

Joint meeting of the Planning Commission, Board of County Commissioners and Board of
Zoning Adjustment

March 2, 2004
Custer County Courthouse
Westcliffe, Colorado

Present:

Planning Commission:

Mr. Lynn Attebery Mr. John Campbell Mr. Pat Bailey Mr. Vic Barnes
Mr. Keith Hood Ms. Sherry Rorick

Board of Zoning Adjustment:

Mr. Pete LoPresti Ms. Dorothy Nepa Mr. Skip Northcross

Associate Members:

Ms. Renee Bolkema Mr. Rod Coker Mr. Bruce McDonnall Ms. Georgiana Scott

County Commissioners and Attorney:

Mr. Dick Downey Mr. Larry Handy Mr. Dale Hoag Mr. John Naylor

Staff:

Mr. Linc Lippincott Mr. Dan Bubis Ms. Christy Kesselring

Absent:

Mr. Gerard Dearborn Mr. Bill Donley

The meeting was called to order at 1:01 P.M. by LINC LIPPINCOTT, Moderator. LIPPINCOTT called for approval of the February 2003 minutes. BAILEY MOVED and BARNES SECONDED. The motion passed unanimously.

ZONING OFFICE REPORT

February 2003

5 Septic inspections, Site reviews
1 Violation reviews
0 Homeowner Septic installation test
3 Septic Contractor test
18 Special conferences
7 Compliance Inspections

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Permits issued:	<u>2003</u>	<u>2004</u>
Septic	9	9
Zoning	17	9

1 I.S.D.S. variance was issued for a Portable/Chemical Toilet to: Ansell

- The water training seminar was re-scheduled for April 22. The time will be 11:00 a.m. to 3:00 p.m. and will be held in the basement. The Planning and Zoning Office will provide lunch.
- A workshop was held on February 26, to review the Subdivision Regulations with the input from the legal review. The next workshop is scheduled for March 18, from 10:00 to 12:00 and another one, if needed, is scheduled for April 1st.
- The Setback Variance request, for Phillip and Bonnie Holler, was cancelled by the applicant.

LIPPINCOTT turned the meeting over to the Planning Commission.

CUERNO VERDE AIRPORT ASSOCIATES, INC. / WRAY PEDRO / PLANNED UNIT DEVELOPMENT
- FINAL PLAN HEARING

Property description: A PARCEL OF LAND IN SECTION 25, T 23S R 72W and in SECTION 30, T 23S, R 71W.

Schedule number: 102-35-995/102-35-996

BOLKEMA was required to fill CAMPBELL's seat on the Planning Commission because she was originally seated at last month's hearing because of CAMPBELL'S absence.

Pedro was present and represented himself. ATTEBERY explained that this was a continuation of the February 10th Hearing on the Final Plan. He said that the Sketch Plan application was submitted on April 25, 2003, and the Preliminary Plan was submitted on July 25, 2003. This is the final phase.

Pedro explained that the covenants were in their final draft form, that he agreed to the Conditions specified and the Uses Allowed, and that he felt that all of the requirements of a PUD had been satisfied with the exception of the final Amended Water Decree. He said that the covenants may need to be modified due to the outcome of the Amended Decree. The Wet Mountain Valley Water Users Association had made three requests that Pedro agreed to. The covenants will probably include: 1) reference to the Amended Covenants and the Amended Water Decree. 2) that each property owner shall meter water usage and report the usage to the Developer/Homeowner's Association. 3) and that the Division of Water Resources may require a flume on the Schwab ditch headgate.

Final written public comments were given to the Boards prior to the resumption of the Hearing. Those in attendance were permitted to provide input prior to the Planning Commission discussing elements of the proposal.

Naylor explained that Colorado Statute 24-67-105.5 required the Planning Commission to make a decision on the PUD within 40 days of the beginning of the Final Hearing. If a decision was not made, the request would be considered approved. He explained that this was to prevent delaying tactics that kept a project from moving forward.

A discussion on which uses would be allowed resulted in the elimination of crematorium, mortuary/funeral home, and museum. Bus and taxi service was modified to shuttle/taxi service. The initial

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paragraph on the Permitted Uses document was modified to increase clarity and reduce redundancy. Definitions for wholesale and retail were added. The final approved document is dated 3/2/04 and is attached.

The first condition of the Final Conditions document was amended to read “Only uses specified in the Allowed Uses document shall be allowed unless prior approval by the Planning Commission and Board of County Commissioners is obtained.” Condition 22 was amended to read “The parking requirements, in accordance with the Zoning Resolution, Section 11.6.M, shall be determined by the Planning and Zoning Office when the land owner applies for his Zoning Permit. Satisfying those requirements shall be the responsibility of the land owner.” The final approved document is dated 3/2/04 and is attached.

