ELBERT COUNTY

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AGENDA
PLANNING COMMISSION MEETING
Agriculture Building at Fairgrounds
95 Ute Avenue, Kiowa
DATE: April 20, 2021 - - TIME: 7:00 PM

1. CALL TO ORDER

The meeting was called to order at 7:07 p.m.

2. PRAYER: Peter Hoogendyk

3. PLEDGE OF ALLEGIANCE: All

4. ROLL CALL

Planning Commissioners Danny Willcox, Daniel Michalak Jr, Van Sands, Peter Hoogendyk, Justin Klassen, Roger Burton, and Duane Owens (all on Zoom).

5. REMINDER TO TURN OFF CELL PHONES

6. STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S) PERTAINING TO MATTERS OF THIS BOARD

None.

7. CONSENT AGENDA ITEMS ARE RESERVED FOR ITEMS that are deemed to be non-controversial. This allows the Planning Commission to spend more of its meeting time for issues in which there is a need for a more significant discussion. If anyone desires to address the Commissioners regarding an item from this day's consent agenda, please ask that the item be removed from the consent agenda for further discussion.

None.

8. CITIZEN COMMENTS

None.

9. APPROVAL OF MEETING MINUTES

A. April 6, 2021

Motion: Approval of the April 6, 2021, Planning Commission meeting minutes.

Dan made a motion to approve the April 6, 2021, Planning Commission meeting minutes. Peter seconded the motion.

Yes - All
No – None
Motion passed 7-0.

10. **PUBLIC HEARING PROCESS** **Chairperson Statement:** This matter requires this body to conduct a quasi-judicial hearing, which means the body must find facts and base its decision upon the application of the adopted regulation standards/criteria and the competent, substantial and material evidence received during this hearing.

All testimony must be competent, on topic and not repetitious.

Chairperson - The order of business for Public Hearings will be as follows:
1. Open Public Hearing
2. Staff Presentation
3. Applicant Presentation (if any)
4. Public Testimony
5. Public Comment Closed
6. Applicant Rebuttal
7. Board Only Discussion
8. Board Motion and Roll Call Vote
9. Close Public Hearing

Note: Once the Public Hearing has been closed, no further testimony will be taken.

11. PUBLIC HEARINGS

A. Porter Rezone (RZ-20-0071) - A request for a rezone of 10 acres of 56.55 acres from (A) to (AR) on a property at 1280 County Road 166, Elizabeth

The public hearing for the Porter Rezone (RZ-20-0071) was opened and Jenn Klich, CDS Land Use Planner, began her presentation. After Jenn's overview of the application Phil Giesing and Wes discussed the purpose of the rezone.
Danny asked for public comment.
Nathan Gandolph, 40575 Cricket Circle, Elizabeth (Lot 2)--Asked for clarification as to whether the business park portion of the development was being discussed?
Danny—Answered that this was strictly for the rezone.
Jenn—Stated that the other was a completely separate project/application.
Nathan Gandolph--Asked whether the driveway permit has been approved and finalized through Elbert County.
Danny—Stated that there wouldn't be a driveway permit until this process is completed.
Nathan Gandolph--Asked about a road permit.
Danny—Stated that after the application is approved, they can apply for the road permit.
Jenn—Stated that the first step is to establish the easement for the road. Further, the easement was approved by the Assessor's Office and Road & Bridge didn't have any comment.   As long as the road was constructed to County standards and was within the easement it would be allowed by the County.
Jenn—Further stated that the easement would not go into effect until the rezoning and minor

