

EL PASO



COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

Planning Commission Meeting
Tuesday, December 4, 2018
El Paso County Planning and Community Development Department
2880 International Circle, Hearing Room
Colorado Springs, Colorado 80910

**PRESENT AND VOTING: JIM EGBERT, ALLAN CREELY, JOAN LUCIA-TREESE,
TOM BAILEY, GRACE BLEA-NUNEZ, AND KEVIN CURRY**

PRESENT AND NOT VOTING: NONE

**ABSENT: BRIAN RISLEY, JANE DILLON, PETER AURICH, AND SHARON
FRIEDMAN**

**STAFF PRESENT: CRAIG DOSSEY, MARK GEBHART, AND EL PASO COUNTY
ATTORNEY COLE EMMONS**

**OTHERS PRESENT WHO SPOKE AT HEARING: WILL KOGER, JENNY BISHOP,
MIKE FINK, JUDY VON AHLEFELDT**

1. Report Items

Planning and Community Development Department – Mr. Dossey

A. The next scheduled Planning Commission meeting is on Tuesday,
December 18, 2018.

2. Consent Items

A. Approval of the Minutes – November 20, 2018
The minutes were approved as presented. (6-0)

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Regular Items

3. MP-18-001 WATER MASTER PLAN

DOSSEY/GEBHART

**EL PASO COUNTY
WATER MASTER PLAN**

A request by the El Paso County Planning and Community Development Department to update the Board of County Commissioners on the development and adoption of the Water Master Plan as an element of the El Paso County Master Plan. (Craig Dossey, Executive Director, Planning and Community Development; Mark Gebhart, Deputy Director, Planning and Community Development)

Mr. Egbert read the following statement:

Because §30-28-106(1), C.R.S., implies multiple hearing to adopt a master plan, no action will be taken today. The Planning Commission acknowledges that the proposed MP-18-001 – Adoption of a Water Master Plan as an Element of the County Master Plan, has been thoroughly presented to the Planning Commission today. The Planning Commission finds that the notice and newspaper publication requirements of §30-28-106(1), C.R.S., have been complied with, and that the public has had an opportunity to participate in the hearing and present testimony and evidence. The Second Reading of the proposed Water Master Plan and final action thereon is scheduled for December 18, 2018, at this location, at the Planning Commission hearing scheduled for that day, which hearing will begin at 9:00 a.m.

Mr. Gebhart, Mr. Emmons, and Mr. Koger all participated in the presentation to the Planning Commission. The Water Master Plan is located on the Planning and Community Development Department’s website as well as in the EDARP portal for public review.

Mr. Emmons – This is a legislative proceeding. Legislative hearings are prospective in nature – future applicability, general application, and not normally restricted to an identifiable person or specific property. This is not quasi-judicial, which is determination of rights, duties and obligations of specific individuals. There are three basic components of land use: 1) planning; 2) zoning; and 3) subdivision. Justice Kourlis’ dissent in *Bd of County Comm’rs of Larimer County v. Conder*, 9827 P.2d 1339 (Colo., 1996) provides a straight forward description of each component. Planning: “There is a distinction between planning for the use of land and regulating that use.” *Conder*, at 1351, citing *Theobald v. Board of County Comm’rs*, 644 P.2d942, 948 (Colo. 1982). Planning includes the master plan or comprehensive plan element, and “master plans are the broadest exercise of the planning function, and are adopted to “accomplish the harmonious development of the County in terms of the general welfare of the inhabitants and the efficient and economic use of its land.” *Conder*, 927 P.2d at 1351. A master plan is just what it claims to be, a planning tool.

El Paso County, zoning and subdivision regulations are guided by the Master Plan, but are not controlled by the Master Plan. By contrast, zoning is the regulation of land in terms of intensity and type of land use, and subdivision is the regulation of the division of land.

