

Joint Meeting of the Planning Commission, Board of County Commissioner

May 7, 2014
Custer County Courthouse
Westcliffe, Colorado

Present:

Planning Commission:	Vic Barnes, Bill Donley, Keith Hood, Patrick Lynch, Cindy Howard and Pat Bailey
Absent:	Rod Coker
Associate Members:	Dale Mullen, Chris Nordyke and Glen Livengood
Absent:	None
Staff:	Jackie Hobby and Chuck Ippolito
County Commissioners	Lynn Attebery, Kit Shy and Allen Butler
County Attorney	Absent

The meeting was called to order at 1:04 P.M. by VIC BARNES Custer County Planning Commission Chairman.

County Commissioner ALLEN BUTLER made a motion to reconvene the Custer County Commissioner's Motion passed unanimously.

Pledge:

BARNES: We need to approve the February 6, 2014 minutes.

BARNES: Moved and accepted the minutes.

Motion passed unanimously.

BARNES: JACKIE will you please give us a Zoning report.

HOBBY: In the month of April the Zoning Office did three septic inspections, two septic contractor tests and two special conferences. Permits issued in the month of April were four septic permits, and fourteen zoning permits. Zoning permit fees for 2014 totaled \$13,963.70 zoning permit fees for 2013 were \$26,356.00.

BARNES: Thank you JACKIE. I want to introduce GLEN LIVENGOOD he is a new Associate Member, Welcome we appreciate you being a member.

BARNES: We need to replace ROD COKER with an Associate Member.

ALLEN BUTLER drew the name.

BARNES: GLEN LIVENGOOD will you please go to a seated position as a Member of the Planning Commission.

BARNES: We have two agenda items today. The first agenda item is MUSIC MEADOWS. This is the Special Use Permit. It involves two phases, one is the presentation and the other is the hearing. We had the presentation in November and the other meeting in February. After much discussion, the Planning Commission voted to approve the Special Use Permit and we made that recommendation to the Commissioners and the Commissioners did not take our recommendation. We have some new information. ELIN would you please come up and give us everything that is up to date on your application.

GANSCHOW: After our meeting in February my sister PAM and I sent a letter to the State Water in Denver, CALEB FOY. We asked for consideration on how they would review this from

their office. We began to understand the policy that the state had with water use. That led to a modified version of our Special Use Permit. We scaled back on what we originally thought of doing and his response was quite positive. Basically if the horse operation was for ranch purposes and if we had water and sanitary supplied for the guests that rode horses then we could rent the house. The other piece that we pulled back on is the level of services that we provide to the guests that rent the house. They would be responsible for their own meals and we would still allow for a turnkey ranch style meal with no impact on the water. We do the shopping and they fix their own food. We do not have any employees that reside at the ranch. So we did an amended proposal. People will sign up with us to ride horses and we will provide a wash station and porta-potties at the barn for our guests. We will rent the ranch house by the night. When we do have any events like Horsemanship clinics, we will provide the meals at the barn. We have a food license so that we can serve food for these Special Events. We have a Horsemanship clinic scheduled in October which will only have six participants and is a two day clinic. We have a photography clinic also scheduled. They do not spend the night and I will be serving them breakfast. I believe the last question from MR. FOY was if you will be requiring a Special Use Permit in light of the current amended application? I have all the current licenses that are required.

BARNES: One of the reasons that ELIN referred to an amended application is that it is listed as MUSIC MEADOWS LLC and the applicant is UTMOST ENTERPRISES doing business as MUSIC MEADOWS RANCH and that is being done at MUSIC MEADOWS LLC. So they question is do you even need a Special use Permit?

BARNES: On your amended application you state that if you need water you are going to get it from ROUND MOUNTAIN WATER on your private residence.

GANSCHOW: That would only be used if we needed some extra water.

HOWARD: It is my understanding that you cannot take water from Round Mountain Water outside the district.

