

Planning Commission Minutes

For February 19, 2019

Members Present: Chairman Dwight Freeman, Leonard Brown, Mike Mitchell, Everett Myers, Cary Aloia, Charles Stilling, Randy Kern and Dixie Diltz – Secretary.

Members Absent with notification: Grover Hathorn

Member Absent without notification:

Others Present: Ivan Troyer, Patrick Sullivan

Chairman Dwight Freeman Called the meeting to order at 1:35 pm.

Alternate Charles Stillings seated in Grover Hathorn seat on the Board.

Mike Mitchell made a motion to approve the Agenda. Leonard Brown seconds. Motion carried unanimously.

Charles Stillings makes a motion to approve the minutes of the January 15, 2019 meeting as presented, Everett Myers seconds motion. Motion passes unanimously.

New Business: Conditional Use application presented by Ivan & Magdalena Troyer for an expansion to the existing grocery store as well as the addition of a Cabinet Manufacturing Shop in an existing Ag Building.

Chairman Freeman reads through the application and verifies the receipt of email from RG Road and Bridge (Patrick Sullivan) and Division of Water Resources (Pat McDermott). Secretary Diltz confirms that no comments were received from neighbors. Secretary Diltz recommends the Planning Commission look at it as a two part application. Reminding the Board that they can recommend approval or denial of the application as presented, or they can recommend approval of one portion and denial of another portion or they could recommend denial of the entire application.

Secretary Diltz explains the history of the property. The Grocery Store was originally approved (2008) as a Home Occupation then later (2012) as a conditional use to allow for an expansion beyond what the Home Occupation allowed.

Dwight Freeman asks for and receives clarification of a well-defined area of conditional use on the property. The site map is identified and reviewed.

Ivan Troyer states that he would like to add about 20' x 80' to the existing grocery store. Randy Kern clarifies that the current grocery store does not occupy all of the square footage of the existing building. Charles Stilling question how many houses are existing on the property. It is clarified there is only one existing house. The distance between the two buildings is approximately 60'. The direction of proposed expansion of the grocery store would be to the north. The Grocery Store and Agricultural building are located on an aerial map. Cary Aloia asks for clarification of the comment from Pat McDermott of DWR. Secretary Diltz states that she had talked with Pat McDermott by telephone and confirmed that they did locate two adjudicated domestic wells on the property. The wells do allow for SOME other use, his concern is still the continued expansion of these businesses in this area. Mr. McDermott was asked to send an email verify this information, however it has not been received prior to today's meeting.

Chairman Freeman questions the amount of water use that would be required for the businesses. There is an existing restroom facility in the grocery store, although Mr. Troyer states it is not operational at this time. "The drain is currently plugged up" A porta-pottie is located outside for use. Restroom facilities would be required in the Cabinet shop building if approved. This would also require a new OWTS system. Charles Stilling asks for verification of the location of the wells. Dwight Freeman asks Mr. Troyer about the Ag building exemption form he signed in 2011. Randy Kern explains Colorado Statue exempts agricultural buildings from building code and that zoning setback are all that is inspected on ag buildings. The waiver is explained to applicants when they sign it. Ag buildings are not intended to turn into something else later. Dwight Freeman questions if an Ag building can be changed to be building code compliant. Randy Kern confirms that it can, structural engineer review and recommendations would be required. Public access of the cabinet manufacturing business is discussed. Mr. Troyer states that he will allow some public into the building. Randy Kern explains that when you add the public or employees to the building, it will trigger requirements for accessibility and restroom facilities will be required.

Mike Mitchell questions the Ag building exemption form and says it is something that needs to be discussed further at another time. A change to the Agricultural Form is suggested to state "Changes in use will require compliance with building codes".

Dwight Freeman asks the board if they feel they can move forward on the application with the signed form as it is or if they think the wording should be changed by BOCC before they move

forward on application. Everett Myers state that he thinks the wording needs to be changed before they can move forward. Secretary Diltz stated that the BOCC could change the wording on future forms, but the one signed in 2011 cannot be changed retroactively. The BOCC could maybe do a resolution repealing the forms.

Secretary Diltz requests that the Chairman move the conversation forward to allow Patrick Sullivan to speak in regards to road and driveway access.

Patrick Sullivan informs the Planning Commission that the concern from Road & Bridge is that the driveways are large enough to accommodate whatever type of vehicles will be using them including large trucks. The parcel in question has two existing driveways, neither of which is a very far distance from the intersection of two county roads. The visibility of traffic entering or leaving the driveways needs to be considered. Pat Sullivan would recommend a 35 foot width for the driveways which is more in line with the commercial requirements as well as clearing of some of the trees or brush to increase visibility. Neither county road in this area is paved. The 11 South is the better of the two roads, it has been rebuilt. The 5 East is narrow, choked down and creates some issues for north & south traffic. Road & Bridge does not have a problem with new applications, new businesses, new things; it's just more traffic for us, more traffic for you guys and more traffic for your kids, so that's a safety concern for Road & Bridge. Patrick Sullivan confirms that he would like to have the access and visibility addressed if the application is approved.

