

Planning Commission Minutes

November 17, 2020

Member Present and seated as Board: Vice –Chairman Mike Mitchell, Rodney Reed, Cary Aloia (via Zoom) Jessica Lovelace, Alternate (via Zoom) and Dixie Diltz – Secretary.

Members Absent with notification: Chairman Leonard Brown, Charles Stillings, Jerry Gallegos, and Russell Pratt, Alternate.

Others Present: Candice Hennigh, Michael Schaefer, Diana Velasquez, Judy Baker, Marc Trujillo, Ab Yoder and Levi Yoder.

Others Present via Zoom format:

Vice -Chairman Mike Mitchell called the meeting to order at 1:35pm.

Rodney Reed makes motion to accept the agenda as presented, Cary Aloia seconds the motion. Motion passes.

Rodney Reed makes a motion to table the minutes the minutes of October 20, 2020 to the December meeting, Jessica Lovelace seconds, and motion passes unanimously.

First Item of Business: Right of Way Vacation application from Tedd & Candice Hennigh, 223 3rd Street, Jasper.

Vice -Chairman Mitchell opens the public hearing. Secretary Diltz presents staff report and the application to board; the application is a request to vacate an alley way only between lots 1-2-3 and lots 10-11-12 in Block 24 in the Cornwall subdivision. These parcels are currently zoned residential and each parcel is approximately ½ acre. The application was received on September 28th and deemed complete. The area is typically seasonal cabins, the Hennigh's are building a residence and wish to combine the two parcels into one to facilitate building a garage.

Request for comment was sent to Division of Water Resources, Fish and Wildlife, USDA, Colorado Parks and Wildlife, RGC Road and Bridge, RGC Sheriff's Office and the RGC Attorney. RGC Sheriff and RGC Road and Bridge commented stating that they had no concerns with the vacation of an alleyway in this area.

108 notification letters were mailed to surrounding property owners within 1,500 feet on October 20th and notice of public hearing was published in the Monte Vista Journal on October 28th. No comments have been received from the public.

It is the opinion of the staff that this would have no effect on the platted roads, whether build or not, and no effect on access to any other roads. It is the staff recommendation to allow this right of way vacation with the condition that the applicants file a new survey conveying both parcels into one combined parcel prior to obtaining a building permit for the garage.

Vice Chairman Mitchell asks for clarification on the map included in the packet. Jessica Lovelace asked for further clarification on the map and the location of the alley way to be vacated. Discussion is held regarding the original plat for the Jasper area and if there were any codes or restrictions in place when the area was originally divided. The road that is platted on the east side of the property is not built at

this time. Candice Hennigh explains the access road used to get to her property and the location of Clear Creek on the west side of her property. Jessica Lovelace states that she doesn't feel this would have any effect on surrounding property owners as no roadway will be affected by this vacation.

Cary Aloia made a motion to approve based on the staff report recommendation, Jessica Lovelace seconds the motion. Motion passes unanimously.

Discussion is held regarding Cary Aloia recusing from the Schaefer Applications due to her being contracted to provide Services for the Schaefer's. With Cary not able to hear and act upon the application, the P&Z Board does not have a quorum. It is discussed and the decided to go ahead with the Public Hearing and vet the application, but not make a recommendation to the BOCC and not hold a vote of the Planning Commission.

Second Item of Business: Minor Subdivision presented Michael & Kim Schaefer, 1604 County Road 28, Monte Vista.

Diltz presents staff report and the application to board; the initial plats were received on July 16th with the application and corrected plats being received and accepted as complete on September 10th. 38 notification letters were mailed to surrounding property owners within 1,500' on September 25 and notice of public hearing was published in the Monte Vista Journal on October 28th.

The parcel is currently a 579.8 acre agricultural ranching parcel located at 1604 County Road 28, just west on Monte Vista and south of Highway 160. They are requesting a minor subdivision to divide one 6.56 acre parcel and one 4.72 acre parcel from the remaining acreage. There were previous divisions of land from this parcel which caused this application to have to go through the minor subdivision process and not qualify for another exempt division. There is proposed to be no change in the use of the land and the applicants are wishing to do this division for estate planning reasons. Request for comments was sent to The City of Monte Vista, State Land Board, USDA, Water Conservation District, Division of Water Resources, RGC Road & Bridge, NRCS, and RGC Attorney. Division of Water Resources and RG County Road & Bridge sent comments. No comments were received from the public. The recommendation of Staff is for approval of this minor division of land with the 6.56 acre parcel to be zoned AE and the 4.72 acre parcel to be zoned RR.

