

Joint Meeting of the Planning Commission, Board of County Commissioner

April 6, 2010
Custer County Courthouse
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman
Carole Custer Commissioner

Planning Commission: Vic Barnes, Pat Bailey, Sherry Rorick, Rod Coker, Bill Donley, Keith Hood, Paul Buckles

Associate Members: Ken Lankford, Dale Mullen, Cindy Howard, Dorothy Nepa
Brad Stam

County Attorney John Naylor

Staff: Jackie Hobby

Absent: Roger Camper

The meeting was called to order at 1:03 P.M. by VIC BARNES Planning Commission Chairman.

Pledge;

BARNES: The first item on the agenda will be to approve the minutes for February 9, 2010 and March 9, 2010.

DONLEY: I move that we approve the February minutes.

BAILEY: Seconded the motion.

BARNES: All in favor

Motion passed unanimously

DONLEY: I move that we approve the March minutes.

BAILEY: Seconded the motion

BARNES: All in favor.

Motion passed unanimously

BARNES: JACKIE will give a Zoning report.

HOBBY: We have the Master Plan in the Zoning office for the public to view. We are working on the Subdivision Regulations; Mr. BARNES will give everyone an update.

BARNES: We have two (2) items today. The first one is a Special Use Permit for PAINTED VIEW RANCH. I will read the applicants statement. The applicant's statement will refer to the original Special Use Permit.

BARNES: read the applicants statement."First to address the "list of events" & change to "list of Uses" Second to add to #2 (4-H shows) & FFA shows Third to delete in #8 (Bad weather) Fourth to add to the "list of uses" #1 Horse shows- any discipline
The following are uses requested to enhance the business & use of our facilities: Art Shows, Auctions, Community Events, Community Service (Emergency Care) Concerts, Cowboy Poetry gatherings, Corporate Parties, Dog Shows, Entertainment, Fundraisers, Feed Store, Overnight parking in conjunction w/events, signage specific for events, weddings and retail.

BARNES: JACKIE have adjoining land owners been notified?

HOBBY: Yes, eight (8) adjoining land owners and five (5) interested parties were notified. The zoning office received two (2) replies. TERRY NIMNICH and CITY OF FOUNTAIN and those were in favor and will be entered in the record.

BARNES: BRAD JOHNSON will be representing Painted View Ranch.

JOHNSON: I am in my second year of Operational Director for the Painted View. We are taking the ranch in a different direction, we are offering concerts and horse events. I believe that we have brought business to the town and the county. We see ourselves as a destination venue, ideally would be able to bring people in to the county, spend money and then go home. To clarify before I came to Painted View Ranch they had a Special Use Permit in place and we understood that we had permission to hold concerts at the ranch. On the list there were some things that we believe were originally asked for but omitted. JOHNSON read the list to the audience. We would like to amend our Special Use Permit to cover these items. Are there any questions that I can answer?

DONLEY: Is there any new construction?

JOHNSON: The only thing that we are doing is a lean to on the South side of the arena, so that people can get out of the weather if they are eating in the outdoor cantina. I would also like to add, along with the large events, that we have at our facility; we always make a courtesy call to the Sheriff and Clinic to let them know. If the event is large the Sheriff Posse is there also. Our dust mitigation is part of the requirements, last year we hired JERRY SEIFERT and his water truck to control the dust. Last year we also brought in an additional water truck to water the horses. I am sure someone will ask this question about watering additional horses, What we have done is entered into a contract with Upper Arkansas for water usage to augment our water so that we can water our livestock. We have two (2) restrooms inside the arena for guest and two (2) private restrooms. Veltrie Disposal brings out portable potties for large events.

BUCKLES: On portable bathrooms is that based on anticipated crowds? Or what number is that based on?

JOHNSON: Yes, CHRISTIE VELTRIE has a formula on how many portable potties you need and if you are serving alcohol. That will increase the number that you are required to have. The original number is based on ticket sales.

BUCKLES: Your maximum ticket sales are based on occupancy established by the fire department?

