

MORGAN COUNTY PLANNING COMMISSION MEETING
MORGAN COUNTY COURTHOUSE - RM. 29
THURSDAY January 27, 2011 6:30 P.M.

MEMBERS PRESENT

Robert Wright
Trevor Kobe
Brandon Andersen
Bill Weaver
Roland Haslam
Steve Wilson

STAFF PRESENT

Grant Crowell, Director
Charlie Ewert, Planner Tech/Code
Teresa Rhodes, Planning Commission Assistant

MEMBERS ABSENT

Adam Toone

COUNTY COUNCIL PRESENT

Tina Kelly

***** MINUTES *****

1. Call to order – prayer.

Chairman Wright called the meeting to order.
The prayer was offered by Member Kobe.
Chairman Wright excused Member Toone.

2. Approval of agenda.

Member Haslam moved to approve the agenda as printed. Second by Member Kobe. The vote was unanimous. The motion carried.

3. Declaration of conflicts of interest.

There were no conflicts of interest declared.

4. Public Comment.

There was no public comment at this time.

5. Discussion/Decision: Preliminary Plat Approval for Lazy H Ranch Planned Residential Unit Development.

Chairman Wright noted this agenda item was tabled pending a legal opinion from the County Attorney on the road length. He noted the Attorney had given a legal opinion and the Planning Commission had reviewed that and found it to be satisfactory.

Member Haslam moved to forward a positive recommendation to the county council for preliminary plat approval for Lazy H Ranch planned residential unit development with the following nineteen conditions: (*italics indicates amendment to the original staff report*)

1. That all unbuildable land may be utilized in the residential dwelling unit calculations for this subdivision.
2. That all requirements of the County Code, except those that are legally varied, are met and adhered to for this subdivision.
3. That all requirements of the County Surveyor are met and adhered to in the final plat submittal and prior to plat recording.
4. *That the private streets be constructed with all-weather paved asphalt surface that meets the requirements of the submitted geotechnical reports, as verified by the County Engineer.*
5. *That the street system be constructed and placed under warranty prior to issuance of any building permits within the subdivision.*
6. That all remaining conditions of the County Engineer's preliminary plat review, as stated in the memo dated January 3, 2011, are completed prior to or as part of the final plat submittal:
 - a. That the individual wells are included as required subdivision improvements with the final plat submittal, and are designed, constructed and financially assured accordingly.
 - b. That a statement from a licensed engineer certifying that the existing bridge over East Canyon Creek has the capacity to handle all anticipated traffic loads (including emergency and construction vehicles) is submitted with the final plat application.
 - c. That an easement and maintenance agreement is required for all private streets and drives.
 - d. *That all private driveways are constructed per the recommendations of the geotechnical report for the project.*
 - e. That the developer shall choose and specify the retaining wall method and material for the project in the final plat submittal.
 - f. That storm drainage calculations are updated and shown on the final plat submittal.
7. *That the bridge is constructed with 14' width to inside of guardrail to match the road variance with proper guardrail design and subject to final approval of the County Engineer.*
8. That the final re-vegetation plan for all cuts and fills is included and financially assured as part of the required improvements for the subdivision.
9. That verification of fire code and urban wild land interface compliance is required in writing from the local fire code official as a condition precedent to issuing building permits for all structures and also as a condition precedent to issuing a certificate of occupancy or completion for the structure. This shall be placed as a note on the plat.
10. That all building permit submittals for homes and accessory buildings shall have individual grading, drainage and re-vegetation plans, which are designed and stamped by licensed civil engineer. This requirement shall be included as a note on the final plat.
11. That all structures and construction disturbance related to structures shall remain within the building envelopes identified on the plat. This shall be added as a note on the final plat.
12. That an approval letter from the Health Department for the septic system and well protection locations is received prior to or concurrent with the acceptance of a final plat application for the subdivision.

