

**SAN MIGUEL COUNTY PLANNING COMMISSION
MINUTES – REGULAR MEETING**

September 9, 2020

On-line Meeting

Present: Lee Taylor, Chair
Pamela Hall, Vice-chair
M.J. Schillaci, Secretary
Ian Bald, Member (arrived late)
Josselin Lifton-Zoline, Member
Tobin Brown, Jr. Alternate

Absent: Matthew Bayma, Sr. Alternate

Planning Staff Present: Kaye Simonson, Planning Director
John Huebner, Senior Planner

County Staff Present: Amy Markwell, County Attorney
Nancy Hrupcin, Legal Assistant, County Attorney’s Office

9:00 a.m. Chair called the meeting to order.

APPROVAL OF MINUTES

MOTION by MJ Schillaci to approve the August 12, 2020 Planning Commission Meeting minutes as presented.

SECONDED by Josselin Lifton-Zoline. **VOTE PASSED 4-0.**

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	Aye	Nay	<u>Abstain</u>	Absent
Ian Bald	Aye	Nay	Abstain	<u>Absent</u>
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	Aye	Nay	Abstain	<u>Absent</u>
Tobin Brown	<u>Aye</u>	Nay	Abstain	Absent

PLANNING COMMISSION AND STAFF COMMENTS

Kaye Simonson, County Planning Director updated the Planning Commission on various matters.

The Master Plan Update is still on hold for the Planning Department but they are ready to move forward as soon as we can start holding community meetings.

The county annual budget process is underway and Planning is researching a fee update. Planning’s fees have not been updated for more than twenty years.

Planning will discuss affordable housing mitigation rates and fees with the Board Of County Commissioners and will be preparing an RFQ for updating the Affordable Housing mitigation rate. Developers are required to provide 15% affordable housing for commercial uses. The Impact Fee has been out of date since 2015. In the early 90s the Land Use Code required people to build a deed restricted unit for houses of a certain size. The LUC has since changed and now an impact fee is required for new construction, and the requirement to build a new unit was removed from the code. The Commissioners would like to discuss with staff on September 16, 2020 a policy for owners who want to buy out their deed restriction on existing Accessory Dwelling Units (“ADU’s”).

The Sunnyside Affordable Housing Project is taking the first step toward annexation of the property into the Town of Telluride. It will be 30 units, a combination of 1-2 bedroom units, townhouses and 3 studio units and at this point the units being for rent. There will be a new zoning district customized for that project and hoping to break ground possibly next spring.

ANNUAL REVIEW OF THE ERDMAN ENERGY ENTERPRISES LLC: SOLAR FACILITY SPECIAL USE PERMIT, LAST DOLLAR ROAD, APPROVAL GRANTED MARCH 20, 2019

Those who addressed the commission:

- John Huebner, Senior Planner
- Charles Price, neighbor
- Bo James Nerlin, Attorney for Charles Price
- Terry Schuyler, San Miguel Power Association
- Tim Erdman, Applicant
- Kaye Simonson, Planning Director

John Huebner presented the annual review of the Erdman Energy Enterprises LLC Solar Facility Special Use Permit. Planning Staff had a site visit in October 2019 after site preparation for the project had started, and again after the commercial solar array project was completed in August 2020. The solar panels were installed last November 2019. The applicant has installed the required wildlife fencing around the installation and has begun tree planting to provide screening from Last Dollar Road. Erdman also re-seeded approximately 5 acres to repair disturbed soils on the site using a hydro-mulch process. Applicant needed a reliable water source to clean the panels and water the trees. This summer he was able to complete two ponds and an irrigation system to water the hydro-mulched areas. Applicant has also begun controlling for weeds, particularly two kinds of thistle. He has done hand pulling, let sheep onto the site and sprayed. There is still some work to do regarding controlling for weeds. With the completion of the commercial panels, there is potential for 274 kW to be generated into the SMPA electrical grid. The applicant is still waiting for the final sign off by the state electrical inspector. In the interim he has been crediting all the electricity produced to local non-profits and the Telluride airport.

