

ELBERT COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS MEETING MINUTES

Regular Meeting Held in the BOCC Meeting Room

March 13, 2024 at 9:00 AM

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Rhonda Braun Recorder, Elbert County, Co



A. INVOCATION/PLEDGE OF ALLEGIANCE:

County Manager Shawn Fletcher provided the Invocation and led the Pledge of Allegiance.

B. CALL TO ORDER AND ROLL CALL

The regular meeting of the Board of County Commissioners was called to order at 9:02 AM. Deputy Clerk Emily Backhus-Irwin called the roll and all Commissioners were present.

C. APPROVAL OF AGENDA

Motion: Approval of Agenda as presented.

Commissioner Grant Thayer made a motion to Approve the Agenda as presented. Commissioner Dallas Schroeder seconded the motion.

Yes - Chris Richardson, Grant Thayer, Dallas Schroeder

No - None

D. CONSENT AGENDA

Motion: Approval of Consent Agenda as presented

Commissioner Dallas Schroeder made a motion to Approve the Consent Agenda as presented. Commissioner Grant Thayer seconded the motion.

Yes - Chris Richardson, Grant Thayer, Dallas Schroeder

No - None

1. Approval of CDS Mylars as needed
2. Approval of Vouchers as needed
3. Acknowledgment of CED Pipeline Report
4. Ratification of SafeBuilt Agreement

E. ELECTED OFFICIALS/DEPARTMENT HEADS/STAFF REPORTS

County Clerk and Recorder Rhonda Braun spoke about the recent primary election that occurred on Tuesday, March 5, 2024. Ms. Braun stated that there were about 150 in person voters. Ms. Braun thanked Maureen Duffy, all of the election judges and the Elbert County Posse for their efforts to have a smooth election that was a great success.



Commissioner Richardson talked about a joint board meeting between Douglas County and Elbert County Commissioners. Commissioner Richardson read a passage about an interrogation that occurred regarding a certain missing treasurer's book for the Sesquicentennial Tid-Bit.

F. CITIZEN PUBLIC COMMENT

Don Gray - 16000 Hwy 86 - Mr. Gray asked if there were any comments from Xcel yet about their project.

Chuck Hughes - 19753 Wedemeyer Rd - Mr. Hughes voiced appreciation for the Sheriff's office attending the BOCC meeting. Mr. Hughes spoke about a book he had read, 'Rural White Rage'.

Commissioner Richardson commented that Xcel still has not presented an application and also that the green energy bill has not been introduced yet. Commissioner Richardson read aloud two emails from Ron Kosher and CJ Patton in regards to locking developers fees and freezing impact fees.

G. DISCUSSION ITEMS

1. Discussion of Citizens' Concerns regarding Engagement of Deputies for Private Security

Commissioner Richardson read an email from Roger Schultz. Mr. Schutlz has concerns with the off duty deputies escorting the surveyors and Xcel. Mr. Schultz was told by a deputy that if homeowners created a problem, he would handcuff them and call for an on duty officer to arrest them. Mr. Schultz is opposed to the violation of their rights.

County Attorney Bart Greer recited Statutory Surveys statute 18-4-515 that states a licensed surveyor is allowed to perform surveys on private land as long as the 14 day notice had been mailed to the homeowner. Mr. Greer also stated the surveyors must carry ID and identify their employer. The surveyor can only do a boundary survey, not a fence line, gates or structures.

County Sheriff Tim Norton stated that their office has been dealing with the problems involving Xcel for quite some time. Sheriff Norton was told about one of the meetings being held in Simla that ended up getting canceled for safety reasons. Sheriff Norton said the meeting was moved to Kiowa and his office was asked to provide security. Sheriff Norton stated they are there to keep the peace only and to protect people's rights. There was discussion that the sheriff's office does charge \$65 per hour for one deputy and one county vehicle paid by Xcel and that \$5 per hour of that \$65 goes towards the use of the county provided vehicle. Sheriff Norton reiterated that his office is agreeing to this arrangement only to keep the peace.

