

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

October 2, 2012
Custer County Courthouse
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman and Allen Butler Commissioner
Planning Commission: Vic Barnes, Bill Donley, Rod Coker
Board of Zoning Adjustment: Dee Hoag, Ken Patterson, Lockett Pitman and Ken Lankford
Associate Members: Brad Stam, and Dale Mullen
County Attorney John Naylor
Staff: Jackie Hobby and Chuck Ippolito
Absent: Dorothy Nepa., Pat Bailey, Keith Hood and Sherry Rorick

The meeting was called to order at 1:00 P.M. by DEE HOAG Custer County Board of Zoning Chairman.

Pledge;

DALE MULLEN replaced DOROTHY NEPA

HOAG: We have one agenda item and it is for a setback variance for PAUL and TERI LOONEY. The LOONEY'S are asking for a 39 1/2 foot variance on the north and a thirty five foot variance on the east side of their property. I will read MR. LOONEY'S application statement *"Dear Board of Commissioners My wife Teri and I are looking forward to retirement and wish to add a garage with workshop, storage and equipment barn attached. We wish to include a utility sink because of the topography of our parcel, the location of the well, water line and septic we are requesting a variance on setback. Although we are fully aware of the rationale for the 50' limit, it would present a hardship for us to locate the garage elsewhere. The property line runs adjacent to a deep ravine so there would be no impingement on the neighbors view or use of property. We sincerely hope that you will agree that this is a worthwhile project and grant the variance. Thank you for your consideration.*

MR. LOONEY, would you like to step up to the podium and add anything to your statement?

LOONEY: Thank you, I appreciate the time you have taken to hear my request on our appeal for the variance. I believe that the variance that I am requesting is the ideal spot, based on ecological and topographical consideration. When the committee was at the site, you could see the meadow above the house. Because of the direction of the mining claim we would not be able to place the garage there without asking for a variance. The site pad is already in place and the visual to the neighbors that are involved will not have any effect. The proposed site pad is the best where we are concerned.

HOAG: JACKIE were the adjoining land owners notified?

HOBBY: Yes, six were notified, with one response from RODNEY HAAS. JACKIE read the letter to the Board and he does not have any problem with the variance.

HOAG: Does the Board have any questions?

MULLEN: When we were on site, you mentioned that, when it was suggested that you move the garage back inside the fifty feet you indicated that you were planning to put a picture window on that side of your house. You did not want a garage sitting there.

LOONEY: Yes, that was my concern at the time. We had the property surveyed and that would also require a variance.

MULLEN: So that is a non-issue either way.

PITMAN: I appreciate you saying that you believe there would be a variance on the east side; I would like to have proof of that. When we were out there I thought there was plenty of room. I would still like to know what that variance would be. That is the issue that I have. I would like to know what that variance would be on this site and also if you moved it would you need a variance.

PATTERSON: Along those same lines, the way it looked to me is when they excavated for the house they pushed that dirt over the edge. I cannot let you build a garage on un-compacted dirt. Your garage will eventually lean out.

LOONEY: The soil does not actually extend over the property line and wouldn't you have that issue wherever you put the garage?

PATTERSON: No, up above you would have native soil. Your foundation would stay put; you are looking at a maximum of ten to twelve feet of fill material where you are placing it now.

HOAG: That's a good point if we were the builders. That is an issue for MR. LOONEY.

LOONEY: We want to build the garage next to the house. It does not make any sense to me to build the garage over there. The impact on the terrain or the neighbor is less where I would like to place it.

HOAG: Any other questions?

LANKFORD: I agree with what you are saying, I was out there and looked at it. I am also wondering what the setback would be, with what LOCKETT said. There would be plenty of room if you went up on the hill.

LOONEY: The way the house is positioned the property goes to the northeast and the ridge goes along the direction of the mining claim. You would have to move it significantly up the hill to stay within the fifty foot setback.

HOAG: You would have to be quite a bit to the south on your property. Any other questions?

No reply

HOAG: I will entertain a motion.

PITMAN: I don't believe we have enough information. I am still concerned about the variance; it could be on the east side. I would like to make a motion to postpone until we get more information.