The Master Plan is defined in the El Paso County Land Development Code (“LDC”) as a planning tool, is separate and distinct from zoning and subdivision regulations, and is not defined as being included in the LDC. Master Plan – A plan and any functional element to the plan as adopted and amended, for the physical development of the unincorporated territory of the County. Also known as the El Paso County Comprehensive Plan, El Paso County Master Plan, the Master Plan for El Paso County, and the El Paso County Land Use Plan. As of 2000, there are 55 adopted elements of the El Paso County Master Plan.

The master plan of a county...shall be an advisory document to guide land development decisions.

The Colorado state legislature specifically defined the roles of the County Planning Commission and the board of County Commissioners in the land use process. “It is the duty of a county planning commission to make and adopt a master plan for the physical development of the unincorporated territory of the county.” C.R.S. §30-25-106(1) The Planning Commission – not the Board of County Commissioners – is authorized for the planning function – to make and adopt the Master Plan.

When a county planning commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearing has been published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan §30-28-106(1), C.R.S. A county.... Planning commission may adopt the county ... master plan as a whole by a single resolution or ... may adopt parts thereof... The commission may amend, extend, or add to the plan or carry any part of it into greater detail from time to time. The adoption of the plan or any part, amendment, extension, or addition shall be by resolution carried by the affirmative votes of not less than a majority of the entire membership of the commission.” §30-28-108, C.R.S. “The county planning shall certify a copy of its master plan, or any adopted part of the amendment thereof or addition thereto, to the board of county commissioners of the county.” §30-28-109, C.R.S.

Ms. Bishop, Colorado Springs Utilities – On the issue of recycled water and our ability to sell it, we have an extensive program to use and reuse our water to extinction. We utilize augmentation, water exchanges and storage for planned use at a later time. We may sell it at some point if there’s no place for storage, but typically we hold on to that commodity as part of our portfolio.

Ms. Blea-Nunez – I looked at this Water Master Plan from the eyes of my 19 year old daughter (who will be 61 in the year 2060), and I asked what kind of County we will be leaving her. I understand that the Water Master Plan is intended to be a guidance tool and not a regulatory document. As an attorney I was hoping to see more regulatory impact. My hope is that the Water Master Plan results in changed behavior with respect to the use of renewable resources. As I understand this was one of the main goals of the 300 Year Rule when adopted and it has not occurred.

PUBLIC INPUT

Mr. Fink, Fountain Water Superintendent and Steering Committee Member – I would like to say thank you to the staff, the Commissioners for their diligence in implementing this initiative. This meets the Colorado State Water Plan's goal that 75% of Coloradans will live in communities where the water resource planning is congruent with the land use planning. The Water Plan is a tool to guide the County in planning the future responsibly. His report is on permanent file.

Ms. Von Ahlefeldt – I don't believe this is a finished product that can be called a Water Master Plan. It is a good start. It should be called a report of 2018. I've lived in the County since 1969 and have been in the planning of Black Forest since 1972. This Plan has some areas that more work needs to be identified. The community integrity is important. This could be a component of the County Master Plan but not the vehicle driving all the development singularly.

Mr. Egbert – Do you have any idea how many of the 18,000 wells are in the Black Forest area? **Ms. Von Ahlefeldt** – Maybe half of the 5,000 residents have wells.

Mr. Egbert – We are just doing a first reading of the Plan, but we will be making a decision on the 18th of December. You mentioned that people don't know about this, but everyone is encouraged to come that day. **Ms. Von Ahlefeldt** – We did spread the word about the open house, so most of the people who came were from Black Forest. I think that the sampling method through Metro Quest is not effective. People don't look at the County's website every day to see what is coming up. There should be more meetings in the communities and not just relying on internet.

Ms. Lucia-Treese – From having worked on this committee, I have to say that you cannot compel the public to respond. You can have meetings, you can have it electronic, you can get the word out; but you can't compel people to be involved. I get that only 1,000 respondents is not a lot when we have 650,000+ residents; but on the flip side, I was surprised that we had that many. Most people care that if they turn on their taps they get water. There isn't the involvement commitment that you may think there is.

Ms. Von Ahlefeldt – I would agree with you but I feel as though there are more avenues to get the word out.