development were filed.
Nathan Gandolph--Stated that this road would be an eyesore to him because his property backs up to where the road is planned, within 5-6 feet of his corner posts. Stated it is elevated and he has had to look at unimproved surface for over a year with no erosion control.
Danny—Stated that once they are able to get the road permit it will be built to County standards.
There were no other public comments. Planning Commission members began asking questions.
Roger—Asked why they didn't pursue access from Cricket Circle. Then, asked whose property the easement is on that comes off of County Road 166. Stated that a potion of the easement would be on the adjacent property. Finally, stated that the applicant had said there was no well on the property but he thought there was a residence on the property so he asked whether the current residence has a well.
Phil—Stated that the property that the easement crosses is owned by him and his wife, all under the same ownership. Stated that there was a "30' choke point" on the roadway. Stated that the road access will still be 24' wide for fire access. Stated that the reason they are not coming through Cricket Circle is that he will eventually have commercial development and he doesn't want the commercial development to access through an existing residential development.
Roger—Asked about the existing residence and well.
Phil—Stated that there was no residence on the property right now, but they have applied for a well permit. Stated it is all according to the adjudicated water plan.
Roger—Stated his understanding was that there was an existing residence on the back of the property already, but he couldn't see it when he went out there. Asked why we were allowing a half easement on one portion of the access road.
Wes—Answered that the easement is owned by Phil and Ellen also, it is a separate parcel.
Roger—Asked whether they owned the entire easement or just half.
Phil—Stated that half is on the 56-acre parcel, which was the intended access off Singing Hills Road. Stated that they gave themselves access on their 10-acre property. Stated that was all to gain access, to move it over about 150'.
Roger—Stated his understanding is that he owns the parcel in front along Singing Hills Road.
Phil—Correct. It is off to the side, there is a 20-acre parcel between the 56 acres and Singing Hills Road, except for the 30' strip that they own.
Roger—Asked why the rest of the easement wasn't moved further to the west, so they would have the full 60'.
Phil—Stated that the have the full 60' for the majority of it. There is just one choke point there where the two property corners come together. Nathan Gandolph's corner and the other corner to the west. Stated that if he had known he would have to use this access when he subdivided the Whispering Meadows Subdivision, he would have given himself 30' out. Stated that the original plan was to come through Cricket Circle. Stated that the Commissioners denied that access and told him he had to use the 30' access or his 56 acres at the time that Whispering Meadows was permitted.
Roger—So, Whispering Meadows is the part that is up along Singing Hills?
Phil—Yes, Whispering Meadows is the subdivision to the right.
Roger—Where Cricket Circle goes through?
Phil—Yes.
Jenn—Showed where Whispering Meadows is located in relation to the project. Then, stated Phil was saying that access to the 56 acres was denied via Cricket Circle. So, they had to use the 30' strip along

County Road 166.
Phil—Stated that is correct. It was decided about 1-2 weeks after the platting of Whispering Meadows. Stated he isn't sure what generated that closure, but it actually works out for the better now that he can have the commercial development go right out to Singing Hills Road rather than trying to bring commercial traffic through a residential subdivision.
Jenn—Showed on the screen where the choke point was located on the plans. Then, stated that as long as the access easement is established, and emergency access is approved by the Fire Protection District then we are comfortable with it.
Roger—Inquired about the parcels adjacent to Singing Hills that were called out as "not a part". Asked Phil whether he owned those.
Phil—No, that is the 20 acre parcel he mentioned earlier. I do not own.
Roger—So that is why the entire 60' could not be put on that side?
Phil—That is correct.
Peter—Asked whether this would allow it to be done according to County Standards—the road.
Jenn—It will. Stated the right-of-way is the overage in County Standards and stated that the right-of-way can be limited as long as it is okay for emergency access. Reiterated that this limited area was a very small area near the fence lines.
Danny—Asked staff whether we already had the approval from Elizabeth Fire.
Jenn—Acknowledged. Stated she sent the whole exhibit package and easements to Kara and received an approval. Stated this didn't come in time to make it into the Planning Commission packet but will be added to the packet for Board of County Commissioners.
Danny—Stated he thought she mentioned it in her presentation.
Dan—Stated he did get a little confused in the presentation. Asked for confirmation that Lot 1 is the residential lot on the southeast corner.
Jenn—Stated that in the exhibit, that is correct. Lot 1 is the 10 acres, and Lot 2 is the residual. Stated that the letter from the Division of Water Resources referred to Lot 1 in Porter and Lot1 in the Goosecreek Business Park.
Dan—Stated that is what was confusing.
Jenn—Agreed. Stated that she parsed it out and that their final answer really is their reference to the augmentation plan. Stated that the Court Decree states that while they recommend a particular aquifer, if you end up utilizing a different aquifer as long as you abide by the limitations from the Decree they are fine with that.
Dan—Stated we will deal with the EDZ at a future date, so this is just the rezone.
Jenn—Right.
Dan—Just 10 acres, southeast corner. AR.
Jenn—Correct.
Dan—I'm good.
Danny—Asked Van whether he had any comments or questions.
Van—No, I don't have anything.
Justin—Stated it seemed like a pretty streamlined rezone to him.
Duane—Stated he didn't have any comments or questions. It looks pretty straight-forward to him.
Duane—Asked about the choke point location. Asked if there were two fence corner lines on each side of the road. Asked if there was a setback that needed to be moved or if there would ever be an

