

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

November 2, 2005
Custer County Courthouse
Westcliffe, Colorado

Present:

Planning Commission:

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

Board of Zoning Adjustment:

Mr. Gerry Dearborn	Mr. Bill Donley	Mr. Bruce McDonnall	Ms. Dorothy Nepa
Mr. Skip Northcross			

Associate Members:

Mr. Joe Arbuckle	Mr. Rod Coker	Mr. James Jones
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County Commissioners and Attorney:

Mr. Dick Downey	Mr. Dale Hoag	Mr. Kit Shy	Mr. John Naylor
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Staff:

Ms. Christy Kesselring

Absent:

None

The meeting was called to order at 1:03 P.M. by LYNN ATTEBERY, Planning Commission Chair.

ATTEBERY called for approval of the October 2005 minutes. BARNES MOVED to accept the minutes CAMPBELL SECONDED. The motion passed unanimously by voice vote.

ATTEBERY recused himself from the Madden Special Use Permit Hearing and JONES was seated in his place.

ATTEBERY announced that the Guilkey/Hall Special Use Permit request has been withdrawn and the Cook Ski Area Proposal Special Use Permit request has been postponed until the December meeting.

ATTEBERY made the motion to have the Planning and Zoning Office send a letter to Terry Cook concerning

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

his Special Use Permit Request for a Ski Area. Cook must submit a completed packet to the office answering all the concerns of the Office and the Planning Commission by close of business on January 20, 2006. The motion was SECONDED by JOHN CAMPBELL. The motion passed unanimously by voice vote.

ZONING OFFICE REPORT

- There was a Subdivision Regulation Workshop on October 27, 2005 from 10 A.M.-12:00 P.M. in the Courthouse basement.
- GIS: -The County Cartographer and office staff attended an "Introduction to the Geodatabase" sponsored by ESRI on 10/19/05.
- The Office has only received one application for the proposed intern position.

GUY P. AND KAREN M. MADDEN/SPECIAL USE PERMIT PUBLIC HEARING

Property Description: ROSITA HILLS, FILING 2, LOT 85

Schedule number: 100-30-210

ATTEBERY explained the Special Use Permit process to the members and the audience and read the applicants statement. There were 14 letters sent out. Three responses were received from the Custer County Regional Planning Commission; Water 2 Division Resources-Janet Kuzmiak; and Wet Mountain Valley Fire Protection

GUY MADDEN representing himself. MADDEN submitted a packet of information to the boards and office staff including a letter of water needs assessment; the November 1, 2005, Fire Inspection; and proof of insurance.

BOB SENDERHAUF representing the Regional Planning Commission, had questions concerning the covenants and if the County has any liability; Fire Inspections that need to be completed and the need for hauling water from outside the county.

MADDEN stated that he did not see any liability for the county concerning the covenants. MADDEN is fully responsible for his own actions and any person can sue him under the guise of the covenants. MADDEN also said that he has gone to twenty neighbors and received nineteen approvals for his project.

JOE TOSH, 136 Ben Eaton Lane, said he was a past Board of Directors Member for the Rosita Hills Property Owner's Association. On June 30, 2003, the board was dissolved, but the covenants are still in effect. TOSH said that according to the covenants certain lots are allowed to have commercial/business.

SENDERHAUF asked the County Attorney if the County had any liability with the covenants. NAYLOR said that the County does not enforce covenants and the applicant is acting at his own peril. SENDERHAUF said that he has no more questions and is in support.

SUSAN CARTER asked if she could see the proposed building. After being informed that the building was already built, she did not have a problem.

ROB McILWRAITH said that he supports business in Rosita Hills.

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

SHERRY RORICK had a question concerning liability insurance. GERRY DEARBORN commented that the stairs were dangerous and if the County had a Building Code, the building would be condemned due to the stairs.

MADDEN said that Fire Inspector, Roger Squire, conducted a fire inspection on 11/1/05, and a few extinguishers need to be replaced and the upstairs window is to be replaced or changed. Another inspection will be done in 21 days. Jesse Souza will probably do this inspection.

