

Joint Meeting of the Planning Commission, Board of County Commissioner

May 11, 2010
Custer County Courthouse
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman
Carole Custer Commissioner
Planning Commission: Vic Barnes, Pat Bailey, Sherry Rorick, Rod Coker, Bill
Donley, Keith Hood, Paul Buckles
Associate Members: Dale Mullen, Cindy Howard, Dorothy Nepa
Brad Stam
County Attorney John Naylor
Staff: Jackie Hobby
Absent: Roger Camper, Ken Lankford

The meeting was called to order at 1:06 P.M. by VIC BARNES Planning Commission
Chairman.

COMMISSIONER ATTEBERY: Reconvened the Board of County Commissioners May 11,
2010 meeting back into session.

Pledge;

BARNES: The first item on the agenda will be to approve the minutes for April 6, 2010.

BUCKLES: I move that we approve the April 6, 2010 minutes.

DONLEY: Seconded the motion.

BARNES: All in favor

Motion passed unanimously

BARNES: JACKIE will give a Zoning report.

HOBBY: In the month of April we had 3 septic inspections, 1 violation, 8 Special Conferences
and 1 compliance inspection. In April of 2009 we had 3 septic permits and in the month of April
2010 we have 9 septic permits. In 2009 in the month of April we had 13 Zoning permits and in
the month of April 2010 we have 26 zoning permits. Permits issued to date in 2009 were 32
and in 2010 are 45 Skeptics' in 2009 were 11 and in 2010 are 12. I have a couple of comments.
One is that MR. WATTS called the office today and said the reason why he did not contact us
was that he was ill. He would be willing to come and speak to the Planning Commission about
the Subdivision Regulations.

BARNES: We will need to adjourn today by 3:00 P.M. The courtroom is needed for another
item. We have three items on the agenda today. I would like to remind you that if anyone
would like to speak to come up to the podium, identify yourself, and who you are affiliated with.
The first agenda item is a Special Use Permit Modification for PAINTED VIEW RANCH. This is
a hearing, to amend their Special Use Permit. After our meeting on April 6, 2010 Jackie,

Donna, Brad and I got together, took all the input from the previous meeting, and tried to put it together in a logical fashion. I will read the list.

Uses Allowed:

1. Art shows, Pet shows, and Agricultural related animal shows.
2. Community activities including but not limited to: 4-H, FFA, Weddings, Reunions and Fund raisers.
3. Concerts
4. Cowboy poetry gatherings
5. Corporate gatherings
6. Auctions
7. Retail limited to agricultural related sales including but not limited to: Tack, Feed, Vet Supplies and Clothing. All retail will be limited to the existing structures.

BARNES: I will ask the representative from PAINTED VIEW to address us.

BRAD JOHNSON: I am the Director of Operation for PAINTED VIEW. I will answer any questions that you may have. Once again we are an agricultural/equestrian venue. We have horse events, concerts and what we are asking is to have our concerts four times a year and not have to come in and get a Special Event Permit. MATT WELSH is here to answer any questions about water.

BARNES: Thank you, Planning Commission do you have any questions?

HOOD: What is the status of the water?

WESLSH: First let me state that the application was submitted to the state. On March 23, 2010 we received the comments from the state and responded. There were no points of contention from them in those responses.

BARNES: Any other questions regarding water while MATT is up here?

No response

MULLEN: I will address this to BRAD. I have a copy of the visitor's guide 2010. On page eleven there is an advertisement for PAINTED VIEW and my focus was on your cantina which I refer to as a restaurant. You had emphasized your agricultural events which I believe was four times a year. If I read this advertisement your focus was on the restaurant, corporate events, weddings, and a full outdoor kitchen that is capable of up to a hundred people. Sounds like a very nice facility but it sounds like your emphasis is on the restaurant instead of the four mega events that you spoke of.

JOHNSON: Per the draft that we did collectively, four concerts is the maximum we would ever want to do. To augment that we are doing horse shows and it is not a restaurant that we do day in and day out. This is to compliment the other events that we have and is exclusive to our events and is not open to the public.