HOBBY: Yes, you are correct; you will need to purchase the water from ROUND MOUNTAIN.

BARNES: The first thing we need to address is if you need a Special Use Permit. You are still providing overnight stays and you are still providing meals?

GANSCHOW: No only providing meals for a special event. If we have an event then I will be catering the event.

BARNES: The horseback riding, you are providing lunches also.

GANSCHOW: Yes, sack lunches that are prepared offsite.

BARNES: The main thing that required a Special Use Permit was the main theme of a Bed and Breakfast.

GANSCHOW; Yes, but we are not doing that.

BARNES: Yes, but you are providing meals to overnight guests.

GANSCHOW: Yes, but not in the house.

BARNES: Ok, I will ask for comments from the Planning Commission about this amended Special Use Permit.

HOWARD: I have notes down about the events so are you going to need Special Event permits or a SUP. Also the retail gift shop would be consistent with a SUP.

DONLEY: If she did not sale gifts would she need a Special Use Permit? She has two operations, a rental house and events.

BARNES: Yes, she would but that is the question here, she has modified her application. We are trying to get your opinion on that.

GANSCHOW: Horseback riding is day rides and two events on the calendar and we have so many horseback riders during the summer so not that many events other than that are planned just trying to fit something in.

BARNES: If you have some Special Events, like an open house, you will need a Special Event permit.

GANSCHOW: Ok, I guess you will guide me in the best route.

DONELY: How much is a Special Event Permit?

HOBBY: Fifty dollars per event.

DONLEY: How much is a Special Use Permit?

HOBBY: Five Hundred dollars.

GANSCHOW: I have already paid that fee and it is non-refundable.

BAILEY: I believe that a Special Use Permit would be the way to go.

GANSCHOW: It may be fine even if you require a Special Use Permit. If you go back to what FOY had outlined for the key components it may still be fine. If the commercial endeavor is not from the animals, it is not a primary source of income and no water is used for the commercial endeavor other than watering the animals. That was his response and if we can do this within those perimeters than we will be ok.

HOBBY: You are having some events in ranch house. Are you going to serve any meals?

GANSCHOW: They will be served in the barn.

HOBBY: If you do not get a commercial well you understand that all the cleanup of the dishes and pots and pans will need to be done at your home.

GANSCHOW: Or bring a legal source of water to wash with.

DONLEY: Yes

BARNES: If ELIN is still having overnight guest do we still need an engineer report for the septic?

SHY: No, if she is not exceeding the occupancy. I don't believe she needs that. When I read MR.FOY responses it seems like the only thing he is responding to is when she has a trail ride. He is not responding to when you have a Special Event or gathering of people. As far as a Special Use Permit, it says in here, that the proposed activity would not require a Special Use Permit. The Special Use Permit would only be to cover those gatherings; it seems to me she has three people in the house which has an adequate septic for that. The horse watering has to do with the trail rides that are all agreeable according to MR.FOY. She is not going to use any water at all because she is going to haul the water. The Special Event is not any business of the State at that point because it will not impact the well. The convenience of the Special Use Permit is the fact that she has already paid five hundred dollars. Why would she want to do fifty dollars per event and only be able to have ten events and then you have used up your five hundred dollars. This is a convenience in a way for the Special Events. With the Special Events the water and septic are taken care of by porta-potties and hauled water. The commercial part is another aspect of it. If there is a gift shop then that's another part of it. None of that affects the state water.

DONLEY: How would we craft a permit for ELIN? We believe that ELIN does not need a Special Use Permit but she has already paid the money.

SHY: It would be for only her Special Events. She has answered the water and sanitation questions and the approval would be the commercial aspect.

HOWARD: She is acquiring the water from an approved source and she is using the house as a short term rental. Then the water goes away and the remainder of it is just the Special Events.

BARNES: Any other comments from the Planning Commission?

No comments

BARNES: Any comments from the Commissioners?