JOHNSON: Yes, that's correct.

BUCKLES: On the cantina, is that an additional building or inside a building?

JOHNSON: The structure that we are about to add onto? That is a structure add-on to the existing building.

BUCKLES: On the list you have, will you be marketing under all of those?

JOHNSON: Yes, like everyone else we are trying to make a living. We are going to go after corporate retreats, chuck wagon cook off, border collie field trial.

BUCKLES: You are really treating it as an event center?

JOHNSON: Yes, I do not want say an event center because the town has plans for an event center. I want to call it a multi- use center in the agricultural world.

BUCKLES; A dilemma that I had in the dialogue during the site tour is where is that line to draw? Is an antique car show different than an antique tractor show a motorcycle event? Where is the line to be drawn? We want to keep these things in an agricultural sense that it is cohesive with the community.

JOHNSON: That's why you won't see a motor cross track, that's not consistent with what we are. We are an agricultural equestrian facility, with a lot to offer. It's so seasonal we need to hustle to make our money in about four (4) months.

NEPA: Have you read the Master Plan?

JOHNSON: I would like to, but I understand that you are working on one now.

BARNES: The one we are working off of is the 2002 edition and the revised 2010 is available to look at.

NEPA: The 2002 Master Plan calls for keeping commercial type uses orientated towards the two (2) towns. I am a bit frustrated about the Feed Store and the Retail because they are wide open. Also would you be willing to limit your auctions to something agricultural like stock and tractors versus motorcycles and car shows? More than anything, the Feed Store and the Retail seems to me that it pulls that theory in the Master Plan from the community. Is the Feed Store to benefit your own people? Then I see that as agricultural. If you're Retail is it for someone to replace something before they show like a cowboy hat and cannot show, up in the ring unless the properly attired, I see that as an agricultural thing. We cannot say it would benefit the community if we take business away from the community.

JOHNSON: Let me jump over to a consumer, My children are very active in 4-H and we have had a lot of show steers and lambs and if you have a feed store that isn't able to service then you have to go down the hill and buy it. Once again, consistent with how we do things and keeping it agricultural. If we had to specify all these different things this is where it gets problematic, for example someone in the community was sick and we decided to have a fund raiser. What if the fund raiser was an auction and everyone donated something. Does it have to be only agricultural items? The HOODS don't want to be backed in a corner where they have to keep coming back to the county and asking permission. Our operation is agricultural in mind and we plan on keeping it that way.

NEPA: Specifically are they willing to say no auctions for motor vehicles or motor cycles?

JOHNSON: I would have to take that to the HOODS.

NEPA: Let's go back to the Feed Store. First of all you will need another building.

JOHNSON: No, we will be using an existing building that we plan to use of 2,300 sq. ft. Outside that metal building is a lean to that can house another 30 to 40 ton of feed. We have met four (4) times with Purina and we have been approved for a Purina premium store. We also want to be able to sell a cowboy hat, a pair of jeans, or gloves.

NEPA: I am still very edgy about the retail operation out in the middle of the valley. I was in the Land business for a very long time and when you start to spread out it becomes very splotchy. I supported you at the beginning and I did not believe the first time that you needed to go through this process. When you start getting away from that like the first two items that's when you start getting away from the agriculture part.

JOHNSON: Read a statement from Kim Vaughan that was entered into record. That was after our 2009 cutting horse event. I had a lot of people during that event that had traveled and needed feed. There was no feed in town.

NEPA: I have no problem with you selling feed to them. I have a problem with you selling feed to everyone else.

JOHNSON: I think that would be problematic I can sell feed to people that attend the events but not to someone else?

STAM: On the same subject the term retail is very broad. This could imply that you could operate a convenience store, gas station etc... Isn't there some way that you could limit that language?

JOHNSON: Yes, we put retail in there to compile a list like horseshoes, horseshoe nails, wranglers, glove and cowboy hats. I am not clear on how to do that. We are not going to be a used car lot. If there is a list that we can make that is clear for us and the zoning office we would be glad to do it.

