

COMMUNITY & DEVELOPMENT SERVICES

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MEETING MINUTES
PLANNING COMMISSION

BOCC Public Hearing Room, 215 Comanche Street, Kiowa, CO 80117

DATE: April 1, 2025 TIME: 7:00 PM

1. **CALL TO ORDER:** 7:01 PM – Chair Kirkwood
2. **PRAYER:** 7:02 PM – Chair Kirkwood
3. **PLEDGE OF ALLEGIANCE:** 7:02 PM - Led by Chair Kirkwood
4. **ROLL CALL:** 7:03 PM – Carrie Seubert
Commissioners Present: Chair Kevin Kirkwood, Vice Chair Robert Poletiek, Van Sands, John Gresham, Nicole Hunt, and Diana Edstrom.
Commissioners Absent: DeDe Schott-Grace, Kyle DeNardo, and Dan McCallin.
Meeting Staff: Marc Dettenrieder, Director of Community and Economic Development; Kelsey Lanham, Land Use Planner; Danny Klibaner, Land Use Planner; Wendy Doyle, PC Recording Secretary; Carrie Seubert, Planning Technician.
5. **STAFF REPORT:** 7:04 PM – Marc Dettenrieder
Recent actions of the Board of County Commissioners reported.
6. **CITIZEN COMMENTS** Unrelated to public hearings: 7:04 PM – None - Chair Kirkwood
7. **APPROVAL OF MEETING MINUTES:** 7:05 PM
Commissioner Sands moved to approve February 4, 2025, meeting minutes as presented.
Commissioner Hunt seconded the motion.
Motion Passed 6 – 0.
8. **PUBLIC HEARING PROCESS:** 7:06 PM – Chair Kirkwood
Appointed by the Board of County Commissioners (BOCC), the Planning Commission is a quasi-judicial volunteer board that essentially takes the application at hand, references the regulations and ordinances in place, and compares them with the application. Following the public hearing, the commission may vote one of three ways: 1. Vote to recommend approval; 2. Vote to recommend denial; 3. Recommend approval with conditions. The recommendation is 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.

PUBLIC HEARING #1: 7:08 PM

GOODMAN REZONE (RZ-2023-00026)

Staff Presentation: Kelsey Lanham, Land Use Planner - presented the proposed application requesting approval to rezone 40.032 acres from Agriculture (A) to Residential Agriculture (RA) at Parcel No. 64254-00-002.

Based upon review of the approval criteria found in Elbert County Zoning Regulations Article III.C.4 and the findings in the Staff Report, staff recommends approval with conditions of the Goodman Rezone.

Applicant Comment: Katharine “Kathy” Goodman, Applicant/Property Owner, and Peter Demas – expressed appreciation to K. Lanham and stated agreement with the recommendations presented by staff.

Public Testimony Opened/Closed: None - Chair Kirkwood

Applicant Rebuttal: None – Chair Kirkwood

Board Discussion: Chair Kirkwood

Brief discussions held between Planning Commissioners, Staff, and Applicant included inquiries, responses, and requests. Commissioner Hunt:

- Zoning regulations do not require a certain time limit for community meetings; however, a more recent community meeting would have had interest in area rezoning and development since the August 2023 meeting. *Staff*-applicants (based upon time span) are made aware of 2nd community meeting option and via posted signs, mailings, and newspaper, adhere to public notification requirements;
- Request for community meeting information to be included in the Staff Report for future public hearings.
- Inquiry on three referral periods lasting 14 months. *Staff*-applicant required time to address project matters following the second referral period, resulting in the third referral period;
- Inquiry whether the January 2023 final drainage report (Elbert County’s Construction Standards and Specifications 2019 edition) is compatible with the current 2025 edition. *Staff*-Elbert County’s Engineer reviewed the application and had no objections to the final drainage report;
- Inquiry as to why the application was re-noticed for the March meeting. *Staff*-following the cancellation of the March 4th Planning Commission meeting, Elbert County Legal Counsel determined re-noticing was required.
- Inquiry as to why affidavits were distributed in hardcopy as opposed to being included in the agenda packet. *Staff*-March 4th agenda packet did not successfully transfer to the April 1st agenda packet;
- Inquiry on the individual on the March mailed notification certification and relation to the proposed project. *Staff*-due to short notice to process re-notification, Legal Counsel and the Director of Economic and Community Development authorized Megan Decker (Planning Technician) to complete certified mail notices;
- Request content of notice affidavit form be reviewed. Points to consider and recommendations stated;
- Inquiry about referral organization Colorado Division of Water Resources (CDWR) pertaining to water level declines and County consideration of resources for long term water supply. *Staff*-engineered documents are addressed by the Department of Public Works - specific details can be requested on behalf of the Planning Commission, if desired. CDWR did provide approval of the proposed project; and
- Request for referral letter follow-ups to be included in agenda packets. *Staff*-proposed project agenda packet did include the most recent CDWR letter.

