

Joint Meeting of the Planning Commission and Board of County Commissioners

October 1, 2014
Custer County Courthouse
Westcliffe, Colorado

Present:

Planning Commission: Vic Barnes, Bill Donley and Patrick Lynch

Absent: Pat Bailey, Rod Coker, Keith Hood and Cindy Howard

Associate Members: Dale Mullen

Absent: Glen Livengood and Chris Nordyke

Board of Zoning Adjustment: Ken Patterson

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 1:03 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 have our Associate Members DALE MULLEN and the Board of Zoning Adjustment Chairman KEN PATTERSON replace the absent seated members.

BARNES: The first order of business is the approval of the August 5, 2014 minutes.

DONLEY: I make a motion that the August 5, 2014 minutes are approved as presented.

MULLEN: I will second the motion.

BARNES: All in favor? All opposed?

Motion passed unanimously.

BARNES: JACKIE would you please give a Zoning report.

HOBBY: In the month of September we had five septic inspections, five special conferences and four compliance inspections. In the month of September we issued four septic permits and twenty four zoning permits. Year to date we have issued forty five septic's and one hundred and forty nine zoning permits, compared to 2013 year to date fifty septic permits and one hundred and forty six zoning permits.

BARNES: Thank you JACKIE. We have a lot of folks here and I am sure you want to comment for both of the agenda items and if you have a comment please come up to the podium and introduce yourself. If you are responding to questions we would like you to come to the podium. We have two agenda items today. The first one I have some comments on, I don't believe that the office handled this application quite right. It is an application for an Amish Cemetery and a Saw Mill. These should be two separate applications; the reason is that they are on two

separate parcels. What we will do is still have the presentation today for the Special Use Permit and everyone has been notified and everyone here will have an opportunity to talk. We will hear both but they will be a separate application.

MULLEN: Schedule number 101-48-758 will pertain to which application? Will they be A and B?

BARNES: We will identify them as 101-48-758 A for the Cemetery and 101-48-758 B for the Sawmill.

BARNES: The first agenda item will be the application for a Cemetery; I will read the applicants statement;" *One acre cemetery next to McCoy Cemetery on Cut bank road. Flat and or vertical headstones and will allow green burial by County and State specifications. Cemetery will be maintained by the Westcliffe Amish community and will be the Troyer Cemetery.* This is a two phase process and so this phase is the presentation and everyone will have the opportunity to comment and have suggestions. Next month we will have the hearing and will make a decision.

HOBBY: This will be for the Troyer Cemetery which will be identified as 101-48-758A and three adjoining land owners were contacted. The Zoning Office received one written comment from BARBRA MCCOY GARTNER *"My family and I have no objection to the establishment of the Amish Cemetery on land adjacent to the McCoy Cemetery.*

BARNES: Will the applicant please come up to the podium and add anything to the application.

JOEL TROYER: I don't have anything to add to the applicant statement.

BARNES: Any questions from the Planning Commission?

PLANNING COMMISSION: Commented on the fencing, number of burials, water usage, creation of undersized lot, access, adequate drainage, where the creek is located on the property and a Deed restriction.

BARNES: Does the Board of County Commissioners have any questions?

SHY: Will you be issuing deeds for each individual plot as you sell them?

TROYER: We will not be selling them.

SHY: Do you have any financial mechanism to maintain the cemetery?

TROYER: No, that is a good thought.

BUTLER: Do you have some form of record keeping that will be recorded to let someone know who is buried in the cemetery? You will have the area fenced?

TROYER: Yes, we will fence the area.

BARNES: We had a set of conditions on the McCoy cemetery and one of those conditions was that it had to be recorded with the County.

BARNES: Any comments from the audience?

PAUL LEACH: My property is directly across from the proposed cemetery. North Colony Creek does run east of the property. A drainage ditch has been running all summer. Doesn't that cut across that one acre cemetery property? I believe that there is a junior water right that runs across the corner of the property. I don't have any strong objection against the cemetery; since I can see it from my living room I would prefer flat tombstones.

BARNES: Thank you, we did not know about the ditch.

DONLEY: That could be noted on the Plat and they would need to put restriction stating a setback of fifty feet.