Secretary Diltz explains that the 4.72 acres piece of land is already separated from the main parcel of land by County Road 28 and the Monte Vista Canal. Jessica Lovelace questions what the previous divisions of land were. Michael Schaefer explains that the parcels in the south west corner were divided because it was not land he could farm and due to prior property owners and the location of fences it was sold to others. Michael explains that he did not realize he even owned the property across the road and canal until a few years ago. Because it is isolated from his main parcel it makes sense to divide it off and then possibly in the future someone would want to build a house there. Secretary Diltz confirms that the only way to access this 4.72 acres parcel would be from Lariat Road.

With no further questions and no public comments Vice chairman Mitchell reiterates that the P&Z Board does not have a quorum to make a motion or vote on this application. The P&Z Board sends this application on to the BOCC with no recommendation so the applicant is not delayed anymore.

Third Item of Business: Minor Subdivision presented by Michael & Kim Schaefer.

Diltz presents staff report and the application to board; the initial plats were received on July 16th with the application and corrected plats being received and accepted as complete on September 10th. 34 notification letters were mailed to surrounding property owners within 1,500' on September 25 and notice of public hearing was published in the Monte Vista Journal on October 28th

The parcel is currently a 64.17 acre agricultural ranching parcel, located at 5657 County Road 27, just west of Monte Vista and North of Highway 160. They are requesting a minor subdivision to divide one 4.88 acre parcel from the remaining 59.29 acres for estate planning purposes. Request for comment was sent to The State Land Board, NRCS, Water Conservation District, Division of Water Resources, RGC Road & Bridge, and RGC Attorney. Responses were received back from RGC Road & Bridge and Division of Water Resources. No comments have been received from the public. The recommendation of Staff is for approval of this minor division of land with the 4.88 acre parcel to be zoned RR as it is currently vacant and RR is the zoning typically assigned to lots less than 5 acres.

Michael Schaefer says that there are no plans for this parcel at this time but possible a home site in the future. Right now it is just vacant agricultural land. The location of the parcel is clarified. The existing access from Highway 160 is discussed. The Board has no further questions and there is no public comment. Vice chairman Mitchell reiterates that the P&Z Board does not have a quorum to make a motion or vote on this application. The P&Z Board sends this application on to the BOCC with no recommendation so the applicant is not delayed anymore.

Cary Aloia returns to the Board of Planning & Zoning.

Fourth Item of Business: Velesquez/Trujillo Estate, 422 County Road 63.

Secretary Diltz presents staff report and the application to board; The application is for a minor subdivision submitted by Diana Velasquez on behalf of the estate of Delma Trujillo. This project has been in process for quite some time, probate court was held and the applicant was then able to bring the application to the county for approval. All payments of the application fee were received with the last one being received Oct 7th. The application and plat was accepted as complete on October 9. 69 notification letters were mailed to surrounding property owners within 1,500' on October 20 and notice of Public Hearing was published in the Monte Vista Journal on October 28th. The parcel is currently a 13.43 acre agricultural estate parcel located at 422 County Road 63. There are several parcels of land that have been previously divided from the property and several boundary line adjustments were done in the attempt to settle this estate. The applicants wish to divide this parcel into 4 parcels of varying size in order to finalize the estate of their parents. This plat was approved through the courts although the property couldn't be probated due to it being placed into joint tenancy prior to the passing of Ms. Trujillo.

Request for comment was sent to Forest Service, Colorado Parks & Wildlife, USDA, State Land Board, Water Conservation District, Division of Water Resources, Rio Grande County Road and Bridge, NRCS, Rio Grande County Attorney and Fish & Wildlife on November 2. Responses were received from Colorado Parks and Division of Water Resources. Several inquiries were received from surrounding property owners but no comments have been received from the public. The recommendation of Staff is for approval of this minor division of land with the parcels to be zoned R as are most of the surrounding parcels are currently zoned.