As the Commissioners required, notice was sent to all parties who provided comment on this project and to specific HOAs and other interested parties. Comments were received from Terry Schuyler, SMPA and Kenny Maenpa, Telluride Airport, stating that they had no issues with the installation. A comment letter was also received from Charles Price via his attorney Bo James

Nerlin. The purpose of this review is to confirm that the applicant has met the conditions of the Special Use Permit, or making progress meeting those conditions. It is not to reopen consideration of the application nor to re-review it at this time.

Lee Taylor asked if Erdman Enterprises and SMPA have a Power Purchase Agreement. Planning is not a party to the confidential sales agreement between the developer, Mr. Erdman, and SMPA. Terry Schuyler confirmed the agreement is in place and confidential between the parties.

MJ Schillaci asked if a copy of the Notice of Determination has been received by the FAA. John replied yes, and that there is a finding of no significance regarding airport operations. There is nothing further required at this point.

Mr. Erdman thanked the Planning Commission for their review. In January the array went online and he began giving credit to the non-profits. He has not sold any subscriptions yet as he is waiting for approval from the state electrical inspector. The solar facility has been operating flawlessly since January. He is planting two groves of 10-15' tall aspen trees and some shrubbery. The panels were placed further from Last Dollar Road as the site would allow to minimize the visual impact to motorists.

Lee Taylor asked if Erdman Energy is selling subscriptions directly or through SMPA. Mr. Erdman replied that they are direct subscriptions between Erdman Energy and the subscriber. SMPA will do the billing and credits the subscriber. The airport was the first to subscribe and he will have further subscriptions once the State has signed off on the project.

Josselin Lifton-Zoline asked if there was any concern with the original application from Colorado Parks and Wildlife about birds. John replied that no, there was no concern expressed. He added the ponds on site were a positive for birds and wildlife.

Pam Hall asked if there had been any complaints received from neighbors or any negative feedback. John Huebner replied that he heard from the Price's via their attorney last summer regarding the site prep. Planning did a site visit after the complaint, and determined that construction was within the established footprint described in the application. Charles Price replied that his objection with the development has primarily been with the visual impact and its effect on avian migration. He feels that the project does not comply with section 2.12 of the Land Use Code regarding scenic quality and wanted to state that for the record. Lee Taylor asked if someone could check in with the Town of Telluride regarding the solar array at the water treatment plant and ask if they have had any noticeable or recorded instances of avian impacts as they are about the same size, and next to water.

Bo Nerlin commented that the concerns expressed on behalf of Mr. Price are with the two general conditions and ten specific conditions of the Special Use Permit as indicated in his letter. He would like to ask for more in-depth review or documentation from staff that shows the conditions enumerated in the application had been met.

Pam Hall asked if this is the only review or is it ongoing for every year. John Huebner responded that this is the only review requested by the County Commissioners and that Planning is scheduled to bring forward the Planning Commission’s recommendation to the BOCC on October 7, 2020. He stated Mr. Erdman is in full compliance with the Special Use Permit and the only outstanding item is for the county weed manager to visit on site once the vegetation has taken hold. Kaye Simonson added that staff will continue to monitor the project and make sure they are in compliance moving forward.

Josselin Lifton-Zoline inquired about the additional panels that could be added for the private residence and when that might happen. She wondered if that requires additional approval or if that is part of what has already been approved. Mr. Erdman replied that he has no immediate plans for additional panels. Kaye Simonson added that he has approval for a certain number of panels. If he wants to expand past what he has been approved for, he would need additional development and building permits. Tobin Brown asked if it would be a separate array or an expansion of the current array. John Huebner stated that Erdman Energy Enterprises does have approval to expand the current array.

Bo Nerlin asked if he could have copies of the permits that have been approved. Also, even though the project does not require further review, there are some outstanding issues such as the revegetation that the Planning Commission could follow up on. Lee Taylor suggested adding to the motion a request that planning re-stipulate within the year to the status of the various conditions of the permit. Kaye Simonson replied that following up on permits and projects is already part of the job of planning. Josselin Lifton-Zoline suggested that any additional review happen after the rest of the project is completed.