The paper copy of the Final Plat was accepted by the Planning Commission.

Steve Trexel informed the Boards that the amendment request on the existing water decree will be held on March 11 before a referee. If the referee determines that she has enough information, she can write a ruling for the water judge to sign. The protesters could reach a compromise with Pedro before the hearing, in which case Pedro’s lawyer would write the decree for the judge to sign. The referee may determine that some or all of the protesters are inconsequential and write a ruling for the judge to sign. Or the hearing may have to go before the judge. The result is that a final decree on the amended water decree could take a while to be issued or it could happen fairly quickly depending on the circumstances. Pedro stated that he thought the issues that the protesters are concerned about are being worked out and he expected no significant delay.

Naylor explained to Trexel and the Boards that if there was a motion to approve the PUD request contingent on the Final Amended Decree, Pedro could not take any action until that requirement had been satisfied. Pedro would not be able to record the Final Plat, and he would be constrained from acting on the entire project.

RORICK MOVED to recommend to the Board of County Commissioners, that the Final Plan Phase be approved with the Conditions and Uses as they were modified today. This approval shall be contingent on: 1) The Water Court’s approval of the amended augmentation plan that Mr. Pedro has applied for; 2) On Pedro appearing at a regularly scheduled meeting of the Planning Commission and County Commissioners with the Amended Decree and his water attorney, to explain the decree; and 3) An updated letter from his water engineer stating that the Amended Water Decree satisfies the requirements of the Custer County Zoning Resolution, Section 11.6.A and Appendix C.2.2.h.8) with regard to the sufficiency of the water’s quantity, quality and dependability. BOLKEMA SECONDED. The role call vote was tied with three in favor and three opposed.

The members of the Planning Commission explained why they voted as they did. BOLKEMA voted yes and stated that a lot of time and thought went into this proposal and it will be beneficial to the County. ATTEBERY voted yes and explained that he sees the airport as a commercial area; that this will be the first time that the County can get a handle on what goes on out there; that he doesn’t see this as being an out of control situation; and economic factors played a part in the decision, lack of jobs having negative consequences on our County. BARNES voted no saying that he agreed with what Attebery said and that he approved of the concept from the very beginning, was comfortable with the Conditions and Uses, but was bothered by not having the final decree, which the Resolution requires, and the potential for a judge to modify the decree in such a way as to not satisfy what is needed for the PUD. RORICK voted yes and said that she felt that the airport is the right place for this kind of business. She also expressed her sorrow for the local homeowners who didn’t anticipate the on-going changes. HOOD voted no and stated that using all the good reason he had, he couldn’t approve something without knowing all the conditions that were going to be attached to it, specifically the water plan. This PUD has been particularly difficult to go through, because this is not a typical PUD and is more like a subdivision. BAILEY voted no stating that from the start, it was Pedro’s job to convince him that this county needed this now and 20 years down the road. Pedro has not done

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this. Secondly, Bailey stated that he has been against PUDs in this county.

Attebery explained to the Commissioner's that since the vote was tied, it was the equivalent of a recommendation to deny, Naylor agreed.

HANDY MOVED to NOT ACCEPT the recommendation of the Planning Commission and to APPROVE the requested PUD Final Plan phase with the conditions specified by RORICK. Those conditions are: "with the Conditions and Uses as they were modified today. This approval shall be contingent on: 1) The Water Court's approval of the amended augmentation plan that Mr. Pedro has applied for; 2) On Pedro appearing at a regularly scheduled meeting of the Planning Commission and County Commissioners with the Amended Decree and his water attorney, to explain the decree; and 3) An updated letter from his water engineer stating that the Amended Water Decree satisfies the requirements of the Custer County Zoning Resolution, Section 11.6.A and Appendix C.2.2.h.8) with regard to the sufficiency of the water's quantity, quality and dependability.". HOAG SECONDED. The motion passed by voice vote with HANDY and HOAG voting in FAVOR and DOWNEY voting OPPOSED. HANDY said that his main concern was water and that Pedro has gone to a lot of trouble to change his augmentation plan for a proposal without knowing whether it would be approved. He further stated that commercial development belonged around the airport. HOAG concurred with Handy about the water, everyone knows its there, he goes to court to change the use allowed and then we deny him that use. An airport is commercial and even though the Master Plan didn't specify locations for commercial, the airport was certainly a prime candidate. DOWNEY said that he made a motion during the Preliminary Plan to not approve that phase, because he was concerned that the water should be in place so that the Planning Commission could make sure that it is exactly what its supposed to be and then proceed to Final. The designing of this project has been more of a business park and the airport is not the appropriate place.