infringement of anything at those lot lines. Asked if there were a restriction that wouldn't allow something else to be placed there.
Jenn—No. The easement being established on Phil's two lots in the northeast and southwest will be recorded. The easement takes priority, and any of those fences can't extend past the property lines of the other two diagonal properties. So, if they move, they will move to the interior of those properties.
Danny—Stated that the easements are open area. Fences aren't supposed to be put in them; however, people do.
Justin—Stated if they decide to build something on the interior of their property, they still have setbacks on the interior of their property. They can't push that fence line out into the easement.
Dan made a motion to recommend APPROVAL to the Board of County Commissioners of the Porter Rezone (RZ-20-0071) subject to the three (3) conditions of approval in staff's report. Justin seconded the motion.

Yes—All
No—None
Motioned passed 7-0.

B. Spring Valley Ranch Service Plan Amendments for Metropolitan District #4, Metropolitan District #5, and Metropolitan District #6 (SR-21-0020)--A request to approve the Amended Metropolitan District #4, Metropolitan District #5, and Metropolitan District #6 located in Sections 30 and 32

The public hearing for Spring Valley Ranch Service Plan Amendments for Metropolitan District #4, Metropolitan District #5, and Metropolitan District #6 (SR-21-0020) was opened.
Danny—explained that service plans are tied to the funding process for a development. Danny further stated that it is the funding process primarily for any off-site improvements, road, infrastructure. That the Service Plan is the process that is utilized to fund all the improvements for a development. That the most important thing for the Planning Commission is to make sure the service plan shows enough funding to cover the infrastructure needs. Stated that their role is to make sure there is enough money brought in or bonded to cover all the improvements needed and stated in the development.
Justin—Asked if they funding has to go beyond the warranty period for the roads.
Danny—Stated that the way metro districts work, and these are all metro districts, is they are set up. Metro districts are covered by DORA, they're statutory. You collect money through your taxes and mill levies. The metro district is funded through a mill levy. The County is responsible for collecting those mills, then distributing that money to the metro districts. Then, each one of those metro districts have a specific function. The money initially is probably bonded, and they use those tax proceeds through those metro districts to pay back those bonds over a period of time. It's paid through the tax payer for each home paying. Stated that the roads have a two (2) year warranty period and then the County accepts those roads. Stated that the initial construction is all done by the developer to County specs funded by, usually, bond money that is recouped through [inaudible].
Justin—So as long as these metro districts are solely within the Spring Valley Ranch area, right? These metro districts don't go outside of the Spring Valley Ranch area.
Danny—Stated that these funds are paid back by taxpayers in the specific area receiving the benefit. Those metro districts are dedicated to Spring Valley, and sometimes specific areas within Spring Valley. Stated that the only areas with added mill levies are the areas where the improvements are made. It

