

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

Planning Commission Meeting
Tuesday, February 18, 2020
El Paso County Planning and Community Development Department
2880 International Circle, Hearing Room
Colorado Springs, Colorado 80910

REGULAR HEARING
9:00 a.m.

PRESENT AND VOTING: BRIAN RISLEY, BECKY FULLER, ALLAN CREELY, GRACE BLEA-NUNEZ, TOM BAILEY, TIM TROWBRIDGE, AND SARAH BRITAIN JACK

PRESENT AND NOT VOTING: ERIC MORAES

ABSENT: JOAN LUCIA-TREESE AND THOMAS GREER

STAFF PRESENT: MARK GEBHART, GABE SEVIGNY, NINA RUIZ, LINDSAY DARDEN, ELIZABETH NIJKAMP, GILBERT LAFORCE, AND EL PASO COUNTY ATTORNEY COLE EMMONS

OTHERS SPEAKING AT THE HEARING: MARK HYATT, ANGELITA HYATT, TAMMY FIELDS, DAN FIELDS, AND ADRIAN REED

Report Items

- 1. A. Report Items -- Planning and Community Development Department – Mr. Gebhart**
 - a) The next scheduled Planning Commission meeting is for **Tuesday, March 3, 2020.**
 - b) **Ms. Dillon** has resigned from the Planning Commission. We thank her for her many years of service to the County and wish her well in her new endeavors.
 - c) **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 as well as a Planning and

Community Development progress report of permits and projects in process.

- d) **Mr. Gebhart** explained that he and **Mr. Dossey** will be attending some meetings regarding regional water. More info to come.

B. Public Input on Items Not Listed on the Agenda - NONE

2. Consent Items

- A. **Approval of the Minutes – February 4, 2020**
The minutes were approved as presented. (7-0)

- B. **P-17-001** **RUIZ**
MAP AMENDMENT (REZONE)
CORDERO

A request by Angel Cordero for approval of a map amendment (rezoning) of 35.55 acres from A-35 (Agricultural) to A-5 (Agricultural). The property is located west of North Ellicott Highway, approximately 1.5 miles north of Highway 94. A concurrent application has been submitted for a minor subdivision to subdivide the property into two (2) single-family residential lots. (Parcel No. 34000-00-378) (Commissioner District No. 4)

PC ACTION: MR. BAILEY MOTIONED/MS. FULLER SECONDED TO APPROVE CONSENT ITEM 2B, P-17-001, FOR A MAP AMENDMENT (REZONE) FOR CORDERO UTILIZING RESOLUTION PAGE NO. 27, CITING 20-006, WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED UNANIMOUSLY (7-0).

- C. **MS-17-001** **RUIZ**
MINOR SUBDIVISION
CORDERO

A request by Angel Cordero for approval of a minor subdivision to create two (2) single-family residential lots. The 35.55 acre property is currently zoned A-35 (Agricultural) and is located along the west side of North Ellicott Highway, approximately 1.5 miles north of Highway 94. A concurrent map amendment application has been submitted to rezone the property to A-5 (Agricultural). (Parcel No. 34000-00-378) (Commissioner District No. 4)

Mr. Trowbridge inquired about the water sufficiency for the minor subdivision and if the applicants had been notified since it was received so late. **Ms. Ruiz** – The online EDARP system notifies the applicant when it's uploaded.

PC ACTION: MR. BAILEY MOTIONED/MS. FULLER SECONDED TO APPROVE CONSENT ITEM 2C, MS-17-001, FOR A MINOR SUBDIVISION FOR CORDERO UTILIZING RESOLUTION PAGE NO. 19, CITING 20-007, WITH TEN (10) CONDITIONS AND ONE (1) NOTATIONS, WITH A FINDING OF WATER SUFFICIENCY FOR WATER QUALITY, QUANTITY, AND DEPENDABILITY, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED UNANIMOUSLY (7-0).

