

COMMUNITY & DEVELOPMENT SERVICES

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**MEETING MINUTES
PLANNING COMMISSION**

BOCC Hearing Room, 215 Comanche St., Kiowa, CO

DATE: February 20, 2024 TIME: 7:00 PM

- 1. CALL TO ORDER:** 7:03 PM - Chair Willcox
- 2. PRAYER:** 7:03 PM - Chair Willcox
- 3. PLEDGE OF ALLEGIANCE:** 7:04 PM - Led by Chair Willcox
- 4. ROLL CALL:** 7:04 PM
Commissioners Present: Chair Danny Willcox, Vice Chair Kevin Kirkwood, Van Sands, Eric Carlson, Robert Poletiek, John Gresham.
Commissioners Absent: DeDe Scott-Grace, Mike Buck, 1 Vacant Seat.
Staff Present: Danny Klibaner - Land Use Planner, Wendy Doyle - PC Recording Secretary.
- 5. REMINDER TO TURN OFF CELL PHONES:** 7:05 PM - Chair Willcox
- 6. STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S) PERTAINING TO MATTERS OF THIS BOARD:** 7:05 PM
D. Klibaner reported: Spring Valley Ranch F10 Final Plat was approved on February 14, 2024.
- 7. CONSENT AGENDA ITEMS:** 7:06 PM None – D. Klibaner
- 8. CITIZEN COMMENTS:** (unrelated to public hearings) 7:06 None – Chair Willcox
- 9. APPROVAL OF MEETING MINUTES:** 7:06 PM
Approval of December 19, 2023, Planning Commission Meeting Minutes.

MOTION: 7:07 PM
Commissioner Eric Carlson made the motion: Approve the December 19, 2023, Planning Commission meeting minutes as presented.
Commissioner Van Sands seconded the motion. **Motion Passed 6 – 0.**
- 10. PUBLIC HEARING PROCESS:** 7:07 PM - Chair Willcox presented:
The Planning Commission is a volunteer board appointed by the Board of County Commissioners (BOCC), a quasi-judicial commission that essentially takes the application at hand and references the regulations and ordinances in place and compares them with the application. Following the public hearing, the commission may vote three ways: 1. Vote to recommend approval; 2. Vote to recommend denial; 3. Recommend approval with conditions. Recommendations are forwarded to the BOCC holding the authority to approve the application. All testimony must be competent, on topic and not repetitious. The Chair's statement concluded with the order of business for public hearings.
- 11. CHAIR ANNOUNCEMENT – Conflict of Interest:** 7:08 PM
Phantom Creek Rezone and Preliminary Plat public hearings. Chair Willcox recused himself from all involvement with the public hearings; stating his home is located within public notification radius for both of the Phantom Creek Development

public hearings and received said notifications.

Vice Chair Kevin Kirkwood will perform the duties of the Chair for the remainder of this Planning Commission meeting.

12. PUBLIC HEARINGS: 7:10 PM

- 1. Phantom Creek Rezone (Case P-2023-00039)**
- 2. Phantom Creek Preliminary Plat (Case P-2023-00040)**

PUBLIC HEARING #1: 7:10 PM

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

STAFF PRESENTATION: 7:10 PM

Danny Klibaner, Land Use Planner. Applicant/Owner: Mike Brownson, Phantom Creek Development, LLC. Location: 39010 and 39622 County Rd. 21, Elizabeth, CO 80107, unincorporated Elbert County, East of County Rd. 21, and North of County Rd. 154, approx. 5 miles North of Elizabeth. The applicant is requesting to rezone 126 acres from (A) Agriculture to (AR) Agriculture Residential. Note: A Preliminary Plat (Case P-2023-00040) to subdivide the 126 acres into 10 lots (not part of the rezoning application) will be reviewed pending this rezone application. Surrounding properties: North – (A) Agriculture, Foxtail Farms Subdivision/35-acre lots; South – (RA-1) Residential Agriculture 1, Hidden Pines Subdivision/4+-acre lots; East – (A) Agriculture, 45-acre/35-acre lots; West – (A) Agriculture, 3 lots, approx. 40-acres each. Access to the development includes Pronghorn Ave., a private loop road that connects to Pronghorn Ave., and 2 private driveways that will serve the Southern two lots. Pre-Application submitted February 3, 2022; Formal Application submitted May 5, 2023; applicant has acknowledged and/or resolved all comments raised during the referral process; noticing was completed in accordance with the Zoning Regulations. . Slides presenting property location, aerial and zoning maps reviewed.

Six (6) criteria listed in the Elbert County Zoning Regulations, Article III.C.4 (a) – (f) for all rezone requests were presented and reviewed. The Planning Commission is to consider the Rezone Criteria in its review of this application.

