

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

March 6, 2007

Custer County Courthouse  
Westcliffe, Colorado

## Present:

Planning Commission: Lynn Attebery; Pat Bailey; Vic Barnes; John Campbell; Rod Coker; Keith Hood; Sherry Rorick  
Associate Members (PC): Sarah Senderhauf; Christy Veltrie  
Board of Zoning Adjustment: Gerry Dearborn; Cindy Howard; Skip Northcross  
Associate Members (BZA): Jim Jones; Kenneth Patterson  
Commissioners: Carole Custer; Dick Downey; Kit Shy  
Staff: Jackie Hobby; Christy Kesselring; John Naylor (County Attorney)

## Absent:

Board of Zoning Adjustment: Bruce McDonnall; Dave Tonsing  
Associate Member (BZA): Joe Arbuckle

The meeting was called to order at 1:00 P.M. by LYNN ATTEBERY, Planning Commission Chair.

JIM JONES and KENNETH PATTERSON were seated on the Board of Zoning Adjustment in Bruce McDonnall and Dave Tonsing's absence. The Board of Zoning Adjustment did not have any agenda items, so attendance was not necessary.

Attebery called for an approval of the February 2007, minutes. VIC BARNES MOVED to accept the minutes, JOHN CAMPBELL SECONDED. The motion passed unanimously by voice vote.

## ZONING OFFICE REPORT

- The proposed Subdivision Regulations are still being reviewed by the County Commissioners.
- The proposed Special Events Permit regulations are being reviewed by the County Attorney.
- The office has seven (7) Special Use Permits and one (1) Planned Unit Development pending.

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## HUMBOLDT PEAK PARTNERS LLC/PLANNED UNIT DEVELOPMENT(PUD)-SKETCH PLAN PHASE PUBLIC HEARING

Legal Description: S2NW4 SW4NE4 N2SW4 NW4SE4 N2N2 SEC 13-23-73 (Legal for entire property)  
Schedule Number: 102-09-851

ATTEBERY read the applicant's statement, *"Sketch Plan PUD application for 80 acre parcel to include two (existing) caretaker units, ranch buildings, six new home sites and a common ranch "cookhouse." Proposal includes 76% open space."*

There were 11 letters sent and 2 responses received by the office from Keith and Sandy Moreland (opposed) and Joan Sanger (opposed).

BUCK BLESSING, partner/owner, TOM BRAUN, development planner, and PAUL SNYDER, conservation easement attorney, represented the application. BLESSING explained there are three (3) family partners involved in the ownership of the ranch. The partners want to create a "family compound" of six new home sites clustered on an 80 acre tract and they wish to preserve the land and agriculture aspect of the ranch with a conservation easement. The six home sites and cookhouse would be clustered in a treed area. The cookhouse is designed as a central gathering spot for socializing and recreation. BLESSING said that the PUD would have

76% of the land in open space, with six new home sites, the cookhouse and the existing two caretakers' units. Each home site would be approximately 2 acres and have a 3/4 acre building envelope.

BLESSING explained the use allowed by right would allow for 6 parcels (3-80 acre parcels and 3-35 acre parcels). BLESSING said dividing the ranch and having homes scattered over the entire ranch defeated the purpose of the family compound and preserving the entire ranch. In order to cluster the homes, the partners have used the PUD regulations as the vehicle to achieve these goals. BLESSING explained the benefits of the PUD process for the county and for their application. The county retains open space for an increase in density.

BLESSING further explained there will be no perimeter lot fencing, no commercial uses allowed, the structures would be architectural controlled, there are square footage requirements for structures, the homes sites are clustered in a vegetated area to avoid visual impact and the project would have to be sold as a whole, the home sites could not be sold off individually. BLESSING told the board members that setting precedence could be avoided with a set of good findings (findings are conclusions/reasons for the board's decisions). BLESSING said the partners are working with the San Isabel Foundation to put the balance of the ranch in a conservation easement with up to 3 additional home sites being withheld.

ARTHUR VYN BOENIGHAUSEN said he studied the ranch and there are more imaginative ways to develop the ranch. BOENIGHAUSEN gave a copy of a letter to the applicant and to Commissioner Shy.

SANDY DEWEESE, adjacent property owner, said she supported the idea of cluster, but she had an issue with the cookhouse and she thinks she can see it from her property.

BILL GILLETTE applauded the clustering, but had some questions concerning the amount of land in open space. GILLETTE would like to see a written guarantee the partners would put 320 acres in a conservation easement and keep the water rights with the land. GILLETTE wondered why the need for 9 houses=6 new home sites + the 2 caretaker units + the cook house. GILLETTE opposes the application because it sets a bad precedence and he wants everything in writing.

LOCKET PITTMAN objects to the application and believes that there should be one house on 35 acres or 1 house on 80 acres depending on the zone.

JOHN BRANDENBURG is not in favor of the PUD because it sets a precedence and he does not want to see the pristine valley carved up. BRANDENBURG would like to have the conservation easement put into writing.

