

**Meggan Herington, AICP, Executive Director**  
**El Paso County Planning & Community Development**  
O: 719-520-6300  
MegganHerington@elpasoco.com  
2880 International Circle, Suite 110  
Colorado Springs, CO 80910

**Board of County Commissioners**  
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## **PLANNING COMMISSION**

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

Planning Commission (PC) Meeting  
Thursday, January 19<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:** BRIAN RISLEY, SARAH BRITTAIN JACK, JAY CARLSON, TIM TROWBRIDGE, BECKY FULLER, ERIC MORAES, JOSHUA PATTERSON, BRANDY MERRIAM, AND CHRISTOPHER WHITNEY.

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

**PC MEMBERS PRESENT AND NOT VOTING:** BRYCE SCHUETTPELZ.

**PC MEMBERS ABSENT:** TOM BAILEY.

**STAFF PRESENT:** MEGGAN HERINGTON, JUSTIN KILGORE, RYAN HOWSER, CHARLENE DURHAM, CHRISTIAN HAAS, LEKISHIA BELLAMY, MIRANDA BENSON, AND EL PASO COUNTY ATTORNEY LORI SEAGO.

**OTHERS PRESENT AND SPEAKING:** NONE.

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

**A. Planning Department. Next PC Hearing is Thursday, February 2nd, 2023, at 9:00 A.M.**

##### **DISCUSSION**

**Mr. Kilgore** introduced a new planner, Lekishia Bellamy.

**Mr. Risley** asked if Ms. Bagley was still on leave?

**Mr. Kilgore** responded that Ms. Bagley would likely return in early March.

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

## **2. CONSENT ITEMS**

**A. Adoption of Minutes of meeting held January 5th, 2023.**

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

**B. CS-22-003**

**HOWSER**

### **MAP AMENDMENT (REZONE) 4-WAY COMMERCIAL REZONING**

A request by The O'Neil Group for approval of a map amendment (rezoning) of 67.14 acres from PUD (Planned Unit Development) to CS (Commercial Service). If the request for map amendment (rezoning) is approved, the applicant will be required to submit any applicable preliminary plans, final plats, and site development plans prior to the initiation of any uses. The applicant may also be required to submit application(s) for preliminary plan(s) and/or final plat(s) if future subdivision of the property is proposed. The 67.14-acre property is located directly west of the intersection of Highway 24 and Stapleton Road. The subject property encompasses land that is situated on the north and south side of Stapleton Road and is within Section 28 and 33, Township 12 South, Range 64 West of the 6th P.M. (Parcel No. 42000-00-399) (Commissioner District No. 2).

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

**C. PUDSP-21-005**

**HOWSER**

### **PLANNED UNIT DEVELOPMENT/PRELIMINARY PLAN WATERBURY FILING NOS. 1 AND 2**

A request by 4-Way Ranch Joint Venture, LLC for approval of a map amendment (rezoning) from PUD (Planned Unit Development) to PUD (Planned Unit Development) and approval of a preliminary plan for 198 single-family residential lots and eleven (11) tracts. The Waterbury PUD and Preliminary Plan was approved by the Board of County Commissioners on January 15, 2013 (BoCC Resolution No. 13-44). The previously approved plan included an alley-loaded residential product, which the current request proposes to remove in favor of a traditional lot layout. The current proposal also includes modifications to the previously approved road layout. If the proposed PUD and Preliminary Plan are approved, the applicant will be required to receive approval for final plat(s) prior to commencement of construction. The 61.86-acre property is located at the northwest corner of the intersection of Stapleton Road and US Highway 24 and within Sections 28, 29, and 33, Township 12 South, Range 64 West of the 6th P.M. (Parcel Nos. 42000-00-366; 42000-00-368; 42000-00-417) (Commissioner District No. 2).

## **DISCUSSION**

**Ms. Fuller** asked if Mr. Howser could clarify how many parcels were already approved and what is changing in this PUD from the previously approved PUD? Is this PUD more dense?

**Mr. Howser** answered there are 2 additional units. This project proposes 198 dwelling units where the previously approved plan proposed 196 dwelling units.

