

Joint Meeting of the Planning Commission, Board of County Commissioner and Board of Zoning Adjustment

December 7, 2010
Custer County Courthouse
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman and Carole Custer Commissioner
Planning Commission: Vic Barnes, Keith Hood, Pat Bailey, Rod Coker, Bill Donley
Board of Zoning Adjustment: Skip Northcross, Dee Hoag, Ken Patterson and Dave Tonsing
Associate Members: Dale Mullen, Cindy Howard and Dorothy Nepa
Staff: Jackie Hobby
County Attorney: John Naylor
Absent: Sherry Rorick, Paul Buckles, Gerry Dearborn, Brad Stam, Roger Camper, Ken Langford

The meeting was called to order at 1:15 P.M. by SKIP NORTHCROSS, Board of Zoning Adjustment Chairman.

Pledge:

NORTHCROSS: I would like to request we have a moment of silence for our friend and colleague, GERRY DEARBORN. In your own way wish him some good thoughts. Thanks, we will need to seat an alternate. DALE MULLEN replaced GERRY DEARBORN.

NORTHCROSS: Welcome everyone. We need to amend the agenda. There are two items on the agenda, one is a setback. Two, we need to include a variance for an undersized lot.

This is a joint meeting of the Board of Zoning Adjustment, the Planning Commission and the Board of County Commissioners. The Board of Zoning Adjustment is a quasi-judicial body. The BZA has set guidelines, follows state statutes and deals with the Zoning Regulations. Anyone in the audience may ask questions. Step up to the podium and give your name. The microphones are for recording purposes. We have business to do first. Then, I will read the applicants statement and take questions from Board members and the audience. After discussion we will ask for a motion, have more discussion and then have a vote by a raising of hands. The Board members will then state their reasons for voting.

NORTHCROSS: At this time we will need to approve the September 7, 2010 minutes.
No Comment

NORTHCROSS: The September, 2010 minutes are approved as distributed. I would like to take a minute before we go to the office report to congratulate Chairman VIC BARNES and

MS. HOBBY for the work they did last month with the joint meeting. It was one of the best meetings of a Board I've attended in my 12 years of association with these Boards. It was well planned, moved along expeditiously, especially with a standing room only group of concerned citizens of Custer County. The speakers were organized and presented their information quickly and to the point without getting into personal issues and without going over the time limits set by the Chairman. Various speakers quoted and used items from both the Master Plan and the Zoning Resolution. It surprised me that not only had so many people read these documents but they seemed quite familiar with them. Thank you so much VIC and JACKIE.

At this time we will have a Zoning Office report.

HOBBY: In the month of November we had 5 septic inspections, 1 Zoning violation, 4 special conferences and 10 compliance inspections. Septic permits to date are 56 compared to 72 this time last year. The zoning permits issued to date in 2010 are 183 compared to 182 in 2009.

NORTHCROSS: The first item on the agenda is the BOCC and the SANGRE DE CRISTO setback variance and then the creation of an undersized lot for an electrical sub-station next to the landfill. The Legal description is NW ¼ NW ¼ Section 2 Township 23 South Range 72 West. The property address is 2250 County Road 328, Westcliffe Colorado.

I want to apologize to the BOCC, SANGRE DE CRISTO ELECTRIC and their representative, KIT SHY for the poor attendance at the site tour last Thursday. I would also like to comment that there was no representative of the applicants present and the application was not filled out properly. The Request for a Setback Variance states, Applicants briefly explain your request and the reasons for it. What are the extraordinary and exceptional situations applicable to the property? We have nothing to go on. With that said, I will read the applicants statement.

Applicants statement: "The commissioners were recently made aware of an opportunity to improve the electrical power supply for the Rosita area. Sangre De Cristo Electric has determined that the present Querida Substation is rapidly reaching its maximum capacity to serve the Rosita area. A new Substation will soon be required. It turns out that a Substation in the area of the Landfill would allow for upgrade in quantity and dependability of electrical power. This would also provide power service to the Landfill facility. With this goal in mind the County Commissioners directed the County Surveyor to survey and describe a parcel to meet the requirements of Sangre De Cristo Electric.

NORTHCROSS; KIT SHY will represent the applicants as the County Surveyor. Were adjoining land owners notified?

HOBBY: Yes, with no response.

NORTHCROSS: is there anything that you would like to add to the application?