KIRK CHARBONNEAU wanted to know if the property could be re-zoned to allow six (6) homes put in one general area and leave the rest of the ranch open.

JERRY BROWN is concerned about development in the Valley floor. BROWN said the developers are taking away from the ranch land. We need to keep developments out.

WENDY GEARY, adjoining property owner, is glad the applicant has switched some things around from the first proposal and listened to the neighbors concerns. She has concerns about the size of the cookhouse and the chance this could be used as a private retreat. GEARY asked about the conservation easement and what was going to happen with it. GEARY is concerned about the how the water rights are going to be affected. GEARY said that she and her husband are opposed.

DOROTHY NEPA told the boards the revised proposal implies a reduction in density, which is not exactly true. NEPA said that just because it's open space, doesn't mean it has to be hay fields. She has concerns about the

lack of assurance on the conservation easement, questions with the over all application and is opposed to the PUD.

SALLY BRANDENBURG is opposed to the PUD and wants to rescind the density numbers in the PUD regulations.

DAVID ENGLER thinks the applicant should not be allowed to break the County rules. The cookhouse is too big and he has doubts about the purpose of this application.

ANGUS THOMPSON believes there should be severe financial penalties for violations of the agreements if this application is approved.

BLESSING answered the questions thus far. The cookhouse is to be a large eating area with a commercial kitchen, pool table and ping pong table. It has not been designed yet, but will be subject to the architectural control committee. BLESSING said that approximately 380 acres will be in open space, but he is not willing to guarantee in writing the conservation easement because he will be denied the tax credits.

PAUL SNYDER said they want to maintain the ranch and the only way they can afford it is through tax credits. SNYDER further explained that this is a faith and trust issue and if Blessing does not keep his word concerning the conservation easement, the county could just say "NO" to any of his future requests.

VYN BOENIGHAUSEN wants this thing about the conservation easement in writing because handshake deals can go sour.

BLESSING continued to answer questions by explaining how the partners want to keep the ranch together as a whole and still get a tax benefit from a conservation easement. BLESSING went through the history of the first application and how the partners arrived at this application. BLESSING said the partners intend to follow the rules and keep the property in agricultural use.

GEARY asked about the well and septic and the effects on adjoining properties. BLESSING responded they want as few wells and septic as possible and these will be addressed in the Preliminary Phase.

ROCK CANDA has some reservations about the water rights and the project needs to make certain that no harm comes to a water right.

DEARBORN asked what BLESSING did for a living, BLESSING responded he was a real estate investor.

BARNES said the plan changed from 404 acres to 80 acres and the two pieces are really linked together via the agricultural use. He further explained the county cannot go on good faith concerning the conservation easement issue. BLESSING agreed the 320 acres has to be managed in conjunction with the 80 acres, but he cannot guarantee a conservation easement or he loses the tax benefits. SNYDER said he has looked for a way to make all parties happy with the promise of a conservation easement, but has not found any.

NEPA said the conservation easement should be done first and he should not be creating value.

KATHRYN MILLETT said her family shares a piece of property and they do not need a 6000 square foot cookhouse. MILLETT told the board members that a conservation easement is giving up value and he is trying to create value and the Colorado taxpayers are the ones who will have to pay.

JIM JONES commented that without the PUD density, Blessing does not get the value for a tax incentive.

RAY HERRICK said he would rather see the houses in one location with the PUD instead of staggered around the ranch.

ROCK CANDA , adjacent property owner, said the plan makes sense from a visual impact because it is less offensive than the use allowed by right. CANDIA explained the negative visual impact of developing the Canda Ranch into 35 acres development versus this application. CANDIA has some reservation about traffic on Horn Road and to Horn Creek.

SUSAN CARTER said she is opposed to this development as it opens the door for greedy developers.

Further discussion by the audience and board members touched on leasing versus selling water rights, the caretaker units, septic systems, current PUD regulations, how the property was deeded, tax credits, conservation easement, vacation homes, number of partners, and the density issue.

BARNES MOVED to recommend the Board of County Commissioner to approve, with reservations, the Sketch Plan at this point and allow it to go into the Preliminary Plan Phase. BARNES further explained that if the partners separated the ranch into 6 parcels as is allowed by their use by right, the Agriculture use on the property would be lost. CAMPBELL SECONDED. The motion passed by a majority by roll call vote. RORICK voted yes and said this is a better solution than what it could be. RORICK apologized for the attacks on Blessing's integrity. HOOD voted no because he could not disconnect the 80 acres from the rest of the ranch. HOOD said if it was addressing the entire ranch, he may have voted yes. ROD COKER voted yes because he feels it is a better option, but he has 3 pages of notes that need to be addressed. CAMPBELL voted yes because he feels this would have the least impact on the property. BAILEY voted yes, and he would like to see some commitment for the conservation easement at the preliminary presentation. BARNES voted yes and already stated his reasoning. ATTEBERY voted yes and said he has the same concerns as other board members and wants answers at the Preliminary Plan Phase.