NEPA: I do not have any questions, I do have some comments. I believe that in any other community what they would refer to is spot zoning. I understand the need for the feed items for their horse groups. They are an insulated group and they do not contribute much to the county. They buy what they need and will go down the hill for example to buy cheaper gas. Also considering the feed store, you will never be able to resolve the numbers and kinds of feed that is available to make everyone in the valley happy and they will still go down the hill. I believe that the feed and the retail are totally beyond the scope of agricultural. I have been very supportive with this operation. I am not supportive of the feed store or the retail. It detracts

from the commercial areas of the county which we have put into the Master Plan and they should be far more limited on the retail side of things. Limiting it to the existing structures does not solve this problem. They have huge structures out there. I went to every business when we were trying to solicit new members and I specifically asked them how outside events affected their business. I had no positive comments. They felt like they did not have any business from them. With the exception of the event last night they had a few of the groups come into town and have dinner. With all the services that they are providing them I do not see how the towns are going to benefit.

BARNES: Thank you, is there any other question?

HOWARD: I would like to make a comment to last night's downtown Colorado round table that I attended. The Car Show parks on Main Street and they close down Main Street. Some of the comments was this actually is more detrimental to local business. In response to the comments that I heard this is an ideal venue. It has its own parking and is off Main Street, these folks have the opportunity to come spend dollars. It is not negatively impacting Main Street business.

BARNES: Thank you CINDY, any comments from the audience?

No response.

BARNES: Any comments from the COUNTY COMMISSIONERS?

CUSTER: I am fine with the way the conversation has gone so far. I have nothing more to add.

AUSTIN: What it does to the local economy is a tough one because it does bring in a lot of people. I also was at the meeting that CINDY was referring to. The point was made also that our local establishments might want to open early and close late during these events. I have to agree with CINDY it is a good thing. I appreciate the comments and I am ok with everything the way that it is.

BARNES: What is the pleasure of the Commission?

BAILEY: I make a motion that we recommend to the Commissioners that we approve the Special Use Permit as per the new list of conditions.

DONLEY: Seconded the motion.

Motion passed, unanimously.

REASONS:

BUCKLES: Yes, they worked in good faith to narrow the parameters of the facility. That is why I support it.

HOOD: Yes, I did not see anything in the application that did not support the community. I was concerned about the water but they have taken care of that.

COKER: Yes, the conditions placed on it seem logical. They have worked hard to work with us.

RORICK: Yes, everyone should have the right to make a living.

BAILEY: Yes, I agree with all the comments that have been stated. Looking at what they have done, what they did last year and how they put on the event. I agree that this is a good thing that they are doing.

DONLEY: Yes, They have met all the conditions that were placed on it.

BARNES: Yes, I support it. They have worked with us and have met all the conditions that we placed on them.

BARNES: Commissioners?

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

AUSTIN: Seconded the motion.

Motion passed, unanimously.

REASONS:

ATTEBERY: Certainly I believe that what RDH Holdings do on this property is a benefit to the community. If there are some complaints in writing we can act upon them.

CUSTER: As what has been said previously they have gone the distance and we have a good plan that is going to work.

AUSTIN: I support everything they have been doing. They have been honorable about everything and they have been right up front.

BARNES: Thank You, Motion has passed. Our next item on the agenda is the Zoning Boundaries. We had a presentation last month on some of the options. MR. MICHAELSON are you representing the property owner?