BARNES made the motion to RECOMMEND the County Commissioners APPROVE the Special Use Permit because it has a minimal impact. This approval is subject to the following conditions:

1. A Special Use Permit will be issued when proof that all applicable State and Federal permits have been obtained. A current copy of these permits will be kept on file in the Planning and Zoning Office. If any of these permits lapse, the Special Use Permit will automatically expire.
2. Parking will be contained within the specified parking area and not on the County Road rights-of-way.
3. The owner and/or applicant will notify the Planning and Zoning Office within thirty (30) days if operations are abandoned, or if there is a change in operations.
4. Water issues:
 - a. Water usage shall be in accordance with the rules promulgated by the State of Colorado Water Commission, and adhered to for any applications involving water usage.
 - b. If water is hauled in, that water shall come from a "legal" source. the Special Use Permit is issued.
5. The applicant will comply with all applicable Federal, State, and County Regulations.
6. The permit will be reviewed the first year and after that upon receipt of a written complaint.
7. The floor plans of all proposed structures will be reviewed by the fire service specifically for emergency exits, etc. The structure will be inspected annually by the Fire Marshall. A copy of his report will be submitted annually to the Planning and Zoning Office by the applicant.
8. An engineer designed modification to the septic system will be completed within 60 days of granting the Special Use Permit.
9. The Special Use Permit will have a limited life of 5 years.
10. Trash will be properly contained in a wildlife-proof container until it is properly disposed of.
11. A maximum of two overnight customers will be allowed.
12. Before the permit is issued, the issues with the November 1, 2005, Fire Inspection must be resolved and approved before the Special Use Permit is issued.

BAILEY SECONDED and the motion passed unanimously by roll call vote.

SHY accepted the recommendation of the Planning Commission based on the conditions placed in the motion. SHY stated that he was impressed with the presentation. DOWNEY SECONDED and the motion passed unanimously by a voice vote.

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

JANET FLICK /SPECIAL USE PERMIT PUBLIC HEARING

Property Description: NE4SE4 SEC 2 21 71

Schedule number: 102-24-150

ATTEBERY read the applicant's statement. There were 15 letters sent out and 26 responses (10 for the proposal, 14 against and 2 neutral). The responses were from Mike Scott; Dorian Morrell; Esther Smith; Martha Davis; Regional Planning Commission; Wet Mountain Valley Fire Protection District; Division 2 Water Resources-Janet Kuzmiak; Angela Dietrich; Fran Ackley; Thomas R. Cameron; Cynthia Thompson; Rebecca Richardson; Kathleen East; Bob Shelton; George Hoke; Kurt Stocker; Claire McCutcheon; Steve McCutcheon; Alex Wilcox; Dave & Marty Mernitz; Mary Jane Fuller; Lynne Campbell Bryan; Bill Vuchetich; Bob Strobo; Mimi Strobo; and Phyllis Yake.

ATTEBERY asked FLICK if she had a water needs assessment and FLICK answered that she has a contract with Worthley Equipment Company, LLC to deliver water for one year. The water will be obtained from Canon City. FLICK stated that approximately 4.5 gallons per day per dog will be required for water and sanitation.

MARTHA DAVIS lives approximately 4 miles from Flick. DAVIS said that she trusts Flick and has never seen her property dirty. DAVIS said that if she had to leave her dog someplace it would be at Flick's.

ESTHER SMITH is one of Flick's neighbors. SMITH said that Flick was respectable, conscientious, hardworking and honest in her business practices. SMITH thought Flick's plans were well thought-out and would be a good thing for people.

BOB SENDERHAUF, representing the Regional Planning Commission, presented concerns that were discussed at the Regional Planning Commission about Flick's application. The concerns addressed were dust; dark sky lighting; water; septic; noise; parking; licensing from the state; and fire department concerns. Primary concern was for the Fire Department. As long as the fire department concerns were addressed, there were no further problems with the issue.

ATTEBERY asked FLICK and ALBIN if they had contacted the Fire Department. ALBIN said that she had spoken with Dallas Anderson and discussed the fire concerns. Dallas Anderson runs the sub-station at Boneyard Park. ATTEBERY said they need to talk to the Wet Mountain Valley Fire Department instead of the substation.