STAM: The term entertainment suffers the same problem. Would you describe what kind of external lighting you provide for the campers and activities at night?

JOHNSON: We have zero or no impact on the community, we have no lights in the pastures one light on the front of the barn the cantina has a very low voltage light. There are lights inside the arena.

STAMM: Do you plan any additional lighting out there?

JOHNSON: No

HOWARD: Hi, my name is CINDY HOWARD I am an alternate for the Boards and I also own Westcliffe INN. I am in my seventeenth (17) year of running the Westcliffe Inn. I would like to say that the horse events that you did last summer were the single biggest draw of new activity we had. I am on the Tourism Board and I expressed this to them as well, that those events had a bigger impact on lodging and, because they were destination events, had a bigger impact on the economy than anything else. Everything that we heard was positive comments. My kids grew up raising Llamas and we traveled to the stock shows and national shows. We could always buy food, drink, arts and crafts, feed, hay and all sorts of tack. One of the questions that I have is looking at your feed store will there also be vendors at some of these events? That seems to be a rental income opportunity.

JOHNSON: Yes, we did have vendors at both of our previous events. We had bit and spur makers we, had Jan Mapes a great sculpture: we had Dave Hollack a saddle maker who actually built a saddle in four (4) days while the event was going on. Yes, to answer your question we do have vendors that come to the events.

HOWARD: So that's a retail issue. I support free enterprise, the Chamber of Commerce and everyone that's working on economic issues. This is a huge issue with people going out of town to buy. I live down on county road 136 and travel on Hermit road I have not had any issues with traffic or any problems with your events. I think we do not need to get too carried away about his wanting retail. I have a copy of the Master Plan. While I know that we want to keep the focus of commercial growth in the towns, we have restaurants, Horn Creek having a gift shop, auto servicing selling parts. I support your retail and I support what you are trying to do. Westcliffe Inn saw its lowest occupancy rates in sixteen (16) years during 2009. We have to do something in this community or we are going to see more than a thousand properties on the market. I know that there are some specifics that need to be worked out but in general I support this.

JOHNSON: I would like to express to everyone that we are an agriculture equestrian center and we are happy to gear the specifics to what everyone asked towards this. If we open a Feed Store it will be for the community.

HOOD: Does the office have a copy of the proposed contract for water?

JOHNSON: I have that right here. I will leave that with them. The water contract was entered into the record. CSU stated that we needed ten (10) gallons of water per horse per day and when we did the calculations for the contract we quadrupled the water usage. Upper Ark will only sell one (1) acre of water.

HOOD: When would this water be available?

JOHNSON: As soon as we sign this contract in the next week.

DONLEY: The water augmentation plan has been filed, it has not been approved. I don't understand how this is going to work.

RORICK: I want you to know that it is not our intention to put limits on your right to make a living. I have a question on your signs specific to events?

JOHNSON: The signage would be on the corner of Hermit and Kettle on our property for the Feed Store. Concert and parking for our events are all up to code and are taken down after the event. The sign would not exceed 3'x5'.

BUCKLES: What I am reading from this is the HOODS are absentee owners. What would your reaction be if we say this will be revisited in a couple of years? Not to be rescinded, but to refocus on the spirit of the agreement?

JOHNSON: That decision would be up to the owners. I have been working for the HOODS for over a year and they are great people who are community minded. They have no hidden agenda. We want it to be an asset to the community.

BUCKLES: There are realties that are beyond our control. If the ownership would change then the gray areas become pushed and that is one of my concerns, where an understandable agreement goes very wrong.

JOHNSON: Yes, I agree we are still an agricultural and equestrian facility and if certain guidelines are put in place then those are the ones we follow and we will work under that parameter.

BARNES: Can I interject. There is a list of conditions applied to the original Special Use Permit. One of them is that the Special Use Permit goes with the HOODS. If there would be a new owner then they would need to apply for a Special Use Permit.