ATTORNEY PETE MICHAELSON: Yes, I am representing MATT MILES and his wife. They are the owners of the old KOCH ranch. We are not an applicant in this. We are here to protect the land owner. The statute talks about a certification process if you are going to have zoning plans. You are in fact passing a zoning ordinance by identifying those boundary lines. During a site visit CAROLE CUSTER, LYNN ATTEBERY, KEITH HOOD, KIT SHY and JACKIE HOBBY they took a look at MR. MILES' property where this ambiguity exists. . KEITH feels strongly about the line being on the ground following the knoll that would make it about the tenth choice. Before there can be a Zoning resolution adopted, the County Commissioners have to have a public hearing and a fourteen day publication notice for everyone in the community . That hearing is depending on recommendation from the Planning Commission. The Planning Commission has about ten choices on the boundary line concerning this property. MR. MILES would prefer that rather than have his property treated different than anyone else in the county it would be the center line of the creek and center lines of the roads. So the way the process has to work is that the Commission needs to make a decision on what your recommendation is to the Board among the ten or maybe eleven choices. Now if the Board thinks that they like a different choice, then it goes back to the Planning Commission. This process could go on and on. Mr. MILES would prefer not to have this in limbo. There are some reasons for this. I have spoken to the County Attorney and there is a potential for some litigation not necessarily from MR. MILES. There are issues that have been raised in this whole process. It has to be done right. We would like it to be quicker and not longer. MR. Miles does not want to see subdivision of his property and is considering a conservation easement. What you do here could have an impact on your whole Zoning code. The way we do this and how this Zoning Resolution is passed has to follow some steps. Some of the issues that become legal issues is what is it that you are amending? What the previous map is or isn't? What is the basis for the choice you make? Mr. MILES' property is treated different than anyone else. Just to the North of them is some hay meadow that is in the five acre zone. The creek is what is used for their property description. That is how it has been described since the original map MR. MILES would like to see done here is what has been consistent with the scheme in place that affected his neighbors and that his property not be subjected to a random choice. The Zoning ordinance, as it ends up being adopted here, can be enforced and not at the expense of my clients property rights. The choice before you, whatever your recommendation, is you want to end all those concerns in the final recommendation? My request of the Board is the statute does not

say that if there is a substantial change that it has to have a fourteen day publication. I think that there could be enough exchange today that the Planning Commission makes a recommendation to the Board. Collectively, as you discuss it, you would end up with the best of the ten choices. The Board of Commissioners would find consistence with what you decide here today for publication. There are some legal issues that could lead to a legal challenge by my client. I have been speaking to county attorney MR. Naylor An executive session would be in order to discuss some of the legal issues. There is a case from the Court of Appeals that discuss Zoning map issues It is about as close to what is going on here today. With some consequences' that make me anxious. I don't know if MR. Naylor wants to go into executive session?

NAYLOR: Yes, this court case makes me anxious also. We can always use advice from an attorney.

COMMISSIONER ATTEBERY made a motion, seconded by COMMISSIONER AUSTIN to go into Executive Session, citing Colorado Revised Statute 24-6-402 regarding a conference with an attorney regarding legal advice on a specific legal question.

Motion passed unanimously by the County Commissioners.
Executive Session: 1:48 P.M.

ATTEBERY: Made a motion, seconded by AUSTIN to go back into Regular Session at 2:35 P.M.

Motion passed unanimously by the county commissioners.

ATTEBERY: Members of the audience, thank you very much. Usually when we come out of Executive Session the Chairperson makes a statement regarding the Executive Session. I attest that I am the Chairperson of the Custer County Board of Commissioners and confirm that the discussion remained on topic and that no matters were adopted and no actions or decisions were made. I will turn the meeting over to the Chairman of the Planning Commission.

BARNES: Thank you, MR. MICHAELSON or MR. MILES do you have any further comment?

MICHAELSON: No

BARNES: Planning Commission any comments?

No response

BARNES: Comments from the audience?

No response

BARNES: Comments from the, County Commissioners?

Custer: Not at this time.

ATTEBERY: No, not at this time.

AUSTIN: No, not at this time.

BARNES: We will go back to the Planning Commission for their recommendation.

BAILEY: I will make a motion that the line for Zone four follow the center line of Grape Creek south and east until it meet the section line, between sections four and five, go east on section line between four and five then to Colfax road, then the center line of Colfax to center line of Highway 69.

BUCKLES: Seconded the motion.

BARNES: I will ask for a vote, all in favor?

Six in favor

BARNES: All opposed?

One against.

Motion passed

REASONS:

Buckles: Yes, Government exists for the benefit of the citizens and not as a hindrance.

COKER: Yes, this was the quickest way to solve this issue.

RORICK: Yes, it rectifies a situation that was not created by MR. Miles

BAILEY: Yes, we needed to get this resolved quickly this is the best to resolve this.

DONLEY: Yes, this is the fastest way to resolve the problem

HOOD: No

BARNES: Yes, our mission here is to get a clear definition of where this line should be and for the benefit of the county.