Dwight Freeman asks Ivan Troyer if both businesses are dependent on the other or if he will be alright with one being approved and not the other if this is what the Planning Commission comes to. Ivan Troyer says he would take one if that's all he gets however, the ag building didn't turn out as he first intended, he never used it as an ag building and he would really like to have it changed if possible. Even if he doesn't do cabinets, he is not using it as an ag building now. Dwight Freeman directs the board members to address the grocery store first then the Cabinet Shop.

Dixie Diltz clarifies that the applicant intends to only do the dry goods and canned goods in the store, no dairy, refrigerated or cut produce, as was previously approved and does not involve the Health Department. Ivan Troyer says that is his intention. The property setbacks are verified. Randy Kern states that the Store building, if expansion is approved, will be required to be brought into code compliance. Everett Myers questions the well on the property. Dixie Diltz says she spoke with Pat McDermott by phone and although he had concerns about the continued expansion of commercial uses in the area, the wells could be used with proper permitting. Ivan Troyer will be required to be compliant with the Division of Water Resources if

this application is approved. The existing wells are adjudicated domestic wells, some commercial use can be accommodated.

Mike Mitchell makes a motion to recommend approval of the addition to Grocery Store with the stipulations that:

1. Driveway access is approved by Road & Bridge,
2. All requirements of the Division of Water Resources are met,
3. All County Building codes are met,
4. Working plumbing and sewer is provided in the building.

Cary Aloia seconds the motion, motion passed unanimously.

Dwight Freeman turns the topic to the cabinet business. Mike Mitchell states he would like to request an addendum to the "Ag Building Exemption" from the county commissioners and then hear this part of the application after that addendum is done. The "Ag Building Exemption" form is discussed and if a change could be retro-active. Dwight Freeman says the way the form is written is open to a lot of interpretation. Mike Mitchell states that he is leaning toward allowing the Cabinet shop but would like the wording on this form changed and the code clarified. Cary Aloia stresses that this form is not "Code" it is an administrative form and the applicant voluntarily signed that there would never be a change of the use of his ag building and the applicant stated he has never used it as an ag building. Dwight Freeman asks the Board what they think this administrative form means. Leonard Brown says it means you can't change it. Randy Kern explains that for life, health and safety sake you have a building code in this jurisdiction. Per the state law, buildings that are for the shelter of animals, shelter of livestock, farm machinery are exempted from that building code. The state exempts these buildings, you can build them however, so once that's done and they want to change the use to something that does involve life, health and safety we have to figure out how to bring it up to code. It's already built, maybe the builder built it according to code and maybe not.

Secretary Diltz brings to the Boards attention the "zoning uses" that would be on this single parcel of land if this application is approved. This parcel is agricultural with a residential use on it, the grocery store adds a commercial use to the property and if the cabinet shop is approved it would be adding an industrial use to the parcel. This is creating multi use zoning in this agricultural zone. The purpose of zoning is to locate like uses next to each other for compatibility. Mike Mitchell questions how far back we would have to go to get rid of the zoning code in Rio Grande County. He states that in the real world in rural areas they are allowing all this on the same plot. Randy Kern states that one could argue about some areas that have very lax zoning codes, it's not a real pretty picture.

Charles Stillings asks if there were any neighbor comments. Secretary Diltz states that there were no comments from the neighbors. The property across the 5 East is identified as the "school section" with no one living in the residence on that property. The total square footage of the business uses would be much larger than the square footage of the residential uses on the parcel if both parts of this application are approved. The Grocery Store would be approximately 3,600 sq. ft, the cabinet shop is 2,700 sq ft and the residence is approximately 2,400 sq ft. The "other uses" are starting to outweigh the primary use of that corner of land, the primary was residential. Dwight Freeman questions if an amendment of zoning would be a better way to look at this. Secretary Diltz reminds the board that this parcel is 233 acres zoned agricultural ranching. It would not be in the best interest to change this full parcel to a commercial zone. Everett Myers states that he thinks we already have some places that may be over utilized in some of the past places we've approved. He doesn't feel this is as big an issue as having a goat barn 50 feet from your house. In his opinion he doesn't feel having a cabinet shop on that corner will be a big compliance issue. A lot of the Amish people have several businesses at their homes and he doesn't feel this is any different.

Charles Stillings states that the conditional use regulation in the code book is pretty wide open. As long as it doesn't cause any adverse impact on other uses, location, method of operation, scale... scale is a big thing as has been brought out; intensity and traffic generated.