Public Comment:

Don Gray - 16000 Hwy 86 - Mr. Gray stated that he spoke to one of the deputies after a survey was performed and the surveyor was in the patrol car. Mr. Gray feels the Sheriff's office shouldn't be doing this. Mr. Gray stated he has attended all of the Xcel meetings and has never acted threatening. Mr. Gray also said that when speaking to the deputy, the deputy said he was over reacting. Mr. Gray mentioned that there was one individual who did not receive a notice and was confronted by the deputy and surveyor. Mr. Gray asked Mr. Greer about the statute again.



Attorney Greer read the statue again verbatim, specifically about the notices being sent to residents at least 14 days before the desired date of entry on the property by certified mail and regular mail.

Commissioner Thayer asked Mr. Gray if he received his notice and Mr. Gray said yes.

Eric Jiblits - 19656 Wedemeyer Road - Mr. Jiblits stated he is against the Xcel Power Pathway Project, supports our law enforcement and against police state. Mr. Jiblits stated that the impression being given by the Sheriff's office is that Elbert county is being used to further police state and that he has a right to protect his property.

Debby Cromer - 24372 County Road 122 - Ms. Cromer expressed concerns about the \$5 per hour charge for the county vehicle use. Ms. Cromer believes that is not nearly enough being charged. Ms. Cromer also spoke on the Xcel meeting in Simla where the residents attending the meeting to express their opinions were basically told that Xcel has already made their decision. That they made up their minds and are creating a problem by putting the cart before the horse.

Jay Stretcher - 30012 Hwy 24 - Mr. Stretcher stated he was approached by a deputy and asked for permission to park on his driveway on not on Highway 24 for safety reasons. Mr. Stretcher agreed.

Mark Kanipe 17274 Hwy 86 - Mr. Kanipe stated he did not receive any notices from Xcel. Mr. Kanipe said he has a no trespassing sign on his property and on March 4th there were two vehicles at his front gate where they parked inside his property line. Mr. Kanipe attempted to file trespassing charges with the Sheriff's office. Mr. Kanipe wasn't given names of the employees on his land when he tried to file charges. Mr. Kanipe was told that the county approved Xcel to be on his land because he has an easement. Mr. Kanipe stated he does not have an easement.

Brad Ray - 17112 Hwy 86 - Mr. Ray expressed concerns when he was contacted by an armed deputy a quarter mile down his driveway and being alerted there was a surveyor on the back side of his property. Mr. Ray stated he wasn't notified that the Sheriff and surveyor would be there and feels his rights have been violated. Mr. Ray stated his is worried that the survey company is collecting other data points besides boundary information.

Soni Conner - 40388 Moonstone Ct - Ms. Conner asked Sheriff Norton if there was a prepared speech for the deputies when they arrive on someone's property and are presented with questions.

David Healy - 2795 Gold Creek Dr - Mr. Healy is very surprised at how aggressively Xcel is taking this project. Mr. Healy also said he wants the county to stay ahead of Xcel.

Darrell Littlefield - 27454 CR 113 - Mr. Littlefield inquired about any legal proceedings being done before the notices being sent out by Xcel. Mr. Littlefield spoke about fee simple ownership for our residents being taken away from property owners that citizens have a right to in the U.S.

Sheriff Norton addressed the public's concerns and questions.

In regards to handcuffing, that was only if the situation got out of hand, there are no speeches prepared for those deputies, his deputies are there only to keep the peace. One deputy did go around to other properties as a courtesy to alert them of what was going on. Sheriff Norton reiterated that they do not support the Xcel project, only to keep the peace. The Sheriff's office is working on reasonable fees for using county equipment. Sheriff Norton said his Deputy felt he was doing the residents a favor by letting them know they were there. Sheriff Norton wasn't entirely sure his deputies were aware at the time about the statute, but they are all aware now.

Commissioner Richardson said he would like the policy changed on the statute in regards to no mention of proof of receipt when notices are sent to residents.

Mr. Gray inquired as to who is liable if something were to happen to a deputy when they are off duty.

Commissioner Richardson stated there are regulations in place with additional liability insurance available.

Mr. Hughes spoke again about the boundary lines only and was very adamant about it being just that, concerned about citizen take a way.

Commissioner Richardson stated the application still hasn't been received. The Commissioners will provide a fair hearing when it does arrive. Once received, will hold all public comment in the issue until hearing per statutes. Public comment could be taken as testimony instead of just comment on a pending application. Must preserve due process.