Planning Department Findings:

- The proposed rezoning is In general conformance with the Elbert County Comprehensive Plan.
- The proposed rezoning meets all the criteria for approval in the Elbert County Zoning Regulations.
- The proposed rezoning meets the requirements for conventional residential development in the Elbert County Subdivision Regulations.
- The proposed rezoning is compatible with existing and allowable land uses in the surrounding area.
- The proposed rezoning will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

Planning Department recommends the Planning Commission recommend APPROVAL of the Phantom Creek Rezone (Case P-2023-00039) to the Board of County Commissioners, subject to the following conditions.

Conditions of Approval:

- The applicant will be required to remove the public hearing sign within seven (7) days of a decision by the Board of County Commissioners.
- The rezoning shall not become effective until all fees are paid, conditions of approval are met, and the exhibits are recorded.
- Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners' approval.

STAFF PRESENTATION FOR PUBLIC HEARING #1 CLOSED: 7:19 PM

VICE CHAIR ANNOUNCEMENT – Revision to Order of Business for Public Hearings: 7:19 PM

Public Hearing #1 closed following Staff Presentation.

Public Hearing #2 will commence with Staff Presentation.

PUBLIC HEARING #2: 7:20 PM

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

STAFF PRESENTATION #2: 7:20 PM

Danny Klibaner, Land Use Planner. Applicant/Owner: Mike Brownson, Phantom Creek Development, LLC. Location: 39010 County Rd. 21, Elizabeth, CO 80107, unincorporated Elbert County, East of County Rd. 21, North of County Rd. 154, approx. 5 miles North of Elizabeth. The applicant is requesting to subdivide 126-acres (currently (A) Agriculture zoning in the process to rezone to (AR) Agriculture Residential) into 10 lots with approx. 28-acres of open space along a dry creek bed. Property owner's personal 35-acre parcel, 39622 County Rd. 21, is not a part of the development. Surrounding properties: North – (A) Agriculture, Foxtail Farms Subdivision/35-acre lots; South – (RA-1) Residential Agriculture 1, Hidden Pines Subdivision/4+-acre lots; East – (A) Agriculture, 45-acre/35-acre lots; West – (A) Agriculture, 3 lots, approx. 40-acres each. Access to the development: Pronghorn Avenue, Phantom Creek Circle (a private loop road that connects to Pronghorn Ave.), and 2 private driveways to serve the Southern two lots. Possible solutions for private road access maintenance are being considered. Over 20% of the development will be dedicated to open space and larger lots to have individual wells and septic systems. A minor variation, in accordance with Zoning Regulations, will allow for a lot size variation of 10% or less. The small variation in lot size allows for more uniform lot shapes and a consistent delineation of the open space. Pre-Application submitted February 3, 2022; Formal Application submitted May 5, 2023; applicant has acknowledged and/or resolved all comments raised during the referral process; noticing was completed in accordance with the Zoning and Subdivision Regulations. Slides presenting property location, aerial and zoning maps reviewed. The Preliminary Plat meets the requirements in Article IV of the Elbert County Subdivision Regulations for providing all the required documents and information.

Five (5) approval criteria listed in the Elbert County Subdivision Regulations, Article I.C. (a) – (e) for all subdivision requests were presented and reviewed. The Planning Commission is to consider the Plat Approval Criteria in its review of this application. Pertaining to approval criteria (c), several drainage and erosion reviews were performed, and the State of Colorado is involved regarding a small, decommissioned gravel mine on the property.

Planning Department Findings:

- The proposal is in general conformance with the Elbert County Comprehensive Plan.
- The proposal meets all the criteria for approval in the Elbert County Zoning Regulations.
- The proposal meets the criteria for approval in the Elbert County Subdivision Regulations.
- The proposal is compatible with existing and allowable land uses in the surrounding area.
- The proposal will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

Planning Department recommends the Planning Commission recommend APPROVAL of the Phantom Creek Preliminary Plat (Case P-2023-00040) and to authorize a minor variation to the lot size (less than a 10% variation) to the Board of County Commissioners, subject to the following conditions.

Conditions of Approval:

- The applicant will be required to remove the public hearing sign within seven (7) days of a decision by the Board of County Commissioners.
- The rezoning shall not become effective until all fees are paid, conditions of approval are met, and the exhibits are recorded.
- Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners' approval.
- County and applicant come to an agreement for Pronghorn Avenue road maintenance.

STAFF PRESENTATION FOR PUBLIC HEARING #2 CLOSED: 7:37 PM

VICE CHAIR ANNOUNCEMENT - Revision to Order of Business for Public Hearings: 7:37 PM

Public Hearing #2 will continue with inclusion of Public Hearing #1 for: APPLICANT PRESENTATION, PUBLIC TESTIMONY, APPLICANT REBUTTAL, and BOARD ONLY DISCUSSION. A separate "motion" will be made for each public hearing.

APPLICANT PRESENTATION: 7:38 PM

Mike Brownson, Applicant/Owner, shared family residency and property history along with vision and considerations in designing the proposed development. Considerations included water/wells, community input, Pronghorn Ave. easement, Phantom Creek Circle, and road maintenance.

