

Joint Meeting of the Planning Commission and Board of County Commissioners

June 4, 2013
Custer County Courthouse
Westcliffe, Colorado

Present:

Planning Commission: Vic Barnes, Pat Bailey, Keith Hood, Rod Coker, Bill Donley and Patrick Lynch

Absent: Cindy Howard

Associate Members:

Absent: Dale Mullen and Brad Stam

County Commissioners: Lynn Attebery, Allen Butler and Kit Shy

County Attorney: absent

Staff: Jackie Hobby and Chuck Ippolito

The meeting was called to order at 1:00 P.M. by Jackie Hobby, Custer County Planning and Zoning Office Director.

Pledge;

HOBBY: Acting as Chairperson to conduct election of officers. There were two nominations, VIC BARNES for Chairperson and KEITH HOOD for Vice-Chairperson. Is there anyone else that is interested in the Chairperson or Vice-Chairperson position?

No reply

HOBBY: All in favor please raise your hand.

Motion passed unanimously by voice vote.

VIC BARNES was elected Chairperson and KEITH HOOD, Vice-Chairperson.

Hobby: Asked if they both would accept the position, and both said they would.

BARNES: Moved to the Chairpersons seat to continue the meeting. Thank you everyone for that vote of confidence. Now we will need to elect a secretary, official newspaper and posting place.

DONLEY: Made a motion to have JACKIE HOBBY as Secretary, Wet Mountain Tribune the official newspaper, and the Custer County Courthouse bulletin board as the official posting place.

HOOD: Seconded

Motion passed unanimously by voice vote.

ATTEBERY: Certainly when you get half way through the year without having any meeting it speaks pretty well for what the Zoning office does and what everybody does. Through the re-write of the Zoning Regulation were certainly owe a thanks to SKIP and presented SKIP with a book.

SHY: Thank you SKIP. You always do a fine job.

BUTLER: Thank you for all the hours that you put in.

SKIP: Thank you so much.

BARNES: JACKIE would you please give a Zoning report.

HOBBY: In the month of May we did eight septic inspections, one Homeowner septic test, three special conferences, and seven compliance inspections. In 2013 to date we have issued twenty septic permits compared to twenty five septic inspections. Zoning permits at this time last year sixty nine compared seventy four this year. Also we need to approve some minutes from last year so we will do this at our next meeting.

BARNES: Thank you JACKIE. We have two agenda items today. The first is a Subdivision Waiver and the second agenda item is a Plat and Re-Plat. Anyone from the audience that would like to speak please come up to the podium and identify yourself. We are recording this and we need to make sure we have accurate records. The first item is a request from BETH and ANDREW ZELLER. A normal Planning Commission has seven members. We are short one today and only have six present. The applicants today have a choice if you would like a full complement of seven board members. If you don't want to we can go ahead and proceed with the six board members. When you come up to address the board if you do not want to proceed let us know and we will postpone your application. The first is a Sub-division waiver from BETH and ANDREW ZELLER and I will read the statement: " *We request a waiver to build on the 10 acre lot described above. This 10 acre parcel was subdivided on May 22, 1973. We acquired the parcel in 1994 believing it could be built on. It is our desire to build a cabin/home of approximately 1000 sq. ft. on this land within the next five years. In the long term this may be our retirement home. Between now and then we would use it for visiting family members*". MR. ZELLER is there anything that you would like to add to your application?

ZELLER: Thank you, I am comfortable with having just six members listen for my application and make a decision. My thoughts are a 1000 Sq. Ft. foot print and maybe a basement and the possibility of a loft. I don't have a starting date on when we would start to build but probably. I was surprised that it was not subdivided before June of 1972. There are a number of other ten acre parcels in the immediate area and there are homes and cabins on those parcels and my thought was that it had been subdivided about the same time as they had been. I found out that it had been subdivided in May 1973. I missed the deadline by eleven months and that is why I am asking for an exception.

BARNES: Does the Planning Commission have any questions?

DONLEY: I am trying to get this straight. Who subdivided it?