HOWARD: I have my Zoning Resolution and a sign cannot exceed 20 sq. ft for advertising.

BARNES: Also, in the original Special Use Permit, a review will be done on a written complaint basis.

HOBBY: Read the sign regulation which stated 20 sq. ft.

JOHNSON: We will only want a 3'x 5' sign we want to maintain the valley.

HOBBY: I would like to comment on the concert that was held last year. I did not receive any negative comments about this event. All the local entities that were involved reported that it was very organized.

NEPA: Would you comment on your corporate parties?

JOHNSON: We would market it. If we did an advertisement we have an outdoor area that we call a cantina which we would advertise. They would come out and then stay in town.

BARNES: We were talking about retail. Should we put in there something to the effect as to agricultural retail?

JOHNSON: Yes

HOBBY: We could actually limit it to retail inside the building.

JOHNSON: Absolutely that is our intention. We want to sell feed we sell hay already, Chicken feed etc.

BARNES: I know that in our pre-conference we have entertainment is there anything above and beyond that?

JOHNSON: What that goes back to is the original meeting and the HOODS had included that item in the original Special Use Permit and it was omitted.

HOBBY: I believe that when we had our pre-conference it was brought up that for the sake of making a list, include everything so that we don't always be questioning if they are allowed to do this and Painted View doesn't keep coming into the county and applying for a Special Event Permit.

JOHNSON: This is not the first trip in here, and also, what you say about our property changing it also applies to the county changing employees.

BARNES: We can take out the word entertainment and include the events in the wording on what you want covered.

HOWARD: My concern if we had a bicycle rally and we needed to put up a hundred bicyclists, now you have taken it off the list by eliminating that word.

JOHNSON: Yes, I agree I received a call from a group of Vietnam Vets who are traveling all around, fifteen hundred members, and they want to come and park and hold their rally in 2011.

HOWARD: there are firemen that are making the trek after nine eleven and there are a lot of those venues going on. I believe it will be very hard to have a specific word on the list.

BARNES: I am going to ask the audience if they have any questions.

SHY: I have one comment. I have been on both sides of this and the list of the things you want to do is only limited by your imagination. The best is to have a list of the things that will not be allowed. Anticipating all the things you want to do is very hard and could limit the facility.

BARNES: We talked about having the retail in the building only. Another thing is that we would not allow fireworks and pyrotechnics.

JOHNSON: That would not be allowed at our facility.

BARNES: On the overnight parking there would be no sewer connections.

JOHNSON: No, but we do have Christie Veltrie come in and empty their holding tanks and porta-potties this is not an RV park.

BARNES: We would like you to do courtesy calls to the Planning and Zoning, Sherriff office, Clinic before your event.

JOHNSON: We do that already.

BARNES: Are there any questions or comments from the Board of County Commissioners?

AUSTIN: I am impressed about the questions and I like the presentation and believe that it is a huge asset to this county. I agree with what KIT SHY said it would be easier to write a list of what will not be allowed. I don't want you to be trapped by that.