HOBBY: MR. LOONEY is asking for a variance on this side so this is the application that we vote on. We can't move MR. LOONEY'S garage over if he was denied. Then if he decided to move it and needed a variance we would decide on that variance. You are only dealing with the variance that he submitted.

PITMAN: I am not convinced that he cannot go on the east side and stay within the fifty feet, based on the site tour. If that is impossible and we still need a variance, I would be more inclined to vote for it.

HOBBY: MR. NAYLOR would you please comment on this? LOCKETT and LANKFORD said that if they had more information concerning this application that they would be inclined to approve or deny this application.

NAYLOR: MR. LOONEY could request that he would be given additional time to file more information. The Board should go along with that and give additional time.

LOONEY: I do understand the situation. I regret the stakes not being there and after meeting with MR. SHY, seeing where the lines are. For me I would just say that if we do not have a variance for this, and to keep it in the fifty foot line that would put my garage up the hill away from the house. I would personally not be inclined to go up there and I would have to ask for another variance. I want to put it where it would be accessible to the house. I can get more information for you, but obviously there is ten acres. Yes you could put the garage other places. It would not make sense for me to do that; we would like you to consider this location.

MULLEN: I would like to motion that we approve this variance of thirty nine and one half foot variance on the north and a thirty five foot variance on the east.

No response

HOAG: Motion died for lack of a second

PATTERSON: I motion that we deny the variance request.

LANKFORD: Seconded the motion

MULLEN: Are you still taking comments? I guess from being on the site tour I am a little confused by what is happening here. I see no objection from any of the neighbors and the property is sitting on a mining claim on the side of the hill. Where he is asking to build the garage maintains the ascetic view, from his existing house sets it back. I am confused on what we are doing, are we trying to help him build? Or are we addressing his request for a variance? Those are my only comments. I am not sure we are not off on a tangent that we should not be on.

PITMAN: My issue is, having been on site ,I need to be convinced as to what MR. LOONEY says on why he cannot put the garage somewhere else. I am not comfortable that it is not a possibility.

LANKFORD: That is my issue to because under our guidelines the very first thing is to find an exception and if there is no other place that he can build then I do not have a problem approving this variance. Being at the site tour, I am not convinced that there is not another place. If we follow the guidelines for granting a variance I am not convinced that there is not plenty of room somewhere else.

LOONEY: I hired MR. SHY to come do a survey to identify how far we were away from the property lines. If you are not inclined to give the variance, why did I go and get a survey?

HOAG: We have a motion and a second. Any comments?

PITMAN: I will comment based on the information that we had. From the drawing stand point it looks like there is room here. Which I am not sure that we could see that, based on the guidelines that we follow. That is the problem.

MR. LOONEY: I do not know if I can come back next month. Is there a way someone can come look at it?

PITMAN: I think that is a reasonable request to go back out and look at it.

HOAG: We will continue this hearing and the next meeting will be November 13, 2012

PATTERSON: I will withdraw my motion.

LANKFORD: I will make a motion to continue.

PITMAN: Seconded the motion.

Variance was continued.

HOAG: Do I have a motion to adjourn

PITMAN: I make a motion to adjourn

PATTERSON: Seconded the motion

The motion passed unanimously

BARNES: Moved to the Chairpersons seat to continue the meeting. We will call the Planning Commission meeting to order at 1:46 P.M.

ATTEBERY: I will make a motion that we reconvene the joint session of the Planning Commission and Board of County Commissioner meeting.

Motion passed unanimously.

BARNES: We have four people absent, we need seven, BRAD STAM and DALE MULLEN are automatically placed in a seated position. We need to approve the August 7, 2012 minutes.

Any comments? If not, I motion that we approve them as presented. JACKIE will give a Zoning report.

HOBBY: In the month of September we did ten septic inspections, one violation, and thirteen compliance inspections. In 2011 year to date we issued sixty eight septic permits compared to this year of fifty eight septic inspections. Zoning permits at this time last year were one hundred and forty six compared one hundred and fifty this year.