Commissioner Poletiek:

- Inquiry on the community meeting process. *Staff*-process is a topic for Agenda Item 11. Work Session, Discussion Item – Regulations Updates following scheduled Public Hearings;
- Inquiry on qualification of referral agencies, referral packets, and role/responsibilities of County Engineer. I.e., CDWR. *Staff*-comments will be provided if County Engineer has objections; otherwise, referral letters are sent to the applicant to mediate items with referral agencies; and
- Inquiry on drainage report reviewed by Public Works Dept. (Road and Bridge) pertaining to 2019 rules and regulations. *Staff*-inquiry would have to be deferred to Public Works.

Commissioner Edstrom:

- Inquiries for date formal application submitted and zoning regulations in effect. *Staff*-formal application submitted October, 2023, referencing Zoning Regulations Amendment #4. Public hearing re-notification adhered to Zoning Regulations Amendment #5, recorded 2/20/2025;
- Request for staff to reference and adhere to zoning regulations in effect during the application process. Approval criteria and other documents in the project agenda packet adhere to both Zoning Regulations Amendment #4 and Amendment #5. *Staff*-presented a summarized review of zoning regulations approval criteria;

- Inquiry on agenda packet documents referring to rezone, minor subdivision, and both rezone and minor subdivision. *Staff*-public hearing for compliance with rezoning regulations only; minor subdivision follows an administrative process negate of public hearing;
- Request for property owner information to be corrected/clarified on the application prior to submission to the Board of County Commissioners (BOCC). *Staff*-will update the owner information in the Staff Report provided in the BOCC agenda packet to reflect Ms. Goodman as dual-owner of the 240-acres;
- Raised topic of plat documentation included in the rezone documentation. Chair Kirkwood advised the matter is appropriate for a work session discussion and referenced material included in the agenda packet for plat is not final nor considered during a rezone public hearing;
- Inquiry pertaining to the list of property owners and mailing map. *Staff*-Assessor's office created and provided the mailing list to applicant;
- Request for inclusion of all required documentation in agenda packets for Planning Commission review;
- Inquiry related to period of delay since community meeting and between referral periods in relation to zoning regulations timelines/requirements. *Staff*-planning staff determined a third (three week) referral period was warranted based upon period of delay;
- Inquiry as to why zoning regulations wording is not the standard wording used in agenda packet documentation. *Staff*-in the process of creating uniform templates; and
- Inquiries on how wording is selected for referencing zoning regulations and usage of its wording in documents. *Staff*-written clarification from the Planning Commission on language and zoning regulations references on documents would be highly beneficial.

Commissioner Kirkwood:

- Inquiry on water rights. *Applicant*-Denver, Arapahoe, and Laramie Fox aquifers to be utilized.

Call for Motion: Chair Kirkwood

Commissioner Sands moved to continue Goodman Rezone, RZ-2023-00026, an additional three (3) months.

Motion discussed without a second; hence, fulfilled the purpose of the second.

Board Discussion/Staff Comments: Staff recommended continuing this item to an earlier date and time certain as a three (3) month continuance is not needed. Marc Dettenrieder stated the next Planning Commission date available is May 6, 2025.