Ian Bald joined the discussion after the meeting had started.

MOTION by Tobin Brown to recommend to the Board of County Commissioners that no changes be made to the Erdman Energy Enterprises LLC Special Use Permit based on the finding that Erdman has complied with the Special Use Permit terms and conditions of approval. **SECONDED** by Josselin Lifton-Zoline. **VOTE PASSED 5-0**

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	Aye	Nay	Abstain	<u>Absent</u>
Tobin Brown	Aye	Nay	Abstain	Absent

LAND USE CODE AMENDMENT RECOMMENDATION: SUBDIVISIONS CODE AMENDMENT PERTAINING TO FINAL PLAT REQUIREMENTS AND SURVEY MONUMENTS

Those who addressed the commission: Kaye Simonson, Planning Director
Dave Foley, County Surveyor

Kaye Simonson presented the proposed Land Use Code Amendment for Articles 3, 4, 5 and 6 regarding subdivisions. The purpose of the amendment is to provide clear direction regarding subdivision procedures and requirements that is consistent with state statute and best practices. It is

also to correct errors in the LUC amendment subdivision process and to reorganize subdivision requirements so like items are grouped together. This was requested by Dave Foley, the County Surveyor. When he was preparing the initial draft he met with local surveyors, land use attorneys, county staff, and other elected officials to get feedback on preparing the draft. Kaye highlighted some of the proposed changes.

Development application types, particularly subdivision exemptions are reconciled between Articles 3, 4, and 5 so the language is always consistent and the citations are correct. Planning has put in very specific requirements for final plats and the language for the certificates and acknowledgements that should be on the plat. This amendment will provide clear direction for plat submittals.

The Planning Department added more detail for submission requirements for preliminary subdivisions and PUDs particularly regarding easements, water and drainage. There is more information on how to monument a property when surveyed, which is consistent with statute and best practices. A new section, 5-1204, Vacation of Lot Lines, is added. Currently we use the standards in Section 5-1203, Lot Line Adjustment, which are similar but with some slight differences. There are final plat requirements specified in Subdivision Exemption Section 5-12. Most of these refer to Article 4, but there are a couple of things that require more specific language. For example, if a property line adjustment is within a platted subdivision, it is different than the language one would use on two properties that had not been previously platted through a subdivision process. Also, two definitions were added to Article 6, 'County Surveyor' and 'Platted Subdivision Lot'. Issues with the Wright's Mesa subdivision exemption procedures were discovered. When the Wright's Mesa zone district was updated in 2010 it split subdivision exemptions into properties greater than 37 acres, less than 150 acres and properties greater than 150 acres. The code is cleaned up so it is consistent throughout the code and so an exemption for a property less than 150 acres is a two-step process and an exemption for more than 150 acres is a one-step process. Inconsistencies and errors regarding lot size and two different types of open lands subdivisions were also corrected.

Since the commission received their packets the Planning Department had several thoughts for further consideration, said Kaye Simonson. Planning would like to propose that the Subdivision Improvement Agreement be added as an Appendix to the Land Use Code. The reasoning is that you do not have to have a Land Use Code amendment if you want to change language if it is in an appendix. As an agreement, it is something that needs to be customized and tailored to the actual proposal.

Secondly, in regards to assigning addressing, under 4-502 (I.) a proposed change of job responsibility to 'Addressing Official' rather than the 'County Building Department', allows for the GIS Coordinator to assign addresses. All addressing standards are an appendix to the code, so the LUC does not need to be amended if addressing standards need updating. In Section 5-1203 B regarding the purpose or effect of a lot line adjustments, a recommendation is to strike the words, "for development and resale purposes", and adding the phrase "it cannot render a previously buildable lot, unbuildable." In 5-1204 A Lot Line Vacation, it is suggested to add the phrase, "except if approved as a subdivision pursuant to section 3-7.

Kaye also received an email from Lee Taylor after the packets were sent. He asked if we should consider cultural and historical resources and it should we add that to our subdivision and PUD requirements.