BARNES: The Commission has provided their recommendation to the Board of County Commissioners.

ATTEBERY: Do I have a motion to accept their recommendation.

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

ATTEBERY; Seconded the motion

Motion passed unanimously.

REASONS:

CUSTER: MR. MILES I truly appreciate you bringing this to our attention and to work together to resolve this issue to everyone's benefit. We need to take it to the next step which is a public hearing.

AUSTIN: We need to resolve it.

ATTEBERY: I voted for the recommendation. I don't think it is perfect. It at least gets us a step in the right direction where we can hear from our public concerning these zone boundaries.

And, it takes it out of the hands of the Planning Commission and directed to the County Commissioners and I hope when we do get to this that we will hear comments from the public. This needs to be resolved. Keith and I looked at it trying to think of the intent of the leaders at that time. Trying to put this together is too difficult for us to try and figure out. They were talking about irrigated land and protecting the valley floor. This way we can define something for the neighbors and the community around this area. We certainly would have their input so we can move forward with our Zoning Resolution.

NAYLOR: We will need to have a motion to reflect the amended Zoning map.

DONLEY: I make a motion that between now and the public hearing on this map clarification, that the present map of 2002 that was part of the Zoning Resolution be used, and that the new amended map includes all the changes.

HOOD: Seconded the motion.

Motion passed unanimously

BARNES: Our next agenda item is a presentation from DENISE CULVER from the Natural Heritage Program.

CULVER: Showed the Planning Commission a power point presentation. My name is DENISE CULVER and I am a biologist with the Natural Heritage Program. We are a science based program that is non profit and we work with the Colorado State University. We are the only repository for information on Colorado plants, and animals as well as their critical habitat. I am presenting this idea to the Planning Commission with the idea of seeking grants to perform a survey to document this in Custer County. We have completed all the counties next to your county with the exception of Huerfano County. One of the first questions asked of me is why we even need this? The natural treasures that you have here in Custer County and with the rural character of the county and the huge vistas and open space, this project would help you plan for the future. If this would get approved you would have access to a team of experienced biologist, for your property at no expense to the landowner. This is volunteer participation and we never trespass on other people's property. Every landowner would be contacted and at that time they could say yes or no. There is one endangered species in Custer County and that is the Mexican Spotted Owl, which is usually found in the high mountain areas. The landowner has control over the data. If the landowner has problem with the data then I will turn over my field notes to the landowner. The data is placed on the map with x marks the spot and if someone would look at that data they would not know where it is exactly located. Somewhere in the next 4 square miles, with a random center point this species occurs. One of the concerns that was brought up at the meeting with the County Commissioners in 2008 is the Freedom of Information Act and the Colorado open record act. I have checked our legal counsel at CSU and our database can be assessed only by us. Are there any question?

DONLEY: If I am a property owner and you find something on my neighbor's property that will fall into those one to two miles or four miles. Then my property can be affected also.

CULVER: Yes that is correct. That polygon could easily fall into an adjacent land owner's property. The information that the Heritage collects has no legal implication it's for planning purposes to know where sensitive areas are.

HOWARD: I have the same question but with different implication. If it's on public land then my property could be affected.

CULVER: Yes, it is very ambiguous. Somewhere in the county basically this plant occurs.

HOWARD: Wouldn't that have impact also if it's a mile or four miles within public lands.

Wouldn't that have an impact to limit access to a wilderness area if there is an endangered plant?

CULVER: No, there are no endangered plants within the county. Any information that we collect has no regulatory implications. This is to let you know what the important natural resources are in the county. This is information that typically the landowner would have to purchase. This information, as a landowner would help you get money for habitat for the wildlife, like the wetlands. It helps with funding opportunities for those folks who sign up for it.

SUSIE COLEMAN: If you know there are no endangered plants and one specific animal what impact are you going to have by going and looking for other things?

CULVER: I think the impact would only be good. You would have this team of biologists at your disposal for an entire summer.

COLEMAN: Why does Custer County need this?

CULVER: If you are considering getting money from some of these agencies like Natural Resources Conservation Service they will need this information.

COLEMAN: We have done that before and did not need that information.