DORIAN MORRELL has known Janet Flick for about three years. Flick has proven herself to be a wonderful, trustworthy person and has a great operation.

MIKE SCOTT, 520 Bear Ridge Road off of CR 271 and is about 1.5 miles east of Flicks. He bought the property for the scenery, to get away from the traffic and to get away from noise. He can hear the dogs from his property. Increasing the number of dogs, will increase the level of the noise. SCOTT said the project should not be approved.

ALEX WILCOX is the President of the Dilley Ranch Property Owner's Association. WILCOX said that the

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

Property Owner's Association has five members and the board is split-two for, two against and one neutral. WILCOX said he spoke with the two neighbors and one is for and one is against. He contacted other members of the association with the same results. Some who are for it, like the idea of a boarding facility and a grooming facility nearby. The concerns include: if the waste is disposed of properly and how is the waste going to affect groundwater; noise; increase in traffic and road damage and how will the facility be lit at night.

MARY FULLER, has owned 3 lots adjacent to Flick from 1995-July 2005. FULLER said her property has been for sale for quite some time. In July she sold lots 5 & 6 and took a \$139, 693 devaluation hit on the sale because of Flick's Kennel. FULLER still retains ownership of Lot 7, which borders Flick on 2 sides. FULLER said her money is invested in the property and she cannot sell Lot 7 due to Flick's kennel. FULLER said another thing that bothers her is the history of dog breeders and how their ventures grow from one thing to another. FULLER said she is afraid of what will come next. FULLER believes that Custer County needs more regulations to address situations like this.

BILL VUCHETICH said he received a letter from Flick, which contained a section discussing Flick hiring an attorney to see if he could hear the dogs. According to the attorney, the dogs were no longer audible when you reached Mahorney's property. VUCHETICH testified that he could hear the dogs barking while he was using a chainsaw and he is buffered by a ridge line. VUCHETICH said he had thought about building on the ridge line, but he will not due to the dog noise.

DAVID MERNITZ, owns and represents the Dundee Memorial Animal Care Center, a kennel, boarding and daycare facility, regulated through Colorado State Veterinarian under the Pet Animal Care Facilities Act (PACFA). MERNITZ stated that Flick's proposal did not meet all of the PACFA regulations for proper flooring. He also stated that this proposal would have between 25 dogs in the 1st year to 55 dogs in the 3rd year of operation. MERNITZ pointed out that the well is being improperly used and hauling water is not a permanent commitment. He also stated that the property tax classification needs to be changed to reflect the commercial purpose.

SUNNY ARONSON lives approximately .9 miles away from Flick. ARONSON said that Flick is trying to comply by hauling water and putting up sound barriers as a solution to the problem.

KEN FELTY, lives on CR 271, and he said he can hear continual yapping of dogs. FELTY said that the noise pollution is annoying and he does not want water tankers and increased traffic on the County Roads. FELTY asked the Commissioners to consider the impact this will have on the neighbor's lifestyles.

PARK STREET, lives 300 yards from Janet Flick, said that this proposal, if approved, needs to be tightly regulated. LEE STREET, said she could hear audible barking at night.

JAMIE CAMPBELL, who lives at Flick's residence, stated that she cannot hear barking from the end of the driveway and the plan is to set appointments to help with the traffic issue.

BARBARA STANSON said she believes this is a good idea and is what people need.

LORAIN SILVER questioned the number of dogs. FLICK and ALBIN said it fluxed between 75-90 dogs right now.

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

CLAIRE McCLUTCHEON, said she could hear the dogs when she is on her deck, day or night.

ALLEN McCONNALL, who used to operate the Small Business Development in Canon, said that the planning for this project is complete and that FLICK is well-qualified.

CARLY BROTIUS, 240 Kiowa Drive, has never heard the dogs bark.

SANDY KENSEY, lives at Flick's residence and Centennial Ranch, said she is a light sleeper and has never heard the dogs bark at night.