No comments

LIVENGOOD: If we are looking at a use on this property that is not a historical use, and it will drift from that norm, wouldn't the term Special Use explain that? If she is having overnight guests for financial gain isn't that a Special Use for that property?

BARNES: There is a Use by Right, and ranching operation and everything that ELIN has been doing up until recently has been under the Use by Right. When she started providing meals to overnight guests that what took it over to the Bed and Breakfast category, then the decision was made that she needed a Special Use Permit.

LIVENGOOD: Then by having a Special Event, it took it away from the normal ranching event.

BAILEY: The letter from MR. Foy, from what he outlined there is no Special Use Permit required. It has nothing to do with Special Use.

HOOD: The six items that she has listed should be included in the permit. And the water would be from an outside source.

HOWARD: Yes, I agree with KEITH that the water would need to be acquired by an approved outside source, and under the permitted use the state commercial exempt well is not required.

BARNES: Any comments from the Commissioners?

SHY: We always have the same situation with these and that is the water and sanitation. We have two separate activities here and both are covered by legal use of water and sanitation. The only thing beyond that is the gatherings, water and sanitation for the gatherings, the source for them, and a little bit of commercial activity. With those approved that should meet the needs of all the events that you are talking about. Without having to go through a process every time you have one.

HOBBY: The Zoning office has a copy of the lease agreement, liability insurance, food service license and she has been paying her lodging tax.

BARNES: Do I have a motion?

HOOD: I will make a motion that we grant the Special Use Permit with the conditions that were crafted.

DONLEY: I will second that.

BARNES: I have a motion and a second to approve the application. Any further discussion? All in favor, all opposed.

Motion passed unanimously.

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

SHY: Seconded the motion

BUTLER: I have a motion and second is there any further discussion?

ATTEBERY: Glad we worked through this and I really don't know how much discussion that the office should do with MR. FOY.

SHY: The Special Use Permit is not required for the items sited in your letter by Custer County. He has no jurisdiction over any of the other issues that we have talked about.

BUTLER: All in favor say I

Motion passed unanimously

GANSCHOW: Thank you very much for all your hard work.

BARNES: Our next item is a request by EL LEGADO LLLP for a waiver of Subdivision Regulations. We have a very lengthy application statement so I am going to refer to the representative.

JACQUELINE GAITHE: I am here under a limited power of attorney giving me the authority to act on behalf of DR.ROBERT HAMILTON who is the principal in EI LEGADO LLLP.

DONLEY: Are you an attorney that is representing him?

GAITHE: I am representing him but I also have the power to make decisions on his behalf. Initially DR. HAMILTON and EL LAGADO LLP transferred a ten acre parcel to ELIZABETH HAMILTON ARRINGTON; daughter and then we were contacted by the Planning and Zoning office that there is a Subdivision requirement and that the ten acre parcel was not large enough and that we could carve out a thirty five acre parcel or we need to submit an application for a waiver. The ten acre parcel is going to ELIZABETH HAMILTON ARRINGTON the shape of the one hundred acre parcel that was carved out of a weird shape parcel. As you see it is very hard to carve out any more than a ten acre parcel and the issue is that there is a structure outside of this ten acre parcel that DR. HAMILTON wanted to keep. It's a covered pavilion. So if you go any farther that direction you would be at the pavilion and if you go the other direction then you are in another parcel of land. The same is true if you go west or south. Any direction you go you really can't carve out a thirty five acre parcel. Some of the concerns would be how is this parcel going to have water, ingress and egress if it was transferred and down the road is it going to be subdivided. This will be some of the things that I will address with you today. I believe that DR. HAMILTON has filed that paperwork. There are three wells that service that one hundred acre parcel and the larger parcel of land that is owned by EL LEGADO. Two of the wells, well #2 and well #2 A services that ten acre parcel so ELIZABETH would not need a well permit. It would not impact the water or well rights of anyone. There is an agreement that is already between EL LAGADO LLLP and ELIZABETH ARRINGTON for those water rights and it has already been recorded in Custer County, I did bring copies of it if you would like to take a look at this. In that agreement also address in ingress and egress to allow her to be able to get in and out of that ten acre parcel it address that in the event she wanted to transfer that parcel out of her name ELIZABETH would have to offer it back to EL LAGADO LLLP. All of this is addressed in the access agreements. ELIZABETH is married and there is also an agreement between her and her husband that if they were divorces or if she would die that the parcel would go back to EL LAGADO LLLP so there is no concern that the ten acre parcel in a divorce action would get subdivided again. Our statement that is in here is lengthy. It covers all the issues and also includes a plat map with the hundred acres with the remaining of ninety acres.