does not impact other people in the County.
Justin—Stated he was asking for clarification regarding when the County accepts maintenance of the roads and the warranty period. Appreciates Danny going over where that stops and starts.
Danny—Reiterated that the service plan has to show enough funding is generated through that area and through bonding to cover the infrastructure needs within that area. Stated that, based on what is shown, these metro districts are funded real well.
Christina Stanton, Director of CDS, began her presentation.
Ms. MaryAnn McGeady—Stated that her firm represents the applicants and that Courtney is also in attendance from their firm. Reiterated that the Districts' Service Plans were already approved. Stated that, in the original approvals, there was a sentence that required debt election questions to contain language limiting the mill levies as stated in the service plans themselves. Stated that they didn't have any concerns with the concept; however, after the plans were approved, they had to try to draft those election questions and they then reached back out to the County's bond counsel and stated that they didn't know how to draft the question. Ms. McGeady stated that the reason is because the service plans require a mill levy to be in place for payment of the debt until you get past a certain debt to assessed evaluation ratio. And, once you get past that debt to assessed evaluation ratio, then the mill levy cap comes off. The reason it is proposed to come off, and that language is there, is so that when the risk is gone..because you don't get to that ratio until the project matures and the houses are there and the assessed evaluation is there. At that point, you don't need the cap anymore and you can get better terms and interest rates on a refinancing if you don't have the cap on. Reiterated that they couldn't draft that election question. Stated they told Kim that if she could draft the question, they would put it on their ballot and vote it. Kim couldn't draft the question either, which is why they are back before us to request this sentence be removed. Stated that the restriction related to the mill levy cap and the requirements for how it rolls off are all still in the service plans. Stated that they are limited by what is in the Service Plans in how the Districts can issue debt. Stated that it was kind of a belt-and-suspenders idea to put it into the question that gets voted, but they couldn't figure out how to do it. Stated that the constraints on how they draft debt questions are partially governed by TABOR.
Danny—Asked if their election question will not contain a cap on their mill levies.
Ms. McGeady—That is correct.
Danny—Okay, but your cap is placed in your service agreement.
Ms. McGeady—Correct, it is in the Service Plans and it won't come out. Further stated that this language was not in the Service Plans for Districts 1, 2, or 3.
Danny—Stated he thought the cap was a requirement by TABOR in your election question. Is it?
Ms. McGeady—No. The cap is in the Service Plans. It is required by the County to be in the Plans. Under TABOR, you have to vote the authorization to issue the debt. The idea of having a mill levy cap is not articulated in TABOR.
Justin—Asked who actually writes the ballot question? The Clerk & Recorder as well as the lender?
Ms. McGeady—Stated the for Metropolitan Districts, the drafters of those election questions are usually a team of people. The general counsel, our office, would be involved in that exercise. Our bond attorney would be involved in that exercise. And your attorney, Kim Crawford at ButlerSnow, is a bond attorney. She's not on our team because she doesn't represent our Districts, she represents the County. Stated the reason she reached out to Kim was to ask her to imagine she was on the team and asked her to help them draft the question. Stated Sherman & Howard is their bond counsel. Stated they also work with a

group who is a frequent underwriter for Spring Valley issues.
Justin—Asked whether the Clerk & Recorder has final approval of the ballot question language.
Ms. McGeady—No. Stated the Metropolitan Districts have their own designated election officials. Stated they would serve in the same capacity as the Clerk & Recorder does for the County. The Clerk & Recorder is not the DEO for their elections.
Danny—Stated that the only thing the Clerk & Recorder governs is the timing in which they get the ballot question on.
Justin and Ms. McGeady—Confirmed. Then, Justin stated they also build it into our County election process.
Ms. McGeady—Stated that the Metro Districts certify their questions with the DEO and the DEO coordinates with your Clerk & Recorder.
Justin—Asks why we (the Planning Commission) have to approve the redaction of a sentence out of a ballot question.
Danny—I think the answer is because it is a specific change in the Service Plans.
Ms. McGeady—Exactly. Stated that this was the only time where one of the Spring Valley Service Plans had this sentence put into it in the approval process. And it related to what they needed to put into their election questions. So that is why we want to take it out of the Service Plans, so that the County does not have a role in how the election questions read.
Danny—Stated that to change the Service Plans you have to go through the process. Questioned whether it was required to go before the Planning Commission.
Ms. McGeady—Stated that the way the State Statute reads, they are required to go to the Planning Commission. Ms. McGeady re-read the sentence that they are asking to have removed. Then, discussed the debt ratio. Stated that their role was as a referral to the Board of County Commissioners.
Justin—Asked for confirmation on the request to remove the sentence, and verification that the Service Plans will still contain the information of the cap requirement.
Ms. McGeady—Absolutely.
Justin—Caught up now. Just wanted to make sure he and everyone else understood that they were not voting on a ballot question.
Danny—No you're not voting on a ballot question.
Dan—Asked about bonded in-debtedness. The ability to be able to get a better interest rate. Stated that when you are more than 50% you are less of a risk. Asked whether this will change any of the interest rates or make it more favorable for Spring Valley.
Ms. McGeady—Stated that in the Service Plans the mill levy caps are imposed to be sure that the risks of slow developments/slow growth—I mean, we've hit recessions before so it can happen—and the bonds are issued assuming houses are going to be built at a certain value, at a certain pace. So if that slows down, there is a risk if there's not a mill levy cap that the property tax would have to increase to pay the debt. So we have the mill levy cap stay on, it is shifting the risk to the bond buyer—away from the property taxpayer. So the bond buyer, in taking that risk, is going to set a higher interest rate on the bonds when they are first issued. As the community develops, and the assessed evaluation increases because the houses are built, at some point you get to a place where the assessed evaluation exceeds 50% of the debt. Mathematically, at that point, you don't need the cap anymore because the risk isn't there that the build-out won't occur. So the bond buyer, then agrees that this is a different kind of debt now and I can't justify that interest rate. Usually it is a different bond buyer. The bond buyer that buys