BARNES: Thank you JACKIE, we have one agenda item it's a request from Custer 2020 for a Special Use Permit and I want to remind everyone this is a two phase process. Today will be the presentation and in November will be the hearing. Anyone that would like to speak please stand up at the podium and say your name and address, I will read the application and BARBARA SUTTON will be representing the application.

Custer 2020 dba Club America WMV requests a Special Use Permit that will allow CAWMV to hold various athlete events at Club America facilities, and to use various Custer County roads, trails, parks and other unincorporated county property for portions of, or the entire event. A Special Event Permit for each of these future events will be costly for our non-profit and so we seek a Special Use Permit.

Current and future events include adult and child triathlons and dualathons, Aqualon's (swim bike or swim run Adventure races (including events over an obstacle course); Trail runs, marathons, 5k and 10k runs; biking events(on road and off road including mountain bike events);climbing events, winter sports events(snowshoeing, skiing, snowboarding races of events, kayaking and boating events, orienteering events; geocaching events, horseback burro donkey events, and perhaps others that have not been thought of. We envision developing sports tourism for Custer County and hope that our events will draw people from outside the valley, both athletes and spectators and their support staff increasing tourism and economic development here. Entry fees will also cover event expenses and bring income to Club America WMV. I will make a couple of points, if you recall at the beginning this Special Event

request it mention and athletic events at Club America facilities. I want to point out that we are only making a decision on what happens in the unincorporated portions of the County. Also at our pre-conference, I changed the wording at the end where it stated other similar events. One thing I want to point out we do not have a full complement of seven board members, It is your right if you want a full complement of the full seven, we will postpone or we can continue with five members.

BARB SUTTON: I am DR. BARB SUTTON I am a member of the Custer 2020, I have lived in the county for ten years. Would the Planning Commission mind introducing yourself to me? Planning Commission introduced themselves

BARNES: Do you have a question BILL?

DONLEY: Yes, I have a question about the application; it says here to use various Custer county roads, trails parks and unincorporated county property. Does that mean the county owns the property? Or does that mean its private land in the unincorporated part of the county?

BARNES: County property in the unincorporated part of the county. Any place in the county beside the two towns.

SUTTON: Thank you for meeting here today and letting us present this. We have *ambitious* plans since we were successful in purchasing the property last year. We offer the community the opportunity for the health and well-being and other sports enthusiast to come to Custer County. In the list of events I tried to be as inclusive as I could so I do not have to come back. The sports adventure activities are very varied and they change all the time. We would like to take advantage of that. They benefit the community and bring a lot of people to the community and increase the economic development. We would like to take advantage of this instead of going through the process of a Special Event Permit all the time. We have done three of these this year and it becomes very costly. So we would like to do the Special Use Permit and at your pleasure we would like to seek a waiver of fee for that. We are good corporate citizens, and we are active in the community in various different ways.

BARNES: This is pretty unusual Special Use Permit because in the past we have a permit that deals with a specific piece of property. One of the things that I think should be brought up is how you will apply for each event.

SUTTON: In going through the Special Event Permit process, I was impressed with the form and it was a great check list for us. It covered all the bases with the Road and Bridge, Sherriff and Clinic. We are all in favor of this and we would continue to fill out this form and submit it and the county would see that we had the porta-potties and water covered and this is very good checklist of things. We would do that for every event as a method to communicate to the county. We also communicate to the town of Silver Cliff and to Westcliffe when it involves their property. The form is a very easy way to communicate to the county. The difficulty is writing the check that goes with it.

BARNES: Thank you BARB, any questions from the Planning Commission?

STAM: This is a comment more than a question, I fully support what Club America is doing. I have no problem with any of the programs that they run. I don't think Club America resources should be drawn down by paying fees. At the same time, I am concerned about the integrity of our process at the Planning Commission. I look at the Zoning Resolution and the form that we use for a Special Use Permit. This application looks like we are trying to put a square peg in a round hole. The Zoning Resolution clearly requires that if there is going to be a Special Use Permit there has to be notice and opportunity to be heard for adjoining land owners. The property needs to be specifically identified and the land owners need to be specifically identified. Our form says that there has to be a plot plan submitted and that the application

then would be submitted. The application needs to be filled out. I am a bit troubled here and my guess is that everyone in this room would like to do what Club America wants to do, I don't think we want to get in a position that we got one set of laws that we allow for people we like and a different set for laws for people that we do not know. I am afraid that we are blowing away all the Zoning Resolution requirements and to approve this that we would be headed in that direction, I wondering if it would not be easier just to waive some of the Special Event Permit fees, so that we go through that process. It sounds like you are willing to go through the process, it's the fee that concerns you. That would be more in keeping with the Zoning Regulations procedure.

