

Minutes of the Proceedings
Laramie County Planning Commission
Prepared by the Laramie County Planning & Development Office
Laramie County Wyoming

Thursday, April 14, 2011

- 110414 00** The Laramie County Planning Commission met in regular session on April 14, 2011 at 3:30 p.m.

Planning Commission members in attendance were: Commissioner Jody Clark, Chairman; Commissioner Paula Qualls, Vice Chairman; Commissioners Frank Cole, Jim Ward and Bert Macy; Planning Director Gary Kranse; Associate Planner Lyndsay Hazen; Recording Secretary Nancy Trimble.

Those signing the meeting register were: Carole Eppler, 9222 Bell Lane, Cheyenne; James Rodebaugh, 4875 Road 203, Carpenter; Richard Boulton, 344 Road 154, Carpenter; Leo Smith, 115 Road 153, Carpenter; Harriet M. Hageman, 320 W. 4th Ave., Cheyenne; Wendy Douglass, 9911 Bell Lane, Cheyenne; J. Fred Volk, 6101 Yellowstone, Cheyenne; Brad Emmons, AVI PC, Cheyenne; Nancy Olson, Cheyenne MPO; Eric Sackett, Rio Verde Engineering, Pinedale; Colt Bruegman, 8009 US Hwy 30, Cheyenne; JJ Butler, Daniel, WY; Hank Bailey, 9801 Bell Lane, Cheyenne; Tom Mason, Cheyenne MPO.

- 01** Review and action of the Subdivision Permit and Plat for Swan Ranch Rail Park, 4th Filing, located in a portion of Section 27, T.13N., R.67W., of the 6th P.M. Laramie County, WY.

Brad Emmons, agent for the applicants Clear Creek Land Company and Swan Ranch LLC, came forward to present the application. He explained that the subdivision permit was for 6 lots: one was for rail access only, which was lot 6; one was for the regional detention, which was lot 2; and the remaining four were industrial commercial lots. With regard to condition 1 of the staff report requiring modification to include the proposed public sewer system on the plat, bids had been received this week, and construction should start within the next 2 to 3 weeks, and should be completed July 1st. He stated the applicant was in agreement with conditions 2 and 3. In reference to condition 4 on the dedication of the 30' access easement, the applicant was working with planning staff in order to make sure there was access to the regional detention pond outlet structure. He addressed condition 6 with regard to the use and access of lot 6 -- it's intended use was currently a private rail corridor; and as development continued, the corridor should continue on. On condition 8 - the sewer line was going to be installed, and as it was definite, there was no need for DEQ approval. Commissioner Cole suggested that since the access easement needed to be granted to someone, why not to the owner of lot 2? There will need to be clarification if the access must come off of Tundra. Commissioner Cole stated easements need to be designated to specific utility companies, so there needed to be specification.

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Gary Kranse gave a review of the staff report and mentioned that the first, second, and third filings of Swan Ranch Rail Park had been recorded. He explained that PlanCheyenne shows this area as best suited for industrial type uses, and the development agreement was already in place. Mr. Kranse stated there had been a number of comments received which need to be addressed prior to the recording of this plat. Planning staff found that the application met criteria for a subdivision permit and plat, and asked that the Planning Commission recommend approval with the eight conditions listed on the staff report. Mr. Kranse said he believed that once the detention pond situation was clearly defined, it would clear up the questions regarding the access easement, and that staff would follow through on the necessity of the DEQ review.

Commissioner Cole stated that an old roadway appears on the plat just west of the southeast corner, and asked what was it for? Mr. Emmons stated he didn't know. Commissioner Cole suggested maybe it was the old road to Fort Collins, CO. Commissioner Clark asked if there were any other questions.

Commissioner Clark opened the hearing to the public. As there were no public comments, she closed the public hearing and opened it to the members for discussion and a motion. Commissioner Qualls motioned to approve the subdivision permit and final plat with conditions 1 - 8 of the staff report; Commissioner Ward seconded the motion, and the motion passed with a vote of 5 - 0.

02 Review and action of the Preliminary Development Plan for 307 Properties located in a portion of the North ½ of Section 5, T. 12 N., R. 62 W., of the 6th P.M., Laramie County, WY.

Gary Kranse asked for the representative of 307 Incorporated to come forward and present the application, and prefaced that the preliminary development plan was a new process, which replaced the preliminary plat, and was more detailed than both the preliminary and final plats. The new preliminary development plan provided opportunity to find all issues that could be addressed before the final plat was submitted, therefore expediting the process.