BARNES: Our next item on the agenda is a presentation concerning the boundaries between our zones and the commissioners have asked KIT SHY our county surveyor for a presentation. SHY: Moved to the screen to present the power point. The original Zoning map was derived to be an exhibit for the Zoning Regulations from 1971. That was based on several hearings. The issue was that our zoning was based on density primarily, then uses extended from that density. In the original Zoning Resolution they did not incorporate the map but they refer to one and at this time we have not been able to locate one. Over the years there have been several different maps drawn by the Planning and Zoning or Cartographer. I used all their sources that I could find to come up with. We concentrated on all the zone changes and any map that reflected a zone change from the original map. I have outlined a list of the sources at the end of each survey of the zone district. I cite the sources for the Zoning map to develop the map, the Zoning Resolution, and records that are referred to book and page. There were a whole series of maps, some recorded some not recorded, and I made reference to that also. They are pretty much consistent with the exception of the map with the circle. Within each zoning district the parcels are also subject to other zoning issues. There are non-conforming parcels that were used different when zoning went into place. There are lands that are State and Federal entities and Utilities companies that are within a particular zone. The perimeter is essentially what we described. It follows in most of all the maps roads, creeks or section lines which we call aliquot lines, the exteriors of sections or internal quarter lines within the sections. They were originally drawn that way and were fairly easy to reproduce. There are also some zone changes. They are some zone two that was originally in zone four. But since there was a zone in between they were not boundary changes. They were spot zoning within the zone, Centennial Ranch, Aspen Mountain Ranch, The Woods at Gem Mountain, The Woods at Buck Mountain, McKinley Mountain and Bull Domingo was a zone change by petition and approved by the boards. One thing that was outlined in the original Zoning Resolution talked about physiographic regions and a lot of that was the geographic regions and the uses. The original Zone One was implied to mean the irrigated land and the boundary is essentially identified by the highway and Grape Creek. Zone One starts at the county line. Nearly all the irrigated ground lies west of Highway 69 and in most cases west of Grape Creek. The county boundaries are established by statute. Zone Two (2) is the westerly county boundary and the boundary of Zone One(1) until the south end of the valley borders Zone Four (4) all based on the section lines Zone Three (3) is a combination of the original Zone Five (5) and Zone Three (3). We originally had a separate zone for the Wetmore area and as far as geography goes that was based on the Hardscrabble creek drainage. Which those were combined at a later date by the Commissioners. Zone three (3) became known as the Wet Mountain District. Zone Four (4) where most of the development has gone, on is a Five (5) acre zone. An area we had a trouble figuring out was the zones between one (1) and four (4), essentially northerly bounded by Schoolfield and on the south and east by Colfax. At some point this line defined by Grape Creek it leaves grape creek and connects to Highway 69. The problem is that there are several maps. The various lines that I have indicated show all the lines that we derived from the various zoning maps. These are all drawn here by scale. There is no dimensional information or physical feature or no aliquot line or section line where it leaves grape creek and intersects the highway. There are three (3) maps that all agree that they are on one location and then there are six (6) other maps that show it in a different location. The yellow line is the edge of the irrigated area. I also tried to find if there was a named irrigation ditch that we could refer to. There is a ditch along here. It is a tail water ditch that picks up the irrigation that is done in the field along here it's irrigated from Grape Creek and the tail water is picked up along this ditch and returned to Grape Creek.

One part of this line is based on an application from this homeowner to the Zoning office for a building permit and he indicated that the zone line was on the edge of the meadow. The definition between Zone One (1) and Zone Four (4) would be the five (5) acre zone and the eighty (80) acre zone. I don't know what source to use so it will need to be determined by the Planning Commission and the Board of County Commissioners. I would say that the best solution would be to go out on the land with some key people who have an idea where it was intended to be. North of this area is some property that would be in zone four (4) that is irrigated land. It lies east of Grape Creek. This needs to be reconciled by the landowners and the Planning Commission and Board of County Commissioners. At some point this will need to be surveyed to be described into the zone boundaries. Most everything else was able to be described by physical or zone features.

HOBBY: In reference to a picture it shows the drainage ditch located on the property.

SHY: Yes, that might very well be the intended line.

BARNES: On the map, where is the line for the drainage?

SHY: I am making a guess but I believe it is the darker yellow line. I have never seen the ditch only from Colfax, I do not know what it does past that. I would rather tie it off to a section line. Where we leave Grape creek and what we travel between Colfax and the highway is the question.

HOWARD: I have two questions. Are there just two property owners involved?

SHY: This is actually crossing property owned by one person.

HOWARD: If it was to follow Grape creek down the line wouldn't that also affect Degrees' property.

SHY: No

HOBBY: Mr. Degree thought that it followed the creek down to a fence post then the drainage line and then to the stop sign.

HOWARD: Does this property have a conservation easement?

BARNES: One of the property owners is considering a conservation easement.

HOOD: As close as the creek comes to the bluff were you to that point?