ZELLER: The term subdivision may have a legal term that I am not accustomed to. It was a 40 acre parcel bought in 1971 by my uncle PAUL ZELLER who then sold 30 acres of it, leaving this 10 acre piece.

DONLEY: Do we have that deed?

HOBBY: Its attachment #5 that is in your packet that MR. ZELLER submitted with his application. That is describing 30 acres and this is not describing the 10 acres that we are dealing with.

ZELLER: To my understanding the 30 acres that was sold was from the original 40 acres leaving 10 acres.

HOBBY: This deed that is describing the 30 acres is now STARK'S property. This deed does not have any description containing the 10 acres. The reception #123980 which was done May 6, 1980 is the first deed that I could find that describes these 10 acres.

SHY: I believe that the division actually occurred when the 30 acres was sold and the 10 acres was created. The first time the 10 acres appears on a deed by itself is in 1980, so as a stand-alone parcel it appears in 1980.

BAILEY: The original 40 acres did not have any structures?

ZELLER: That's correct and there still are no structures.

DONLEY: Are there any wells on this property?

ZELLER: No, the STARKS purchased a number of smaller properties and they have a well on another parcel that serves their home.

BARNES: Any further questions?

No reply

LYNCH: I did not receive this information in my packet.

DONLEY: Who owns the property to the west of this 10 acre parcel?

ZELLER: I do.

DONLEY: How many acres are there?

ZELLER: 35 acres.

BARNES: Do the Commissioners have any questions?

SHY: I have one question for JACKIE. What is actually clear here is that the 40 acres was viable on its own. In 1973 which was after Zoning, dividing the 30 was actually in violation then. Dividing the 30 left two non-conforming parcels. The 30 has been combined with some smaller parcels so that makes it conforming that has a well and a home. The remainder 10 acre parcel was created in 1973 and deeded in 1980.

HOBBY: Yes

BUTLER: I am not clear on where the wells are.

ZELLER: My understanding STARKS only have one well.

SHY: To our knowledge there is no well on the 30 acre or 10 acre parcel?

ZELLER: No, there is not a well on the 10 acre and I don't believe there is one on the 30 acre parcel.

BARNES: Did you contact the adjoining land owners?

HOBBY: Yes and no one replied.

BARNES: Any questions from the audience?

No reply

BARNES: Any other questions from the Planning Commission?

DONLEY: The 35 acre parcels that you own next to it do you have a house on that now?

ZELLER: Yes, it's got a Special Use Permit where the Seminary is and that includes the house that I live in, and has two commercial wells that are augmented with water.

DONLEY: The simple thing to do is to combine that 10 acres with that property. That will eliminate the illegal non-conforming lot.

ZELLER: I can understand that. The problem with that would be trying to make it fall under the existing water augmentation, might be a million dollar project.

DONLEY: It was a lot that was created wrongly and it is undersized and created illegally.

BARNES: That is my problem also. We are being asked to grant a subdivision waiver on a non-conforming lot. We got a time line of a whole number of transfers past that 1973 on up to March of 2001 and I don't believe that any of those are improper.

BAILEY: According to the Zoning Regulations they could legally subdivide it but are not allowed to put a structure on it. So it's just a non-conforming not illegal basically.

COKER: If this had been done correctly, someone have had to come to the Planning Commission in 1973 and asked for a waiver?

BARNES: Yes, that is what should have been done. These official transfers of property occurred and were recorded. No one went to the Planning and Zoning office and if they would have done that they would have been informed that they needed to get a subdivision waiver and at that point and time they were under another Zoning Resolution.

COKER: So according to PAT the Zoning Resolution would have allowed them to do it, but if they wanted to develop they would need to come to the Planning Commission?

BARNES: No, I believe the Zoning Resolution states that in order to do a subdivision you have to have a permit. Anything under 35 acre you have to have a permit.

SHY: The deed was recorded in 1973 but when was it executed?

BARNES: BILL if ANDREW took your suggestion and included this with the other property how would that affect his wells?

DONLEY: He would need to ask for more augmentation water and drill a well.