Call for Amended Motion: Chair Kirkwood

Commissioner Sands moved to amend the original motion to state Goodman Rezone, RZ-2023-00026, be continued to date and time certain Tuesday, May 6, 2025, 7:00 PM, at 215 Comanche St., Kiowa, CO 80117.

Commissioner Edstrom seconded the motion.

Motion Passed 6 – 0.

PUBLIC HEARING #1 GOODMAN REZONE (RZ-2023-00026) CLOSED: 8:32 PM

PUBLIC HEARING RECESS: 8:33 PM – 8:44 PM

PUBLIC HEARING #2: 8:44 PM

WF REAL ESTATE REZONE (RZ-2024-0023)

Staff Presentation: Kelsey Lanham, Land Use Planner - presented the proposed application requesting approval to rezone 40.035 acres from Agriculture (A) to Residential Agriculture (RA) at Parcel No. 64251-00-023.

Based upon review of the approval criteria found in Elbert County Zoning Regulations Article III.C.4 and the findings in the Staff Report, staff recommends approval with conditions of the WF Real Estate Rezone.

Applicant Comment: John Wilson, Applicant/Property Owner – extended appreciation for Commission's consideration.

Public Testimony Opened: Chair Kirkwood

Testimony in opposition: Bill Henry, 25000 Ben Kelly Rd., Elbert, CO 80106, Topics included road use/categorization/maintenance. Testimony in favor: None.

Public Testimony Closed

Applicant Rebuttal: None – Chair Kirkwood

Board Discussion: Chair Kirkwood

Brief discussions held between Planning Commissioners, Staff, and Applicant included inquiries, responses, and requests. Commissioner Edstrom:

- Inquiry for confirmation Zoning Regulations Amendment #4 utilized. Staff-confirmed;
- Raised topics of plat information in the staff presentation and zoning regulations exhibit criteria in the rezoning, not subdivision, process. Staff-explained rezone vs. subdivision/plat use of the exhibit. Chair Kirkwood advised the matter is appropriate for a work session discussion and referenced material included in the agenda packet for plat is not final nor considered during a rezone public hearing;
- Identified required documents excluded from agenda packet. Staff-March 4th agenda packet did not successfully transfer to the April 1st agenda packet; documents identified addressed; encouraged commissioners to communicate with staff prior to a public hearing should matters related to an agenda packet be of concern; and
- Recommended BOCC receive the Sept. 5, 2024, letter from Colorado Department of Water Resources containing a state engineer's opinion relating to proposed water supply for review.

Public Hearing Recess: 9:10 PM – 9:20 PM

Staff Request: Marc Dettenrieder requested a continuance to date and time certain April 15, 2025.

Board Discussion: Chair Kirkwood

- Commissioner Hunt requested proper procedures be followed for affidavit of sign posting; further address referral agency comments from the geological survey and Colorado Division of Water Resources (CDWR). Applicant-responded to all CDWR provided comments.

Call for Motion to Continue: Chair Kirkwood

Commissioner Poletiek moved to continue WF Real Estate RZ-2024-0023 to date and time certain Tuesday, April 15, 2025, 7:00 PM, at 215 Comanche St., Kiowa, CO 80117.

Commissioner Edstrom seconded the motion.

Call for Voice Vote: Chair Kirkwood

AYE: Robert Poletiek, Nicole Hunt, Diana Edstrom, and Kevin Kirkwood. No comments.

NAY: John Gresham - Applicant presented enough for rezoning request and issues on next phase should have been brought up with staff prior to meeting. Van Sands - I concur with reasons provided by John Gresham.

Motion Passed 4 – 2.

PUBLIC HEARING #2 WF REAL ESTATE REZONE (RZ-2024-0023) CLOSED: 9:27 PM

PUBLIC HEARING #3: 9:28 PM

SHAW REZONE (RZ-2024-2571)

Board and Staff Discussion: In order for the Planning Commission to judge the case and perform its quasi-judicial function, it needs to have all of the evidence before it. Zoning Regulations Amendment 5, Article II, Section B. General Requirements lists documents required.