Jessica Lovelace questions if there is a date or timeline for the zoning change and/or the filing of the deeds. Secretary Diltz states that there is no set timeline and the applicants will have to follow through and make sure the deeds are completed.

Judy Baker speaks from the audience and asks the names of the Board. Board introductions are done.

Rodney Reed asked the current use of the property and it is explained that it is currently vacant / agricultural land.

Judy Baker questions if her brother would be allowed to have his horses if the property is zoned Residential. Secretary Diltz explains that the County would defer to the Colorado State Extension office in regard to how many horses would be allowed per acre and that he would be allowed to keep the horses conditional to this limit and proper care of the animals.

Rodney Reed verifies that this is the land that surrounds Joel Condren's property. Ms. Baker explains the history of the family ownership of the land and how the 1 acre parcel of Mr. Condren fell out of the family control.

Jessica Lovelace questions access to each of the individual parcels. Secretary Diltz directs the Board to the plat and identifies where each parcel will have legal access, even if the current owners do not use the access as platted.

Ms. Baker questions the access to Joel's property, the access is identified on the plat map and it is confirmed that Joel does have a legal access. Ms. Baker then questions the fence that Joel has placed on the property which may be on Ms. Baker's property. Secretary Diltz explains that with the survey, Ms. Baker should try talking with Joel and resolving the issue directly with him. If they cannot resolve the issue that way then the only other course of action would be a civil case through the courts.

Rodney Reed makes a motion to recommend approval of the minor division per the Staff report. Cary Aloia seconds the motion. Motion passes by unanimous vote.

Fifth Item of Business: Absalom Yoder & Levi Yoder; 5190 E County Road 8 South, Monte Vista.

Secretary Diltz presents staff report and the application to board; the application is a conditional use application submitted by Absalom & Levi Yoder for an expansion to a cabinet shop. In 2010 Ab Yoder applied for a "Home Occupation" permit to operate the cabinet shop out of this building. It was unclear on the application what space he was approved for under the Home Occupation permit but it was clearly stated that if the business grew or added employees Mr. Yoder would need to come back in for possible conditional use approval. The square footage of the shop building greatly exceeds what would be allowed as a Home Occupation, so when the Yoder's came in wishing to expand the building even further it was the determination of the Land Use Staff that the only option for the Yoder's was to apply for a conditional use under the "cottage industry greater than 2,000 s.f."

Further property history:

In 2010 Ab Yoder applied for and was granted a "conditional use" to operate a commercial greenhouse on the property.

In 2015 Mr. Yoder applied for and was granted a “conditional use” to operate a laying hen operation on the property.

In 2019 Mr. Yoder Mr. Yoder applied for a building permit to build a second residence on the property.

The property currently has two residences, the cabinet shop business, a conditional use approved laying hen operation, and the greenhouse operation (although the Yoder’s have agreed to give up the greenhouse conditional use as they no longer operate this business and only use the greenhouse for personal use). The property is currently 54.41 acres located at 5190 E County Road 8 S. Surrounding areas are agricultural ranching and agricultural estate. There were two code sections to be looked at for this application. The cottage industry section and the manufacturing and production section on the use table. Request for comment was sent to the EPA, the Division of Water Resources, State Wildlife, Fish & Wildlife, USDA, RGC Attorney, RGC Road & Bridge, Water Conservation District, NRCS, Colorado Parks and Wildlife and the Empire Canal. Response was received from Commonwealth Irrigation Company, Colorado parks and wildlife, Fish & Wildlife and the Division of Water Resources. All referral comments have been adequately addressed with the permit with the Division of Water Resources in the process of being finalized. Although this building will not require water use when the Division of water Resources was reviewing this application it was determined that prior permitting issue were not completely rectified when the chicken barn was built.

Mr. Yoder states that he either did not know he was to get the new permits at that time or he had probably put it back and just forgot it at the time, but he is working on getting it finalized now.

13 notification letters were mailed to surrounding property owners within 1,500 feet on October 20, 2020 and notice of public hearings was published in the Monte Vista Journal on October 28, 2020. No response from neighbors or public.