TROYER: If the ditch does go down the property, we could move the whole plot two hundred feet.

LEACH: I believe it just runs across the corner.

BARNES: That would be a practical solution. MR. LEACH we don't know about the conditions yet. Any other questions from the audience?

BARNES: Hearing none. That concludes the presentation phase of 101-48-758A and now we will have the presentation for the sawmill, I will read the applicants statement; "*Change portable band saw mill from personal to commercial use. Starting part time approximately 2 days per week with 1 person. In future up to 4 part and full time employees with hrs. of operation Mon-Fri 8-5 slabs are sold for firewood or fencing, Saw dust is used for animal bedding. Traffic approximately 1-2 trucks per week.*" JOEL would you please come up to the podium and do you have anything to add to your application.

BARNES: Were the adjoining land owners contacted and do you have any replies?

HOBBY: Six adjoining land owners were contacted and one request from an interested party. We received one written comment from a non-adjoining land owner and one written comment from an adjoining land owner.

HUMBOLDT PEAK RANCH, LLC
370 17TH STREET, SUITE 4950
DENVER, CO 80202

VIA FACSIMILE

September 29, 2014

Jackie Hobby
Director, Planning and Zoning District
Custer County
PO Box 203
Westcliffe, CO 81252

Jackie,

It has come to my attention that William D. and Erma Sue Troyer are seeking a Special Use permit to change a "personal use" milling operation to a "commercial use". As a nearby property owner (Humboldt Peak Ranch, 5295 Macey Lane), I oppose this change of use.

I am certain that there must be areas in the county that are appropriately zoned for industrial uses such as this, but a commercial sawmill is inconsistent, and incompatible, with the rural, residential nature of the neighborhood. Additionally, the addition of large commercial vehicles to our gravel road will increase the rutting and wash-boarding of the road and will also increase the county's cost of maintenance.

I am hopeful that the planning commission will recognize that this use is inappropriate in this location and encourage the applicant to seek a more appropriate parcel away from a residential area.

With Best Regards,

Buck Blessing
Manager
Humboldt Peak Ranch, LLC

Custer County Planning and Zoning Office
Attn: Jackie Hobby, Planning and Zoning Director
P.O. Box 203
Westcliffe, CO 81252

September 30, 2014

Dear Jackie Hobby:

This letter is in response to the Certified Mail 7011 0470 0002 1946 2705 dated September 10, 2014. As outlined in the letter, a Special Use Permit is being requested for property at 3801 C.R. 125, Westcliffe, CO 81252.

Our questions and concerns are focused on the entire area, all property owners, and the best for this request. First, it seems that the request is being made by William and Fern Troyer land owner for parcel 101.48.758, but written and signed off by Joel Troyer land owner for parcel 101.92.067. Please clarify who is making the request and exactly where the proposed sawmill will be located. Also, is the request for the change in zoning including the marked easement to the William Troyer property?

Wacey Creek Ranch is residential. This is part of the charm and decision we made in selecting and purchasing our property. The requested change from residential property to Commercial Use property has a huge impact on the land, property owners, and area in general.

View is a definite concern in the residential area. Property owners rush in the possible surrounding of the Valley. The proposed sawmill would have a definite negative impact on the view and natural sounds of the area. The disruption would deteriorate individual's ability to enjoy their time and financial investment in the Valley.

We believe that commercial land use will infringe on property owners privacy. An additional concern is the amount of commercial semi-truck traffic. The infrastructure is underdeveloped including roadways for this type of business and commercial traffic. The sound and emissions of truck traffic is of great concern. Also the product output from the proposed sawmill would negatively impact the area, as stacks and sawmill laying and piled around waiting to be sold.

In considering a planning zone change, please consider the future plans outlined. No time table is laid out to state that the future could not be implemented upon a zoning change approval. Future building plans are outlined to include a privacy fence between the mill and Colony Lane. We feel that this would be a requirement prior to being able to establish this business for commercial use. Closing of the sawmill would be critical to maintaining view and value of all property adjacent. In the proposed term would all of the product be housed or would product arrive and be stored outside and finished product be stored outside awaiting sale? The request did not address these details.