Staff Presentation: Danny Klibaner, Land Use Planner - presented the proposed application requesting approval to rezone 40.1 acres from Agriculture (A) to Agriculture Residential (AR) at 25715 County Road 5, Elbert, CO 80106. The intent of the AR zone district is to permit a mix of agricultural uses and/or private residences; minimum lot size 10 acres.

Based upon review of the approval criteria found in Elbert County Zoning Regulations Article III.C.4 and the findings in the Staff Report, staff recommends approval with conditions of the Shaw Rezone.

Applicant Comment: Tracey Aaron, Authorized Representative for Dane Shaw, Property Owner – extended appreciation to D. Klibaner and noted the agenda packet Staff Report includes the one (1) communication she received in 2022 following the community meeting.

Public Testimony Opened: Chair Kirkwood

Testimony in opposition: Joe Pepper 25134 CR 5, Elbert, CO 80106; Dee Valdez Pepper, 25134 CR 5, Elbert, CO 80106; Mark Sutfin, 1777 CR 86, Elbert, CO 80106; and Nic Arellano, 25820 CR 5, Elbert, CO 80106.

Topics included road condition/use/safety/maintenance, traffic, water, public notification process, written request submitted for zoning community meeting to be held again; and neighborhood impacts.

Testimony in favor: None

Public Testimony Closed

Applicant Rebuttal: Ms. Aaron stated property owner's intentions for property, appreciation/respect for neighbors and property rights.

Board Discussion: Chair Kirkwood

Brief discussions held between Planning Commissioners, Staff, and Applicant included inquiries, responses, and requests. Commissioner Hunt:

- Community meeting held in August 2022; a more recent meeting would have provided neighbors opportunity to discuss zoning changes in the area since that date;
- Identified blank pages included in the agenda packet;
- Request for affidavit notice form to be reviewed for revisions;
- Required newspaper affidavit and traffic study not included in agenda packet. Staff-County Engineer advised a traffic study was not needed; thus, waived by the Director of Community Development Services, in accordance with the zoning regulations. E-mail from County Engineer provided in the agenda packet. Ranchland newspaper ran affidavit on two occasions; inadvertently not included in agenda packet;
- Inquiry regarding referral agency Colorado Geological survey recommendations pertaining to soil and foundation investigations and issuance of building permits; and
- Requested clarification on project considered a comparison for 10 acre lots in the area. Staff-comparison is a recently approved rezone in the area of the proposed project.

Commissioner Edstrom:

- Inquiry as to why a letter stating Director of Community and Economic Development waived the traffic study was not included in the agenda packet. Staff clarified County Public Works Director Hanks and Road and Bridge Foreman Walp determined traffic study was not necessary. Going forward, staff will include documentation of required documents waived in the agenda packet;
- Required title commitment not included in agenda packet. Staff-title commitment was received and placed in the minor plat exhibit as opposed to the rezone exhibit. The document will be included in rezone projects going forward;
- April 2023 list of property owners for notification reflects two different owners with addresses differing from those listed on the County Assessor's site along with one property shown to have been sold in August 2023. Staff-re-notification efforts exceeded zoning regulations requirements; and
- Review criteria stated in the zoning regulations and stated in the agenda packet briefly discussed as to how a decision is reached on criteria being met. Chair Kirkwood advised the matter is appropriate for a work session discussion.

Call for Motion: Chair Kirkwood

Commissioner Edstrom moved to continue Shaw Rezone (RZ-2024-2571) until agenda packet is full and complete. Motion discussed without a second; hence, fulfilled the purpose of the second.

Staff Comment: Marc Dettenrieder stated next Planning Commission date available is May 6, 2025.

Call for Amended Motion: Chair Kirkwood

Commissioner Edstrom moved to amend the motion to state Shaw Rezone (RZ-2024-2571) be continued to date and time certain Tuesday, May 6, 2025, 7:00 PM, at 215 Comanche St., Kiowa, CO 80117. Reasons: Missing required documents in the agenda packet and notification of the surround property owners is in question.

Commissioner Hunt seconded the motion.

Call for Roll Call Vote: Chair Kirkwood

AYE: Nicole Hunt and Diana Edstrom. No comments .