BARNES: DALE you have a comment?

MULLEN: Yes, clarity that I seek is that you mentioned that it's a Special Use Permit and then later on you call it a Special Event Permit. Are they one in the same? My familiarity with this form is because of the Airport event that we have each year. We have to jump through these hoops and submit this form and we do and gladly do it to be compliant. Because we are a county agency we have the luxury of having the fee waived so we don't have that pain that you are discussing. Are you requesting a Special Use Permit or a multiple Special Event Permit for which fees would be waived?

BARNES: The request is for a Special Use Permit. The idea is for us to facilitate the process that they would come and fill out a form and it may not be this Special Event form. It may be a form that would include the detail.

MULLEN: Did I not hear MS. SUTTON say that they were more than willing to fill out the form and say that they spoke with the Sherriff and Clinic etc. So I guess that I am still confused.

HOBBY: Club America in general has been very good at submitting the form and fees as required. The concern was the fee. We were thinking about that and constantly having to come before the Commissioners to have it reduced or waived. Then we thought that they could have a Special Use Permit. After BRAD brought it to our attention concerning the Zoning Regulations, I believe that the idea is good. The way it's done is where we need to focus and their concern is the fee. The fee is \$100.00 and if the County Commissioners give them a break its \$50.00 and if you hold an event three or four times a year that can add up.

BARNES: Yes, we have two things here. We do not set fees this is up to the County Commissioners. They are the Board that would have to agree with the waiver of the fees. If we discuss that then we need to see if we have opened up another area for other entities to do the same thing. I don't know if we want to that. Again we cannot make that decision about the fees.

STAM: You made a reference to outside organizations coming in and sponsoring some of the events as a possibility. Did I misunderstand you?

SUTTON: We do not plan on doing anything like that, unless it would be that we would become a site for Danskins race for the cure. That is an outside organization that we would oversee and benefit from it.

STAM: That is why I raised the question because the Zoning Regulations make it clear that whoever gets the Special Use Permit has to take full responsibility for the event.

SUTTON: That is all we are interested in doing.

DONLEY: Is this a Special Use Permit to grant a blanket Special Event Permit?

HOBBY: Yes

BARNES: It would be for a series of Special Events. It's basically to allow them to not have to pay the fee for every Special Event Permit.

DONLEY: Is this a Special Use Permit to allow them not to have to pay Special Event fees?

BARNES: Yes, exactly.

DONLEY: Is that something the Planning Commission can do?

BARNES: We can go ahead and do a Special Use Permit.

DONLEY: The whole purpose of this is for them to get out of paying the Special Event fee.

BARNES: Yes, Commissioners do you have any comments?

ATTEBERY: Gentleman?

BUTLER: I thought I had it figured out until the Board begin to ask questions. This is not easy. We are talking about allowing another organization to not pay the Special Event fee. I am concerned as to else could use that Special Use Permit to allow Special Events to happen. So who is it that decides that? I am not saying that we are giving away county money, they have a lot of events and they are very good for the county. What would they do if the ATV club said we are going to have a ride and walk, we are going to walk around the museum and then we are going to ride the ATV to Rosita. Then they could go through Club America?

SUTTON: If any organization would come to us to put on their event so they did not have to go through the process, we would not allow them to do that.

BUTLER: Also, working with Club America four and a half years ago that this was their vision doing these things. We can make it complicated, how are we going to answer all these questions.

HOBBY: If we take this particular application and apply it with the existing Zoning Regulations, we have a problem. We do not have any particular land attached so the application is incomplete. The whole point is to save the fee for an organization even if we halved it to \$50.00. That would allow a scholarship for a child to swim this summer. Should they not get a Special Event Permit for so many years at no cost or after they get five the next five are free?