DONLEY: I agree. I did not need this information.

CULVER: I would like to add that this is not going to negatively impact your property.

CULVER: So the next steps are that the Planning Commission will make a recommendation to the Board of County Commissioners. The internal optimist that I am, then the next step would be that the first grant needs to be written in June and it usually happens if I have a support letter from the County Commissioners. Then the next grant would be through the County and that would be due in August. I would help write that and submit it to the County. That money cannot be used for administrative costs and so the Planning and Zoning office would probably spend a couple hours a month also on this project. Hopefully the project would begin next year. In summary it is volunteer program and all decisions' will be made on the available data.

HOWARD: There are no matching funds for money for the grant from the County?

CULVER: Yes, for the second grant but over the years I have received Federal funding to help with the matching funds.

BARNES: Thank you DENISE. I will ask if the Planning Commission has any questions.

BUCKLES: You have made reference to right and wrong decisions made by various boards. What criteria are you using to decide what is a right and wrong decision?

CULVER: I did not mean it that way, I meant informed decisions.

BAILEY: On the agenda this is posted as an informational item.

NAYLOR: We will need to amend the agenda and make a recommendation to the Board of County Commissioners or keep it as a presentation.

RORICK: I make a recommendation to the Commissioners that we forgo this opportunity at this time.

HOOD: Seconded the motion.

Four were favor.

Two were in against.

One abstaining

REASONS:

HOOD: I voted against it. It is just another level of bureaucracy.

DONLEY: I opposed it because I could deny permission to access my property, I have no control of who is surrounding me and I could be impacted on what they did on their property.

BAILEY: I agree with what BILL said. We have some organizations here that do a good job with plant life.

BUCKLES: I actually cast a no vote. I could not find a reason to support it and I could not find a reason not to support it. The fact that it is volunteer program is a benefit, but even being volunteers the fact is that it could affect the neighboring land owners. I have no conclusion at this time. So I abstain from voting.

COKER: I voted against the motion from the perspective that the more data as a Planning Commission can't hurt.

RORICK: I made the motion against it for the reason that most of the land in Custer County is owned by the Government not the County. As a pretty big parcel of land that we own and lease t we know that they would not be given permission to be on this land. I don't believe that the bigger land owners of this county will give permission for them to be on their property and that leaves the little land owners. They can always come back and put it through as a community vote.

BARNES: I opposed it because I think we need to be open minded about it and like what ROD said the more data is beneficial. I spent my career working as a wildlife biologist and studying plants and the more data you can get from this kind of program is always beneficial. I don't accept the comments about the affect from neighboring properties. If we look at our Master Plan it falls right in line.

BARNES: Commissioners?

CUSTER: Make a motion that we take the Planning Commission's recommendation

ATTEBERY: Seconded the motion

Motion passed

Two in favor

One against

REASONS:

ATTEBERY: I voted in favor of the recommendation from the Planning Commission. If it was turned around a little different, it was a little different when you say that the data is held onto and only certain people get the information. That is today and we don't know what is going to happen five years from now. If some organization needs the data they will probably get it and that is where I have a problem.

Austin: I probably brought this in the door. LYNN said that he thought it should go through the Planning Commission and I agree with that. I think this is the best service and the community needs to have the opportunity to say they do not want to participate. I am disappointed.

CUSTER: We have seen the chair of the Master Gardens here and I commend what you are doing. I believe that this is another layer of what we are doing and we do not need it at this time. So my vote is no.

BARNES: Do you have anything you need to talk about JACKIE?

HOBBY: Yes, don't forget tomorrow is the Master Plan hearing from 1:00 P.M. to 3:00 P.M.

BARNES: Thank you for DENISE for coming.

CUSTER: Make a motion to adjourn at 1:52 P.M.

ATTEBERY; Seconded the motion.

BARNES: Tomorrow we have the Master Plan meeting from 1:00 P.M. to 3:00 P.M. and unless something happens that will probably be the last Master Plan public meeting. We will set up a Subdivision workshop at our next meeting.

BAILEY: Made a motion to adjourn.

DONLEY: Seconded the motion.

Meeting adjourned at 3:47 P.M.