

**STEAMBOAT SPRINGS PLANNING COMMISSION MINUTES**  
**JANUARY 14, 2010**

The special meeting of the Steamboat Springs Planning Commission was called to order at approximately 5:05 p.m. on Thursday, January 14, 2010, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were Chairman Rich Levy, Cedar Beauregard, Karen Dixon, Brian Hanlen, Jason Lacy and Cindy Slavik. Absent: Sarah Fox. Alternate position is vacant.

Staff members present were Senior Planner Jonathan Spence, Senior Planner Bob Keenan, City Planner Jason Peasley, City Planner Seth Lorson, and Staff Assistant Tami Heskett.

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**PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

None.

## **CC & CS ZONE DISTRICT WORK SESSION DISCUSSION**

Discussion on this agenda item started at approximately 5:05 p.m.

### **STAFF PRESENTATION**

Jason Peasley –

The first thing that we have is changes to the front setbacks. He explained what those changes were. As opposed to having a form-based code you would have a range in which to place your building. We hope that this brings the buildings closer to the street with a more urban form to them. We've changed the side and rear setbacks.

Seth Lorson –

He showed on the overhead what it looks like in the CC zone district.

Jason Peasley –

The change is that it's a bit more prescriptive now. By having a maximum setback requires that the buildings be pushed towards the front of the lots.

Jonathan Spence –

We're thinking about adding appropriate language so that under certain circumstances the developer wouldn't have to go through a variance. He gave some examples.

### **COMMISSIONER QUESTIONS**

Commissioner Lacy –

What was that negative consequences language again?

Commissioner Slavik –

That would not necessitate a variance?

Jonathan Spence –

One way could be to do a variance and the other way would be to do a PUD.

Jim Cook –

What about the even of a fast food operation where they have a drive-up window?

Jonathan Spence –

I would imagine that we would not be permitting a fast food restaurant frontage along hwy 40.

Jim Cook –

You're saying that right now there will not be any room for any new fast food?

Jonathan Spence –

No, what I'm saying is that you would have to request for a variance.

Commissioner Hanlen –

The biggest goal that I have with adjusting these standards was trying to create it so that you could go in and subdivide a property that was in the CC or CS zone district and you weren't being penalized for doing so. By eliminating or drastically reducing the amount of front, side, and rear setbacks as well as the new street standards that the City adopted to give a little bit more flexibility with the placement of the sidewalks and the roadway. I'm hoping that we can go in and create something where a lot of these awkward parcels can be subdivided and you do not have to come in with one single development application. Whether it's best to alter the CS and CC zone districts I am not in full agreement with. I think that the TND may have a place in this. That's what the goal was when we started talking about these changes.

Brian Olson –

By being able to plat a property....

Jonathan Spence –

Some of the direction that we got from Planning Commission was to see if we could implement our new T4 and T5 TND standards on the CC and CS zone districts. What we found was that what makes those standards work is having the backbone infrastructure of the subdivision standards. If a property wanted to rezone to TND then we would have to run some tests on that property to see if they could do a subdivision that would meet those standards of the TND.

Brian Olson –

This person is doing this huge development. It makes sense to be able to come in and have parcels from this 5-acre property that you can develop now.

Commissioner Hanlen –

The problem is the setbacks.

Jonathan Spence –

The whole thing would be developed with the revised setbacks to a form that the Planning Commission and City Council wanted.

Commissioner Hanlen –

Did they have to go in as a PUD? Did that bump it into a variance then?

Jonathan Spence –

Yes.

Commissioner Hanlen –

You have to pay more and you have to go through the variance criteria process. A lot of the criteria are set up where it's not an easily overcome obstacle. If you have too many then you're automatically bumped into the PUD process. Our PUD process is a lot of times penalty based where you're simply trying to achieve a better product. You're then having to come up with things that cost additional money.

Jonathan Spence –

We treated it as an opportunity to do something special. (sarcasm)

Commissioner Hanlen –

When we were talking at worksession about how many projects come through with variances. The number said 50% of all DP's ask for variances. When I went back through and crossed off conditional use and duplicates of the same DP's that were in there. The number actually got above 60%. If 60% of DP applications are coming through the city right now are having variances....that's one variance all the way up to having to go through a full PUD. To me that's an indication that something is wrong with our zone district standards. A lot of those projects Planning Staff, Planning Commission, and City Council get behind whole-heartedly.