Mike Mitchell states he is fine with the multiple uses on the parcel of land. Cary Aloia states she is kind of on the fence in regards to the multi-use on the parcel and feels that regardless of the outcome of this application Mr. Troyer needs to go through the proper process to bring the building into code as he just stated that the use is not agriculture now. She tells the board that she lives in the area and there is getting to be a lot more traffic and every corner is starting to have a business on it. She rides her horses and bike down that road, there's lots of kids on that road, it's scary when you're driving down it and there are so many kids. That's something that concerns her, the increased traffic that is already there. She does think there should be a means to repurpose buildings but she is not too sure about this application.

Leonard Brown says that he did the math and the shop and store if approved would be 6600 sq. ft. and the house is 2,400 sq. ft. He is not in big favor of this right now, he does feel that if anything is going to be done you need to make sure it is safe and meets the codes. He thinks that should be done before the application moves forward. Leonard says he likes for people to be able to do things on their property, however, it seems that a lot of these are coming in after the fact and asking forgiveness instead of coming in first and asking permission. This building has never been used as an ag building according to Mr. Troyer. He feels that it is the wrong way

of going about this. If you're going to build an ag building, do it. But if you're going to build an ag building with the thought of using it for something else, then do it the other way. He feels he would be hard pressed to recommend approval of this one. Secretary Diltz states that she feels we all need to look deeper, a lot of things have happened in the past and she doesn't think we have always dug deeper into the code book to see if we are doing it per the code book. "I'm not asking if we like it or if we agree with it, but it is my job and it is your job to enforce this code book that we have in front of us today. Not to like it, but to enforce it." She pointed out the statement in the zoning code book on page 38 that states "commercial uses are generally limited to those associated with agricultural uses." We are currently in the process of updating the code book, but if we are not willing to enforce what we have written in front of us, why are we going through the process of changing it?

Dwight Freeman comments yes the code book states what it states, but where it is located is changing, and will probably be something different in the future, but as it sits right now with two dirt roads on each side, the traffic is going to the store any way, he doesn't see a lot more traffic because of cabinets. I don't think this form in front of us regarding agricultural buildings is reason to deny because I don't think it truly means what it says. So we can comment with conditions on roads, water and septic, building to code and getting across the form.

Charles Stillings makes a motion to recommend approval of the Cabinet Shop in the agricultural building with the stipulation that:

1. Driveway access is approved by Road & Bridge
2. All requirements of the Division of Water Resources are met,
3. All County Building codes are met, to bring it up to code for an industrial building
4. Working plumbing and sewer is provided in the building.

Mike Mitchell seconds the motion. A roll call vote is called for, Leonard Brown-No, Cary Aloia-No, Mike Mitchell-Yes, Charles Stillings- Yes, Everett Myers-No. Motion fails. 2 to 3

Leonard Brown makes a motion to recommend denial of the Cabinet Shop based on Article XII of the Land Use Code book Section A, 1 Purpose and Intent in regards to scale or intensity of activity and traffic generated as well as the presence of the documentation of agricultural exemption-form being signed but never abided by. Cary Aloia seconds the motion. A roll call vote is called for, Leonard Brown-Yes, Cary Aloia-Yes, Mike Mitchell-No, Charles Stillings-Yes, Everett Myers-No. Motion passes 3 to 2.

T.J. Dlubec is present by phone for an update on the Code Book update. Looking at the project schedule we are on track. A review of the first public outreach efforts, the open house and the agricultural conference that TJ and Dixie attended was given and some of the comments that

came from these outreach activities. RG & Associates is working on the policy sections of the code and intends to have all 13 draft articles to Dixie within the week and then to the Planning Commission by the 8th, with plans to do another open house the third week of March. Discussion regarding spring break being that week led the board to recommend postponing the open house and next meeting by a week or two. Dixie and TJ will work on this scheduling.

Further discussion of the "Ag exemption" form is held and the Planning Commission directs Randy Kern with the Building Department to present to the BOCC a possible change. It is recommended that the form state "Changes in use will require compliance with building codes and building permits".

Chairman Freeman relinquishes chair seat to Secretary Diltz for reorganization of the board. Mike Mitchell moves to retain the officers in current positions. Charles Stillings seconds. Dixie Diltz asks for further comment. Dwight Freeman declines the chair position due to intentions of the Freeman's to move out of the area within the year. He will stay on the Planning Commission until he officially moves, but feels there needs to be someone else in the chair position. Dwight Freeman has been on the PC since 1980!

Mike Mitchell withdraws his nomination and makes a motion to nominate Leonard Brown as Chairman. Cary Aloia seconds and the motion passes by unanimous vote.

Mike Mitchell nominates Dwight Freeman for vice-chair. Dwight Freeman declines position. Leonard Brown nominates Cary Aloia for vice-chair Cary Aloia declines position due to lack of experience on the board.

Dwight Freeman makes a motion to elect Grover Hathorn to the vice chair position. Mike Mitchell seconds the motion. Motion passes by unanimous vote. Term dates for all members are reviewed.

Next meeting will be March 19th, 2019

With no further business the meeting was adjourned at 3:55 PM.