Ms. Conner inquired about the legal process in regards to the Sheriff being able to or not able to state he can file the charges for the trespassing.

Sherrif Norton stated the County Attorney already stated it in the statute.

Mike Buck 39255 CR 17 - Mr. Buck said he is against the Xcel power lines, supports the Sheriff's office.

Mr. Buck stated Xcel hasn't submitted their application, they have lobbyists for legislation to take away rights from counties. Mr. Buck questioned if other counties are against this as well.

Commissioner Richardson said that there are lobbyists speaking for our county along with 63 other counties feeling the same way Elbert County does, working with CCI and having lots of zoom calls pushing back on this project.

2. Discussion Regarding Methadone Treatment Contract

Attorney Bart Greer spoke about the progress of the contract. He has been asking for changes to be made. Mr. Greer received a response for him to make changes and he is willing to do so. Mr. Greer still has some more questions directed towards the Sheriff's Office that need to be answered and will continue to follow up.

No public comment

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H. ACTION ITEMS

1. Consideration of February 28, 2024 Minutes

Motion: Approval of February 28, 2024 Minutes

Commissioner Grant Thayer made a motion to Approve the Minutes as presented. Commissioner Dallas Schroeder seconded the motion.

Yes - Chris Richardson, Grant Thayer, Dallas Schroeder

No – None

2. Consideration of Approval of BOCC Budget Guidance for 2025

Motion: Approval of BOCC Budget Guidance for 2025

Commissioner Dallas Schroeder made a motion to Approve the BOCC Budget Guidance for 2025. Commissioner Grant Thayer seconded the motion.

Yes - Chris Richardson, Grant Thayer, Dallas Schroeder

No – None

3. Consideration of Approval for the Updated Finance Policy

Motion: Approval for the Updated Finance Policy

Commissioner Grant Thayer made a motion to Approve the Updated Finance Policy. Commissioner Dallas Schroeder seconded the motion.

Yes - Chris Richardson, Grant Thayer, Dallas Schroeder

No – None

4. Consideration of Approval of Library Board Appointments

Motion: Ratification of Library Board Appointments

Commissioner Dallas Schroeder made a motion to Ratification of Library Board Appointments. Commissioner Grant Thayer seconded the motion.

Yes - Chris Richardson, Grant Thayer, Dallas Schroeder

No – None

I. BOARD PLANNING

1. Agenda Items for Next Meeting

- a) Status of budget from the Finance Department
- b) Update from the Clerk and Recorder with regard to a Special Election

Commissioner Richardson called a recess at 10:32 AM to return at 1:00 PM for the Land Use Hearing.



J. LAND USE HEARINGS 1:00 P.M.

The Land Use Hearing was called to order at 1:00 PM. Deputy Clerk Emily Backhus-Irwin called the roll and Commissioner Grant Thayer and Commissioner Dallas Schroeder were present. Commissioner Chris Richardson recused himself from the hearing.

1. Phantom Creek Rezone (P-2023-00039)

Motion: To Open a Public Hearing for Phantom Creek Rezone (P-23-00039)

Commissioner Grant Thayer made a motion to Open a Public Hearing for Phantom Creek Rezone (P-23-00039). Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder

No - None

Public Hearing Opened at 1:00 PM

Land Use Planner, Danny Klibaner presented the application for the Phantom Creek Rezone. Mr. Klibaner stated that the rezone of 126 acres would be from Agricultural to Agricultural Residential. The property address is 39010 County Road 21 and 39622 County Road 21 in Elizabeth. Mr. Klibaner stated that this project will have private road access, 20% open space and trail access. The properties will have larger lots with individual well and septic systems and also wildlife friendly fencing. Mr. Klibaner also said a road maintenance agreement with a Subdivision Improvement Agreement will be required. Staff recommends approval of the rezone.

Applicant Mike Brownson thanked Danny and the CDS team for all their hard work. Mr. Brownson stated he has lived in Elbert County for 36 years and has been working on this project for about 4 years now. Mr. Brownson stated he spent a lot of time envisioning what this project would look like and is excited to share the growth with the neighbors. Mr. Brownson understands the concerns about water and has completed water studies saying he's very pleased with how it's progressing.