Eric Sackett, of Rio Verde Engineering, came forward and explained that section 5 was purchased with the plan to develop five light industrial lots to service the increasing oil industry demands, and to bring the road up to standard. The applicant was going through the DEQ approval process regarding the septic situation, and was working on getting the road layouts established. He stated the biggest issue was with the private Road 149, and trying to reach an agreement for improvement. The intent was to create a new county road entirely on the property, then connect it to the existing road.

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Commissioner Cole stated he made a second trip yesterday to verify the site, and found Road 149 was all on Section 5, not on the adjacent property. He asked if road 203 was on an easement or right-of-way owned by the County. Mr. Sackett responded he believed it was an easement, and would research to verify. Commissioner Cole suggested on the traffic study that both ends of the road be utilized, with the north end being a left-only onto Road 149, and the south end leading to road 203. He also asked if the development sign had been posted. Colt Bruegman, of 307 Incorporated, said it had blown into the ditch and was posted on the wrong property when it was replaced. Commissioner Cole stated the easement for Road 150 needed to be on the plat in order to be platted properly, and that he saw no problem with access to the county road with regard to line of sight issues. Mr. Bruegman said the main issue was traffic from the interstate. Commissioner Cole said speed limits were also an issue.

Gary Kranse gave the staff report, and expressed that there is a need to accommodate the oil industry due to the Niobrara oil play. He stated that the access issues needed to be resolved with WYDOT. The introduction of a new road on the south of the property should address that situation. He explained that this would serve the need in the area for trucks and industrial uses, and provided a good opportunity for accessible roadways. Staff recommended that the application met the criteria of a preliminary development plan. A subdivision permit and site plan would be required prior to further action.

Commissioner Cole noted that the plan indicated a power line on the north side of the road, and that there was an easement indicated on the north side which would need to be dedicated to High West Energy.

Commissioner Clark opened the hearing to the public. James Rodebaugh of 4875 Road 203 came forward and stated he was located to the west of the subject property, and was concerned about the impact of this action on the quality of life in the rural area, and asked wouldn't this be considered spot zoning? He asked if there wasn't somewhere else where it was zoned light industrial for this type of development, and how can the landowners know what type of business would be going in. Mr. Rodebaugh expressed concern for the water aquifer and game movement, as well as traffic - how much would be concentrated? He stated there had been a number of accidents in the past where the road curved. He had concern for the water aquifer as his well draws sand when irrigation is being performed in the summer, and this could place a big draw on the aquifer. In addition, how was fire suppression to be handled? Commissioner Clark asked if Gary Kranse would address these concerns? Mr. Kranse responded that he would wait for all comments, then address them at the same time.

Leo Smith of 115 Road 153 came forward and stated he owned property on three sides of the subject property. He explained that Mr. Rodebaugh had addressed all of his concerns, and added a request that power lines be placed underground.

J. Fred Volk of 3560 Horse Creek Road stated he had concerns, and that this was a classic case of spot zoning. He asked if that wasn't something the County was trying to avoid? He stated that there was other land in the County, for example near the TA Truck Stop, which included 60 acres which were already zoned light industrial to accommodate truck traffic. He said he had driven on the curve mentioned, and expressed that truck traffic would definitely impact roads in that area and that it was not the best location for new road placement.

Mr. Kranse explained that Fire District No. 4 made the comment that they would like to see a 30,000 gallon cistern to accommodate fire suppression, and the developer was checking into that. Zoning was also mentioned three times in the review comments -- this is in unzoned area, so there would be no land use designations. What would be evaluated would not be land use, but impact to surrounding property. There would be no restriction on the type of land use in this case. One of the differences in managing outside the zoned boundary is that the County cannot stop uses, as the land is not zoned. The only opportunities to address impact are with a site plan and this preliminary development plan -- first, let the neighbors know what's proposed; second, receive comments from them; and third, address those impacts. He stressed that traffic and water were both valid issues, as well as power lines. Wells would not be regulated through the County, but by the State Engineer. We can make them aware, and ask the developer about the intended uses; however, the State has the ultimate say. East Laramie County has a control area, which allowed for another level of approval for well permits to be issued. With regard to the traffic concern, the County and the State are concerned, and with the ability to circulate traffic on Road 203, issues could be reasonably mitigated. As far as underground power lines, that would be a question for the developer, but could be addressed as well.

Colt Bruegman, the president of 307 Incorporated, asked Commissioner Bert Macy, of High West Energy, if it would be possible to run utility lines underneath Road 149? Commissioner Macy responded yes. Mr. Bruegman stated there was a water well that put out 25 gallons per minute for the water suppression, and there was a storage tank. He stated that they sympathized with the neighbors, and, as with any type of development, they did the best they could when choosing the property. Having observed oil trucks and tankers parked on private land, they were trying to help with that situation. His company owned 480 acres out there which should provide a buffer zone.

