than some of the homes that were built after this use was already established. I just don't think that redefining the character of the neighborhood as residential is appropriate for us to do. I am in favor of the variance. The changes do away with the legitimate objections.

**Mr. Carlson** – I want to concentrate on what we are here to do today which is a variance of use. We are not engineers, it's not up to us to look at the drainage or erosion. I see it fits a problem. If we disapprove this, he could do so much more according to the zone district. It looks like he's doing things better. He will have issues that he has to deal with. I think we are here to settle an issue and I will be in favor of approving it.

**Ms. Lucia-Treese** – I am still very dismayed and distressed by this. The large gaps in time and not bringing what was needed bothers me greatly. I don't believe a hardship has been proven which is in our review criteria. It seems to me is there is a lot of passing of the buck. The owner didn't know this, the County staff did this. I don't believe that a concerted effort has been made and that this is merely coming for forgiveness rather than coming for approval.

**Mr. Moraes** – I look at this like a land use issue. When we look back at what has been there, it has been a campground and an RV park. Have things moved around and expanded? Yes. At the same time, if we try to go back to 1972 through aerial pictures, there is no way to definitely define what was there. It is going to be bigger or smaller and in different locations. But the odds of us nailing it 100% in the same size and same location the same way it was in 1972, in my mind is nearly impossible. Could we get close? Possibly. But would that be at the detriment of the applicant? Maybe. Maybe he'll still have more campground and the neighbors could still say it is still not in line with what was there in 1972. I don't think that it will be a determination and a true factor when we look at the aerials. At the same time, we talked about a similar case at Lone Duck Campsite. I looked at those variance applications, and it's basically the same. There was a violation and came back to the PC and BoCC. That variance was approved. I don't see much difference between that case and this case. I'm not saying we are setting a precedent, but in this case I look at it and we've done it in the past with campgrounds when you can't prove what was has gone on in the past. Finally, as soon as the RV storage issue came up, then we heard the complaints. If the RV storage was never there, would these other issues ever be known or brought up. In my mind, the other uses would have continued on. And now RV storage won't be there.

**Mr. Trowbridge** – I appreciate the RV storage being removed. I also appreciate **Ms. Eiland** getting that permit information tracked down. Processes take time. I totally understand the timeline and how it takes so much time to get here. It's been an RV campground for a long time. As for making changes, land changes require permitting, but we tend to do things on our own property and wonder if we do something on our property, do we need a permit. I will be in support of this.

**Mr. Greer** – I want to thank the applicant on the effort they've made so far. It is a difficult case and there are a lot of issues. I think the application meets the criteria and I will be in favor of this. I have reviewed the materials and I'm up to speed on the materials, so I feel able to vote on this.

**Mr. Risley** – I land somewhere in the middle. In looking at the approval criteria there are things we may consider. I also struggle to understand how this ties with undue hardship. The property is zoned C-2. Some of those uses may work to **Mr. Nieman's** advantage. I heard 60 sites, 72 sites, is it RV and tents? That is not clear to me. I would recommend that the applicant be much more clear when you go to the BoCC.

**PC ACTION: TROWBRIDGE MOVED/BAILEY SECONDED FOR APPROVAL REGULAR ITEM NUMBER 4, VA-18-005 FOR A VARIANCE OF USE FOR ROCKY TOP CAMPGROUND WITH FOUR (4) CONDITIONS AND THREE (3) NOTATIONS AND THAT CONDITION #4 BE REVISED TO REMOVE THE APPROVAL OF THE OUTDOOR AUTOMOBILE, BOAT, AND RECREATIONAL VEHICLE STORAGE AND TAKING INTO CONSIDERATION THE CHANGES PRESENTED TODAY, UTILIZING RESOLUTION NUMBER 21-002 AND THAT THE ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION PASSED (5-4). THE NAY VOTES WERE LUCIA-TREESE, FULLER, RISLEY, AND BLEA-NUNEZ.**

**Ms. Fuller** – There needs to be more clarity when you go to the BoCC. A bad business deal is not a hardship.

**Ms. Lucia-Treese** – My comments I made before the vote will suffice.

**Ms. Blea- Nunez** – I agree with my colleagues. This has not met a hardship. No further comments.

**Mr. Risley** – No further comments.

**4. El Paso County Master Plan – Information Update – No Action Needed – An update was given during Report Items.**

NOTE: For information regarding the Agenda item the Planning Commission is considering, call the Planning and Community Development Department for information (719-520-6300). Visit our Web site at [www.elpasoco.com](http://www.elpasoco.com) to view the agenda and other information about El Paso County. Results of the action taken by the Planning Commission will be published following the meeting. (The name to the right of the title indicates the Project Manager/ Planner processing the request.) If the meeting goes beyond noon, the Planning Commission may take a lunch break.

**The minutes were approved as presented at the February 18, 2021 hearing.**