**PC ACTION: TROWBRIDGE MOVED / FULLER SECONDED FOR APPROVAL OF CONSENT ITEM NUMBER 2C, PUDSP-21-005 FOR A PLANNED UNIT DEVELOPMENT/PRELIMINARY PLAN, WATERBURY FILING NOS. 1 AND 2, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT, WITH EIGHT (8) CONDITIONS AND FIVE (5) NOTATIONS, AND WITH A RECOMMENDED FINDING OF SUFFICIENCY WITH REGARD TO QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (8-1).**

**IN FAVOR:** MR. RISLEY, MS. BRITTAIN JACK, MR. CARLSON, MS. FULLER, MR. MORAES, MR. PATTERSON, MR. TROWBRIDGE, AND MR. WHITNEY.

**IN OPPOSITION:** MS. MERRIAM.

**COMMENT:** MS. MERRIAM stated she did not think enough information was provided concerning the water sufficiency finding. MS. SEAGO responded that communications from water providers are part of the information provided on EDARP, which is public record, and are relied upon when the County Attorney provides their water review.

### **3. CALLED-UP CONSENT ITEMS**

**2B. CS-22-003**

**HOWSER**

#### **MAP AMENDMENT (REZONE) 4-WAY COMMERCIAL REZONING**

A request by The O'Neil Group for approval of a map amendment (rezoning) of 67.14 acres from PUD (Planned Unit Development) to CS (Commercial Service). If the request for map amendment (rezoning) is approved, the applicant will be required to submit any applicable preliminary plans, final plats, and site development plans prior to the initiation of any uses. The applicant may also be required to submit application(s) for preliminary plan(s) and/or final plat(s) if future subdivision of the property is proposed. The 67.14-acre property is located directly west of the intersection of Highway 24 and Stapleton Road. The subject property encompasses land that is situated on the north and south side of Stapleton Road and is within Section 28 and 33, Township 12 South, Range 64 West of the 6th P.M. (Parcel No. 42000-00-399) (Commissioner District No. 2).

#### **DISCUSSION**

**Mr. Howser** asked Ms. Merriam if there was a specific question he might be able to focus on?

**Ms. Merriam** asked about a sufficient water finding.

**Mr. Howser** stated that a finding of water sufficiency is not required for a rezoning. He believes the applicant will petition for the property to be serviced by a different water district in the future, but that cannot happen until rezoning is approved.

**Ms. Merriam** asked for more information regarding 4-Way Ranch Metro #1 being listed as the Metropolitan District in the staff report.

#### **STAFF PRESENTATION, APPLICANT PRESENTATION**

**Ms. Merriam** stated her question regarding water findings was related to the suitability and compatibility with the surrounding area. Water is her main concern as it relates to the criteria of

approval. This is a corner of residential/agriculture, and this is a proposal for commercial. How will this be developed in a compatible way?

**Mr. Trowbridge** asked that Ms. Ruiz (the applicant's representative, Vertex Consulting) address the drainage through the property as she goes through her presentation.

## **PRESENTATION CONTINUED**

**Ms. Fuller** asked how much acreage of the previous PUD was designated residential use?

**Ms. Ruiz** showed an image of the currently approved PUD which shows "Mixed Use" to include residential but does not identify residential specifically.

**Ms. Merriam** clarified that this rezone to commercial would eliminate the previously approved PUD with the list of different uses.

**Ms. Ruiz** confirmed that rezoning would remove the PUD zoning designations.

**Ms. Merriam** asked if ownership of the property had changed since the PUD was approved?

**Ms. Ruiz** stated ownership had changed.

## **PRESENTATION CONTINUED**

**Ms. Merriam** asked if there would be a transition between existing rural and the proposed commercial? Right now, there are cows on this land. What would that look like?

**Ms. Ruiz** stated she can't answer that at this stage because that application has not been submitted. She then referenced a slide of her presentation which depicts buffering requirements of the Land Development Code (LDC).

**Ms. Merriam** understood that those specific concerns might not have exact answers at this stage, but that's what causes her to have concerns about the suitability.