NAY: Kevin Kirkwood, Robert Poletiek, Van Sands, and John Gresham. No comments.

Motion Failed 4 – 2.

Call for Motion to Recommend Approval or Denial: Chair Kirkwood

Commissioner Hunt moved the Planning Commission make a *recommendation of denial* to the Board of County Commissioners of Shaw Rezone (RZ-2024-2571), due to failure to follow zoning regulations for notice and because it does not comply with Article III.C.4.(a) of the Elbert County Zoning Regulations which require that a proposed rezone is compatible with surrounding land uses.

Motion Failed – no second or discussion.

Call for Motion to Approve with Contingencies: Chair Kirkwood

Commissioner Sands moved the Planning Commission make a *recommendation of approval* to the Board of County Commissioners of Shaw Rezone (RZ-2024-2571), *subject to the conditions of approval* recommended in the staff report *and the contingency: The County provide the information that is missing from the application to the Board of County Commissioners.*

Commissioner Gresham seconded the motion.

Call for Roll Call Vote: Chair Kirkwood

Diana Edstrom – NAY. Has to do with the notification on the list of the owners as well as the two missing documents that were not in the package which made the package not complete.

Nicole Hunt – NAY. I believe that the applicant failed to follow Zoning Regulations for notice; I do not believe our packet was complete, required documents were not included; and I do not believe that it complies with the compatible surrounding land uses.

John Gresham – AYE.

Van Sands – AYE. I believe that the documents were submitted just not in the package and the County has an opportunity to provide those.

Robert Poletiek – AYE. With the contingency that the packet is complete to the Board of County Commissioners.

Kevin Kirkwood – AYE. With the same stipulations.

Motion Passed 4 – 2.

Chair Comment: Recommendation to Approve with the Contingencies as noted to the Board of County Commissioners assuming the package is complete.

PUBLIC HEARING #3 SHAW REZONE (RZ-2024-2571) CLOSED: 10:20 PM

PUBLIC HEARING #4: 10:20 PM

COOK REZONE (RZ-2024-2439)

Staff Presentation: Danny Klibaner, Land Use Planner - presented the proposed application requesting approval to Rezone 0.276 acres (12,022 sq ft) from Commercial (C) to Residential-2 (R-2) at 24395 Main Street, Elbert, CO 80107. The property includes parts of lots No. 15, 16, 17, and 18 in the existing Fricks Addition Subdivision that was approved in 1993.

Based upon review of the approval criteria found in Elbert County Zoning Regulations Article III.C.4 and the findings in the Staff Report, staff recommends approval with conditions of the Cook Rezone.

Applicant Comment: Oliver Cook, Applicant and Property Owner – expressed appreciation to D. Klibaner.

Public Testimony Opened/Closed: None - Chair Kirkwood

Applicant Rebuttal: None – Chair Kirkwood

Board Discussion: Chair Kirkwood

Brief discussions held between Planning Commissioners, Staff, and Applicant included zoning, tax statements, water source and availability, and request for affidavit notice to be reviewed for revisions.

Call for Motion: Chair Kirkwood

Commissioner Edstrom moved the Planning Commission make a *recommendation of approval* to the Board of County Commissioners of Cook Rezone (RZ-2024-2439), *subject to the conditions of approval* recommended in the staff report. Commissioner Poletiek seconded the motion.

Call for Voice Vote: Chair Kirkwood

AYE: Kevin Kirkwood, Robert Poletiek, Van Sands, John Gresham, and Diana Edstrom. No comments.

NAY: Nicole Hunt. Because of the nonconformity to the Zoning Regulations regarding notice.

Motion Passed 5 – 1.

PUBLIC HEARING #4 COOK REZONE (RZ-2024-2439) CLOSED: 10:36 PM

9. WORK SESSION: 10:36 PM Chair Kirkwood

Discussion Item-Regulations Updates. Work Session will not be held due to Resolution 00-01 Adjournment no later than 11:00 PM.

10. ADJOURNMENT: 10:37 PM

Commissioner Poletiek moved to adjourn.

Commissioner Sands seconded the motion.

Motion Passed 6 – 0.