Commissioner Clark asked if there were any other public comments. Mr. Rodebaugh returned and stated that 30,000 gallons of water, depending on the pump, would be depleted in no time, in possibly as little as 10-15 minutes. He asked how that would protect neighbors from a prairie fire. Mr. Bruegman said they planned on keeping the property mowed, and the road south of the property would be a fire barrier. In addition, all top soil would be removed for one mile in all directions, and there would be a 5 foot berm on top of the easement, so this should stop a fire from spreading. Mr. Rodebaugh stated that with 40 - 60 mph winds, a fire would not be stopped, and the road traffic will impact the surrounding area with the noise level. He said he didn't know how much the residents feelings were being taken into consideration. Commissioner Ward how close Mr. Rodebaugh's house was to the subject property. Mr.

Rodebaugh responded that his house was 375 yards from Road 149, and this development would definitely impact him, as he hunts, shoots skeet, and a lot of other outdoor activities.

Commissioner Clark closed the public hearing, and opened to discussion and a motion. Commissioner Cole stated it all came back to not having county-wide zoning, and stated there was nothing wrong with the plat, and as the County can't look at the land use, oil companies could come in. Commissioner Qualls agreed with Commissioner Cole, and stated that she realized this would be an issue for many residents in the county, and would continue to be an issue as long as the oil play was taking place. The only process that could take place would be to look at each of the plats to see if the use did fit with the area being considered. As there was no county-wide zoning, each plat had to be discussed individually. Yes, there would be impact on neighbors, but there was more benefit than negative impact.

Commissioner Ward stated he saw both sides as well, but the use had to be placed somewhere in the county, and no one wanted it in their back yard. Although we cannot see the end result, he did understand the purpose of the application. Commissioner Clark asked for a motion. Commissioner Cole moved to approve with the conditions listed in the staff report, but didn't think the traffic study was too critical. Commissioner Ward asked about what happens with this action after it passes? Mr. Kranse responded that it was a new process, with the purpose of gathering agency reviews and neighbors comments in order to produce a final plat as the next step that addresses all issues that were brought up during the preliminary development plan process, and used the example of running all utilities underground. Commissioner Ward expressed that there was plenty of time to address issues such as buffering and sight distance lines. Commissioner Qualls seconded the motion. Commissioner Cole asked if the application then went to the Board of County Commissioners. Mr. Kranse responded no. Commissioner Cole motioned to add a condition to run power lines underground, and asked if that would include RT Communications lines as well. The response was yes. The motion was seconded, and passed with a vote of 5 - 0.

03 Review and action of the Planned Unit Development (PUD) Amendment for Tract 1, Shellback Subdivision, located in a portion of Section 17, T.14.N., R.67.W., of the 6th P.M., Laramie County, WY.

Carole Eppler, applicant, came forward and expressed that the process seemed to have gotten more complicated. She had previously operated a bed & breakfast for 22 years in the City of Cheyenne. As she had moved last November to a new home and subdivision, she hoped to be able to reopen an establishment there. She had found a lot of people in her neighborhood didn't understand there would be very little impact to them, with less traffic than most families would generate. She clarified that the most cars that would be on the property would be two, aside from their own which would be in their garage, and the closest neighbor was a quarter mile down the road. Her house was the first house on the road, so the bed & breakfast wouldn't impact the other neighbors further down the road, and from December to April there would be

110414 virtually no business due to the weather. She would like the opportunity to address concerns, so the neighbors would be clear on the minimal impact, and was only requesting the PUD amendment for their property.

Gary Kranse gave the staff report, with the purpose of amending the PUD to allow a bed & breakfast facility. In 1999, the zone district was changed from A-2 (agricultural) to PUD (planned unit development), with zoning around the subdivision remaining A-2. This proposed use is compatible with A-2 uses, and staff sees no problem. A bed & breakfast would be the only use by right added and would only be for Tract 1. Environmental Health comments would need to be addressed prior to opening the bed & breakfast.

Commissioner Cole commented that 12 years ago it was recommended the development go to a PUD, with guidelines intended to preserve the natural habitat. He didn't think it was proper to change only for 1 lot, and thought that everyone should have to agree to an overall PUD amendment. On the other hand, it was a much quieter use with a lot less traffic than having teenagers would generate. Mr. Kranse pointed out the letter received from Ms. Wolfe on April 11, 2011 with objections to this proposal, in order to have it entered into the record. Ms. Eppler stated she had attempted to make homeowners aware, and one neighbor had seemed very upset. Mr. Eppler stated she had obtained letters from neighbors of her previous bed & breakfast location at 502 E. 24th St. The letters indicated that the neighbors never even knew the Epplers were operating a bed & breakfast, as there weren't even signs in the yard.