## **PRESENTATION CONTINUED**

**Ms. Merriam** asked for more information regarding the widening of Hwy 24 at Garrett Rd. Will that continue northeast to Stapleton Rd? Is there information on that related to this suitability?

**Ms. Ruiz** answered that a traffic study had been submitted with the rezone application. PCD staff included a condition of approval that identifies the applicant would need to contribute to the roadway improvements as necessary.

**Ms. Merriam** acknowledged that the applicant will be doing their part but asked if the road was going to be made into a 4-lane roadway. Will there be a light at the intersection of Garrett Rd?

**Mr. Hodsdon**, with LSC Transportation Consultants, Inc, answered that he is not aware of immediate plans to widen all the way to the Stapleton Rd area, and that the widening currently under construction goes to the central core of the Falcon area. There was a planning study done



a few years ago, that included this area of Hwy 24, which outlines the future of the highway. The section of the highway relevant to this project is north and east to the area Ms. Merriam is referring to. Signalization is on CDOT's future priority list for Hwy 24 and the Stapleton intersection. It will be completed in order as funding becomes available. They collect funding from area developments as they occur and put it into escrow to go towards the cost of installation.

## **PRESENTATION CONTINUED**

**Ms. Ruiz** read PCD staff's recommended condition of approval number 5. Because the parcels are both legal divisions of land and neither the LDC nor statute requires that a subdivision be submitted for consideration and approval before the BOCC, the applicant requests the condition be removed.

**Mr. Risley** asked PCD staff to address why that condition was recommended.

**Ms. Herington** verified that the PC members all were able to view the staff report in front of them. She then asked Mr. Howser to address the recommended condition.

**Mr. Howser** clarified that he has nothing else to add as part of his official staff presentation. He requested that the traditional staff presentation be concluded. He then addressed the concern regarding the fifth condition. He recognized that it is not a condition typically seen for a rezoning. The purpose was to provide additional notice to any potential, future property owners that the LDC may require a subdivision prior to a site development plan due to the road splitting the property. The road bisecting the property did not create two distinct parcels, which is not a typical situation. He did discuss the condition with the County Attorney, and it was suggested the language be amended to read, "If required by the Land Development Code, the applicant shall submit and receive approval of any applicable subdivision applications prior to approval of any site development plans or initiation of any uses on the property." Amending the makes it clear that a subdivision would only be required pursuant to the requirements of the LDC. The intent is not for the interpretation that nothing can be built on the property until it has been subdivided, but to provide clarity in case the LDC requires subdivision in the future.

**Mr. Risley** stated it seemed logical and asked if the applicant was amenable to the new verbiage?

**Ms. Ruiz** answered that it would be their preference that the condition be removed because the LDC does not require subdivision. The concern is that any new PCD staff in the future may think subdivision if required when it's not. The staff report includes two instances that state, "A subdivision shall be required", and "A subdivision will be required." When PCD staff is completing research in the future, it might be interpreted that somehow, a subdivision was mandated by the PC or BOCC.

**Ms. Fuller** clarified that Ms. Ruiz is saying the staff report is incorrect by including the "shall be" and "will be" language. She thinks including the condition to protect a future, unknowing buyer is valid. If it's not relevant, couldn't a future buyer just point to the current LDC to show subdivision is or is not required and meet that condition?

**Ms. Ruiz** stated that is true, but added that when looking to interpret the condition of approval, researchers could look at the background section of the staff report and see that the language

states it is required. She stated she has seen when something is added as a notice to future property owners, that it's added more as a notation, rather than a condition of approval.

**Ms. Herington** added that the executive summary of the staff report states, "The applicant *may* also be required to submit application(s) for preliminary plan(s) and/or final plat(s) if future subdivision of the property is proposed." The entire staff report does not use the verbiage "shall". Since she joined the PCD Department, there have been multiple discussions with applicants and the County Attorney regarding the subdivision process, the definition of subdivision, and LDC versus state statute. She believes that is part of the reason the condition was added to this application.