Economic growth is important to every community, as well as the tax dollars commercial use provides. Economic growth should be a researched and planned process to obtain the best location for industrial centers. To change the zoning to fit one property owner in one area, or one property owner for financial gain to allow another to establish the business, as well as other properties in different areas causes confusion as alternatives for new homes, new business and the community at large. Please consider our request to not allow this change in property use at this time.

In closing, we would like to thank you for the opportunity to respond to the request, to share our thoughts and concerns and to ask that you give consideration to not allowing the zoning change without a study for the Valley on commercial growth and expansion establishing the best of the entire Valley. Do not approve change for one person today which impacts everyone in the future.

Thank you for any consideration you can give this letter.

MaryAlice and Michael Hinton

BARNES: Thank you, just for the record the SUP application will be 101-48-758 B. This is a eight hundred acre parcel that is on the west side of Colony lane and it is bounded on the South by Cutbank road. This property is owned by JOEL'S parents WILLIAM and ERMA TROYER. You have a contract with them to purchase one hundred and twenty acres. This sawmill will be located in the North East portion of the eight hundred acre parcel. Planning Commission do you have any questions?

PLANNING COMMISSION: Commented on location of parcel, letter from adjoining property owner, Macy Creek Ranch full time residents and how far away from the noise would Macy Creek Ranch residents be, source of trees that will be brought in by semi-trucks, finished product leaving sawmill on semi-trucks.

BARNES: The plan is to have a residence, barn and septic that will be independent of the application. Any questions from the County Commissioners?

BUTLER: We are talking about portable saw mill not a large blade sawmill?

TROYER: Yes, a portable band sawmills that can be pulled behind a pickup.

SHY: The saw will be housed inside a building?

TROYER: Yes

SHY: Your raw materials will be inside the building inside?

TROYER: Most of the products would be stored outside.

SHY: Do you have any idea about the noise level?

TROYER: The neighbor BRAD, who is about five hundred yards away, he says he can barely hear it. The saw has a fifty horse power engine. It does not have the noise of a circular saw.

SHY: Would you describe it as primarily wholesale?

TROYER: Yes

BUTLER: The difference in this permit is that he will wholesale the wood. There are seven, eight, nine or ten portable saws in the County that do not have a Special Use Permit.

BARNES: Any comments from the Audience?

SUSAN ZUCHOWSKI, SCOTT HERMAN, A.J. GRANT and WENDY GEARY commented on the access road, easement, noise, dust, fire, truck traffic, semi Jake brakes, county road usage and maintenance, proposed fencing on the east, wildlife, land value and economic value and emergency response time, what precedence does it set and commercial taxes.

BARNES: Thank you for your comments. We will let JOEL answer these questions and then we will take some more comments.

TROYER: Not all the property will be used for the saw mill; about four hundred feet square would be sufficient. The reason the business would be there is because that is the piece of property that my father wanted to sell me. The reason the other easement is there is to access the other property and it is not constructed at this time. The location of the saw mill will be on the east line of the north section. Our home will be in the North west corner of the north parcel. One to two semi loads a week will be sufficient for the amount of time and help that I have. The facility would be covered and be open on one side. We always keep fire extinguishers on hand and we could have a cistern.

