

Planning Commission Minutes

For August 21, 2018

Members Present: Chairman Dwight Freeman, Vice Chair Leonard Brown, Grover Hathorn, Everett Myers, Cary Aloia (Alternate), Charles Stilling (Alternate), Randy Kern, Mike Mitchell and Dixie Diltz – Secretary.

Members Absent with notification: Wesley O'Rourke

Member Absent without notification:

Others Present: Patricia McCord, Bobby Murphy, Tom Nutt, John Noffske, Debra Martinez, Jonathan Moore, Margery Siemering, Wanda Patterson, Lisa Robirds, Kent Price, Evelyn Price and Pete Gonzales.

Chairman Dwight Freeman called the meeting to order at 1:34 pm and calls for roll call. Cary Aloia is welcomed to the Board and thanked for volunteering her time to serve the community.

Grover Hathorn made a motion to approve the Agenda. Everette Myers seconds. Motion carried unanimously.

Grover Hathorn made a motion to approve the July 17, 2018 minutes, Everette Myers seconds, Motion approved unanimously.

Chairman Freeman clarifies for the record that Cary Aloia is a voting member at today's proceedings sitting in the seat vacated by Wes O'Rourke. Charles Stilling's is also a voting member sitting in Mike Mitchell's vacant seat. (Mike Mitchell joins the board a short time later, but will remain non-voting).

First Item of Business: Application for Re-plat of Minor Subdivision submitted by Terlingua Management Trust and Patricia McCord. Chairman Freeman reads from the application: in 1983 the Board of County Commissioners approved a minor subdivision consisting of 5 lots. Before the plat was recorded the applicant requested a name change and a 6th lot. The minor subdivision was approved and recorded as Joe Murphy Valley subdivision consisting of 6 lots. The request today is to divide one of the lots into 2 lots making a total of 7 lots in the minor subdivision.

Applicant Patricia McCord walks the Board through the 1983 application bringing their attention to Item #11, line #12, line #14. She also brings the boards attention to line #18 and #19. Patricia McCord then refers to a letter she presented to the board dated July 30, 2018 stating that a re-plat of the lot does not change or effect any adjoining lots, that the requested division is unanimously supported by all the current parcel owners and ownership of this re-platted lot would be the same two heirs to which this original lot was deeded. She explains to the board that she quick claim deeded the property to her brother Joel Murphy for the purpose of Joel securing a bank construction loan for his residence, with mutual agreement that in the future they would reconcile the ownership. She met with Attorney William Dunn 2013 subsequently decided to apply for a re-plat. Chairman Freeman clarifies that at least 1 of the lots in the original subdivision had joint ownership.

Patricia McCord States that in her opinion what was overlooked at the time of the original application was the access to fulfill the "spirit" of this application, which would legally allow all of the "grandchildren heirs" the function and ability to have a residence. Approval of her request today would fulfill that aspect, without setting precedence for future subdivision. She continues to read the second page of her letter, and quotes from the Minutes of the October 18, 1983 Planning Commission minutes. "That the addition of one lot, within the 10 lot maximum, was not requested to circumvent subdivision regulations" So evidently back then there was a 10 lot maximum for a minor subdivision. So basically they are asking to be grandfathered in. In conclusion she states "We understand that the Commissioners are not obligated, but are allowed to assist us, by approving this request". Approval of this request would allow a more equitable division of the land between heirs of the Joe Murphy Estate, as was requested and granted by the Planning Commission meeting on October 18, 1982. The

request only involves the “original grandchildren heirs” and does not intend to circumvent any subdivision codes or set any precedence for any future subdivision requests.

Chairman Freeman questions if there are 10 original heirs. Ms. McCord states that there are 9 original heirs. Chairman Freeman has applicant show on a map which lot she is requesting to divide and which lot currently has 3 current heir owners. Existing access is discussed to all parcels. Conversation regarding the other owners possibly wanting to divide their parcels in the future is held. Charles Stilling’s clarifies if Patricia quit claimed the deed to Joel because of the County’s requirements or the lending company’s requirements. It was the lending company’s. Grover Hathorn questions what would happen in the future if the current owners wanted to leave the property to their grandchildren. The question of how many structures currently are on the 6 lots in the subdivision is answered by Patricia as being 5, and that all owners are related with the exception of the Fitzgerald’s. The individual wells and individual septic’s are discussed, as well as the existing well that currently is in use by Joel’s residence and the comments from Pat McDermott DWR. Everette Myers stresses that the water/well issues need to be clarified and verified. Grover Hathorn questions if there is a bank loan still involved on the property, which Patricia is not sure. Everette Myers questions the statement on the original application that says they would never apply for further divisions. Chairman Freeman says that in 1983 the codes would have allowed up to 10 lots in a minor subdivision the agreement to not divide in the future is of lesser importance in his opinion. Everette Myers states that in 1983 there were a lot less constraints on subdividing land, it is unknown why this particular ranch was not subdivided equally at the time and he doesn’t want to see this problem again 20 years from now when the current grandchildren come in and want to further divide it. Chairman Freeman says that it would definitely be a major subdivision at that point; it is currently above the maximum of 5 lots for minor subdivision according to today’s regulations. Grover Hathorn states that you cannot make a decision on “intent”, if it’s not written down it doesn’t matter what the intent was.