Public notice is not required for Planning Commission meetings considering Land Use Code amendments, but as a courtesy Planning placed display ads in the Telluride Daily Planet and the Norwood Post on September 2, 2020.

There will be published legal notice prior to the BOCC Meeting October 7, 2020. Referral agencies were the County Surveyor, County Attorney, Building Official, County Manager, County Treasurer, County Clerk and Recorder, GIS Coordinator, and the five towns.

Land Use Code Amendments may be initiated by county residents or persons who own property in the county. This amendment was initiated by an elected official, the County Surveyor, and the form shall be drafted in the format and style of the code.

The Planning Department does recommend approval of the amendments to Articles 3, 4, 5 and 6 based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments, and consistent with Land Use Code Section 1-4, Purposes, and is consistent with applicable Colorado Revised Statutes with the following direction: Amend Section 4-508 B to move the Subdivision Improvement Agreements Format to an appendix to the Land Use Code; change 4-502 I. to strike County Building Official and state, "as administered by the Building Official; change 5-1203 B to strike, "for development or resale purposes" and state the purpose or effect of the lot line adjustment is not the creation of a new lot or parcel that is on substantially different sized dimension or render a previously buildable lot unbuildable; change 5-1204 A to state, "a lot line vacation and merger of lots, tracks, parcels or streets permanent and cannot be undone at a later date except if approved as a subdivision pursuant to Section 3-7, and finally, amend Section 4-3, Sketch Plan, and Section 4-4, Preliminary Subdivision, to add a requirement for a cultural resource report and also amend Section 5-14, to add PUD standards for cultural resource reports

Josselin Lifton-Zoline asked for further explanation on the cultural resource addition. Lee Taylor explained his request. He said a conversation regarding the San Miguel Valley Corporation Deep Creek parcels and the old Indian burial plot up on the hill. Lee noted the West End regulations also include an assessment of the cultural and historical landscape.

Lee Taylor asked Kaye about clarification on Section 4-410 C and the requirement to submit square footage of non-residential floor space. Kaye responded that it is used in calculations for affordable housing, parking, and calculating the development fee.

Lee Taylor also inquired about the Mineral Resources section, that it does not refer to Oil & Gas, but does include sand and gravel. Kaye Simonson replied that when doing a subdivision they are concerned with who owns the mineral or oil and gas rights and the holders of those rights are on notice that there is development. Kaye also noted that there are statutory requirements regarding extraction of mineral resources such as sand and gravel prior to development.

Dave Foley thanked the Planning Commission for considering these Land Use Code amendments. He initiated them several years ago and it has been an effort. It came about because as County Surveyor he reviews land survey applications and maps that come into the office and we lacked a set of standards that were substantial enough to really give a good review of the maps. Then he and Planning staff started discovering lots of inconsistencies and things the planning office also wanted to address. He really thanked Kaye and her staff for a huge amount of effort and careful review.

These plat requirements are really needed by our county. Our current standards are 30 years old. Dave said he is really glad we are at this point in the review process.

MOTION by Tobin Brown to recommend to the Board of County Commissioners to adopt the amendments to the San Miguel County Land Use Code Articles, 3, 4, 5 and 6, regarding Subdivisions, based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments; is consistent with Land Use Code Section 1-4, Purposes of the Land Use Code; and is consistent with applicable Colorado Revised Statutes, with the following direction:

1. Amend Section 4-508 B, to move the Subdivision Improvements Agreement format to an Appendix to the Land Use Code.
2. Change 4-502 N.1 to strike County Building Official and state, “as administered by the Addressing Official...”
3. Change 5-12-3 B to strike “for development or resale purposes” and state, “The purpose or effect of the lot line adjustment is not the creation of a new lot or parcel (that is, one substantially different in size or dimensions), or renders a previously buildable lot unbuildable.”
4. Change 5-1204 A to state, “A lot line vacation and merger of lots, tracts, parcels or streets is permanent and cannot be undone at a later date except if approved as a Subdivision pursuant to Section 3-7.”
5. Amend section 4-3 Sketch Plan and Section 4-4 Preliminary Plan to require a submission of a cultural resource report. In Section 5-14 add standards of review for cultural resources.