**Mr. Patterson** stated he would not be in favor of keeping condition number 5 for the reasons mentioned. He foresees future complications as a very likely situation. He would support removing the condition as the applicant has requested.

**Mr. Dossey**, with Vertex Consulting and The O'Neil Group, (attending the meeting virtually) stated that he has not seen this condition on a commercial rezoning before during his time working with El Paso County. The controlling guidance is the LDC. To add a condition that supersedes the LDC doesn't make sense; Repeating the LDC doesn't make sense. At what point does one stop repeating the LDC?

**Mr. Risley** stopped Mr. Dossey to advise him that the PC was having a hard time understanding him though the TEAMS audio. He asked Ms. Ruiz to summarize his concerns.

**Ms. Ruiz** repeated Mr. Dossey's comments and asked if he had any further comments.

**Mr. Dossey** added that the entire property is under one ownership, and the owner could develop the land without going through subdivision, if they chose to do so, by developing as pad sites. The only time subdivision would need to occur, is if the owner transferred ownership of a specific legal description as a plat or future development tract. At that point, the LDC should control; It shouldn't be up to a condition of approval.

**Ms. Ruiz** summarized Mr. Dossey's comments.

**Ms. Brittain Jack** asked why the condition is being recommended now if it hasn't been required before?

**Ms. Seago** stated that part of the reason this condition was added was to address the unique configuration of the property. One does not often see a property completely bisected by right-of-way. Mr. Howser identified this looks like two separate pieces of property when it is not. She believes Mr. Howser's intent was to provide notice to potential future buyers that if they were to acquire the piece of land either north or south of the right-of-way independently, at that point, subdivision may be required under the LDC. While it does not appear to be the intent of the owner to sell a part of the property at this point, it is not uncommon for a buyer to acquire a piece of land not knowing it was an illegal lot or was misinformed about what would be required before building on that land. The condition's intent is not to impose anything not otherwise required by the LDC. It is up to the PC whether they wish to recommend this condition or not.

**Mr. Carlson** asked if the portion north of the right-of-way could be sold separately from the southern part?

**Ms. Seago** stated that the owner could in fact sell just the northern section of land and the County would not know if it had been sold. If the buyer then came to the PCD front counter wanting to submit a site development plan, staff would then need to advise them that the new parcel was created illegally, and it needs to go through a process to become a legalized parcel.

**Mr. Carlson** asked if there had to be a parcel number in order to purchase property?

**Ms. Seago** stated there has to be a legal description. A parcel number is just an Assessor's tool.

**Ms. Herington** added that all someone would need to do is create a legal description for the separate acreage and record that with the County Clerk and Recorder's office. It would then be a separate legal description, separate parcel number, that could then be sold as a standalone piece of property. The added condition is meant as a reminder for if that situation were to occur, it is an illegal subdivision and would need to come back through the County's planning process.

**Ms. Seago** added that the reason this condition has not been used before is because it is a rare occurrence that a single parcel is completely bisected by right-of-way.

**Mr. Risley** asked how the County acquired right-of-way bisecting a piece of property without triggering the creation of separate parcels? Does anyone have more information on the background of what occurred?

**Ms. Seago** stated she is not familiar with the background of the acquisition of this right-of-way.

**Mr. Whitney** asked Ms. Ruiz if the LDC requires subdivision in circumstances such as this?

**Ms. Ruiz** stated the LDC would refer to statute, which refers to the creation of parcels less than 35 acres in size.

**Mr. Whitney** stated he understands the preference to have no added condition at all to avoid the theory that it could cause an issue in the future. Does the underlying language allay the applicant's concerns? The condition may not be preferred, but does the added language address the applicant's concern?

**Ms. Ruiz** stated that if the intent is to provide notice to future property owners, it would be her opinion that the condition should be a notation.

**Mr. Whitney** asked Ms. Ruiz what the difference is between a condition and notation?

**Ms. Herington** stated that question can be addressed by County staff.

**Ms. Seago** answered that it is her understanding a condition of approval is required to be met for the approval to be affected. If it is not met or complied with, the applicant or property owner may have that approval overturned for failure to comply with the condition. A notation does not carry that same weight. It is a reminder, notice, or observation. A notation does not require compliance to effectuate the approval of the application.