Public Comment - None

Motion: Approve the Phantom Creek Rezone (P-23-00039)

Commissioner Grant Thayer made a motion to Approve the Phantom Creek Rezone (P-23-00039). Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder

No - None

Motion: To Close a Public Hearing for Phantom Creek Rezone (P-23-00039)

Commissioner Grant Thayer made a motion to Close a Public Hearing for Phantom Creek Rezone (P-23-00039). Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder



No - None

Public Hearing Closed at 1:22 PM

2. Phantom Creek Preliminary Plat (P-2023-00040)

Motion: To Open a Public Hearing for Phantom Creek Preliminary Plat (P-23-00040)

Commissioner Grant Thayer made a motion to Open a Public Hearing for Phantom Creek Preliminary Plat (P-23-00040). Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder

No - None

Public Hearing Opened at 1:23 PM

Land Use Planner Danny Klibaner presented the application for the Phantom Creek Preliminary Plat. Mr. Klibaner stated the plan was to subdivide the 126 acres into 10 lots with approximately 28 acres of open space along a dry creek bed. The location is 39010 County Road 21 and 39622 County Road 21. Mr. Klibaner also stated that a minor variation is also being requested to create more uniformity of some of the lots. Mr. Klibaner said the Subdivision Improvement Agreement and Road Maintenance Agreement will also be required. Mr. Klibaner mentioned there is a potential hazard from a historic shooting range that must be resolved before the final plat approval. Staff recommends approval of the preliminary plat.

Applicant Mike Brownson explained the use of Pronghorn Avenue to the north. Mr. Brownson said the HOA's were inactive, and any agreements were handshakes. Mr. Brownson agreed to 100% maintenance of the 710+/- feet of Pronghorn Avenue to the entrance of Phantom Creek. Mr. Brownson stated he has been speaking with residents in both Foxtail and Hidden Pines Subdivisions trying to get the community together to agree to him maintaining the road especially with concerns of snow removal.

Mr. Brownson spoke about the shooting range hazards and stated he did not have much concern with it since the area was so rural.

Public Comment -

Keith Long - 5511 Pronghorn Ave - Mr. Long voiced his frustrations about how the applicant approached the process for his project and also brought attention to the Board the concerns with the shooting range.

William Hammond - 39410 Lone Elk Cir - Mr. Hammond stated that Pronghorn Avenue is a private road with verbal agreements between the residents for maintenance. Mr. Hammond spoke about his concerns with increased traffic about 2 times more than normal in the future. Mr. Hammond stated that there is not an HOA and is opposed to the applicant maintaining the 710+/- ft of Pronghorn Avenue.

Jeri McTaggart - 39600 Fox Trot Cir - Ms. McTaggart presented a few slides representing the flood plains and flood zones to the Commissioners. Ms. McTaggart stated their area has had 3 major flood events and the proposed lots presented by the applicant including lots 3, 4 and 10 are the most impacted when floods happen. Ms. McTaggart also stated that water spills over County Road 21 when heavy rains are present.

Amy Ford - 39702 Fox Trot Cir - Ms. Ford read off some regulations from the ECSR. Elbert County Subdivision Regulations. Ms. Ford mentioned a regulation about unstable land and recited some of the frequently asked questions. Ms. Ford expressed her concerns with the minor variation application.

Arthur Reidel - 39705 Fox Trot Cir - Mr. Reidel stated that when he and his wife moved in they enjoyed the community, there was a recorded HOA but everything ran on a handshake. Mr. Reidel stated he has plans to use his lands for agricultural purposes and is concerned that all the applicant wants to do is to make money or save money.

Bart McTaggart - 39600 Fox Trot Cir - Mr. McTaggart request the Commissioners to either delay approval of the plat or deny it. Mr. McTaggart stated his opinion is that not everything is being considered along with the concerns for flooding as well as the shooting range issues.

Mr. Brownson stated he has serious concerns about his integrity. Mr. Brownson spoke about the use of Pronghorn Avenue amid concerns from neighbors, addressed the flooding concerns for lots 3, 4 and 10 at length.

Commissioner Thayer had some questions regarding the flood maps that were presented to him, specifically about the setbacks for the flood plains. Commissioner Thayer agreed that a road maintenance agreement must be created and that there are several other items to resolve before approval.