LEONA CALDERWOOD / ZONE CHANGE FROM ZONE I TO ZONE IV

Property description: A PARCEL OF LAND IN SECTION 14 & 15, TOWNSHIP 23S, RANGE 72W OF THE 6TH P.M., CUSTER COUNTY, COLORADO

Schedule number: 102-11-359/361

CAMPBELL resumed his Planning Commission seat and BOLKEMA returned to her seat as Associate Member.

Calderwood represented herself and explained her request to the Boards. She explained that she had a five acre parcel and a 700+ acre parcel and would like to make a 35 acre parcel to build a house on. The parcels are on opposite sides of the zone line between Zone I and Zone IV. She would like to have the 30 acres in Zone I re-zoned to Zone IV so that she could place her house close to the center of the new parcel. She stated that she would place a deed restriction on the parcel to prevent any future divisions.

When asked why she didn't create an 80 acre parcel and move the 5 acres from Zone IV to Zone I, she stated that she didn't want to take productive hay fields out of production and that the new lot followed the ditch and the existing fencing. Calderwood explained that the issue came up during estate planning. She said that the rest of the ranch will be in joint ownership but this parcel will be retained for her personal use.

There was discussion among the Board members about the incursion of the 5 acre zone into the 80 acre zone and that the 80 acre zone needed to be kept intact. Naylor explained that historically the intent was to keep the meadowlands intact. There was discussion about whether the property on the bluff was meadowland or dryland. There was some discussion about moving the zone line to follow the highway and

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making the existing small parcels non-conforming.

The members expressed resistance to creating a precedence of allowing Zone I to be diminished. The 5 acre parcel didn't have a deed showing that it had been created prior to zoning being enacted and therefore probably wasn't a legal lot for permits. Naylor said that typically the county has viewed ground divided by the highway or a county road as being created when the road is put in. The highway was established well before 1971.

ATTEBERY MOVED to recommend, to the Board of County Commissioners, that they approve the zone change request with the condition that the deed restriction prohibiting future division of the land be on the recorded plat. CAMPBELL SECONDED. The motion passed, by role call vote, by a four to two margin. ATTEBERY, BARNES, CAMPBELL, and RORICK voted in FAVOR and BAILEY and HOOD voted OPPOSED. RORICK voted yes but against her personal judgement. CAMPBELL voted yes because the area abuts Zone IV and it isn't really changing anything. HOOD voted no because he didn't like the incursion of the 5 acre zone into the 80 acre zone. BAILEY voted no and said that he didn't like the increase in density and he would rather see a 35 acre undersized lot in Zone I. BARNES voted yes with the condition of the deed restriction and not wanting Calderwood to have to jump through needless hoops. ATTEBERY explained to the Commissioners that the Planning Commission's recommendation was to approve.

DOWNEY MOVED to accept the recommendation of the Planning Commission to APPROVE the requested zone change on the condition that the deed restriction prohibiting future division of the land be on the recorded plat. HANDY SECONDED and the motion passed unanimously by voice vote.

ATTEBERY reminded the Boards that the Subdivision Regulations will be reviewed on March 18th and April 1st.

There are currently no requests for next month.

The next Site Tour is April 1, 2004.

The next meeting will be in April 2, 2004.

The meeting adjourned at 5:00 P.M.

Submitted by,

Dan Bubis
Secretary

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Final Conditions of Silver-West Business Park

1. Only uses specified in the Allowed Uses document shall be allowed unless prior approval by the Planning Commission and Board of County Commissioners is obtained.
2. Aviation related businesses are not allowed on these Lots unless application has been made and permission granted to do so by the Custer County Airport Authority.
3. No more than two structures may be constructed on each lot, one of which may be an aircraft hangar.
4. All utilities shall be underground.
5. Full time residency is not allowed with the exception of proprietor's or security occupancy which shall be contained within an allowed structure, and total area shall not be larger than eight hundred (800) square feet.
6. County zoning requirements shall be adhered to.
7. Roofs and walls of structures shall be non-reflecting in nature.
8. All structures shall be constructed in accordance with the Uniform Fire Code and the Uniform Building Code as it relates to the Uniform Fire Code. The codes shall be the current common codes adopted by the towns of Westcliffe, Silver Cliff and the Wet Mountain Fire Protection District. If the County adopts a Building Code that code shall take precedence. All structures shall be constructed to meet the 1 hour burn rating at a minimum. The Fire Inspector may increase the requirements after reviewing the blueprints and proposed uses for the proposed structure(s). The blueprints shall undergo a plan review prior to a Zoning permit being issued. The fees for the plan review and inspections shall be set by the Wet Mountain Fire Protection District. All inspections by the Fire Inspector shall be according to his availability. Annual fire inspections of all structures shall be required.
9. All outside storage shall be hidden from view by a visual barrier which shall not exceed eight (8) feet in height.
10. None of the Lots shall at any time be divided, subdivided or re-subdivided.
11. In order to protect the aviation clear zone, antennas, flag poles and other similar construction shall not be allowed to exceed twenty-eight (28) feet in height.
12. All open space or common property shall be owned and maintained by the Silver-West Homeowners' Association and shall be kept as such for perpetuity.
13. Security and control of all access from Silver-West Business Park to the public airport, shall be the

