

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

Planning Commission Meeting
Tuesday, February 5, 2019
El Paso County Planning and Community Development Department
2880 International Circle, Hearing Room
Colorado Springs, Colorado 80910

PRESENT AND VOTING: JIM EGBERT, BRIAN RISLEY, ALLAN CREELY, KEVIN CURRY, JANE DILLON, GRACE BLEA-NUNEZ, PETER AURICH, AND SHARON FRIEDMAN

PRESENT AND NOT VOTING: NONE

ABSENT: JOAN LUCIA-TREESE AND TOM BAILEY

STAFF PRESENT: MARK GEBHART, NINA RUIZ, LEN KENDALL, GILBERT LAFORCE, BECK GRIMM, AND EL PASO COUNTY ATTORNEY LORI SEAGO

OTHERS PRESENT WHO SPOKE AT HEARING: JUDY VON AHLEFELDT, HEIDI GANUN, ERIKA BAKKO, KESTI SUGGS, SUSANNE HOFFMAN, HEATHER CROOK, CHRISTIN KNOPEK, ELIZABETH BHAPPU KUDLA

Ms. Judy Von Ahlefeldt spoke about the City of Colorado Springs' Master Plan. Her summary of the City's Master Plan is online at <https://coloradosprings.gov/plancos>. The Sustaining Places: Best Practices for Comprehensive Plans is a manual that the Planning Commission and others should familiarize themselves with during the Master Plan process.

Report Items

Planning and Community Development Department – Mr. Gebhart

- A.** The next scheduled Planning Commission meeting is on Tuesday, **February 19, 2019.**
- B.** The document that **Ms. Von Ahelfeldt** spoke on can be uploaded into EDARP as a resource.

C. A Planning Commission member will be tasked with participating in the County Master Plan Steering Committee. Please let Mrs. Garcia know if you are interested. It will be on the March 5, 2019 hearing as an action item.

D. **Mr. Gebhart** gave an update of the Planning Commission agenda items and action taken by the Board of County Commissioners since the last Planning Commission meeting. He also gave the PCD's project and code enforcement numbers.

Mr. Creely arrived at 9:15 a.m. A quorum is in place.

1. Consent Items

A. **Approval of the Minutes – January 15, 2019**
The minutes were approved as presented. (7-0)

Mr. Curry would like to recuse himself from this project since he lives within 4 blocks of this project. He will not be a voting member for this item.

B. **VA-18-003**

KENDALL

**VARIANCE OF USE
SPRINT DN70XCO32 TOWER**

A request by Heidi GaNun (applicant), representing the property owner Falcon School District No. 49, for approval of a variance of use for an existing pole-mounted Commercial Mobile Radio Service (CMRS) Facility. The property is zoned RR-5 (Residential Rural) and is located one-tenth (1/10) of a mile north of Stapleton Drive on the east side of Towner Avenue. (Parcel No. 52253-00-002)

Ms. Heidi GaNun spoke briefly on the project's plans to upgrade current infrastructure.

PC ACTION: RISLEY MOVED/AURICH SECONDED TO APPROVE CONSENT ITEM NO. 2B, VA-18-003 FOR A VARIANCE OF USE FOR SPRINT DN70XCO32 TOWER UTILIZING RESOLUTION PAGE 51 WITH SIX (6) CONDITIONS, THREE (3) NOTATIONS, (MORE PARTICULARLY DESCRIBED ON PAGE 19-005) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED UNANIMOUSLY (7-0). MR. CURRY RECUSED HIMSELF FROM VOTING.

**SPECIAL USE
REIGNING HOPE COMMERCIAL STABLES**

A request by Chuckie's Place d/b/a/ Reigning Hope (applicant), representing the property owners Craig and Susanne Hoffman, for approval of a commercial stable in the RR-5 (Residential Rural) zoning district. The property is located on the east side of Holmes Road approximately one-tenth (1/10) of a mile north of Vessey Road. (Parcel No. 52060-00-040)

Mr. Curry – There was a note in the staff report that the BFPP limiting uses in the area. The use itself may not be consistent.