13. That will serve letters are submitted with the final plat application from Rocky Mountain Power and Questar, if natural gas is intended to be utilized in the development of the property.
14. That a conservation easement organization is identified and a conservation easement draft is submitted for review with the final plat application covering all of Parcel A, and that a conservation easement on Parcel A is executed prior to the recording of the final plat.
15. That CC&R's and HOA documents are submitted with the final plat application, which shall detail maintenance and financial responsibilities for all common areas and private roads and driveways.
16. That the access mechanism to the gate (Nox Box, etc) is provided to the Fire Department, Emergency Services Department (Ambulance) and Sheriff's Department prior to the issuance of any building permits within the subdivision.
17. That no building permits shall be issued prior to the establishment of a flowing and tested well that is intended to serve the structure and no building permits shall be issued until water rights are transferred to the individual building lot. This shall be placed as a note on the plat.
18. That an updated title report is submitted with the final plat submittal which matches the plats boundary description.
19. *That the preservation, maintenance and ownership of the open space be completed as per the PRUD ordinance 8-13a-3-b*

And based on the following six Findings:

1. That this application was submitted prior to the repeal of the PRUD ordinance and is allowed to be processed and reviewed under those now repealed provisions of the Morgan County Code.
2. That superior clustering, significantly reduced infrastructure, and design superior to a standard subdivision were found by the previous County Council and this design further reduces the number of proposed residential building lots.
3. That curb, gutter, and sidewalk are not required on the private street due to the remote location of the subdivision and low amount of internal traffic generated.
4. That the previously granted variances for cul-de-sac length at 1600' and private driveway width of 14' run with the land.
5. That with the conditions of approval and the previously granted variances, this application complies with the Morgan County Code for a preliminary plat PRUD.
6. *That both Mr. Hatch and the County Attorney believe the Kearn River Pipeline easement is not an issue to this development.*

Second by Member Weaver.

There was discussion on the road surface, private streets, private drives, and warranty.

Member Anderson referred to the memorandum from Wasatch Civil engineering. He noted he was ok with the driveway not being paved but he was not ok with just taking it out of the warranty. He believed the street system, including the private drive, still needs to be constructed and placed in the warranty on #5.

Member Haslam amended his motion to leave the #5 condition as originally stated in the staff report.

The final motion was as follows:

Member Haslam moved to forward a positive recommendation to the County Council for preliminary plat approval for Lazy H Ranch planned residential unit development with the following nineteen conditions:

1. That all unbuildable land may be utilized in the residential dwelling unit calculations for this subdivision.
2. That all requirements of the County Code, except those that are legally varied, are met and adhered to for this subdivision.
3. That all requirements of the County Surveyor are met and adhered to in the final plat submittal and prior to plat recording.
4. That the private streets be constructed with all-weather paved asphalt surface that meets the requirements of the submitted geotechnical reports, as verified by the County Engineer.
5. That the street system, including the private driveways all the way to both turnaround areas, is constructed and placed into warranty prior to the issuance of any building permits within the subdivision.
6. That all remaining conditions of the County Engineer's preliminary plat review, as stated in the memo dated January 3, 2011, are completed prior to or as part of the final plat submittal:
 - a. That the individual wells are included as required subdivision improvements with the final plat submittal, and are designed, constructed and financially assured accordingly.
 - b. That a statement from a licensed engineer certifying that the existing bridge over East Canyon Creek has the capacity to handle all anticipated traffic loads (including emergency and construction vehicles) is submitted with the final plat application.
 - c. That an easement and maintenance agreement is required for all private streets and drives.
 - d. That all private driveways are constructed per the recommendations of the geotechnical report for the project.
 - e. That the developer shall choose and specify the retaining wall method and material for the project in the final plat submittal.
 - f. That storm drainage calculations are updated and shown on the final plat submittal.
7. That the bridge is constructed with 14' width to inside of guardrail to match the road variance and proper guardrail design and subject to final approval of the County Engineer.
8. That the final re-vegetation plan for all cuts and fills is included and financially assured as part of the required improvements for the subdivision.
9. That verification of fire code and urban wild land interface compliance is required in writing from the local fire code official as a condition precedent to issuing building permits for all structures and also as a condition precedent to issuing a certificate of occupancy or completion for the structure. This shall be placed as a note on the plat.
10. That all building permit submittals for homes and accessory buildings shall have individual grading, drainage and re-vegetation plans, which are designed and stamped by licensed civil engineer. This requirement shall be included as a note on the final plat.
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13. That will serve letters are submitted with the final plat application from Rocky Mountain Power and Questar, if natural gas is intended to be utilized in the development of the property.
14. That a conservation easement organization is identified and a conservation easement draft is submitted for review with the final plat application covering all of Parcel A, and that a conservation easement on Parcel A is executed prior to the recording of the final plat.
15. That CC&R's and HOA documents are submitted with the final plat application, which shall detail maintenance and financial responsibilities for all common areas and private roads and driveways.
16. That the access mechanism to the gate (Nox Box, etc) is provided to the Fire Department, Emergency Services Department (Ambulance) and Sheriff's Department prior to the issuance of any building