D. MS-19-003

SEVIGNY

**MINOR SUBDIVISION
POENITSCH MINOR SUBDIVISION**

A request by Tom Poenitsch and Christy Mullins for approval of a minor subdivision to create three (3) single-family residential lots. The 18.86 acre property is zoned RR-5 (Residential Rural) and is located on the northwest corner of the Herring Road and Shoup Road intersection and is within Section 8, Township 12 South, Range 65 West of the 6th P.M. (Parcel No. 52080-00-041) (Commissioner District No. 1)

Mr. Trowbridge – Do they have permission to drill an additional well? Why do they have to go back to Black Creek Squirrel? **Mr. Emmons** – Your concern with regards to the existing well. Under the decree, its and exempt well. A person can obtain that without having to go through any injury analysis. They have chosen to subdivide their property and they have to have an augmentation plan. The exempt well is not included in the augmentation plan. It is provided for in the augmentation plan, but they would have to give up their exempt well permit and obtain a new permit. We see that quite often, particularly in minor subdivisions. By state statute they can get those permits rather readily. The SEO office does not have to post status of that well. It's a foregone conclusion that there will be no injury. When you do a subdivision, that exempt well permit no longer applies. Injury to existing water rights have to be determined. They have the ability to continue the use of the well. The presumptions of no injury go away with subdivision. On minor subdivisions, we require that they establish an HOA or protective covenants so that all lot owners know what water they are entitled to and what the augmentation plan provides. We get those HOA covenants and historically they have been inadequate. We have decided to give the applicants specific language so that we don't see any issues with the property owners and expectations.

Mr. Sevigny – A contractor’s equipment yard is not permitted in the RR-5, so the applicant will have to follow-up with a site development plan and special use application. If the minor subdivision is approved, those processes would follow.

PC ACTION: MR. CREELY MOTIONED/MR. TROWBRIDGE SECONDED TO APPROVE CONSENT ITEM 2D, MS-19-003, FOR A MINOR SUBDIVISION FOR POENITSCH UTILIZING RESOLUTION PAGE NO. 19, CITING 20-008, WITH ELEVEN (11) CONDITIONS AND ONE (1) NOTATION, WITH A FINDING FOR WATER QUALITY, QUANTITY, AND DEPENDABILITY, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED UNANIMOUSLY (7-0).

REGULAR ITEMS

3. AL-19-026

DARDEN

**SPECIAL USE
HYATT EXTENDED FAMILY**

A request by Mark and Angelina Hyatt for approval of a special use for extended family housing. The property is zoned A-35 (Agricultural) and is located on the north side of Judge Orr Road approximately 0.62 miles east of the Judge Orr Road and U.S. Highway 24 intersection. (Parcel No. 42330-00-028) (Commissioner District No. 2)

Ms. Darden asked **Mr. Emmons** to go over the review criteria for a special use.

Ms. Darden gave a brief overview of the project and then asked the applicants, **Mark and Angelita Hyatt**, to give their presentation.

Ms. Darden then gave her full presentation to the Planning Commission.

Mr. Creely – Could you show on the map the surrounding zoning? **Ms. Darden** – The parcel is A-35; there’s some RR-5 and A-5 around the property.

Mr. Risley – I would like clarification on the modular and as it stands today and if it complies with County standards today? If this action is successful today, then they would need to submit a site development plan? **Ms. Darden** – That is correct. And yes they would have to get the approval from Black Squirrel first and then it would be a site plan application.

Mr. Risley – Is there any change in the primary vs. secondary living space? **Ms. Darden** – The idea is that the second home is smaller and the new home being primary would be the larger, newer home.

Mr. Risley – Why not pursue a subdivision instead of building a third home? **Ms. Darden** – Subdivision process is more costly and lengthy. If there were floodplain issues, they would have that to deal with those at subdivision. The Code allows the additional dwelling, so we advocate for the simpler process.

Ms. Fuller – What they have is fine; it's allowed and they would be allowed to add an additional one, so why are we here? **Ms. Darden** – The full-time occupancy of an accessory living quarters is why they are before you. They are treated as guest houses for intermittent guests.

Ms. Blea-Nunez – Assuming they get the water approval, are there conditions as to where they place the other home? **Ms. Darden** – We would look at site location at the time of site development plan. The setback is 25' on all sides.

Mr. Trowbridge – The applicants requested that this be constructed as an additional primary dwelling unit. We are being asked to declare it as a secondary accessory home. **Mr. Emmons** – I think the property owner has the ability to designate the buildings in a way that facilitate the use of the property. The contractor didn't follow the instructions, so the owner shouldn't have to be penalized under our regulations.

IN FAVOR: NONE

Ms. Brittain Jack entered the hearing at 10:00 a.m. She will not be a voting member as the testimony has already started.