Commissioner Thayer recommended a continuance of the Preliminary Plat.

Commissioner Schroeder questioned the second access on the eastern end of Pronghorn and asked if it is truly an access.

Community and Economic Development Director Marc Dettenrieder spoke about the access and stated it does fall into Elbert County Road and Bridge standards and fulfills the requirements.

County Attorney Bart Greer stated he is unsure it is actually an access and said it would be nice to have an Subdivision Improvement Agreement already put together so the right questions could be asked.

Public Works Foreman Jay Walp cited the regulations for access and believes they were put in place for wildfires to his understanding. That it doesn't specify if the secondary access meets the standards.

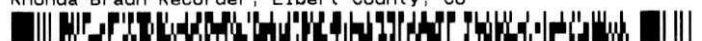
Commissioner Schroeder asked how the storms from 2023 affected this property.

Public Works Director Monty Hankins stated they didn't really affect it, but Public Works wasn't necessarily looking at Phantom Creek.

Mr. Klibaner re-reviewed the drainage study performed by Kimley Horn.

Commissioner Schroeder asked for an executive summary before the final plan and asked Mr. Klibaner if FEMA designated this area as a flood zone.

Mr. Klibaner said no it is not a FEMA flood zone.



Mr. Brownson stated there has been 14 years since a storm has created the type of water flow that they had this summer. The berm on their property is the old bypass the county created when they were adding the new culverts to County Road 21. Mr. Brownson also stated the water does not go above that berm.

Commissioner Schroeder asked Mr. Greer for a better definition of non-exclusive access.

Mr. Greer stated he would like to do more research on that.

Commissioner Schroeder asked Mr. Klibaner if there is was a soil study done on the shooting range.

Mr. Klibaner stated that their department is not far enough along on the study for any answers yet. It appears the berms should be simple to remove.

Commissioner Schroder voiced major concerns with the road agreement not being done yet and also the proposed conditions for approval.

Commissioner Thayer stated that only 2 people can vote on this topic at this time and suggested a continuance to April 24, 2024 to resolve the outstanding issues. Commissioner Thayer is not comfortable with not having enough information listed on the preliminary plat.

Mr. Brownson asked for more time and asked the Commissioners what else he needs to come with. Commissioner Thayer stated he needs to work closely with Community Development Services.

Mr. Brownson accepted the conditions.

Motion: To Continue the Phantom Creek Preliminary Plat to May 8, 2024 at 1:00 PM.

Commissioner Grant Thayer made a motion to Continue the Phantom Creek Preliminary Plat to May 8, 2024 at 1:00 PM. Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder

No – None

Motion: To Close a Public Hearing for Phantom Creek Preliminary Plat (P-23-00040)

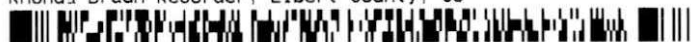
Commissioner Grant Thayer made a motion to Close a Public Hearing for Phantom Creek Preliminary Plat (P-23-00040). Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder

No - None

Public Hearing Closed at 2:54 PM

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Rhonda Braun Recorder, Elbert County, Co



K. ADJOURNMENT

Motion: To Adjourn



Commissioner Grant Thayer made a motion to Adjourn. Commissioner Dallas Schroeder seconded the motion.

Yes - Grant Thayer, Dallas Schroeder

No - None

The meeting Adjourned at 2:55 PM

BOARD OF COUNTY COMMISSIONERS

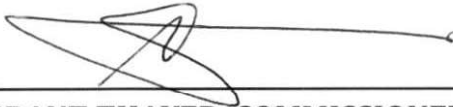
ELBERT COUNTY, COLORADO



CHRIS RICHARDSON, Chair, COMMISSIONER District 1



DALLAS SCHROEDER, Vice-Chair, COMMISSIONER District 2

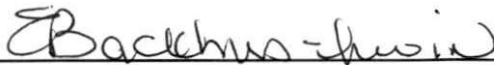


GRANT THAYER, COMMISSIONER District 3

ATTEST: Emily Backhus-Irwin

Deputy Clerk

BY:



Deputy Clerk to the Board of County Commissioners