- permits within the subdivision.
17. That no building permits shall be issued prior to the establishment of a flowing and tested well that is intended to serve the structure and no building permits shall be issued until water rights are transferred to the individual building lot. This shall be placed as a note on the plat.
 18. That an updated title report is submitted with the final plat submittal which matches the plats boundary description.
 19. That the preservation, maintenance and ownership of the open space be completed as per the PRUD ordinance 8-13a-3-b

And based on the following six Findings:

1. That this application was submitted prior to the repeal of the PRUD ordinance and is allowed to be processed and reviewed under those now repealed provisions of the Morgan County Code.
2. That superior clustering, significantly reduced infrastructure, and design superior to a standard subdivision were found by the previous County Council and this design further reduces the number of proposed residential building lots.
3. That curb, gutter, and sidewalk are not required on the private street due to the remote location of the subdivision and low amount of internal traffic generated.
4. That the previously granted variances for cul-de-sac length at 1600' and private driveway width of 14' run with the land.
5. That with the conditions of approval and the previously granted variances, this application complies with the Morgan County Code for a preliminary plat PRUD.
6. That both Mr. Hatch and the County Attorney believe the Kearn River Pipeline easement is not an issue to this development.

The Chairman called for discussion.

Member Wilson asked about the variance. The County Council originally stated that 12' was acceptable. He asked why we are varying from that. Mr. Crowell noted that there was discussion about 12', however, the language in the County Council minutes indicates that the variance was given to a 14' driveway.

The variance was discussed.

Member Wilson asked about the open space ordinance and dedication to a public/private entity. Member Haslam noted however Mr. Hatch completes that PRUD ordinance requirement is completely up to him.

The vote was not unanimous with Members Haslam, Weaver, Wilson, and Anderson for and Member Kobe Abstaining due to the fact that he was not at the January 13, 2011 meeting when this was originally discussed.

6. Discussion/Decision: To amend sections or portions of sections 8-2, 8-3, 8-4, 8-5F, 8-6, 8-8, and 8-10 of the Morgan County Code pertaining to the appeals authority, appeals, variances and related administrative provisions.

Mr. Ewert presented his staff report (please see attached Exhibit A)

Addressed the following facts but noted that these facts are not talking about individuals but the position:

1. The current BOA is appointed by a political body and that same BOA have the authority to reverse the decision of that same political body which makes it an awkward position.
2. There is no current requirement for educational experience. There is currently a very well educated BOA but it is often luck of the draw
3. Current BOA is based off of political boundaries. Nature of those boundaries induces political bias into that system. The decision of the position needs to be as objective as possible.
4. Motivation – currently there is not compensation for the position; you have five people who volunteer their time. Motivation makes it difficult to make a quorum from time to time.

He noted given that basis, there are three basic alternatives that staff has formulated.

1. An appeal and variance hearing officer. Still appointed by the elected officials, but it does address issues 2 -4 above.
2. The county council decisions are appealed directly to District Court. Eliminates the awkwardness of decisions being reversed by an appointed body.
3. Let planning commission make more administrative decisions and have the appeal authority be a higher authority such as the County Council. This is an alternative that is most commonly used in other areas. The planning commission is the land use authority for making administrative decisions; the County Council remains the legislative authority.

Member Anderson noted he would like to know what percentage of cities and counties, similar to ours, use this system and if it is working. Mr. Crowell noted staff would be happy to do some polling if that is what the planning commission would like to see done. He believed the best decision was to ask the question, “what is the best system to get a decision that is based on the law, based on the state code, and that fits Morgan County’s form of government and situation the best.”