Jonathan Spence –

I think that staff will disagree with you on that.

Commissioner Hanlen –

I don't think that staff will disagree with me. When you look at the goals that staff confesses whether it's in the SSACP or elsewhere. Right now if you look at our current standards for CC and CS what I interpret from that is a single story, big box with a sea of parking. Whether it's dressed up or not that's what I interpret when you've got a 0.5 FAR and a 0.5 maximum lot coverage. When we brought this up the whole idea was we need density. Part of the problem is that when developers look at the standards and they are taken by the idea that this is going to be a more cumbersome process to have variances which equals a more expensive process, then is it going to be worth it to fight the system to get a better product? Are we better off with just following with what the code says. That's what I'm implying by when variances come across as a penalty. Can we create something that has the flexibility and encourages density?

Jonathan Spence –

I think that you'll be surprised with what you can do on the regulations. He gave an example. The assumption that because we have variances the code is out of whack I don't think is very accurate.

Commissioner Hanlen –

We haven't seen that particular project yet. He needs to come through and subdivide this property and end up with a product that both he likes, because he'll be able to build maybe one building and sell other parcels and build other buildings later as opposed to having to come through with one massive DP. The City likes it too, because we have a more predictable form that we'll end up with. That was the original emphasis for saying 'this is a good fit for TND'. If we were to come through and overlay all of the CS and CC zone districts and convert all of those to TND T4 or some variation thereof that the highway access plans along with identifying the constraints would in effect be the Land Use Regulating plan. That would supercede the standards that are dictated by the TND code. I thought that was a pretty fair way to get around the code and it changes everybody's mindset and we end up with this predictable form that I thought that everybody was looking for.

Jonathan Spence –

That's a fundamental question. Do people think that stretching the character of downtown along hwy 40 is appropriate?

Commissioner Beauregard –

I would like to hear feedback from the developing community. Would they prefer a form-based code or play with it? We've grown to like it because of what we did with Steamboat 700 it seemed to solve a lot of these issues with the codes that we're more in-depth than what we proposed.

Jonathan Spence –

We've had a hard time trying to mesh with the constraints of hwy 40 and the limited amount of depth of these lots.

Commissioner Beauregard –

Those constraints aren't going to change whether it's CC or CS.

Jonathan Spence –

It does change a little bit with TND, because you don't have the fundamental infrastructure of the lot and block surveillance that makes those types of setbacks appropriate.

Commissioner Beauregard –

When I was looking at the TND building standards it almost seemed like you were writing the same thing except that you didn't have any pictures in the diagrams. It seemed very similar to the building standards.

Jonathan Spence –

It is similar except that you have 0 setbacks.

Commissioner Beauregard –

I would think that a form-based code would be a better way.

Brian Olson –

When you say that can you explain that a little bit more?

Commissioner Beauregard –

It's a diagram with minimums and maximums. The reason why I like this more is because it's more predictable. The finished product is more predictable. What we're proposing is that 75% of buildings will have a 2<sup>nd</sup> floor. The form-based code would say that we want 2 layers on the frontage of the hwy. There are certain smart growths that would say that's a better pedestrian interface than a model that's up and down. It's a more predictable form. It would give you more of a downtown look.

Commissioner Dixon –

A form-based code attempts to sculpt the open space. Walls on the street and spacing of different rhythms and spacing of different scales all relate to how a pedestrian or anyone experiences the environment. No matter what you're building looks like. It gets away from dictating your architecture and more toward allowing you to get closer to the street and build these walls up to the street. You start to get predictability and a nice environment

versus a suburban landscape. That's how they came about. They looked to old downtowns like ours to come up with new ideas with what worked and didn't work. That's how it's evolved over the past 15 years.

Brian Olson –

Is any of the form-based code suggest that it might be easier for a person with a bigger parcel to come in and develop? Right now you feel like you have to get this huge project approved.

Jonathan Spence –

I think that's more of a perception.

Brian Olson –

If you're able to subdivide this parcel and get buildings approved as you go would be easier.

Jonathan Spence –

It's more of a perception, because it's a mish mash out there with constraints, sizes, and dimensions. It would be great to come in and say that the appropriate setbacks are 'x' and create a form for that project.