KIT SHY MOVED TO accept the recommendation of the Planning Commission and elevate the application to the next level. SHY explained that he has the same concerns at the Planning Commission and doesn't care about the profit of the project. SHY looks at this as one piece of land. CUSTER SECONDED and said she wants to preserve the 80 acre zone and has a lot of questions. The motion passed by a majority voice vote with Shy and Custer voting for and Downey voting against. DOWNEY stated he cannot separate the 80 from the 320 acres.

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**IRVING B. AND LOMA P. CREIGHTON/ JAMES P. CREIGHTON LOT LINE  
ADJUSTMENT/VACATE AND REPLAT PUBLIC HEARING**

Legal Description: SILVER CLIFF HEIGHTS, FILING 14, LOTS 18, 19 & 20 (issue only involves lot 18 and 19)

Schedule Number: 101-14-402

ATTEBERY read the applicant's statement, *"We wish to adjust the lot line separating lots 18 and 19 so that the line is located approximately 75' to the East of the eastern most point of the existing log garage. This will eliminate any setback issues for lots 18 and 19 and allow us to sell lot 18 separately from lots 19 and 20. The resulting area of lot 18 will be approximately 7.1 acres"*

There were 9 letters sent and 0 responses received by the office.

ATTEBERY explained the history of the permits on the property. This is a problem created by the County.

JIM CREIGHTON said his parents had purchased the lots in the early 1970s and built a large house, garage and shed along the property dividing lines. The property is being sold and they are trying to make everything legal. CREIGHTON said they are asking to shift the property line between lot 18 and 19 sufficiently East of the garage to provide for a proper setback.

DEARBORN asked what the minimum lot size was and staff informed him it was 5 acres.

CREIGHTON explained he was seeking approval and then would have a plat done.

BAILEY MOVED to recommend the Board of County Commissioners to approve this vacate and replat because the property is in Zone IV and the lots will be 5 acres or more and the county contributed to this issue. The lots will be known as SILVER CLIFF HEIGHTS, FILING 14, LOTS 18A and 19A and will meet the County setback regulation. ATTEBERY SECONDED. The motion passed unanimously by roll call vote. COKER voted yes and stated this application makes sense and does not increase density. CAMPBELL voted yes and said this fixes a problem created by the County. RORICK and BARNES voted yes for the same two reasons given. HOOD voted yes because it moves all the improvements onto one parcel. ATTEBERY voted yes because it corrects a mistake made by the County. BAILEY voted yes for reasons in his motion.

DOWNEY MOVED to accept the recommendation from the Planning Commission, CUSTER SECONDED. The motion passed unanimously by roll call vote.

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**ROBERT AND CARLEY STONE LOT LINE ADJUSTMENT/VACATE AND REPLAT PUBLIC HEARING**

Legal Description: EASTCLIFFE IV LOTS 84 85 & 86  
Schedule Number: 101-82-051

ATTEBERY read the applicant's statement, *"We own lots 83-84-85 & 86-We would like to build a 24 X 36 barn in an area which crosses on lots 84 & 86 - so we are requesting to move the lot lines between 84-86 & 85."*

There were 9 letters sent and 3 responses received by the office. The responses received were from Humberto Guteirrez and Shirley Dawson (in favor); Charles Bogle (in favor) and the Eastcliffe Home Owners Association (in favor).

BOB JOSLEN presented the application. JOSLEN said the applicants want to build a barn across the lot line between 84 and 86. In order to build the barn the lot line will need to be moved and the applicants will move the line 275 feet.

BAILEY MOVED to recommend the Board of County Commissioners approve this vacate and replat because it is in the five acre zone and keeps all the buildings on one lot. CAMPBELL SECONDED. The motion passed unanimously by roll call vote. RORICK voted yes for the same reasons as Bailey stated. Barnes voted yes because it does not affect density. HOOD voted yes because it does not affect density or have any negative affects. ATTEBERY, COKER, and CAMPBELL voted yes for the above reasons.

SHY RECUSED himself from voting because his personal business is involved with the plat.

CUSTER MOVED to accept the recommendation from the Planning Commission, DOWNEY SECONDED. The motion passed unanimously by voice vote.

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**JOHN NAYLOR PRESENTATION**

NAYLOR explained to the boards, the functions of the boards (both legislative and quasi-judicial); ex-parte

communication; the decision making process; the need for a fair and impartial hearing; the need for due process; Open Meeting/Sunshine Law; appeal process; findings for rulings; setting a precedence; Riggins Rules; how to conduct themselves during a site tour; and how to recuse oneself.

ATTEBERY reminded the boards that the next Site Tour will be on March 29, 2007 and the meeting would be on April 3. The meeting will be in the Courtroom.

ATTEBERY Requested to adjourn the meeting. RORICK MOVED to adjourn the meeting, COKER SECONDED. The motion passed unanimously by voice vote. The meeting adjourned at 3.55P.M.

Submitted by,

Christy Kesselring  
Secretary