Mr. Curry – I take some issue with lack of involvement that you describe. I thought the level of inclusion was quite extraordinary. What I'd like to concentrate on is your comment that you don't believe this is a master plan. What do you think is missing content wise or needs to be added to make it a master plan? **Ms. Von Ahlefeldt** – I think the Planning Commission should have been involved in this through work sessions. Rather than this Plan being the driver of the overall master plan, I think it needs to have a goal. The thinking is as long as we can get enough supply then we should be okay with whatever development. That's not the thinking we need. We can't handle the number of people we have let alone try to plan for 1.2 million people.

Mr. Dossey – There is a difference between policy and regulation. You need the policy portion first and then regulations are written. The recommendation to take a more concerted approach at analyzing the 300-year rule is a guiding principle, as is the landscaping plan. Keep in mind that this is very high level look at the County.

Mr. Egbert – Does the County Master Plan plan for the County's growth? **Mr. Dossey** – We have no idea what will happen politically or otherwise, so we look at the State Demographers information to help give us those predictions. In going beyond 25 years, there are a lot of guesstimations. I'd like to see our County be more proactive and not reactive to the growth so that it can be managed more effectively. We need to update these Plans, like the Water Master Plan, or we are planning for the past and not the future. This is the first step, not the last to being more proactive.

Mr. Bailey – As **Mr. Dossey** stated, this Plan is very high level, first step approach. It strikes me that human nature being what it is we focus on the product. The products are less important than the actual process. If we look at it, it's hard to divorce the product. What we want is to take this Plan and we want the process to continue beyond this Plan. If this is the first step in the process then I'm ok with it. Maybe what we would want to add is a short explanation of what the planning process really is. I believe those additional steps are coming. I'd like to see that we budget for the entire process.

Mr. Dossey – When we get into the Master Plan process, we will look at regulatory changes that will suggest how development will occur. It's a process as you correctly identified. It's all tied together to get to the regulatory part of it.

Redlines were created for the goals and objectives section of the Water Master Plan with cumulative revisions made by the Planning Commission. Those changes will be made available to the Planning Commission members and posted on the website.

Mr. Curry -- Some of the policies in the plan are worded as statements of fact. Since those policies are the guidelines we use to determine consistency with the plan, policies should begin with action verbs. **Mr. Koger** -- We'll make that change throughout the document where needed.

Mr. Curry -- My only real concern with plan in terms of content is the discussion of the 300-year rule. The quantity of discussion is out of balance with the significance of the issue, and the tenor of the discussion implies a strong preference for changing it. There are many good reasons for that rule, and while changes might indeed be appropriate in certain narrow circumstances, the discussion in the plan should be cut back and the tone should be more balanced. Note: I think Mr. Dossey indicated they'd take a look at that and make changes as appropriate. To the extent that's accurate, you might include a note to that effect.

PC ACTION: NO PLANNING COMMISSION ACTION NECESSARY AS THIS IS THE FIRST READING OF THE WATER MASTER PLAN.

PUBLIC INPUT:

Ms. Von Ahlefeldt had an opportunity to express her concerns again.

Mr. Emmons – My closing instruction would be because you are not taking an action today, to wrap things up with the statement that I prepared for you to read again into the record.

Mr. Egbert -- Because §30-28-106(1), C.R.S., implies multiple hearing to adopt a master plan, no action will be taken today. The Planning Commission acknowledges that the proposed MP-18-001 – Adoption of a Water Master Plan as an Element of the County Master Plan, has been thoroughly presented to the Planning Commission today. The Planning Commission finds that the notice and newspaper publication requirements of §30-28-106(1), C.R.S., have been complied with, and that the public has had an opportunity to participate in the hearing and present testimony and evidence. The Second Reading of the proposed Water Master Plan and final action thereon is scheduled for December 18, 2018, at this location, at the Planning Commission hearing scheduled for that day, which hearing will begin at 9:00 a.m.

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 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 December 18, 2018 hearing.