BARNES: Thank you. Any questions from the Planning Commission?

HOOD: Yes, where are the two wells that service the property? Where are they located?

DONLEY: Just give us the well numbers.

GAITHE: I don't believe I have those numbers.

BARNES: My understanding is that those wells are on another parcel, the eight hundred acre parcel.

HOOD: They aren't even on the one hundred acre parcel?

DONLEY: I believe the well that services the property is 55713.

GAITHE: The wells are 55712 and 55713. I would point out that the eight hundred and three acre parcel is directly on one side of the ten acre parcel and in my map I don't have a directional sign but I would say directly to the north. The eight hundred and three acre parcel surrounds the ten acre parcel on three sides.

DONLEY: I would like everyone to be aware that there are two homes on this ten acre parcel.

GAITHE: Yes, there is a small house and a larger residence and a cabin. The house that they will reside in is the one level larger structure on the map. The pavilion is on the other parcel.

SHY: So there are actually three homes on this parcel.

GAITHE: Yes

BARNES: Do you have a copy of the packet that we received?

GAITHE: We prepared the packet.

BARNES: We have two pictures, one is the slab outside the property that is the pavilion.

GAITHE: I did not provide the photos.

HOBBY: I provided the photos from the original file from Trinity Ranch.

BARNES: Is the lodge on the ten acre parcel?

HOBBY: Yes, the lodge is MR. HAMILTON'S daughters' residence now.

DONLEY: Then we have a setback issue with that.

HOBBY: All structures must be fifty feet from the property line.

GAITHE: The pavilion is fifteen feet from the dead line.

SHY: Then it is my understanding that we would be creating an undersized lot and a non-conforming setback.

DONLEY: It is not an undersized lot.

SHY: It is ten acres but it would be non-conforming because they did not follow the process. I guess you can say it conforms to zoning size by waiver.

HOBBY: So we have three homes on one parcel.

GAITHE: It would remain a single family living on the ten acres.

NORDYKE: From the looks of things, why could this not be thirty five acres? If there is a prenuptial agreement what difference would it make and it would save a lot of this stuff. If you were going to subdivide it you have plenty of acreage for ingress and egress.

BARNES: The reason we found out about this is because it was already done. If you do not have thirty five acres then you have to go through the subdivision process. Why wasn't that considered?

GAITHE: I don't know sir.

HOWARD: On the applicant statement it talks about the easement and access agreement while approving the augment for the water case number 01C428. Was that a water decree post subdivision? If it is prior, how is there a legal use of the water when there has been a change in ownership?

DONLEY: That was filed in 2001.

HOWARD: Now that it is a ten acre parcel should it not be a household use only?

HOBBY: You should have a letter from the State of Colorado for the water.

BARNES: What they indicate in the letter states that they have an augmentation. Apparently they can use the water from the three wells no matter where they are.

DONLEY: It was all one piece of property owned by the Episcopal Diocese of Colorado. They sold everything but a one hundred acres to the Abby. They bought all the water with an agreement that the Episcopal Church could use water from the wells that were sold.

ATTEBERY: Was it that the Episcopal Church could use the water or the property could use the water?

BARNES: Any further questions from the Planning Commission?

MULLEN: For clarification, this became known by Custer County when you filed the paper work. Everything you have described was an intra-family arrangement without knowledge of the county.