Chairman Freeman tells the applicant that they may want to consider a re-plat of the whole subdivision as a major subdivision in light of the comments and concerns stated today. Bobby Murphy says they do not want to reinvent the wheel they want to keep it simple and he feels an approval with contingencies would satisfy that end. He doesn’t want to blow it out of proportion, they don’t want to circumvent any rules they just want to fulfill the intents of the original application.

Chairman Freeman asks the board if they have further questions and reminds them of the choices they have as to a motion to approve, a motion to deny or a motion to table or postpone. Secretary Diltz comments to the board that the application has already been postponed once by the applicant, if tabled or postponed again, the notifications to neighbors and public notices will have to be sent again. Secretary Diltz states that approximately 80 letters to neighbors were sent out on this application. We have already delayed once and sent out a second mailing. Randy Kern explains to the board how the expensed of postage, publishing in the newspaper and seating the board can quickly become more than what the application fee is.

Everette Myers makes a motion to recommend denial of the Terlingua Management Trust application to further divide lots with in the subdivision. Leonard Brown 2nds the motion. Chairman Freeman calls for a roll call vote. Leonard Brown Aye, Grover Hathorn Aye, Charles Stilling Aye, Everette Myers Aye, Cary Aloia Ney. Motion passes with a vote of 4:1.

Second Item of Business: Conditional Use Application continued from July meeting. Application submitted by Debra Martinez, Community Energy Solar LLC., for a 2MW community solar project. Proposed project to be located at 3004 Sherman Ave, Monte Vista, on approximately 12 acres of land owned by Debra Martinez.

Chairman Freeman reminds the board of the hearing last month and that the applicant requested a continuation with the intention of trying to work out a more amicable plan with the adjoining property owners. Community Solar and Debra Martinez held a second community meeting on Aug 7th at proposed site. Rick Robirds and Son were the only neighbors in attendance. Chairman Freeman continues to read the Staff Recommendation and then asks the applicant what they have found or further wish to address.

Debra Martinez states that she had looked at all these issues before deciding to move forward with Community Solar. She explains that with the water issues it is becoming harder to irrigate her land, the solar project will be considerably less water use on her property and the solar will be a benefit to the community. She felt the project was a positive for both herself and the community; she explains the process of deciding where to locate the solar panels on her property and how the proposed location was selected because it is on her least productive, hardest to irrigate section. She explains the options her and Johnathan looked at to try to move the project further away from the residences and the complications those options would cause with irrigation and production of remaining land.

Jonathan Moore further explains the process of trying to look for alternatives to placement of the panels. He walked the Board through the process showing optional location on the map and based on the dynamics of the lay of the land, the location of existing wells and irrigation ditches Community Solar and Debra Martinez are presenting the original plan. They did consider a solid cedar fence along the north boundary and locating the road inside the fence.

Chairman Freeman asks what the plan for the 100' stretch between the current property line and the proposed cedar fence would be. Debra Martinez says she will farm it. Chairman Freeman discusses the irrigation ditches and what would happen to the property IF water continued to be a problem. Debra Martinez says that would be a decision she would have to make IF the issue continues. She would hope she wouldn't have to turn it into a housing division and would try to keep it at least maintained even if she couldn't farm it.

Pete Gonzales speaks from the audience questioning the fence, the uncertainty of declining property values and that 100' isn't really that far. He states that he is not necessarily against it; he just feels that there is not enough information or answers about what is going on. He questions the access point and clarifies that the traffic will go through Debra Martinez's property. Lisa Robirds asks from audience "what side of ditch will the high voltage line go on?" Jonathan Moore explains that the Excel distribution line, it is not high voltage, is existing on the south side of the lariat ditch, that is the line this project will tie into. The underground line from the transformers to the pole will be on east side of Debra's lateral ditch. Jonathan Moore address Pete's concerns and says he would stay all evening to address Pete's questions, but reminds the board that he held two community meeting on site and in the last letter to the neighbors had offered to go to their homes to visit with them if desired, only two neighbors showed for the first meeting and only one for the second. No one contacted him to requests more information.