Commissioner Clark opened the hearing to the public. Harriet Hageman, an attorney, stated she owns lot 2, which is adjacent to lot 1. She said she felt badly that she had to take this position, but there were restrictive covenants recorded on July 1, 1999, which specifically prohibit a home-based business like this and are enforceable by law, and actually do not allow for any type of home-based business. She continued by reading excerpts of said covenants: all tracts, except 3 & 14 (open space), shall be residential tracts, used only as residential sites. No trade business, sales, or retail are permitted in subdivision. Paragraph 19 was a declaration that all restrictions shall be binding on all parties, for a period of 25 years from recordation, and automatically extended for 10 year periods. These covenants may be amended by a majority of homeowners agreement only. She stated she understood that a bed & breakfast would have minimal impact, but the restrictive covenants in place cannot be amended without a majority agreement of neighbors, and neither the Planning Commission nor the Board of County Commissioners have the authority to override the covenants. Commissioner Qualls stated that the public had to live with covenants. Her understanding was that the only way people restricted by covenants could pursue amendments was to go through the court system, not through the Board of County Commissioners. She stated her homeowners association chose not to go to court, and they now have to live with it. Ms. Hageman said she had just stated what the covenants state, that home-based businesses are not allowed. Commissioner Cole said in the last 12 years, he had seen

this situation many times, and the Supreme Court had ruled in favor of the covenants. He felt that the PUD shouldn't be amended for only one tract.

Hank Bailey, of 9801 Bell Lane came forward as a neighbor in this area. He stated he was also an attorney, and represented John Morris, who owns the remaining vacant land in that area. Mr. Bailey explained he was not here to oppose Carole's wishes. The concern arose when Carole said she wanted change the PUD for the entire area, then came back with just 1 tract proposed for the amendment; they weren't thrilled with that either, but didn't want to make life difficult. Mr. Bailey expressed that he wished she could just proceed without approval. He did agree about the covenants being enforced in a court of law. Any one member could enforce them, and the letter from Ms. Wolfe indicates there is a strong desire to enforce the covenants.

Commissioner Clark closed the public hearing, and asked for a motion. Commissioner Ward considered the neighbor opposition - some were okay with the amendment, some were not. Either way, it didn't matter what was resolved by today's meeting, the applicant needed to work out issues with the neighbors. Under the circumstances, it was in the Epplers best interest to resolve with the neighbors, and then return before the Planning Commission. Commissioner Qualls motioned to continue the item in order to give Ms. Eppler time to further work with her neighbors. Mr. Kranse suggested it was better to put a meeting date on it. Ms. Eppler made a request that would be appropriate to go to the Board of County Commissioners, we don't want to stop the process as she has a right to ask, even with the issue of covenants. The County does not enforce, nor does it undo, covenants. Zoning as it stands doesn't allow the use, but Ms. Eppler has to deal with the covenants issues. The Planning Commission agreed to continue for two months to allow Ms. Eppler to revisit the covenants, then return. There is the expectation she has a right to ask for opinion and for a zoning change, it cannot be prohibited. It is best to put a certain date on the meeting, so at that time the application can move forward or be denied. Staff owes her the right to move forward to the Board of County Commissioners to make a determination. Commissioner Qualls motioned to continue the application to the June 23, 2011 Planning Commission meeting. Commissioner Macy asked how it was legal to request a zoning change, but not meet the covenants. Mr. Kranse responded that covenants are a private contract the County does not enforce and has nothing to do with. The County does manage the zoning and underlying land rights, and anyone can make a request regarding those items, as they are a different issue. The Planning Commission is not in violation of or in conflict with state law, and our approval doesn't relieve her of contractual obligations. Commissioner Macy expressed that although the Commission deals with uses which may be conflicting, and has no bearing or interest in contracts with property owners, would we be in the middle of a situation if we approved this zone change? Mr. Kranse responded no, it would only be the County's

permission given to do what the applicant wanted on their property. Commissioner Ward said it seemed that the cart was put before the horse, without the neighbors agreement to this amendment. Commissioner Cole thought it would be ideal to return with a proposal to amend the entire area. The Planning Commission voted 5 - 0 in favor of continuing the application to the June 23rd meeting.

The meeting was adjourned at 4:55 pm.