GAITHE: I believe that to be correct.

MULLEN: I go to the second part of the document that JACKIE provided and she gave you three alternatives as possible solutions.

GAITHE: The third option we are requesting.

NORDYKE: I still have not heard why and terrain does not mean anything to me. You can build anywhere. Is there a reason why this is not thirty five acres so that we would not have to go through this. Anything can be surveyed, water can be pumped anywhere and the sewer runs downhill.

GAITHE: I believe one had to do with the transfer of properties. They were trying to carve out an equal amount. When you look at the one hundred acre parcel because of its shape you would end up with odd thirty five acre parcel. Almost every direction you go you are going to be cutting into another parcel of land.

DONLEY: Do we have a map of the hundred acres.

SHY: Yes it's in the packet.

GAITHE: In order to make this a thirty five acre parcel we would have to take all of this and it would be an odd shape. I believe that we could move this ten acre parcel to meet the fifty foot setback.

MULLEN: If this had been done properly and they had come to the county up front to find out what they need to do first this intra- family what fees or charges and paper work would they need to do to properly.

SHY: They would have needed to do the subdivision regulations. It is a three step process.

HOOD: Yes, they could have to go through all those steps but under the subdivision regulations any of them could be waived.

HOBBY: Usually if someone comes in with a large amount of acreage we recommend that they do at least thirty five acres because the county would not be involved. This came to our attention after they recorded the paper work.

HOOD: It could have been done and they might have not had to go through the entire subdivision regulations. It would have taken an action.

HOWARD: So if I had eighty acres in the eighty acre zone and sold forty acres, they would not be eligible for any zoning permits. Is there any action because it seems as there is not a problem with the water.

SHY: I believe the action is the action that is requested.

BARNES: Any further questions.

ATTEBERY: If we do not do anything and they come in for a permit and we do not allow them to have it and they do it any way, then what do we do? If you want to address anything, what about the other two buildings. That is on the ten acres, one is a cottage and a small cabin.

DONLEY: Yes, the cottage has a bedroom and bathroom.

HOOD: It isn't under our preview to address those.

ATTEBERY: We have a lot with three homes on it.

BAILEY: Are they pre-zoning?

SHY: Yes, but there were three homes on a hundred acres.

BAILEY: Yes, now we have three homes on ten acres. What can we do about that?

BUTLER: We have a question; they now have three homes on ten acres and three wells.

HOBBY: The letter from Division II, the way I read it is the water is fine.

BARNES: Yes, as long as it did not conflict with the augmentation plan.

HOOD: The wells are under an augmentation plan as long as they use that water on the one hundred acres. If I remember correctly, it was when they sold that to the ABBY and as long as it is used on that property and not in excess of the permitted amounts, the use is correct.

HOWARD: The water case is 2001 but one of the structures was moved in after 2001.

ATTEBERY: The structure came from another part of the property. The counselor's house was built about the same time as the lodge. The other cabin was down by the entrance.

SHY: I would not want to see anyone of these bodies take an action that concerns a setback of non-conformance. That is a mistake to take an action that creates a problem. I am having a hard time that with all that space why they could not make the fifty foot setbacks. The other thing mentioned was the odd shape of it if they didn't do just ten acres. Everyone looks at the parcel they created but look at the remainder, that's not an odd shape parcel. You take the ten acre out of the one hundred acre and look at the skinny thing that surrounds it. There is nothing to preclude her from selling this later.

GAITHE: There is an agreement between her and EL LAGADO LLLP. If she wanted to sell it that it would go back to DR.HAMILTON.

SHY: It does not preclude sale, it just gives him first right of refusal.

GAITHE: Yes

SHY: It has not illuminated this. Someone else could buy this property later.

GAITHE: I know that is the MR.HAMILTONS plan.