Ms. Seago -- The Master Plan is advisory.

Ms. Friedman – I'd like to hear this as a Regular Item.

Mr. Kendall asked **Ms. Seago** to go over the review criteria for a special use and then introduced **Ms. Kesti Suggs, Ms. Erika Bakko, and Ms. Kristin Conabick** for their presentation. Others also spoke to being in favor of the project.

Ms. Heather Crook – She is the mother of a 15 year old special needs child that benefits greatly from this therapy. She implores the Planning Commission to become more informed about this field and asks for approval to continue this therapy program.

Ms. Friedman – On page 11, it says about existing and proposed facilities. Are there no plans for existing structures? **Ms. Suggs** – That is an additional step down the road, nothing in the near future.

Ms. Suzanne Hoffman – Our son Ryan is 10 and in a wheelchair. This kind of horse therapy has so many benefits to a wheelchair bound special needs child. There is a real need for this in the County. The well permit is available (shown). The lot does afford usage for domestic animals.

Mr. Curry – The LDC has been changed since I heard this at the BOA. As I recall, manure stock piles and composting need to be 100 feet from a setback. That doesn't appear to be the case when you look at the site plan. In addition, corrals and stables cannot be located over septic or leach systems. **Ms. Suggs** – We pick up our manure once or twice daily and it's removed weekly. We are willing to move the dumpster if it in fact

does lie within that 100 feet. Mr. Kendall – Manure in a dumpster is not considered to be a manure stock pile.

Ms. Blea-Nunez – Will the number of animals increase? **Ms. Suggs** – No.

Mr. Risley – You've indicated that you see people by appointment only. How many people at one time can be on the property? Answer from **Ms. Suggs** – The special events only happen a couple times a year, but on a daily basis, we can have up to about 1-2 people an hour, 9 a.m. to 5 p.m. Special events can have about 24 people at the most. Our youngest client is 18 months and our oldest is 23 years old.

Mr. Risley – The code enforcement complaint in 2017 stated there is a commercial stable being used in the RR-5 district but the use continued. Why didn't you begin remedying or what actions were taken? **Mr. Kendall** – They applied for the Early Assistance meeting after the complaint was received, they have continued to work through the process with our Code Enforcement staff and myself to remedy it. The BOA allowed the dimensional variance, the special use allows the use, and the final process will be a site development plan.

Mr. Kendall gave his full presentation to the Planning Commission and answered questions.

Mr. Risley – Is there an access easement in place to the property to the east? **Mr. Beck Grimm** – We wouldn't require them to have an access easement because the property would not be using that parcel. They access off of Holmes Road.

Mr. Curry – Do the setback requirements for corral apply here? **Mr. Kendall** – Yes, its 35' from a residential structure. All corrals are meeting that requirement.

Ms. Friedman – Are indoor arenas allowed in RR-5? Is that neighboring parcel RR-5, it appears to be commercial? **Mr. Kendall** -- It is RR-5 and its personal storage, and the indoor arena is part of the commercial stable and would be a part of the site development plan.

Ms. Friedman – Is this considered to be a rural based home business? **Mr. Kendall** – We have seen other occupational therapy businesses; however, because clients ride the horses, we considered it a commercial stable.

IN OPPOSITION – NONE

Mr. Creely – This project is all good for me. So, we need to make this happen. You have my support.

Ms. Blea-Nunez – As an educator, this is an area that is underserved and I applaud your work. I will be supporting this.

Ms. Friedman – As a rural homeowner, I personally would not want this next door to me. It does fit a commercial use based on the impacts. It is a noble great thing to do and you do well. I can also imagine a variety of other noble things that don't fit the rural character. I'm split on this one.

Mr. Curry – One of the things I sympathize with is I'm also a 5 acre property owner. Should it be sold later, the use is set as commercial. I think in general I'm in support of this. Most of the issues will be dealt with throughout the other processes.