SECONDED by Josselin Lifton-Zoline. **VOTE PASSED 5-0**

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Tobin Brown	<u>Aye</u>	Nay	Abstain	Absent

LAND USE CODE AMENDMENT RECOMMENDATION: MINING TWO –STEP CODE AMENDMENT TO THE SAN MIGUEL COUNTY LAND USE CODE.

Those who addressed the commission: John Huebner, Senior Planner
Kaye Simonson, Planning Director

The Board of County Commissioners recently met with the Planning Director to request that all Mining and Mineral Processing use application require Two-step rather than One-step review in the individual zone districts. The purpose of this amendment is to correct an inconsistencies in the Code, including Section 5-11, Conditional Uses on Federal Land. John Huebner presented the proposed draft amendment to the commission.

Public notice is not required, but the Planning Department did put display ads in the Sept 2, 2020 editions and the meeting application was also advertised in the Telluride Daily Planet and The Norwood Post. The amendment was referred to the County Attorney, County Manager, and to the County Natural Resources Director, and the five towns. Comments were received from the County Attorney, County Manager and Natural Resources Director, focused mainly on the language of the standards and the different terminology in individual zone districts. This Land Use Code amendment is strictly procedural. The various standards and inconsistencies of language in different Land Use Code sections will be addressed in a future review. There will not be any mining uses allowed without proper review, and some of those reviews involve areas and activities of state interest.

Josselin Lifton-Zoline asked if this came from the BOCC because of the mining clean-up project that was mentioned. Kaye answered there has been an ongoing concern for having a thorough review of mining applications as possible. All mining and mineral processing LUC standards will have to be revisited at some point.

John Huebner added that the upcoming Burro Mines clean-up application will have gone through review by these Federal agencies, BLM, the Department of Energy, and staff, including the Director of Government Affairs and Natural Resources, Lynn Padgett.

Ian Bald asked that if an activity occurs on Federal Land do they have to apply to the county for a Special Use Permit. John replied we don't really have the authority to say what happens on federal lands but we do have a say on any of the impacts that occur off site from that activity.

Ian Bald left the meeting due to connectivity issues.

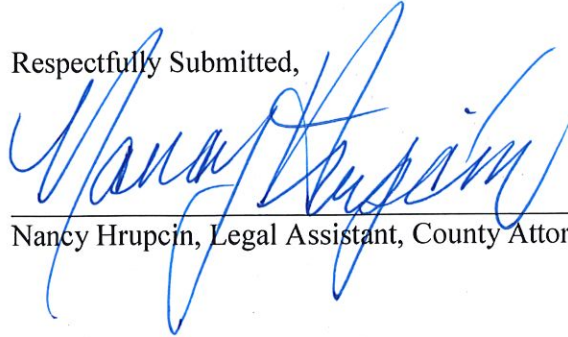
MOTION by Josselin Lifton-Zoline to recommend to the Board of County Commissioners to adopt the amendment to the San Miguel County Land Use Code Article 3, Sections 5-307, 5-318, 5-319, 5-320, 5-321, to require a Two-step Review for all Mining and Mineral Processing Use applications and all Conditional Uses on Federal Lands in all applicable Zone Districts based on the finding that the proposed amendment complies with the standards of Land Use Code Section 5-1802, Land Use Code Amendments; is consistent with Land Use Code Section 1-402, Implement Policies of Land Use Code; and Land Use Policy 2-35, Mining and Mineral Processing Operations, in that the proposed Two-step Review will ensure that mining and mineral processing operations within the county on private or public lands will be sited in appropriate areas and the impact of these activities will be sufficiently mitigated.

SECONDED by MJ Schillaci. **VOTE PASSED 5-0.**

Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent
Matthew Bayma	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Tobin Brown	<u>Aye</u>	Nay	Abstain	Absent

11:00 a.m. Adjourned.

Respectfully Submitted,



Nancy Hrupcin, Legal Assistant, County Attorney

Approved on November 10, 2020.

SAN MIGUEL COUNTY PLANNING COMMISSION



M.J. Schillaci, Secretary

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