The recommendation of the land use staff was difficult and kind of two fold. The Land Use Staff recommended denial of the application based on the size of the operation being larger than the Home Occupation would allow for and the existence of the other conditional use operations on the property. Land Use Staff reminded the Board that the application comes down to the “primary use” of the property. In looking at that you have to decide what you feel the primary use is, if the primary use of the property is still residential then we look at this application as a accessory use cottage industry. How many, how much can you have as accessory to residential? If you look at it as the primary use of the property is now starting to lean heavier to production/manufacturing or commercial than we look at the list of uses in the codebook (table T.2.2) and it says that manufacturing is not allowed as a primary use in this zone district.

Cary Aloia questions what the use of the greenhouse is currently if it is no longer the conditional use? Mr. Yoder states that it is for personal use and partly vacant. Vice Chairman Mitchel clarifies that the chicken business is still there. Mr. Yoder states that they are not considered commercial until they get over 3,000 hens. He stays under that limit. The chicken barn is 36’ x 128’ (4,608 s.f.) Cary Aloia asked if it is possible to repurpose one of the existing buildings to avoid enlarging the foot print of buildings on the property. Mr. Yoder says he doesn’t think the other buildings would work and that Levi is operating the cabinet shop now and just wants more space. Vice Chairman Mitchell questions if there would be any change to the volume of sales or volume of production with the addition of more space? Mr. Yoder

states that Levi would like more space to work more efficiently. Levi states that it's just too small and that he would like to have a separate area for finish work. Cary Aloia questions if there would be an increase in traffic on County Road 8 S. Mr. Yoder says that there will not be any increase. Levi says that his system now is that he buys the doors and drawers and he builds the boxes, varnishes and assembles the cabinets. He then delivers them out to job sites; he doesn't have very many customers in the shop. Rodney Reed clarifies that there will not be a retail space in the business. Randy Kern questions if they would be adding any employees to which Levi Yoder state he will not, that it is just family. The existing building is a 36' x 60' (2,160 s.f.) with a 24' x 32' addition (768 s.f.) and two 16' x 14' storage areas (448 s.f.) The proposed addition is 32' x 36' (1,152 s.f.) for a total building square footage of 4,528 s.f.

Rodney Reed states that he understands the issues but he also sees a young man that wants to do better and expand his business, which sells product, which creates taxes, which fund our county government. Vice Chairman agrees with Reed's statement and says that he sees that the shell is getting larger but what's inside isn't changing.

Randy Kern explains to the Board that it is always a quandary when they come in for the building permit and the projects have grown, where the building probably started out as an accessory building to the residence, the original structure may have even been built before the county had building codes or it may have been done under the residential codes as an accessory building. The problem is when the structure starts growing and we add in the business element, it soon outgrows the parameters and use of a residential accessory building and we have to apply the IBC or commercial code. When we go into the IBC then we have standards for accessibility, restrooms egress and things like that. We try to insert a level of commonsense but it becomes difficult, in this situation we would be trying to apply a commercial code to a building that was partly built under a residential code and partly built with no code.

Jessica Lovelace questions if some of the issues could be handle in by adding some conditions to a approval. Secretary Diltz read the comments from the staff recommendation regarding some possible conditions Staff would recommend if the board decided to recommend approval. The recommended conditions are:

1. No further expansion of the operation will be allowed. No further home occupations, cottage industry or conditional uses will be allowed on the property.
2. The business may not employ any employees other than those that reside in the residences on the property.
3. Public access is limited to only those who have cabinets in the process of being built. No "showroom" or "stock room" is allowed. Public access is limited to the hours between 8:00 am and 6:00 pm.
4. All exterior aspects of the operation shall not disrupt the residential character of the area.
5. All outdoor storage shall be screened in accordance with Section 6.02.C Fences, Walls and Hedges.

Cary Aloia makes a motion to recommend to the BOCC approval of the conditional use with the 5 conditions as stated in the staff report. Rodney Reed seconds the motion. Motion passes unanimously.

No Old Business:

Next meeting will be December 15th, 2020.

Meeting adjourned 4:15 pm