SHY: We can't rely on that, to determine the future. The other thing is that to require a minimum transfer of thirty five acres will substantially restrict any further transfers. Will that be the transfers of thirty five acre parcels? Or the further transfer of ten acre parcels?

GAITHE: No, this would just be the one ten acre parcel.

SHY: Why does it say that it would preclude any further transfers?

GAITHE: I believe it is because of the shape of the lot.

SHY: The difference between a ten and thirty five will preclude any further transfers? If he transfers ten he has a remainder of ninety that is two more thirty five acre parcels. Why would it be precluded by doing a thirty five?

GAITHE: I believe it had to do with the boundaries. I don't know if there is a remainder of two thirty five acre parcels.

SHY: If it's a hundred acres and you take ten acres off then you have ninety acres left so that leaves two thirty five acres that you could sell. All the improvements are on the ten acres making it more valuable.

BARNES: We will go back to the Planning Commission.

HOWARD: I was trying to get some clarification if this is a waiver of a subdivision regs. I see three things, a multi-dwelling variance, a setback variance, and a creation of an undersized lot. I don't want to create another issue down the road.

BARNES: Why are we doing this? You have already recorded the paper work, you have the necessary water so why are we doing this.

GAITHE: Because we were notified that a ten acre parcel is against your Zoning Regulations and we are trying to make it right. DR. HAMILTON was not aware you could not transfer a ten acre parcel. We are coming now to make it right and get approval so that it will be legal.

BARNES: There is nothing to be gained with this action, and there are no penalties. What have they gained?

ATTEBERY: What have they gained, if it matters, is the letter that they received from JACKIE after talking to counsel is they will not get any permits.

HOBBY: You can deny any permits on the property and when they sell the property they will not have a subdivision waiver and a title company would notice. They are trying to come into compliance after receiving a letter from the Zoning office.

MULLEN: With no penalty?

SHY: The penalty is they don't get any permits in the future.

NORDYKE: It's still an illegal lot, whether you knew it or not.

HOOD: He had the right to subdivide the ten acres because it's a ten acre zone but in order to do that he had to come to the Planning Commission and go through the subdivision process or ask for a waiver to the subdivision process. He would have satisfied most of the subdivision process which the main part is the water. The water is adjudicated for that parcel per the court case, so basically all we have is an illegally divided lot.

SHY: This is not a Zoning issue, this is subdivision regulation. The only Zoning issue is the setback and the only people in violation of Zoning is us if we approved a lot line location that was in violation of the set back. A waiver is something that the commissioners issue, a waiver of Senate Bill 35 is part of the subdivision regulations and that is what has been asked for here. But in the course of performing that function we will be violating zoning because we will be creating a setback issue without going through the Board of Zoning Adjustment. I do not see how the commissioners can approve this and violate zoning without the proper zoning process. It violates the setback. The only way I could participate in this to waive the subdivision regulations which are our function and duty. If this is modified to not violate any Zoning regulations and if you are going to ask for a waiver from the Zoning Regulations then that is the Board of Zoning Adjustment and that is not who is meeting here today and I am not going to be the one that violates Zoning when I helped write it.

BAILEY: You don't do anything on this waiver it is still an illegal lot. How can they on an illegal lot come to Zoning on an illegal lot?

SHY: As far as we're concerned this lot does not exist. As a commissioner sitting here today the only thing I am comfortable with is to ask them to bring this into zoning compliance then bring it back into the Planning Commission. That is the only process that I can see.

BARNES: How about the residence?

SHY: I don't think we have anything to say about that.

BARNES: In order to bring those into zoning compliance they are going to have to ask for a Multi dwelling variance also.

BAILEY: If they were going to take action on it with the condition that zoning had to be met.

HOBBY: If you pass this with the condition, then you have violated zoning and then there would be nothing I can do to make them come into compliance and we are creating another issue.

MULLEN: Can't you ask the applicant if they are willing to table this action and meet with the planning office, to work out the zoning issue to resolve and then it would not require a motion here.