the risk at the higher interest rate. When you refinance later, when the cap comes off, the bond buyer is a lower risk bond buyer and you get a lower interest rate. Stated that the cap is rolling off mathematically when the risk is low.
Danny—Stated that it is common practice to go back and refinance these bonds at a lower rate after the mill levies have been set and the development is well underway.
Roger—Asked how they are supposed to evaluate all of those cost estimates and so forth. Stated that the Service Plans have already been approved in terms of the dollar value of the cost estimates that are in it, we are not changing any of that. Stated that the only thing they are changing is this one sentence.
Danny—Correct Roger. Stated he went over the process and purpose because he didn't know if everyone else knew what metro districts and service plans were for.
Roger—Reiterated that all those cost estimates were previously reviewed and approved by a consultant that could verify the construction costs and that went into the original application approval.
Danny—Stated that all the improvements were originally based off of County specs. The money required to cover those infrastructure improvements. Stated that the County usually goes to an outside attorney and ButlerSnow is the one the County used.
Duane—Asked for an explanation of the purpose of the cap on the mill levy. Why you would have a cap when you would potentially want to have that cap higher to release more of that debt sooner.
Ms. McGeady—Stated that there is a balance point. In 1992, the legislature introduced the concept of mill levy caps on debt. Stated that there were bonds issued before that time with unlimited mill levy promises to bond holders at the time when houses hadn't been built yet. Stated that when bonds are being issued early in a development the risk is moving around the table. Is it the developer's risk if development doesn't occur, is it the homebuyer's risk, is it the bond holders' risk? No one ever intended mill levies to be unlimited at the time when there are only a few houses out there. Stated this was supported because it is the mathematical moment in time when the risk is shifting, and you don't need to have the cap anymore because the houses are there.
Danny—Asked MaryAnn whether it was ultimately a protection for the homeowner.
Ms. McGeady—It is absolutely a protection for the homeowner.
Danny—It's a protection for the homeowner, because they know their taxes won't exceed a certain amount.
Ms. McGeady—I would also argue it is a protection for the bond buyer because it signals a risk they need to evaluate. If a bond buyer picks up a prospectus and it says unlimited mill levy bond, that's communicating usually that it is a lower risk investment. If you're picking up a prospectus that says capped mill levy bond, you say well I better ready a little bit more. Stated that was the idea when the legislature put that in back in 1992, they want to protect the residents so that until the project gets more than 50% assessed evaluation to the amount of debt that is outstanding we don't want that cap to come off.
Danny—Asked if there was any public comment. Noting that there was none, they continued the discussion.
Peter—Stated he didn't have any questions.
Duane—On February 24, 2021, there is an entry in the history that says that staff was contacted to formally request a waiver to the community meeting requirement. Asked in what kind of conditions that would be allowable.
Christina—Stated that most applications have the ability to request that. Very few would actually be

granted that. Stated that the Districts did a lot of meetings ahead of time with the Fire Districts and other metro districts. Clarified that both this time and last time they did their community meeting with the Fire Districts and metro districts but requested the waiver to our normal community meeting requirement but still meet with the people who would be impact by their changes. Stated that the documentation related to that request was included in the packet.

Justin made a motion to recommend APPROVAL to the Board of County Commissioners to allow for the redaction of language related to bond caps. Dan seconded the motion.

Dan—Stated that the application number was SR-21-0020.

Roger—Stated that the request was not to remove the bond cap, but to eliminate the sentence related to the election ballot question only.

Justin—Amended his motion to be: To eliminate the requirement for the ballot question as it pertains to this topic.

Yes—All

No—None

Motioned passed 7-0.

12. ANNOUNCEMENTS

None

13. ADJOURNMENT (NO LATER THAN 11:00 PM PER RESOLUTION 00-01)

Motion: To adjourn the meeting.

Justin and Dan made a motion to adjourn the meeting. Roger seconded the motion.

Yes - All

No - None

Motion passed 7-0. The meeting was adjourned at 8:36 p.m.