SHY: My thoughts are also with GERRY DEARBORN today. I have also benefited from the informal and friendly nature that you spoke about on both sides. This is a very unusual circumstance here. I acted in my private business to survey this property; I am acting in my public capacity as the County Surveyor to present it. This is a situation where there is a public need to get power into the east hills. On a personal note, I lived in Rosita for a long time and the first year we lived there we could not even get a phone.

When I asked about getting a phone it cost \$4,900.00 per mile. Utilities to the Rosita area have been a hit and miss thing. Sangre De Cristo spent years making that one small sub-station in Querida stretch as far as they can. Also, the goal is to connect all the sources and the major lines. That would improve everyone's service. From the County's standpoint the landfill is lacking power and that makes it impossible to do anything like trash compacting, heating and maintenance of the vehicles, all things that require electricity. We recently received a letter from Sangre De Cristo that shows what their procedure is for working on this project.

We created a two acre parcel which is their requirement. There is a road easement on the easterly portion that provides access to the land on the south. We have taken into account the expansion of the landfill and its needs and Sangre De Cristo's needs as well. The variance is being asked for because at this time it is difficult to know exactly where the power structure will be located on the two acre parcel.

HOBBY: I have some questions from the site tour. Will the plant look like the Kettle sub-station?

MICHAEL MILLER: Yes, I believe it will look somewhat the same. It has not been designed yet.

HOBBY: Will you use the existing lines to come through the valley floor from the Kettle sub-station?

MILLER: We really don't know at this time.

HOBBY: I did the variance requests for the BOCC. On a half-acre you are allowed to build within ten feet of the property line and that is why it states on the setback variance ten feet from all property lines.

NORTHCROSS: Any comments or questions from the audience?

No comment

NORTHCROSS: Any questions from the Board?

MULLEN: I will direct my questions to Sangre De Cristo. I went on the site tour. The northeast corner of the land will be gifted in return for you to put your sub-station there. The County will motivate you by giving you two acres to do something now instead of later. My question to you is, are you putting a sub-station in initially to put power into the landfill and are you providing at no cost to the County a connection charge that normally a user would pay?

MILLER: Nothing has really been determined. We don't think we need a sub-station at this time, maybe twenty or more years down the road. When we were approached by the County to get electrical to the landfill we both felt that maybe this would provide an opportunity to help each other. We will need to increase the service to the Rosita area and this determined where the route would be. I will ask STEVE EGGLESTON what the cost would be to get service to the landfill

EGGLESTON: About \$177,000.00

MILLER: We will not charge the County for that if we can get a sub-station on the property.

MULLEN: What about the connection charge?

MILLER: That would be waived in this case.

MULLEN: You are building a spur from the existing sub station west of 69 and you will come south with elevated transmission lines west to east to feed that location initially?

MILLER: Initially we will come from Rosita.

MULLEN: You are going to come out of Rosita with elevated transmission lines down County Road 328?

MILLER: No, it will be a three phase distribution line, a regular line that crosses the highway. We will tie into the line in Rosita and it will be overhead.

MULLEN: Two acres of a five acre parcel will be gifted to Sangre. That seems like a lot of land in comparison to what I see in other sub-stations.

MILLER: Two acres is a typical size for a sub-station. The one on Kettle Lane is smaller due to the high terrain.

MULLEN: It will be a sub-station only, not office buildings or parking?

MILLER: No, we might have a control building.

MULLEN: Will this also be a location for cell towers?

MILLER: I don't believe so. We have never done that.

MULLEN: This will be a spur out of Rosita initially, and then when you finally put it into the grid you will run overhead transmission lines north and south so they're going to transfer over properties north and south?

MILLER: No, it will stay on County Road 328.

MULLEN: It will follow County Road 328, then up State Highway 69?

MILLER: Yes, that's correct. We will be coming from both directions, south out of the Kettle sub-station then east to the site and west out of Rosita on county road 328.

MULLEN: Regarding the aesthetics of this, does Sangre De Cristo envision anything else but a typical sub-station? Or, do you make any attempt to mask the sub-station?

MILLER: We have no plan to do that. We don't do that, especially in rural areas. We need to see if someone is inside the facility doing something.

HOWARD: I have one question concerning the height of the towers. Basically I'm concerned about air traffic and the safety of incoming and outgoing airplanes.

HOBBY: That is part of the State and Federal Regulations, if they are in a flight pattern.

NORTHCROSS: It is not in the airport overlay district.