BARNES: My recommendation is that it be tabled until the Zoning issues are resolved.

DONLEY: I move that the Planning Commission take no action. We have all heard the discussion.

BAILEY: Seconded the motion.

HOOD: If we would take no action at this time, in some way we need to notify them that in order for something to be done they have to clarify the Zoning issues before we could do that.

BARNES: Personally I am not that excited about the motion. It's going to fall back on JACKIE and I think if we would request that Zoning handle the Zoning issues then we will come back and address the subdivision waiver.

HOWARD: My comment would be as presented today, if we can approve it without violating Zoning and table it with a different legal description. I am leaning towards denying it as it is. We violate Zoning if we approve the application.

LIVENGOOD: I agree with what you are saying. We can't approve anything that puts us in violation. I would vote against approving anything.

BARNES: Any further discussion.

BARNES: I am going to ask for a show of hands. All in favor of this motion please signify all opposed.

Motion is defeated

BARNES: Now we need a motion.

LIVENGOOD: I motion that we deny the subdivision waiver.

HOWARD: Seconded the motion.

BARNES: Any discussion.

No reply

BARNES: All in favor raise your hand, all opposed. Six people in favor and one against.

REASONS:

BAILEY: I voted in favor of denying the request, based on what we have been discussing. Our actions would create an illegal action and the board cannot do that.

DONLEY: I voted for the motion to deny the request because I do not want to make a recommendation to the Commissioners that would put them in a position where they would grant something that would be in conflict of the Zoning regulations.

HOOD: I voted in favor of the motion to deny because in solving one problem we created more problems.

LIVENGOOD: I voted in favor of the motion to deny the waiver because: A. Creating a problem down the road for the Commissioners and B. I still believe it should be a thirty five acre parcel.

LYNCH: I voted to deny it because the precedence it sets for violating the Zoning regulations.

HOWARD: I voted to deny because I did not want to violate the Zoning regulations and because it is an illegal lot at present there is not a huge penalty.

BARNES: I voted against the motion because I thought a better option would be to table it and give us an opportunity to work on the problems.

BARNES: The Planning Commission sends a recommendation to the Commissioners to deny the subdivision waiver.

SHY: I will make a motion that we accept the recommendation of the Planning Commission for the reasons outlined. I would like to include in my motion that an approval of this waiver would make us complicate in violation of Zoning. Based on the information provided by the applicant themselves we would be in violation of Zoning in terms of setback and multi-dwelling. As part of my motion I would like to instruct the staff to reach out to the applicant and see if these Zoning issues could be resolved satisfactory to create a better application for a subdivision waiver.

ATTEBERY: Seconded the motion.

BUTLER: Motion and second any other comments?

No reply

BUTLER: All in favor say I

Motion passed unanimously

REASONS:

ATTEBERY: I voted in favor of what the Planning Commission said because there are situations and if we voted for one thing we would be goofing up another thing. As far as the applicant himself is concerned giving the benefit of doubt to the applicant. I certainly think they thought they were in a ten acre zone when they did the ten acres. I don't necessarily think they thought about the setbacks or the three homes on one parcel.

SHY: My vote is based on my finding and is framed in the context of my motion.

BUTLER: I can't see passing something that creates more problems. We have one problem and we are going to fix it and we create another problem. We follow the motion that KIT made and we are sympathetic to the applicant. Also, you can move those lines and change everything.

BAILEY: Something that LYNN said that they probably did not realize that they would be in violation of Zoning. Which is probably true. The three homes were on one parcel and are still on one parcel? It was a larger parcel.

ATTEBERY: Probably not too far from the entrance of this parcel is another house and then you go a little bit farther and there is another house and from what I saw on the map I don't know if they were even permitted.

BARNES: Motion approved

BAILEY: I make a motion to adjourn

DONLEY: Second the motion

Meeting adjourned 2:53 P.M.

BUTLER: No other business between the Board of Commissioners we will adjourn 2:53P.M.