Lisa Robirds comes forward to present her information as she has another obligation to leave for. She presents pictures she took while visiting the Romeo site, she talked to the neighbor directly north of the property and said that Romeo handled it completely different and that the neighbors didn't know that the project was even going in until it was there. Lisa says she appreciates the opportunity to at least have this forum to present her opposition. Kent Price comments from audience that he goes by the Romero property regularly, he stopped and was surprised at how noisy it is. Lisa states that she will have to install air conditioning in her house, using more electricity, because of the noise this project will create. She is emotional about this because it will interfere with her quality of life, she moved back here from the City to get away from the City, to be away from the noise and now she will have to address it again. The impact that they will be dealing with is not being address in this application, she feels all they are doing is rebutting any issues she may bring forward. She doesn't feel it should be up to her to do an impact study on how it will affect her. It should be up to the applicant to provide impact studies on how it will affect everyone else. The decommissioning of the solar project in the event of abandonment is discussed. Lisa Robirds asks if the zoning is going to be changed to Industrial. It is stated that there will not be a Zoning change.

Chairman Freeman asks for further explanation of the tilt of the solar panels. Jonathan Moore explains that the panels track the sun throughout the day, therefore the tilt is continuously shifting from morning to evening. Cary Aloia questions the position of the panels at night. Jonathan Moore explains that they reset at night so that they are at the 60 degree angle at day break.

Leonard Brown questions if Community Solar is bonded to assure the clean-up of the property. Jonathan Moore says that they are, he's not sure that the contract with Debra addresses the bonding, in Alamosa County it is a requirement and it might be something that Rio Grande County would want to require of them. It is not unusual. Chairman Freeman states that the noise is an issue that was mentioned last meeting and again this meeting. He asks if any of the Board members went to the site in Romeo. Secretary Diltz visited the site and states that she did observe a faint, low buzzing noise when standing next to the fence; however when she moved 50 to 100 feet from the fence the noise was not audible. She also read an email received from Board member Wesley O'Rourke who also visited the site and stated that he could barely hear the sound of the transformer while standing against the fence, 50' away you can't really hear anything so he assumes over 100' it would be totally quiet. Kent Price asked if the panels were moving, he says when he was there it was the sound of them moving he heard. Grover Hathorn states he stopped at one near Tres Padres and at the fence he couldn't hear it. Leonard Brown states he stopped at the large one near Mosca, the big panels, he didn't hear anything. Mike Mitchell clarifies that it is the transformers that make the sound, when you are transforming from DC to AC, so at night when there is no solar to be transformed there will be no noise, so it's not a 24 hour a day process. Cary Aloia states that she has been by the one near Alamosa High School and has never heard any noise. The location of the transformer on this project is identified and estimated to be approximately 200' from the nearest house.

Jonathan Moore states that the inverters that are to be used on this site specifications state that basically audible noise is 60 dba at one meter at 25 degrees Celsius. Mike Mitchel questions the practicality of moving the transformer to the lower (south) corner of the project. Jonathan Moore states that it is more wire; he thinks this may be more reason to put up a solid fence, if the board feels that will help with the noise concern. The solid fence would create both a visual and sound buffer. Pete Gonzales question why the proposed project wasn't disclosed earlier. Everette Myers states that he feels the issue is not so much noise as it is the devaluation of their property. He doesn't feel this can be determined for many years still. He questions why the project is not being located away from residences, maybe Saguache County, out in the Chico brush someplace. Kent Price comments that this was his original question that was never answered. Jonathon Moore explains the requirements for solar location, Excels distribution network and substation availability. He can't go north as far as he knows, there's not the availability, substations and distribution lines with capacity.

Cary Aloia comments that she is sympathetic to the neighbors' concerns, however, she has neighbors that do things she doesn't necessarily like, but it's not her property. If the property is zoned for something it seems it wouldn't be right to tell someone they can't do something on their property just because someone else doesn't like it.

Mrs. Price questions the impact on dogs. Alpine Veterinary and Conour Animal Shelter are close. Have there been any studies on dogs? Also what effect or studies have been done if a person has a pace maker? Has there been a study. Jonathan Moore is not knowledgeable of any such studies; however the electromagnetic radiation of the solar units is less than that in most kitchens.

Chairman Freeman reviews the criteria for Conditional Use review as referred to in the staff report and say each Board member should answer each of the points for themselves.

Charles Stilling makes a motion to recommend approval with the conditions of sufficient surety bond to assure decommissioning and that a solid minimum 6 foot privacy fence is installed on the northern side of site for the mitigation of sound with continued maintenance of said fence. Grover Hathorn seconds the motion.

Chairman Freeman calls for a roll call vote, motion passes unanimously.

With no further discussion the meeting was adjourned at 4:40 pm.

Next meeting Sept 18, 2018