ZELLER: There is another personal issue here with the other property being utilized as a school. The future ownership could go away and this 10 acres could be owned by me personally.

ATTEBERY: Do we know what date there is on the school? Did they have a Special Use Permit and did the school precede the conference center?

DONLEY: I do not know about that and I don't believe there has ever been a Special Use Permit on the school. It just happened.

BARNES: If they were able to utilize another well they could go for a multi-dwelling variance.

HOBBY: He would need to vacate the line between the properties and then ask for a multi-dwelling variance or he needs to get a subdivision waiver to utilize that 10 acres.

COKER: I can speak to the water augmentation side of things. The seminary and Horn Creek are combined in their water augmentation plan and trying to add another dwelling and additional water use, would probably require opening that existing water augmentation plan. Horn Creek would not be in favor of that so the decree stands as it is. The other way to look at this is the original 40 acres would have been entitled to a well in the beginning and does not have a well on any of those parcels. So by putting a well in this 10 acre parcel is not any different.

BARNES: That would compromise the STARK property.

SHY: So the STARKS could come in and say that we have a 30 acre parcel that was created by all the same action. They are going to need a waiver of Senate Bill 35 to put a well on that. I believe it would be difficult to include that in part of your decision process because those people are not part of this request. I think the potential exist that the other 30 acres could be in the same situation.

HOBBY: We are only dealing with this 10 acre parcel and not the STARK property which is not an application.

DONLEY: So if we allow a waiver of these 10 acres, STARKS can come in tomorrow and ask for a waiver on the 30 acre parcel.

SHY: You cannot make a decision on the 30 acre parcel. I have a historical question to ask. When this was originally done and the first transaction shows this the grantor was PAUL ZELLER, who was one of the founding members of the Planning Commission.

DONLEY: Yes, you are right.

SHY: There is some context here in the evolution of this.

BARNES: Do I have a motion?

DONLEY: I make a motion to deny the request.

BARNES: We have a motion to deny the request do we have a second?

No reply

BARNES: I will second the motion. I am very uncomfortable with granting a subdivision waiver on an illegal lot. Any discussion?

Any comments?

HOOD: I have one comment. Historically we have only granted subdivision waivers on lots that were created pre-zoning and I believe this is the first time we have encountered a lot that was created post zoning. that was not created through a road.

BARNES: All in favor please raise your hand

Four in favor

One against

One abstained

REASONS:

LYNCH: I abstained because I did not have a chance to look at the application.

DONLEY: I made a motion to deny because the lot was created in an irregular manner after Zoning.

BAILEY: I voted to deny based on the fact that it was done after the Zoning Resolution came into place. At the time it was not an illegal lot the Zoning Resolution states that it would have to be a 40 acre lot if there was a structure. So they could subdivide it but you could not have a building on it. We have never given a waiver after it was created. This parcel was not caused by something else like a road.

HOOD: I voted to deny because it was created after Zoning Resolution went into effect the only lots that have been granted a waiver was the ones we had proof that they were created before Zoning.

BARNES: I second the motion because it was done inappropriately and it sets a bad precedence.

COKER: I voted yes and did not support the motion. This is an issue that should have been addressed in 1973 and easiest way to be amenable and support a subdivision waiver.

BARNES: Mr. Chairman we have a recommendation from the Planning Commission to deny the request for a subdivision waiver.

SHY: I think this is a problem that won't go away and will not be the only one that we will see. The problem being that there are a lot of parcels around the valley that people sold a portion and that part might have been legal. But it's the remainder that does not appear in the record independently. You have a specific piece of property that has not been given rights through the Zoning process and was created by attrition. Paul Zeller owned the whole 40 acres and sold the 30 acres to LANGE and had a remainder of 10 acres and then sold it to DWIGHT ZELLER and then you received it.

ATTEBERY: We need to have a motion on the recommendation. Then we will have some discussion.

SHY: I make a motion that we accept the recommendation of the Planning Commission.

BUTLER: I will second the motion.