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sole responsibility of the land owners of Silver-West Business Park and Silver-West HOA. A signed letter of agreement between the developer of the Silver-West Business Park and the Airport Authority Board addressing these issues shall be submitted to, and filed by, the Planning and Zoning Office.

14. The Silver-West Homeowners' Association shall be responsible for adherence of and compliance with the terms and conditions of the approved water augmentation plan.
15. Custer County Planning and Zoning Office shall not issue any permits for construction until the construction plan and specifications have been approved by the Silver-West Business Park Architectural Control Committee and the Wet Mountain Fire Department Fire Inspector.
16. A commercial sanitation company shall be contracted for regularly scheduled refuse removal. The HOA shall be responsible for ensuring that the properties are well maintained and free from debris.
17. Compliance to the terms and conditions specified will be reviewed at the discretion of the Planning and Zoning Office, during compliance inspections, and on a written complaint basis.
18. The Staging Area designated on the eastern edge of the development shall be for the exclusive use of the Fire Department and shall remain so in perpetuity. The Fire Department may use the property for staging and water storage. No permanent structures shall be constructed in the Staging Area.
19. Water storage shall be 20,000 gallons on the Staging Area. A 10,000 gallon storage container shall be installed when the first lot begins improvements and a second 10,000 gallon storage container shall be installed when the second lot is improved. Both containers shall be connected and have the necessary apparatus as agreed upon by the Fire District. Additional water storage requirements on each lot shall be determined by the Fire Inspector based on: the fire protection needs in the general area, type of use, structural components and storage and amount of combustible materials. All water storage containers must be located below ground.
20. All applicable Federal, State and Local regulations shall be adhered to and all necessary permits must be obtained prior to the start of operation. A copy of those permits shall be submitted to the Planning and Zoning Office and kept on file.
21. No signs shall be internally lit. All sign lighting shall be from above the sign directed downwards.
22. The parking requirements, in accordance with the Zoning Resolution, Section 11.6.M, shall be determined by the Planning and Zoning Office when the land owner applies for his Zoning Permit. Satisfying those requirements shall be the responsibility of the land owner.

Silver-West Business Park Uses

The following retail services or wholesale uses are allowed in the Silver-West Business Park and any deviations or exceptions must be approved by the Planning Commission and Board of County Commissioners. If, in the opinion of the Planning and Zoning Office, the use is deemed to not comply with the "Low Impact" designation, the request will be made to the Planning Commission and Board of County Commissioners.

Low Impact Commercial Businesses

Services

Ambulance
Automobile Rental
Bookkeeping / Tax Service
Shuttle/Taxi Service
Child Care
Furniture Upholstering
Greenhouse – wholesale
Janitorial
Laboratory: Water; Soil; Assay; Agricultural i.e. nutrient content of forage; and Medical for testing blood, urine, cultures or similar tests but excluding any research.

Offices
Pest Control
Religious Institution
Studio / Radio Station
Travel Agency

Small Component / Low Impact Assembly (A.K.A. Light Manufacturing) For Wholesale Distribution Only

Printing / Publishing / Bookbinding
Metal Fabrication
Machine Shop / Blacksmith Shop
Wood Shop
Sign Shop
Cabinet Shop
Metal Shop
Electrical Parts / Components Shop
Ceramic Shop
Glass Shop
Building Trades Shop(s): plumbing; electrical; carpentry; HVAC; carpeting; and other similar trades.

Feed Repackaging
Seed Repackaging
Food Preparation – wholesale packaging
Medical Supplies

Wholesale Distribution and Storage

**Ceramics / Glass
Fertilizer / Feed – pre-packaged
Electrical Components
Stone Products
Medical Supplies and testing
Pharmaceutical Supplies
Frozen Foods / Non-perishables
Self Serve Storage
Household Goods Storage
Order Fulfillment Center**

Definitions

Retail: The sale of goods or commodities in small quantities directly to consumers.

Wholesale: The sale of goods in large quantities, as for resale by a retailer.