APPLICANT PRESENTATION CLOSED: 7:44 PM

PUBLIC TESTIMONY: 7:45 PM

Inquiries and Comments - in favor of and/or against - Requested Rezone and Preliminary Plat.

Residing in Elizabeth, CO 80107: Keith Long-5511 Pronghorn Avenue; Bart McTaggart-39600 Fox Trot Circle; Art Reidel-39705 Fox Trot Circle; Greg Hinds-5113 Pronghorn Avenue.

Topics included: Road Maintenance Agreement (RMA) - request RMA be in place prior to any project planning; proposed Lot 10 (gravel pit previously utilized as a gun range) lead contamination; proposed Lots 9 & 10 water runoff/past flooding; Environmental Impact Phases 1 & 2 Assessments/CDPAG; thermal image droning; secondary access egress; traffic count location Pronghorn Avenue, not County Road 21; questions/concerns compiled by property neighbors not submitted to County in time for Planning Commission agenda packet – hand-distributed to Commissioners*; Pronghorn Ave. access as opposed to County Road 21; neighborhood land use compatibility; visual buffers; open space access; tree care; lot size minor variation; developer; home sizes; property value impacts.

*Vice Chair Kirkwood noted: Staff will include the list of questions/concerns in the agenda packet for the Board of County Commissioners' March 13, 2024 meeting to include Phantom Creek Rezone and Preliminary Plat public hearings.

PUBLIC COMMENT CLOSED: 7:58 PM

APPLICANT REBUTTAL: 7:58 PM

Mike Brownson, Applicant/Owner: Proposed sole responsibility for entrance portion of Pronghorn Ave. road maintenance; gravel pit - minimal gun range use against a tire wall minimizing lead contamination; alternate entrance eliminated due to rainfall challenges; incorporating building envelopes/no-build zones; buffering – property Ponderosa Pines available to lot purchasers to transplant; open space – resident access gravel pathways, reviewing parking area for non-resident access, 20' easement behind Mr. Brownson's personal 35-acre lot to connect to Miller Ranch PUD's trail plan; covenants will address road/open space maintenance; researching tree pest identification and treatment.

APPLICANT REBUTTAL CLOSED: 8:09 PM

BOARD ONLY DISCUSSION: 8:09 PM

Brief discussions between Staff, Planning Commissioners and Applicant included:

Mr. Brownson confirmed he will be solely responsible for road maintenance of Pronghorn Ave. up to the first entrance of Phantom Creek Circle, including adding the asphalt apron to the edge of the County easement; consult with Elizabeth Fire Dept. on tree maintenance/mitigation; Lead cleanup is necessary; residents will utilize the West entrance of Phantom Creek Circle, East entrance gated for emergency use; Mr. Brownson confirmed Lot 10 containing the gravel pit is sellable/buildable, previously owned and reclaimed by County; County staff, unaware of the gravel pit gun range, will refer the contamination matter to Colorado Department of Public Health and Environment (CDPHE); wells – existing/new; building envelopes; water - culverts, drainage, overflow; HOA responsibilities; fire dept. service arrangement; wildlife friendly fencing; County staff to research Environmental Impact Assessment Phase 2; open space dry creek is not a FEMA designated floodplain.

BOARD ONLY DISCUSSION CLOSED: 8:26 PM

MOTION FOR PUBLIC HEARING #1: 8:26 PM

Commissioner Robert Poletiek made the motion: Recommend approval of Phantom Creek Rezone (Case P-2023-00039) to the Board of County Commissioners with the Conditions of Approval outlined in the Staff Presentation.

Commissioner Van Sands seconded the motion. **Motion Passed 5 – 0.**

Note: Chair Danny Willcox absent from public hearing due to Conflict of Interest.

MOTION FOR PUBLIC HEARING #2: 8:27 PM

Commissioner Van Sands made the motion: Recommend approval of Phantom Creek Preliminary Plat (Case P-2023-00040) to the Board of County Commissioners with the Conditions of Approval outlined in the Staff Presentation – and additional Condition of Approval: Colorado Department of Public Health and Environment (CDPHE) CDPAG Phase 2 Environmental Review of Proposed Lot 10.

Commissioner Robert Poletiek seconded the motion. **Motion Passed 5 – 0.**

Note: Chair Danny Willcox absent from public hearing due to Conflict of Interest.

13. ADJOURNMENT: 8:29 PM

MOTION: 8:29 PM

Commissioner Eric Carlson made the motion: Move to adjourn the meeting of the Planning Commission.

Commissioner Robert Poletiek seconded the motion. **Motion Passed 5 - 0.**

Note: Chair Danny Willcox ceased meeting involvement following recusal from public hearings

Minutes approved by Planning Commission 04/16/2024

Wendy Doyle, Recording Secretary.