Chairman Wright asked what the problem is with trying to solve reviewing this. He asked if it was the notion that we have an appointed group sitting over our elected officials and that they may be able to over ride their decision. Mr. Ewert noted the reasons above are probably the fundamental challenges, but the issue mentioned is awkward for the County Council. They appoint a board to be an appeals authority per state code but they hope that the Board they are appointing is upholding the decisions because they believe that they are working in accordance with the code; and in many instances they are. It almost seems like hierarchal issue where County Council decisions are being appealed to a body which might not be above the County Council.

Mr. Crowell noted the concern of the former county council, who directed this work, was that the groups of individuals chosen may be prone to more emotional reaction, and if something is going to be appealed why not go directly straight to the record and straight to the law in the most legal way possible.

Member Haslam – noted his opinion is that if we are going to have a BOA it needs to be between the Planning commission and the County Council and if someone does not like that decision then it needs to go to District Court.

Member Weaver noted he is a big believer of legality and believes it should be put upon the shoulder of someone who is trained in that legal realm. He likes the idea of an appointed hearing officer.

Member Kobe noted he does not have any concern of a legally trained hearing officer. He would not wish District court on anyone. So by using a hearing officer, you have someone who is legally trained for the two or three times it may happen over the years. His questions would be, what the cost to the County is if someone takes this to District Court verses hiring a hearing officer. He noted the following:

- Adding to the board or switching it around does not solve what we would want to solve if we moved away from that.
- District court is too costly and the things that have come before this Board does not appeal to be things that need to go to District Court to solve.
- Taking it back to the planning commission level he believes the planning commission is not ready for that responsibility.

Member Wilson noted he is not concerned with hiring a hearing officer. The face of the County Council has changed. He would be willing to send this onto the Council and let them make the decision.

Member Anderson noted he understands the County Council instructed the Planning Commission to look at this issue and give recommendation but believes the County Council has the authority to take care of this. However, he would recommend that the requirements be specific if the option of the hearing officer is decided upon. If a Board is chosen he likes the idea of three undesignated area individuals. He noted he is in favor of keeping it as is.

Chairman Wright asked staff what the specification of a hearing officer would be.

- Mr. Crowell noted a former district judge or a land use attorney would probably be the most qualified.
- The fee schedule will need to be adjusted and cost recovery will need to be revisited.

Member Anderson believed that an individual in a community that volunteer's time is very respectful, especially with the expertise that they have. To use taxpayer dollars to go hire someone, he would first like to see how that cost can be recovered and not out of the taxpayer's wallet.

There was discussion on cost recovery and training requirements for a hearing officer.

Member Wilson moved to recommend that the Planning Commission forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding the County's appeal authority, application 10.067, based on the following findings:

- 1. A Variance and Appeal Hearing Officer is an option supported by State Code.**
- 2. It will increase the legal knowledge from which appeals and variance decision are made.**
- 3. It will reduce the political influence of quasi-judicial decision making.**
- 4. It will provide the County with more flexibility in setting appeals and variance meetings.**

Second by Member Haslam.

There was further discussion.

Chairman Wright asked about cost recovery and asked if Member Wilson would want to add a finding that the County evaluates this position in such a way that the applicant covers the cost.

There was discussion on cost recovery, varying review time per application, size of development. These were all factors that would need to be considered.

Mr. Crowell noted when he has worked with this position before he was able to negotiate a per appeal fee because some are little and some are big; but was not sure that would work again. When an appeal happens, individuals call, staff writes minutes, the lights are on, this is the cost. You can charge an hourly rate, sometimes you get 100% cost recovery and sometimes you don't; it is hard to say what costs would be in general.

Member Haslam asked if the fee recovery is really an issue at this point. Member Wilson said it may be if they choose to accept this recommendation as a final draft. If it is a concern, it should be addressed now for that reason. There was further discussion.

Member Wilson amended his motion as follows:

Member Wilson moved to forward a positive recommendation to the County Council for the proposed land use regulations text amendments regarding the County's appeal authority, application 10.067, based on the following findings:

- 1. A Variance and Appeal Hearing Officer is an option supported by State Code.**
- 2. It will increase the legal knowledge from which appeals and variance decision are made.**
- 3. It will reduce the political influence of quasi-judicial decision making.**
- 4. It will provide the County with more flexibility in setting appeals and variance meetings.**
- 5. That the County evaluates a cost recovery mechanism for the appeals process.**

Second by Member Haslam. The vote was not unanimous with Members Haslam, Wilson, Kobe and Weaver for and Member Anderson against with reason that he is still in favor of the current board as it stands.