NAYLOR: You obviously prefer one organization over another and that is not right. If we want to say non-profits we want to give them a break and they come in to the BOCC and ask for a break, that's ok. Just to say anyone that wants to use their permit if we grant it would get the advantage of not having to pay a fee, which they should be paying to the detriment of the ATV club, why should they have to pay the fee and someone else doesn't? I don't think that is fair. If we want to take care on non-profits that's this decision right here. Even if we grant the Special Use Permit they will be doing about the same as they are doing with the Special Event Permit. We are not solving anything. I think they need to come before the Board and ask the fee to be waived, and that should be done on an individual basis.

HOBBY: We issued six Special Event Permits this year. The majority went to the BOCC and had the fee cut in half to \$50.00.

MULLEN: This issue is not a very big issue if you were to follow his train of thought and not charge for the Special Event Permit. It's not a major issue in the life of the Zoning office.

AUSTIN: I think this is a very good idea; maybe it should be 501c3's. We are trying to generate tourism and I was going to suggest that you include public health. I don't think this is right for a Special Use Permit, it's a Special Event Permit and this Board should follow BUTLERS advice and not charge. If they fill out the form and JACKIE makes sure that everything is filled out then that's the issue.

ROB WRIGHT: I am Club America's manager and I noticed that when you offer something for free then the forms don't get filled out but if you offer some kind of penalty if they don't fill out the form, they comply.

DONLEY: Maybe waive the fee for 501c3's and other corporations etc. pay a fee.

AUSTIN: I would prefer that.

STEVE WILLMAN: I am the president of Club America and I believe that is a good idea, and consider waiving the fees and most races today are big events and are private. They are going more and more private. It is conceivable that large corporations will come in and they would be fully commercial. It might be worthwhile to say just 501c3's.

BUTLER: Part of this is for the 501c3's what if you charged them a small price for the office time that is spent on the form maybe ten dollars.

HOBBY: I do believe that you need to have some compensation. It's everyone's tax payer's money. Our office would provide the form and make sure it is complete and a fee probably should be charged or what MR. WRIGHT suggests a penalty if you did not fill out the form.

BARNES: Is fifty dollars an economic question? Or is it a question of JACKIE'S time?

BUTLER: We serve for the public and our offices serve the people with tax payers' dollars. If we charge the fifty dollars, we know why we charge. It does take time. The issue is who gets to pay and who doesn't and why. Then it goes back to our Zoning Resolution. It's a small thing in your office but it's a big thing to Club America at fifty dollars or hundred dollars. So my comment is, is it economic or JACKIES time? It's a token fee for a permit. You got a Resolution and if you can't enforce it then we need to modify it or get rid of it. If it's a large corporation that comes in then they should pay a fee.

ATTEBERY: If you are sitting outside your home and three hundred and fifty people come by, I bet you would like to know that was going to happen. Something that could possibly happen they could withdraw the application and come to the Board of County Commissioners and speak to us concerning the fees and at the beginning of the year we look at all the fees. The fees are the problem. We will keep the paperwork and the process because the public needs to know that.

SUTTON: We are here to do whatever is best and if it does not fit the Special Use Permit, we do not have a problem with that and we can come to the County Commissioners.

BARNES: We appreciate your comments, 20/20 want to withdraw their application. If you do decide to go to the Commissioner I believe ROD had a good suggestion. A Special Event process is a very good one. I think that everyone needs a form for every event in terms of what the sheriff and the fire department need to deal with. Should you consider some penalty for not doing a Special Event Permit? BARB would you like to get together with your Board before making this decision?

SUTTON: I would like to do that.

BARNES: Any other comments?

WILLMAN: When you use the Forrest Service the more money the event brings in the more money the permit costs. Some of the large races bring in thousands of dollars. There are a lot of issues that you would need to deal with and you would want to be paid for that time involved, a minimum amount on the fee that they would owe based on the amount that the event took in.

BARNES: Do I have a motion to adjourn?

DONLEY: I make a motion to adjourn

COKER: Seconded the motion

Meeting adjourned at 2:54 P.M.