BARNES: This concludes the presentation phase for this application. The next agenda item is for a Greenhouse. I will read the applicants statement: *“With the purchase of this property, we intend to lease the dwelling and all lands to the owner of a company in the business of landscape installation and maintenance and high-altitude plant propagation. Proposed as well for the needs of the business are plans for a greenhouse near the home, approximately 1,500 sq.ft prior to constructing the final greenhouse, an existing 12’ x 20’ space will be enclosed for the first year plant propagation. Plants and garden products will retail from the greenhouse and service barn. Water for irrigation of plants grown on the property or in the greenhouse will not be drawn from the well, but from enclosed cisterns installed for this purpose, and filled with delivered water.* The property owners are not here. We have a Representative Authorization signed. RUSCH; I am going to be leasing the land and my name is BENJAMIN RUSCH. I will be living on and using the property. This property will be used by myself and my two young daughters. Primarily as a residence and also a base for my gardening business. We have been living and working around Custer County for several years. We believe that this property is good for school access and work access and will help us grow in a clean and healthy environment. I run a small landscaping service called GREEN HORN GARDENS. At this location I would like to grow and store perennials, annuals and some small shrubs and grasses. These plants would used in my client’s gardens as well as be available for the public to purchase on site. The growing season is short here and I need to do as much as I can during the summer months to provide for my children. I am trying to earn a living and provide the community with the best garden service as possible. I would like to have a part time retail with garden plants and shrubs, small hand tools and statuary. This would be open two to five days a week, maybe through September, 9 a.m. to 6:00 p.m. They would be stored outside under tents and in a greenhouse. The plants will be watered from water purchased from Round Mountain and stored in cisterns. Plants will be ordered from outside sources but eventually would be propagated from seed and division of the plant. All parking and traffic will be contained to the front of the building. No use of fertilizers or pesticides, because I try to practice organic gardening and there will be a sign on the building and possibly near the road. Any landscaping materials like rocks soil, mulch will be stored at the base of the garage. This kind of material is for personal use. I am not trying to be a landscape supply company. I will apply for a sales tax license. The area around the building would be attractively landscaped and will be kept neat and clean. I believe my business would be an asset to the community and it is my wish to be a good neighbor to those around me and to offer help

BARNES: Thank you Ben. First of all I will ask JACKIE if the adjoining land owners were notified.

HOBBY: Yes, four adjoining land owners were notified and we have three written comments.

September 22, 2014

Custer County Board of Commissioners
Custer County Courthouse
Westcliffe, CO 81252

RE: Application for Special Use Permit
56485 State Highway 69

Gentlemen:

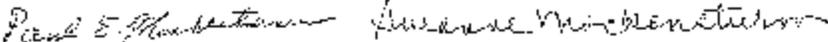
We would not be in favor of changing the existing ag status to a commercial use. We understand it would be for a landscaping and greenhouse operation.

There is currently a landscaping and greenhouse operation on State Highway 69 that is for sale.

Should the "powers to be" approve this special use permit request the following conditions should apply:

- A) Existing well will be metered and read quarterly by the proper authority for it's existing ag use.
- B) Quarterly readings made available to the public without a hassle.
- C) Any and all additional water requirements would meet the State of Colorado water requirement laws.

Sincerely,


Paul E. Mockensturm and Sueanne Mockensturm

cc: Zoning Department

September 25, 2014

Dear Custer County Planning Board, Board of Zoning Adjustment and Custer County Commissioners:

As adjacent property owners of the proposed retail business by Pensco Trust Company, we are strongly opposed to the special use permit request to allow an unnamed landscape installation and maintenance company to build a 1500 square foot greenhouse, and operate a commercial retail business. This property is zoned residential, not commercial, and is located along the scenic view entry into the towns of Westcliffe and Silver Cliff. We urge you to abide by the Custer County Master Plan that states on page 8 that "Custer County is primarily a rural county with urban uses generally located within the incorporated towns of Silver Cliff and Westcliffe". We also cite the same Master Plan, page 17, Environment Policies: E-1: The County will encourage preservation of lakes and streams, scenic vistas, wildlife habitats and watersheds. This property is a wildlife habitat that sits on a hill above and very close to Grape Creek. It is in the direct line of the scenic vistas of the Sangre de Cristo Mountains and the hayfields, which our forefathers and Planning and Zoning Boards have fought to preserve.

We believe that people considering locating in Custer County and people who have already built homes here need to feel secure and know that the Master Plan and Zoning provided by your leadership will be abided by. If someone, like us, works hard for years to build our dream home only to have the rural residential status changed to commercial, their trust in the leadership of the County, and the desire to locate and/or stay here will be deterred.

We have a deep love and long lived investment in the Wet Mountain Valley. Patti's family on both sides homesteaded here in the 1800's making her 5th generation and our children and grandchildren 6th and 7th generation to be raised here. We have owned and operated Byrne Construction business for 32 years and have both been very active in serving the youth of Custer County. We are **pro business**. We are **pro making a living** in the valley. We are also **for abiding by the Master Plan and preserving the natural assets and scenic views** along the highways entering our towns.