**Ms. Herington** added that the reason staff requested a condition rather than a notation relates to the conversations with multiple applicants regarding state statute definition of subdivision and the definition of what a remnant parcel is in relation to subdivision. She believes there are several different definitions of remnant parcel, and staff is working with the County Attorney to clarify and establish better procedures on how to work through the subdivision process. Because there is outstanding disagreement on the definition of subdivision between the state statute and LDC, staff is attempting to clarify and reaffirm with this condition.

**Mr. Whitney** commended staff for wanting to notice individuals of a potential issue but wanted to understand why it was elevated to a condition rather than notation.

**Ms. Herington** clarified that the piece of land north of the right-of-way is less than 35 acres, so by following the definition of subdivision in statute and LDC, a subdivision would be required. It is staff's main concern that there could be a parcel less than 35 acres that does not meet the definition of subdivision. A note could potentially do it; staff just wants to assure that it is documented. Staff wants to make sure they are working through the details related to the possibility of a remnant parcel less than 35 acres, understanding there is a process they may need to go through in the future for that piece of land.

**Mr. Trowbridge** stated it seems like the County created this problem by acquiring the right-of-way that divided the property. Why should the PC put a condition on the property owner for a problem the County created?

**Mr. Risley** agreed and stated that is why he asked about the background.

**Mr. Dossey** (now physically present at the meeting) addressed Mr. Trowbridge's question. He stated the reason the property is bisected is due to the County acquiring the right-of-way. The property was not bisected before Stapleton Rd. The "problem" staff is identifying with a portion of the parcel north of Stapleton Rd. was not of the applicant's creation. If the applicant wanted to develop the entire site as pad sites and lease them, they could do that now. That would not require any planning action. If the goal is to notify people, when do you stop with that notice? They'll need to do a landscape plan, lighting plan, parking plan, etc. because this is a commercial development. Adding this condition seems to be rooted in fear. He doesn't think it's ever been the practice of the County to add conditions of approval based upon what could potentially happen, especially as it pertains to commercial.

**Mr. Kilgore** clarified that PCD staff is agreeable to making this a notation rather than a condition.

**Mr. Schuettepelz** stated he thinks having these details as a notation makes most sense to him. He understood Ms. Seago's explanation that a condition means a condition of approval whereas a notation is a notice. He heard staff explain the condition as a notice to potential future buyers.

**Ms. Merriam** agreed that it makes more sense as a notation. She asked staff about the County Parks Master Plan because the staff report referred to the Plan with the 2013 date when a new Plan was recently approved.

**Mr. Risley** stated he believes this application was submitted prior to the new Parks Master Plan was approved, so the 2013 version was referenced.

**Mr. Howser** confirmed that is correct.

**Mr. Dossey** commented on discrepancy within the staff report concerning whether subdivision is required, or “shall be”, “may be”, etc. He would request that it be consistent throughout the staff report. He thinks discrepancies can be interpreted in the most restrictive fashion. He stated the PC is authorized to make recommendations to the BOCC, and he requested they make the recommendation include that subdivision not be required, regardless of what the staff report says. Legally, it is not required under statute or the LDC.

**Ms. Fuller** stated she is in favor of keeping the condition with the revised language as amended in staff’s presentation because it is in line with the intention of informing the public. There should be no surprises, it should be a predictable process. The amended language seems like a reasonable solution. She suggests staff modify their staff report to be clear throughout.

**Mr. Whitney** added for clarification that staff stated they’d be agreeable that this be a notation.

**Mr. Trowbridge** stated he doesn’t think it should be a condition since the County created the problem. He would accept it being a notation, but also thinks it should be eliminated altogether.

**Mr. Patterson** stated he thinks the condition should be removed. It becomes confusing when things are over-complicated to protect people from incompetence.

**Mr. Risley** explained that the reason he asked about background of the property was because he believes this was a problem created by someone else in the past. He agrees with other board members, that it doesn’t seem right to put the burden of fixing this problem on a particular landowner. In his opinion, there can be a compromise if staff feels strongly there should be some type of notice to future property owners, by amending condition number 5 to be a notation.