PC ACTION: BLEA-NUNEZ MOVED/DILLON SECONDED TO APPROVE CONSENT ITEM NO. 2C, AL-18-015 FOR A SPECIAL USE FOR REIGNING HOPE COMMERCIAL STABLES UTILIZING RESOLUTION PAGE 39 WITH SIX (6) CONDITIONS AND THREE (3) NOTATIONS, (MORE PARTICULARLY DESCRIBED ON PAGE 19-006) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED UNANIMOUSLY (8-0).

REGULAR ITEMS

3. LDC-17-007

RUIZ

EL PASO COUNTY LAND DEVELOPMENT CODE AMENDMENT SMALL CELL AND CMRS FACILITIES

A request by the El Paso County Planning and Community Development Department to amend Chapters 1, 5, and 6 of the El Paso County Land Development Code (2018) as it relates to Small Cell and Commercial Mobile Radio Service Facilities (CMRS). Staff is also requesting the Board of County Commissioners adopt the revised CMRS Facility Removal Agreement. The proposed amendments, in their entirety, are on file with the El Paso County Planning and Community Development Department. **Type of Hearing: Legislative**

Ms. Ruiz asked **Ms. Seago** to go over the Review Criteria before giving her full presentation.

Mr. Egbert – Why do we need to have this kind of regulation? **Mr. Gebhart** – Cell phone towers when they first came out were greatly disliked, now everyone uses them. Some cell towers or updates to the tower require a building permit under the building code. When the regulations were initially drafted the goal was to have less

freestanding and more roof mount or stealth. We want the minimal amount of regulations if they are wall or roof mount, but if they are freestanding that the County has the regulations in place to not distract or be obtrusive.

Mr. Risley left the meeting at 10:50 a.m. A quorum is still in place.

Ms. Friedman – There are a lot of structures in the County. What other structures require financial assurance? **Ms. Ruiz** – The purpose of the agreement is to prevent an unused tower from becoming dilapidated and a safety concern. The cell towers are the only things that require the structural removal agreement as a standard practice. We do have other agreements, such as detention pond agreements, for when the property owner doesn't take care of their infrastructure the County can come in and do whatever repairs or cleanup may be required and charge the property owner.

Mr. Egbert – We don't want the County stuck with decommissioning expenses, so it's important that we have the financial assurance agreements in place.

Mr. Curry – Would the new County rules inadvertently affect personal homeowner's ability to use antenna? **Ms. Ruiz** – If the purpose of the equipment is to provide for that building only, it would not be considered a CMRS facility so we would not be removing the ability.

Mr. Curry – This definition is way too long. But here's my question. If I have a 2 ½ acre property and have a second home and I use that antenna to serve another building, then I can't use it for both structures. The questions I have fall between transmission and reception. Are we regulating transmission or reception or both? Within those areas are more things to consider. There's AM/FM, cell signals, internet signals, and television and video.

Mr. Egbert – We are not regulating RF reception or transmission. We are concerned about structures on property that would adversely affect other property owners. What we do is protect private property rights.

Mr. Curry – My worry is unintended consequences. The control of some of those things may impact private property owners. The regulation of it is fine, I just want to be sure we do it right. **Ms. Ruiz** – The proposed definition of the CMRS does provide many exclusions, such as mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting antennas. We could revise the definition to say property and not building.

Mr. Curry – There is or may be new technology out that you put a small transmitter out on a tree or something that provides internet to other users, not just for personal use. Would those devices be restricted? **Ms. Ruiz** – If it is in fact providing service to someone other than the property owner, then yes it would be restricted.

Mr. Curry – Can you tell me for small cell, what are the requirements? **Ms. Ruiz** – it would be a permitted use and you would need approval but would not require a public hearing process.

Mr. Curry— The FCC precludes you from regulating Over-the-air-reception-devices (OTARD). I do not believe you can include them in the regulations.

Mr. Egbert – With HOAs, they can't prohibit you from having them, but they can specify where they go within the property.