Our specific concerns regarding the proposed commercial business are:

1. Can the current residential well be used for a commercial retail business and employee restrooms? Who monitors that the residential well will not be used to irrigate plants grown on the property or in the greenhouse for commercial sales? What is the water law on that issue? Where is the water coming from to fill the cisterns and what are the guarantees of continued water availability?
2. What protections will be in place to prevent fertilizers and pesticides from flowing down on our hayfields and entering Grape Creek?
3. The current speed limit on Hwy 69 in front of proposed business is 65 mph. Will that need addressing for exiting and entering of landscaping trucks, delivery vehicles and commercial traffic? What about the visibility for oncoming traffic? Will there be an acceleration and deceleration lane with the increased traffic flow? Is it safe to have increased traffic at this location?

4. Where will the greenhouse, cisterns, etc. be located? What kind of signs will be requested? Will the lighting affect our dark skies? Are there any more expansion plans that have not been mentioned here? Do we really want retail business in the rural setting?

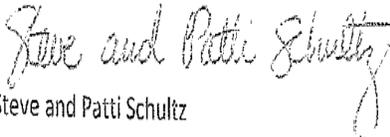
5. The proposed commercial retail business next to our home would be a financial burden on us and our neighbors. The appraisal of our homes and land will be reduced, based on going from a peaceful and quiet rural setting to being located next to a retail business.

6. How long will this unnamed business be here? We are for economic development and appreciate the jobs provided. We are concerned and cautious about "come and go patterns" we have witnessed. People come and try the country life for a few years and then frequently leave and leave things behind. Are we left with the building(s) in the scenic views?

In summary, we encourage the unnamed company of landscape installation and maintenance to locate their retail business in the designated and zoned areas of the county. The Master Plan and Zoning Regulations provide adequate land for commercial businesses. Is there a precedent being set here by going outside the approved zoning areas and allowing commercial and retail businesses to locate in the scenic vistas along the entrances to our towns? Our opinion is yes. The forefathers' and Master Plan developers' opinions are yes. We need to continue to be vigilant as a county and continue as leaders to respect the planning and enforcing of guidelines to preserve the assets, quality of life and natural beauty of our valley. It's hard to go back once the doors are opened.

Thank you for your kind consideration of our concerns.

Sincerely,


Steve and Patti Schultz

56489 State Highway 69

Westcliffe, CO 81252

OCT. 1, 2014

TO: CUSTER COUNTY PLANNING COMMISSION
BOARD OF COUNTY COMMISSIONERS
AND BOARD OF ZONING ADJUSTMENT

IN REGARDS TO THE APPLICATION FOR A SPECIAL USE PERMIT SUBMITTED BY PENSICO TRUST COMPANY THOMAS AND ROBYN WALLERICH - WE ASK THAT YOU DENY THIS PERMIT FOR MANY REASONS, INCLUDING:

① THIS WOULD VIOLATE THE MASTER PLAN PUT IN PLACE BY OUR COMMISSIONERS SOME 40 YEARS AGO WHO HAD THE FORESIGHT TO REALIZE THAT ALLOWING BUSINESSES TO SPREAD OUT THROUGH THE VALLEY WOULD RUIN OUR SCENIC VIEWS, WATER RESOURCES, AND AGRICULTURAL WAY OF LIFE. IF YOU ALLOW ONE TO DO IT, WHERE WILL IT STOP?

② WE BELIEVE THAT ANY RETAIL BUSINESS ADJOINING OUR RESIDENTIAL PROPERTY WILL DEVALUE OUR PROPERTY.

③ CHEMICALS USED IN THIS OPERATION COULD AFFECT OUR GROUND WATER OR BE WASHED INTO OUR POND OR GRAPE CREEK DURING RAIN STORMS AND FLOODING.

④ INSTALLING CISTERNS WOULD DEMAND ONGOING REGULATORY ACTION TO PROVE THAT WELL WATER IS NOT BEING USED. USING THEIR WELL TO WATER THEIR PLANTS COULD AFFECT OUR SPRING FED POND AND WELL. WHO WOULD DO THE REGULATING? AT WHAT COST?