NORTHCROSS: You said twenty years for the completion of the landfill. A variance is only good for two years. Are you looking at something being done in two years?

MILLER: I do not see anything being done in the next two years. We will develop a long range plan that goes out beyond two years.

SHY: It will be used as an electrical distribution center within one year that will connect electricity to the landfill.

NORTHCROSS: Something must be done within the next two years. We do not want to give these variances and someone else walks in later and uses this property. Another question I have is, there is a lot of traffic on that road. I estimate from the edge of the road it is about ten feet to the fence line. You are asking for a forty foot variance from the property line which will put you ten feet from the property line. I can envision some car sliding off and it does seem like that would allow much room.

SHY: It would be very reasonable to put fifty feet on the front and ten feet on the sides and rear of the property.

HOBBY: What about the access to the property. Will you use County Road 328 or the easement?

SHY: Yes, we could use the easement. I believe that is a reasonable suggestion.

Commissioners, is that all right with you?

COMMISSIONERS: All agreed.

NORTHCROSS: Someone received grant money to put solar power at the landfill. When we have electricity, what happens to this grant money? Can someone come back and say we gave you grant money to install solar at the landfill? Do you have to give the grant money back since you will have electricity there?

COMMISSIONER AUSTIN: We just got the letter for the commitment for the power yesterday. The next step would be for Wet Mountain Waste Minimization to contact the state and ask them about the grant. We are moving through this and I don't know the answer to that. If we have a commitment that is six to eight months away it doesn't make sense to put in solar.

NORTHCROSS: Any questions from the Planning Commission?

BAILEY: You said originally that the power is coming down County Road 328, and then you said the line is coming to the site. That will be the original point of construction at the landfill?

MILLER: We would bring it to a point wherever they want the meter.

BAILEY: The variance is good for two years, so if the line is going to the landfill that is actually the start of construction.

MILLER: We are not allowed to do anything beyond the meter.

NORTHCROSS: Do I have a motion for an undersized lot.

PATTERSON: I make a motion that we approve the variance for an undersized lot.

HOAG: Seconded the motion.

Motion passed unanimously

NORTHCROSS: The second agenda item is a variance for a setback on the south, east and west side property lines for forty feet. I would like a condition that some type of construction should begin within two years. HOBBY will repeat the motion.

HOBBY: Mr. NORTHCROSS made a motion to allow a variance of forty feet from all surveyed property lines on the south, east and west. If construction does not begin within two years on the approved site the variance is cancelled.

HOAG: Seconded the motion.

Motion passed unanimously

REASONS:

PATTERSON: YES, It is needed and makes common sense.

HOAG: YES, to be pro-active, and we need new power sub-stations up here. It fits with the Master Plan and the landfill needs it for the compactor.

TONSING: YES, it's a pro-active move and that's all.

MULLEN: YES, it's an expedited mechanism to get power to the landfill.

NORTHCROSS: YES, all the reasons stated above.

HOBBY: Motion number one was to create an undersized lot of two acres in the five acre zone. Motion number two was to grant a forty foot variance on the south, east and west side of the property with one condition that construction must begin within two years or variance is cancelled.

Motion passed.

NORTHCROSS: Do I hear a motion to adjourn?

PATTERSON: I make a motion to adjourn.

TONSING: Seconded the motion.

Adjourn: 2:03 P.M.

BARNES: Welcome everyone. This is a joint meeting of the Board of County Commissioners and the Planning Commission. I will call the meeting to order at 2:16 P.M.

ATTEBERY: I make a motion to call the meeting of Board of County Commissioners back in session at 2:18 P.M.

CUSTER: Seconded the motion.

Motion passed unanimously

ATTEBERY: Commissioner AUSTIN will have to leave at 3:30 P.M.

BARNES: The first order of business will be approval of the minutes of the November 9, 2010 meeting. Are there any additions or comments?

COKER: On page 9 the word forest is spelled wrong.

BARNES: November 9, 2010 minutes are approved as corrected

We already have heard the Zoning report and the applicant's statement so I will not repeat them. I would like to take a minute and tell Mr. NORTHCROSS thank you for the compliment. We appreciate that.

BARNES: This is a hearing for a Special Use Permit for the BOCC and Sangre De Cristo Electric. The presentation was done in November. Mr. Shy will be representing the applicant. We will need to seat some alternates at this time.

DOROTHY NEPA and CINDY HOWARD replaced absent seated members PAUL BUCKLES and SHERRI RORICK.