ATTEBERY: Ok now we can have some discussion. Certainly one of the problems are the dates, and looking at some of the deeds that say 1973 when this came into play. I agree with Commissioner Shy we will see this again. We are never told that what we do sets precedence so everyone that we come across we will look at individually.

BUTLER: Yes, to what LYNN said about precedence. We do everything as it comes along. I would like to approve it but that is not what regulations say.

SHY: Quick question for JACKIE. This would be eligible for a Zoning permit if they would haul water. So if he was able to provide water he would come back to this board again and ask for a multi-dwelling variance.

ATTEBERY: All in favor say I

Motion passed unanimously

BETH and ANDREW ZELLER were denied a subdivision waiver.

BARNES: Our second agenda item is a Plat and Re-Plat.

SHY: I need to be excused from making a decision on this application. I started on this project prior to being elected to the Commissioner position.

BARNES: This request is from PHYLLIS DEARBORN and you have heard my statement. You may postpone this until we have a full seven members present.

DEARBORN; I am comfortable with the six members.

BARNES: I will read your application statement *“I propose to move the lot line to better utilize the parcels and developed over our years here. The new parcels will both be in excess of 35 acres. Also the hogback ditch has been put into buried pipeline and I wanted to recognize this fact on a recorded plat”*. PHYLLIS will you be addressing us?

DEARBORN: No, KIT will be representing this application.

SHY: Normally on 35 acre parcels the county has no participation, unless there is dedicated county property. The roads are dedicated to the county and they participated in the plat and it has been our policy when they re-plat that the county is involved. None of the county right of ways or interest will be effected at all. Phyllis indicated in her application the lot lines that will be adjusted. The originally driveway came off the switch back. Which you can see on the original plat, and down to the house. That restricted the use or the original lot when they built the house they drilled two wells, one on each parcel. With one parcel everything worked out fine but now PHYLLIS would like to sell it. So we reconfigured the line so that it would give the house a little bit more room.

HOOD: Where is the hogback ditch?

SHY: The only indication of the ditch is several risers that come up. If you look at the driveway it's southeast and pretty much parallels the road.

BARNES: Any questions from the Planning Commission?

No reply

BARNES: Any questions from the Commissioners?

BUTLER: To me this looks pretty straight forward and everything has been covered.

BARNES: Any comments from the audience?

DEARBORN: I would like to comment that is a very dangerous area up there, to try to get down the driveway. JERRY had to go up there many times to get people off the side. I decided for safety sake, I would spend my money before I sold this property with the understanding that they would use this driveway and everyone would be safe. I know what it is to lose someone, and I don't want that to happen to anyone else. Thank you.

BARNES: Has this right of way been recorded already?

SHY: It will be recorded.

HOOD: I recommend to the County Commissioners that we approve the application for a Plat and Re-Plat.

BAILEY: I second the motion.

BARNES: All in favor.

REASON:

DONLEY: I voted for the motion, because it will rectify some short comings in the original access.

BAILEY: I voted in favor of the motion, for all the same reasons and also the lot size has not changed, and it makes it more accessible.

HOOD: I voted in favor. It remedies an access problem and it does not substantially change either lot size.

COKER: I voted in favor of the motion. The two lots basically remain the same and the adjusted lot lines on the plat make those two lots usable.

LYNCH: I voted in favor of the motion to utilize the topography and for better access.

BARNES: I voted in favor of the motion for all the reasons that have been mentioned and also I believe that it is a good thing that we have this hogback ditch on record.

BARNES: Mr. Chairman the Planning Commission has recommended that you approve DEARBORN Plat and Re-Plat.

ATTEBERY: Thank you Mr. Chairman, I will make a motion that we accept the recommendation of the Planning Commission.

BUTLER I will second the motion.

All in favor

REASONS

ATTEBERY: My reasons are the same as the Planning Commissions and they are all true to the point.

BUTLER: I agree, same thing.

Motion Passed

ATTEBERY: I will also make a motion that the Board of County Commissioners will adjourn at 2:08 P.M.

BAILEY: Make a motion to adjourn.

DONLEY: Seconded the motion

Meeting adjourned at 2:09 P.M.