7. County Council/Staff update.

- Carver re-zone - Originally the applicant requested this be postponed at the Council level, that request has now been withdrawn and a request for the council to address their application has been submitted.
 - Subdivision is not complete. Mr. Ewert is meeting with Mr. Adams and Mr. Holyoak regularly. There are some UDOT concerns.
 - They would like an answer on the zoning line boundary because that will help them determine their building envelope.
- Vacancy on the planning commission. Member Weaver and Member Wright's terms are up. There are openings for the Mountain Green and Enterprise areas.
- Council has made a decision to not act upon the Council Administrator position.
- Council has made a request for a joint meeting with the Planning Commission. Schedules are being looked at.
- New Chairman and Vice-chairman for the year will need to be addressed in the near future.
- Croydon area plan – Member Toone's opinion is to keep it on a more informal route. Maps are currently being looked at.
- Water study – no information has been received from the State as of date.
- Snow Basin – Developer is aware that the sewage options are a big concern for the County. Mr. Crowell noted he is more concerned about the storm drain management. The following was also noted:
 - It is Snow Basin's intent to build public roads on this project
 - The long term impact to the County could be substantial.
 - Special service districts
 - MPDR is probably not the best ordinance to use.
 - Invite Mark Miller, County Engineer to come and have a discussion with the Planning Commission regarding this proposed project.
 - Water rights – possibly wells. Appropriate to ask someone from Summit County to come and discuss what they have done with their resorts.
 - The County does need to make informed decisions because Snow Basin will be building a new city.
- Kearn River is in the process of re-piping.
- Rocky Mountain Power – met with the County Council in the fall and they will not be coming before the Planning Commission again. They may come before the Planning Commission if they determine and are able to negotiate for a new substation in the County.
- Rivala – has not presented anything new or been in touch with the County recently.

8. **Adjourn.**

Member Weaver moved to adjourn.

Approved: _____
Chairman

Date: _____

ATTEST: _____
Teresa A. Rhodes, Clerk
Planning and Development Services

Date: _____

DRAFT

Exhibit A – Agenda item #6 – Staff report

Memo

TO: Planning Commission
FROM: Charles Ewert, Planner
DATE: January 20, 2011
SUBJECT: Morgan County Appeal Authority; File #10.067

On January 13, 2011, the Planning Commission heard and considered an ordinance regarding a change to the County's Appeal Authority. Decision on the item was postponed, and direction was given to staff to consider alternatives for the Planning Commission's consideration. This memo outlines some of the considered alternatives.

Staff has been advised by the County Attorney that the current proposal is his preferred course of action over what currently exists. Regardless of what the Planning Commission's final recommendation to the County Council will be, all current ordinance references to the appeal authority should be reflected accordingly.

It may be practical for all references to uniformly refer to the term "Appeal Authority," rather than a specific authority type. The County can then create a simple paragraph explaining what the appeal authority is. This way if the County desires to change it again in the future it will be a much simpler process than the current one.

What follows is a table of potential alternatives. When considering them it is important to remember that the Appeal Authority is a legal position and not a legislative one. If the Planning Commission desires to use the current recommendation, a sample motion is included in the January 13 staff report. If the Planning Commission desires to explore ordinance possibilities with one of the following options, please feel free to direct staff to revise the current proposal and present it in a future meeting.

Accept current recommendation for a legally trained appointed hearing officer.	Keep existing board, with districts.	Keep the board, but remove districts (pick from the County's best).	Change the board to three non-districted members.
Change the board to seven non-districted members.	Keep districts but add more at-large alternates for a pool of possible alternates.	Take County Council out of administrative decisions. Re-do Land Use Authority so that the Planning Commission makes most administrative decisions, and the Council is the appeal authority.	Take County Council out of administrative decisions. Re-do Land Use Authority so that the Planning Commission makes administrative decisions, and the BOA or hearing officer is the appeal authority.
Create an appeal committee that consists of staff members that don't make other administrative decisions.	Partner with another City or County to use their appeal authority	Add compensation for appeal authority, and pick an option.	County Council decisions appealed directly to district court.