SHY: No, I have not been on the ground.

BARNES: Seems that it would be easier to locate that through the section line down at that corner. That would be the least likely for problems.

HOOD: The ditch does not make it down to Grape creek when it gets down there it starts to spread.

DONLEY: Until we can get on the property we cannot resolve this issue.

BARNES: Attorney PETE MICHELSON is representing MATT MILES.

MICHAELSON: I represent MR. MILES and he will be affected in whatever your decision will be here. MR. MILES has considered for some time putting an easement on this property. You need to put things in context, the area between a five (5) acre zone and the eighty (80) acre zone is a massive difference in your development rights and a massive disincentive if you zone it a eighty (80) acre zone or an incentive if you zone it a five (5) acre zone. There are a lot of consequences going on here and one is a possibility that what happens is not perceived as just describing a line but re-zoning a property and if that is not done properly that could be an illegal takings. MR. MILES would like, because it is at an advantage with his easement as well as would be the easiest to resolve things, would be to follow the creek down to the section line and tie it back into Colfax. That way we do not have the uncertainty to where is the ditch and where does it go. I would not make too much out of MR. MILES not wanting people on his property. He does not want this to affect DEGREES in any way they are good neighbors. He is not certain where all this is going or what the motivations are. You would be concerned to

that potential; There are forty (40) to sixty (60) acres and when you consider this to be an eighty (80) acre zone or a five acre zone there quite a difference. He is trying to make certain he does not lose his very valuable rights.

DONLEY: What are his objections with KIT being on the property to see what the physical conditions of the property are?

MICHAELSON: He is not certain he agrees with this process at all. He believes that there is not an issue at all that it can be identified on a zoning map and historically it is the tail water ditch. He is the only landowner in whole County that will be affected by this.

BAILEY: Which line does he think it is?

MICHEALSON: Pointed to the yellow line on the map.

DONLEY: South of that is the eighty (80) acre zone. And north of it is five (5) acre zone.

MICHAELSON: Yes and his proposal is to follow the creek to the section line follow it over to Colfax. He says that because for a year or more he has been contemplating placing an easement on all or a portion of his property.

ATTEBERY: On that lower ditch would he be willing for us to identify that?

MICHEALSON: Yes, I believe that he would be willing to do that.

SHY: to clarify this, I am not making a proposal. I am making a report on my findings.

BARNES: If I understood you MR. MILES could live with the line being on the ditch but he would prefer it to be on the section line.

MICHAELSON: Yes, that would help him in his easement request.

SHY: From a practical standpoint this could be described as it intersected the section line to the road back to the highway and would not require any field work at all. The only trick is that Grape Creek crosses that section line seven times. Following are logic from before where ever Grape Creek intersects that line. That would be a solution that could be taken care of right now. If you are to use the ditch it will need to be described.

BARNES: There are two things that we need to do. One is talk to MR. MILES and see what he wants, and meet with MR. MILES on the property with KEITH, JACKIE, KIT, LYNN and possibly the DEGREES. If MR. MILES would agree to that and get some recommendations before we meet again.

HOBBY: We suggest that we meet with MR. MILES and schedule the next meeting after that.

BARNES: Is that alright with you PETE, we will meet with your client and have a proposal and continue the meeting after that?

MICHAELSON: Yes, I will contact him.

ATTEBERY: PETE, the County will be reasonable to his schedule. The only other comment I have is that a tremendous amount of time has gone into this and the effort to this point has been tremendous. We can get this resolved and a definition of the boundaries.

DONLEY: I move that this presentation be continued.

BAILEY: Seconded the motion.

Motion passed unanimously.

BARNES: The Master Plan draft has been completed and copies are available for review at the Zoning office, Commissioners have copies and the public hearing will be April 19, 2010. Our next meeting for the Sub-Division Regulation will be April 13, 2010.

DONLEY: Moved to adjourn the meeting.

RORICK: Seconded the motion.

Meeting adjourned at 3:40 P.M.