⑤ WE DON'T WANT THE TRAFFIC AND NOISE THAT A BUSINESS WOULD BRING.

⑥ THERE IS LOTS OF VACANT PROPERTY WITHIN THE TWO TOWNS THAT COULD BE UTILIZED WITHOUT NEEDING SPECIAL USE PERMITS, REZONING, OR THE INSTALLATION OF CISTERN. THE TOWNS ARE WHO NEED AND SHOULD BENEFIT FROM THE REVENUE GENERATED FROM BUSINESSES.

⑦ THIS IS AN INCOMPLETE APPLICATION. THEIR PROPOSED BUILDINGS, CISTERNS, ACCESS, ETC, ARE NOT DIAGRAMED. HOWEVER, IT DOESN'T MATTER WHERE THEY WOULD GO - WE ARE FIRMLY OPPOSED TO THIS PLAN. THIS PROPERTY IS ZONED RESIDENTIAL AND SHOULD BE USED FOR THAT PURPOSE.

RESPECTFULLY,

JAMES, JANICE
COLE & DAVID
SQUIRE
56487 HWY 69

AND
JEROME & CAROLYN
DE GREE
785 SCHOOLFIELD ROAD

BARNES: Thank you. A number of these questions have been addressed in his statement. Does the Planning Commission have any questions?

DONLEY: Are you going to put the cisterns underground or cover them.

RUSCH: They will be in the garage.

LYNCH: How large will the cisterns be?

RUSCH: Two cisterns about a hundred and fifty gallon each.

MULLEN: Help me understand this business; it will be just you and your two daughters? Do you have employees or plan to have any employees? There is business similar to this in other areas that appear to be quite lucrative as they have grown. Detail what you are planning to do.

RUSCH: My daughters are seven and ten and I do not have any other employees. I am really trying to get a place where me and my kids can live and we can have plants, that we can store there to use on projects. I would like to at certain times of the year allow the public to purchase things. As far as the noise goes, its right next to a highway and it would not get any nosier than that. A lot of nurseries are near residential areas because they are not noisy. All the neighbors live behind the building so they would not even see it. If you look on the map the highway goes right past and the driveway makes a b-line right to the front of the building and would not affect anyone in any kind of way.

MULLEN: This facility that you are going to build is north of the existing structure?

RUSCH: That will only be the tents. It would be like Native Woods where it is open on all sides and has a tent covering for the roof to provide shade and protect from hail. Long term I would like to have it on the south side and down the hill to the other building. That would be a better location but I do not have the resources to build.

BARNES: On the north side, how many tents and what are the sizes?

RUSCH: Probably a thousand sq. ft., and 50 x 20. I don't know if that would be one tent or two. Part of the building that is there on the north side will be used to house plants.

BARNES: Any further questions from the Planning Commission?

Hearing none

BARNES: Any questions from the County Commissioners?

Hearing none

BARNES: Any questions from the audience?

JANICE SQUIRE, COLE SQUIRE, BOB and DEBBIE MILLER, JOAN and RICHARD KOHLER, PATTI and STEVE SCHULTZ commented on the following: drainage ditch flooding, invasive plant species, pesticides, retail business not in the designated area in town growth, signs, commercial, precedence, value of homes.

BARNES: BEN would you answer the questions from the audience.

RUSCH: As far as the plants being invasive you have a greater problem with digging. Also, when you grade a road there are invasive weeds all over. This property does not have any invasive weeds and I intend to keep it that way. As far as invasive plants, they will be in containers. I don't know how long the shed has been on the property, my building will be closer to the top. My material does not have to be down there.

BURTT: My name is MATTIE BURTT and Patti and Steve you do have a nice home but that whole corridor has Sangre De Cristo Electric, the RV Park and it is somewhat a commercial area already. I think BEN'S business would be whole lot more to making it look better and it is a commercial corridor.

BARNES: Any other questions or comments?

Hearing none

BARNES: This concludes the presentation phase of this Special Use Permit.

MULLEN: I make a motion that we adjourn.

LYNCH: I seconded the motion

Motion passed unanimously

Meeting adjourned at 3:28 P.M.