Ms. Ruiz— The Federal definition of small cell includes personal wireless facilities. We request a short recess so that we may research what Mr. Curry is citing. We will come back with a response.

Ms. Elizabeth Bhappu Kudla – I work for Verizon. We are overwhelmingly in favor of these changes. There are just a couple of things that we had comments on. Three things may need to be thought through. We proposed some small cell and CMRS definitions. I think there is room to simplify that definition. It is complex, but overall correct. In addition, a public right of way small cell should be codified. 5G technology will be incredible. In order to have that technology, we will need a lot of these facilities. We feel comfortable with the 3 cubic feet size. The sizes of technology is getting smaller so new technology will fit fine inside those parameters. The Public Works department is creating a policy and it is not complete. We did provide a revision to the County's specific code. We have reached out to the Public Works folks, but we have not heard back yet. We were told there will a forthcoming procedures manual, so we'd like to see that when it is available. The eligible facilities request, 6409, the director may amend the special use variance language should be must and not may. We don't want it to be arbitrarily denied. We think this is a very good revision to the code.

Ms. Friedman – How do other Counties handle the right of way situation? **Ms. Bhappu Kudla** – This is the first County that deals with right of ways in this manner. We usually see that it's put into the Code where small cell facilities are allowed in a right of way.

Mr. Curry – 5G will definitely fit under the definition of small cell. What will the impact be of these proposed rules if you need to put 5G on personal property? **Ms. Bhappu Kudla** – I don't think there is a ton of impact with these revisions. We weren't necessarily looking at it from a 5G standpoint though. Until that technology is deployed, we just don't know what it looks like.

Mr. Curry – Quoted the following FCC regulation found at:
<https://www.fcc.gov/media/over-air-reception-devices-rule>

“As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices (“OTARD”) rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), broadband radio service providers (formerly multichannel multipoint distribution service or MMDS), and television broadcast stations ("TVBS").

The rule (47 C.F.R. Section 1.4000) has been in effect since October 1996, and it prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.”

A quorum was established again after a brief lunch recess. **Mr. Aurich** left the meeting.

Ms. Seago – This is my disclaimer. It was a lot of research in 15 minutes. **Mr. Curry** is correct. There is a separate FCC regulation that addresses over the air reception devices (OTARD), such as your DirecTv, antenna dish, etc. The local government cannot impose any restrictions preventing you from placing an OTARD. However, they may impose restrictions if the purpose of the regulations is for health and safety. We would request that you allow staff to clean up the revisions that were made in the hearing prior to the BoCC Hearing date.

Ms. Ruiz -- OTARD will have a separate definition and it will be removed from the definition of small cell. The revised definition is proposed as: an antenna or mast in support thereof that means that definition thereof Section 47CFR1.4000. Also, add OTARD to accessory and permitted use as allowed in every zone, and under OTARD in use specific standards. A \$0 fee will be recommended to the Board of County Commissioners. A site plan would be required for a mast mount in order to meet set back requirements.

IN FAVOR: **Ms. Bhappu Kudla** spoke earlier in favor of this project. See her comments above.

IN OPPOSITION: NONE

PC ACTION: CURRY MOVED/BLEA-NUNEZ SECONDED TO APPROVE REGULAR ITEM NO. 3, LDC-17-007 FOR A LAND DEVELOPMENT CODE AMENDMENT REGARDING SMALL CELL AND CMRS FACILITIES UTILIZING RESOLUTION PAGE 7, MORE PARTICULARLY DESCRIBED ON PAGE 19-007 AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED UNANIMOUSLY (7-0).

WITH THE CHANGES DISCUSSED AND THE USE STANDARDS THAT APPLY TO OTARD AND PLACED FOR SAFETY REASONS AND WITH THE EXPLICIT AUTHORITY FOR STAFF TO MAKE ADMINISTRATIVE CHANGES FOR CONFORMANCE.

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 February 19, 2019 hearing.