**PC ACTION: BRITTAIN JACK MOVED / PATTERSON SECONDED FOR APPROVAL OF CALLED-UP CONSENT ITEM NUMBER 2B, CS-22-003 FOR A MAP AMENDMENT (REZONE), 4-WAY COMMERCIAL REZONING, AMENDING THE RESOLUTION ATTACHED TO THE STAFF REPORT TO REFLECT A MODIFIED FOUR (4) CONDITIONS AND TWO (2) NOTATIONS, REMOVING CONDITION NUMBER 5, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-2).**

**Mr. Kilgore** asked if Ms. Brittain Jack intended to amend condition number 5 to be a notation?

**Ms. Brittain Jack** stated she is making the motion to remove that condition.

**Mr. Patterson** agreed that was his understanding when he seconded the motion.

**Ms. Fuller** asked if she should vote against Ms. Brittain Jack’s motion if she feels the BOCC should take a closer look at condition 5 being a revised notation?

**Mr. Risley** advised that if the motion is approved, the PC’s recommendation to the Board would be that this application be approved with the 4 conditions and 2 notations suggested by Ms. Brittain Jack. The Board could look back at the record of this meeting if they chose to, to see how the PC arrived at their recommendation.

**Ms. Seago** added that it is up to Ms. Fuller whether the importance of including the condition or notation is enough for her to vote against the application overall. She can also vote in support of the motion and ask staff raise the issue at the BOCC hearing, include it in the minutes, etc.

**Ms. Fuller** stated she doesn't want to hold things up or create uncertainty. She understands applications need to move forward. She thinks this subject should be brought to the attention of the BOCC for their consideration.

**Mr. Moraes** is against the motion. Staff has identified a problem, and he doesn't think the problem should be ignored. He doesn't think this notation would be the same as advising that there will be landscaping issues or buffering issues, or anything else in the LDC. Those aren't issues. Someone created this problem, and it has been identified as a problem. He doesn't think adding it as a notation should cause an issue. The wording includes "applicable" subdivision. At this time, it's not applicable, but it may be at some point in the future. By getting rid of it, the PC is looking at the concern raised by staff and dismissing it because the applicant didn't bring it forward.

**Mr. Risley** reminded board members they are voting on the whole application, not this one condition.

**Ms. Merriam** stated she is against the rezone, regardless of the condition.

**Mr. Trowbridge** recognized there is a problem, but it was not caused by the applicant. Also, the condition/notation is treating the applicant as if they're going to be a bad actor in the future; That they're going to do something they shouldn't do. He stated this is wrong. It shouldn't be presumed that someone will do something they shouldn't. He is in favor of Ms. Brittain Jack's motion.

**Mr. Patterson** stated that this struck a chord with him. The County created a problem and in assigning a solution, the property owner is the one paying the price for incompetence. He stated this feels like a problem if the PC does not support stopping this condition in its tracks. The best way to protect the public is simplifying the process and letting things fall as they lay. It should be assumed that the property owners are upstanding and, if the property is sold, the buyer is a competent buyer.

**Mr. Kilgore** stated staff has clarifying comments.

**Mr. Risley** stated that per the Rule of Order, the opportunity for comment has passed.

**IN FAVOR:** MR. RISLEY, MS. BRITTAIN JACK, MR. CARLSON, MS. FULLER, MR. PATTERSON, MR. TROWBRIDGE, AND MR. WHITNEY.

**IN OPPOSITION:** MS. MERRIAM AND MR. MORAES.

**COMMENT:** MS. FULLER stated she would like the removed condition to be addressed and evaluated by the Board of County Commissioners. MS. MERRIAM had no comments regarding her nay vote. MR. MORAES indicated he would have otherwise approved of the rezone but is not in favor of removing the condition recommended by staff.

#### **4. REGULAR ITEMS. NONE.**

**MEETING ADJOURNED at 10:18 AM.**

**Minutes Prepared By: Miranda Benson**