BARNES: Are there any comments from the Planning Commission?

No comment

BARNES: Any comments from the audience or BOCC.

No comment

BARNES: I have a question. What happens to this property if Sangre De Cristo decides they do not need it. Can you sell this property to someone else?

MILLER: Yes

BARNES: I believe one of the conditions should be if Sangre De Cristo decides they do not want this property, the property reverts back to the County.

HOWARD: Another possible condition could be that it will be used as a utility and if the use changes, the property will revert back to the County and the two acre parcel will be placed back into the whole of the property.

NAYLOR: That could be that if one of their successors fail to use it as an electrical company, it reverts back to the County.

BARNES: Any other thoughts on conditions?

HOBBY: Access into the property would be limited to the existing access off County Road 328.

HOWARD: Visual fencing, is that part of your regulations?

MILLER: Yes, that is part of our regulations to have fencing.

BARNES: Any other thoughts Planning Commission.

No Comment

BARNES: JACKIE will you repeat the conditions.

HOBBY:

1. If variances and permits are not acted upon by the utility for electrical distribution and transmission the property will revert back to Custer County.
2. Access to the property will only be on the existing easement.
3. Will comply with all local, state and federal regulations.

SHY: Does that reverter language have a term on it?

NAYLOR: The County would have the obligation to exercise their right as reverter and they would have to go into court with the deed and the conditions stating that Sangre De Cristo Electric sold the lot and they are not using it for the stated purpose.

SHY: Would that reverter become part of the deed that you prepare?

NAYLOR: Yes, the deed would grant to them together with a legal easement subject to a possibility of reverter in the event that the grantee fails to use the property for that electrical distribution and transmission.

BARNES: Is everyone comfortable with what conditions we have?

HOWARD: The utility company could not, for example sell it to me?

NAYLOR: They could not unless you were going to run an electrical company.

HOWARD: Unless it's recorded as a deed restriction?

NAYLOR: The deed will do that, it's granted to them for their particular purpose.

BARNES: Do I have a motion from the Planning Commission?

HOOD: I make a motion that we recommend to the BOCC approval of the Special Use Permit for the BOCC and Sangre De Cristo Electric with the conditions read by Ms.

HOBBY.

BAILEY: Seconded the motion.

Motion passed unanimously

REASONS:

HOWARD: YES, to have the infrastructure in place for the expansion of electrical service. Conditions on the Special Use Permit were appropriate.

COKER: YES, it addresses a need and the conditions will protect the County.

NEPA: YES, with carefully worded conditions.

BAILEY: YES, in the long range the right thing to do for the County.

DONLEY: YES, all the reasons mentioned.

HOOD: YES, it's good planning for the County and Sangre de Cristo Electrical Company and with the conditions that are in place.

BARNES: YES, I agree with all the statements that were made.

BARNES: Thank you very much. County Commissioners?

ATTEBERY: I make a motion that we accept the recommendation of the Planning Commission.

AUSTIN: Seconded the motion.

Motion passed unanimously

REASONS:

AUSTIN: Everybody has touched on the reasons. It's the right thing to do.

CUSTER: All the above.

ATTEBERY: I certainly agree with the Planning Commission. The Board of County Commissioners could have done this. We decided it would be better if we went through the process. And I would like to thank BILL, MIKE, STEVE and KIT for all their help in this process.

BARNES: Our second item is an informational presentation regarding FEMA. CHRISTE will you come up and identify yourself.

FELDMAN: Hi, I am CHRISTE FELDMAN. I work for the County with OEM as an Emergency Manager. I work with fire mitigation and hazards in this area. The upper

Arkansas region has allowed us to work with them even though we are not enrolled in NFIP. Part of the stipulation before we can update the plan with Upper Arkansas is we would revisit this item. I am not a subject matter expert so I will turn it over to BARBARA FITZPATRICK to answer your questions.

FITZPATRICK and FELDMAN presented the NFIP to the Planning Commission and BOCC.

BARNES: Thank you BARBARA and CHRISTE. JACKIE do you have any comments?

HOBBY: Please send in your letters of interest if you would like your seated position and if you want to remain as an associate.

HOOD: Made a motion to adjourn.

BAILEY: Seconded the motion.

Motion passed unanimously.

ATTEBERY: Made a motion to adjourn.

CUSTER: Seconded the motion.

Meeting adjourned at 4:05 P.M.