IN OPPOSITION:

Ms. Tammy Fields – This property is not in compliance. They Hyatt's indicate that in their notice to property owners, no physical change will be made to the property. They indicated at a Planning Commission meeting that no one was currently living there. That is untrue. Only two residences are supposed to be served by one well according to Black Squirrel Creek Water. This plan of clustering is not in character with the neighborhood. This will have a negative impact on other property owners. The third dwelling unit will be right at that 25' setback. We strongly urge you to deny this request.

Ms. Dillon – I would like to ask staff to address the issues brought up by this opposition. They were interested in adding a smaller modular for an elderly parent. They decided not to go forward with that. In reference to the comment on guest house, we had a Code revision that limits the accessory living quarters to one. If the son moves out then it could be converted to an occasional guest house.

Ms. Fuller – Is Ms. Fields correct on the water? Also, Ms. Fields stated they could build five structures. Could you clarify? **Ms. Darden** – No, they could add another

principal dwelling or they could subdivide and obtain additional water rights. The maximum number of living units on the parcel is three. Under the current Code, only two living structures and one accessory structure were allowed.

Mr. Dan Fields – We fought for zoning and property rights twenty years ago. This is bringing up all those old statements again. We have a custom home built next to trailer houses. I'm worried about opening Pandora's box. Once you get one approved like this, then there will be more. There's opportunity close by that doesn't put a commune on these properties.

Ms. Adrian Reed – I'd like to clarify a couple things. An accessory house cannot have a separate kitchen and cannot have separate utilities. This has both. That negates an accessory house. The well is for two dwellings and only two septic. When you subdivide property, you break it down to 5-acre parcels that can have their own well. It's extremely expensive, but it's necessary.

Ms. Darden – Our previous regulations for accessory units is in A-35 you can have one accessory living quarter for each primary structure. That was the standard before the new Code. You can have unlimited accessory structures but not accessory dwelling units. Since then our Code has changed to allow only one per parcel. They could get permission for an additional primary unit. Our Code does not preclude accessory living quarters to have a kitchen. They have to record an affidavit that the unit will not be rented. With regard to utilities, they are not separately metered.

Ms. Blea-Nunez – Really all we have to answer is can they continuously live in the second home, is that correct? **Ms. Darden** – That is correct.

APPLICANT REBUTTAL: Mr. Hyatt stated they had several conversations with the Planning staff. We did talk about a lot of options and we did discuss subdividing. I was convinced not to subdivide because of floodplain issues. We did want to originally bring my father in law here from Houston. He was not able to handle the altitude, so that was cancelled. We do have four children and two of them want to be in the area. It would satisfy our needs to have three units on our property. It all depends on the variance from Black Squirrel. The zoning is not consistent in the area. We could possibly do A-5 rezone and get additional wells. We just want options available to us at this point. We have plenty of water rights. We are hoping for an approval today. There will only be three houses if we get the variance. The electric has two meters, the gas says guest house on the account.

Ms. Fuller – Would you look at water at the site development plan stage? **Ms. Darden** – We would look at setbacks, but not water like we do at subdivision. We would require documentation that Upper Black Squirrel has approved a major

variance to allow the new dwelling unit to utilize the existing well at that stage. It would be an administrative process.

DISCUSSION:

Ms. Blea-Nunez – Do we let it be a continuous use vs. temporary. The zoning allows for the accessory structure. I will be voting in favor.

Mr. Trowbridge – I am a firm believer in property rights. If you abide by the rules then I don't see a reason to develop your property as you wish. I understand the frustration with change, but they have a right to utilize it.

Mr. Bailey – I'm sympathetic to the opposition, but we have to look at it in accordance with the review criteria in mind. This area was identified as proposed urban density and this is an area that will see some larger density and will continue to change. The County is going that direction. I echo my other colleagues' comments, but I see no reason to oppose this application.

PC ACTION: MS. BLEA-NUNEZ MOTIONED/MS. DILLON SECONDED TO APPROVE REGULAR ITEM 3, AL-19-026, FOR A SPECIAL USE FOR HYATT EXTENDED FAMILY UTILIZING RESOLUTION PAGE NO. 39, CITING 20-009, WITH THREE (3) CONDITIONS AND THREE (3) NOTATIONS, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED UNANIMOUSLY (7-0).

4. El Paso County Master Plan – Informational Update – No Action Needed -- Mr. Gebhart

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.