HAAS TOSPONS, said he has known Janet Flick since high school. He has learned a lot through her.

STEVE McCUTCHEON, Dilley Ranch, said that since Custer County has no regulations to control this, it should not grant the opportunity. McCUTCHEON said that he has heard the dogs barking and has been in front of the Board of County Commissioners before about it,

CATHY ISBY, owns property in Centennial Ranch, said that if Custer County made a rule for everything, it should include a noise ordinance against weaning calves and coyotes.

PRICILLA FOWLER, Bull Domingo Ranch, said she attended the small business class with Janet Flick and she has one of Flick's dogs. FOWLER said she has heard positive comments about Flick.

JAMIE CAMPBELL said that the Crematory is not in the business plan and that the property values have increased dramatically.

GARY FORD, has visited Flick's kennel five times and is impressed with the quality of the dogs and the facility.

CHARLIE BULLARD, Flick's nearest neighbor, said the noise does not bother him, but the increase in traffic and dust does. He believes the traffic will decrease his property values.

FLORENCE BOSTICK, CR 265, has a malamute, that she intends to let Flick take care of. BOSTICK said that Flick's dogs are friendly and clean

RUBY LEACH came here five years ago and reported that FLICK's kennel is clean and Flick cares for the dogs in every way.

CLEVELAND BOSTICK said that some people move in around an airport and then complain about the noise. He wondered if this is the same thing.

BECKY SEWELL, a former employee, said the facility is kept clean. SEWELL has three of Flick's dogs.

DANNY BRALEY said he has taken people out to Flick's and only the big dogs bark, the small dogs do not bark.

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

ALBIN stated Flick abides by PACFA rules and has the intent to go down to 25 dogs. ALBIN said that dogs are noisy and the proposed facility would help the noise issue and Flick would add noise barriers, if needed. ALBIN explained that the water would probably be delivered once a month, there will be black sky, the waste will be disposed of properly, and a bus will be used to help eliminate the traffic problem. ALBIN further explained that Flick will get a permit for any expansion and Flick will adhere to every regulation. ALBIN further said that Mernitz's points were addressed under PACFA rules, and the facility will be staffed 24 hours per day, the floors would all be cement and hauling water was recommended by the state. ALBIN stated that the county should support Janet Flick in her endeavor.

ATTEBERY stated that he appreciated the letters and comments and did not doubt that Flick was an accomplished dachshund breeder, but this is a land use issue, not her abilities as a dog professional

DONLEY suggested that any permit be tied to Janet Flick, not the property. The boards discussed the need for a Special Use Permit for her breeding operation, the noise issue, water issue, waste disposal, reduction of the breeding stock, traffic, easement, PACFA regulations and tying her breeding operation to the Special Use Permit.

ATTEBERY RECOMMENDED to the County Commissioners to send the Planning Commission into workshops to work out all the issues. BARNES SECONDED and the motion passed by a voice vote.

DOWNEY MOVED to NOT accept the recommendation of the Planning Commission and to DENY the application because the facility is in a residential/agricultural zone and people moving into the area have certain expectations. Those expectations have not been met with the noise and traffic. HOAG seconded and the motion carried by voice vote.

HOAG stated that she should bring her dog numbers down to 20-25 dogs and once you can prove you can get it down, you may come back.

SHY said he wanted to hear the Division of Wildlife's opinion about this application.

ATTEBERY stated he had turned the September 2, 2005, Draft of the Subdivision Regulations over to the County Commissioners that morning and the County Commissioners had sent it to the County Attorney for legal review. The review is to be completed by February 1, 2006. A Public Hearing is tentatively scheduled for March, 2006.

ATTEBERY announced that the Youth in Government meeting will be at the Bowling Alley on 11/15/05 at 6:00 P.M.

The next Site Tour is December 1, 2005

The next meeting will be December 6, 2005.

ATTEBERY requested to adjourn the meeting. BAILEY MOVED to adjourn the meeting BARNES SECONDED. The motion passed unanimously by voice vote. The meeting adjourned at 4:30 P.M.

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

Submitted by,

Christy Kesselring-Secretary