Brian Olson –

I'm not suggesting that, but it would be nice to come in and subdivide into smaller parcels.

Jonathan Spence –

That used to be what the PUD was all about. In this community it transformed into this punitive thing where we've extracted every penny and cup. In other places what it's being used for is a growth zoning code that was appropriate for that particular project.

Commissioner Beauregard –

One thing that I recently just read is that smart form-based codes can increase the neighboring property's value. For that reason Brian Olson could sell the property that he couldn't develop and because there's so many descriptive guidelines to what's going to be there that he can be in the future ok with what's going to be built on this property.

Commissioner Lacy –

He'll know with certainty what's going to be there.

Commissioner Beauregard –

The only thing is that you're regulating the building's form. You're saying that in this zone district the building's going to look like this. The reason why I handed you that was because that would be similar to a T4 that we're seeing here. In 2 pages you can outline every building type in that zone district. I like the simplicity and the predictability. That's what I don't think that we're getting with changing the CC and CS zone districts.

Jason Peasley –

What's more encountered with us with the T4 is the unpredictability of the lots.

Commissioner Beauregard –  
Where are you going to get the predictability?

Jason Peasley –  
In the TND subdivision you know that between 7 and 8 is the same as between 10 and 11.

Commissioner Beauregard –  
Can't we strive for that?

Commissioner Dixon –  
You're talking about block lengths being one of the primary subdivisions that we may or may not be able to achieve here because of the hwy 40 access. We would have a 1,000'+ block along here because there will not be any access to hwy 40. A pedestrian paseo counts as breaking up a block. So with TND you would be requiring a pedestrian paseo within whatever that block length range is. You would have a series of buildings and then a 25' paseo that's not a vehicular access, but it certainly breaks up the rhythm, scale, and allows for connectivity for the pedestrian.

Jonathan Spence –  
I would have a question about how to look at commercial subdivisions especially when they're unoriented and out of rhythm.

Commissioner Dixon –  
You would still get your autos parked back here. This particular lot is deep enough that you could still get a road all the way down to the Kum and Go.

Jonathan Spence –  
That's one of the good examples.

Ryan Spaustat –  
This parcel is 60-70% level. To put a road in here is probably unrealistic.

Commissioner Beauregard –  
What we can do is take this and make a form code out of it. We don't need to change this to T4 if we just put some of these diagrams with a minimum and maximum.

Jonathan Spence –  
That's what I'm seeing is that we're really close except that we don't have any diagrams.

Commissioner Beauregard –  
The thing that I don't like about T4 is that it's got a minimum height of 16' so it allows you to go down to 1 level. We're proposing more density with what you're saying. That's what I like about where we're going is that we're gaining that density that we're going to appreciate in the future.

Commissioner Hanlen –  
This is primarily vehicular access now. It's trying to set it up for the future whether it's 15-20 years down the road. My concern is that if we piece meal out these parcels that it's

creating something where somebody couldn't walk from the hotel down to Safeway and feel like you're putting your life in your own hands. We need to set up some type of predictability with the development where Planning Staff, Public Works and Planning staff aren't taking each parcel on a case-by-case basis to try and identify potential access routes to adjacent parcels. Try and identify in what would be the regulating plan for the whole site where we're trying to provide the connectivity and provide the predictability for the applicant so they know what they're getting themselves into when they bring a parcel forward. They know what you're expecting.

Jonathan Spence –

The hwy 40 access plan does show these types of easements.

Commissioner Hanlen –

The work is mostly done for the most part to create the Land Use Regulating Plan to convert it to TND.

Commissioner Levy –

Does the public have enough knowledge on TND and form-based codes to say that's something that you would want staff to explore or do you like the more traditional language of the zoning?

Commissioner Dixon –

I think that Jonathan Spence put it in a good way that is a similar pattern to what downtown is. What you said was that you weren't sure that staff wasn't sure that the rest of the community wanted that. That's really the question for the public.

Jonathan Spence –

In the design standards one of the big things with the consultants was that downtown for us was different. Let's preserve what's unique to downtown, which are the '0' setbacks, flat roofs, and the lot and block.

Commissioner Hanlen –

What you're saying is that the consultants said that and the limited public turnout said that.

Jonathan Spence –

Also the Planning Commission at that time and City Council also said that.

Commissioner Beauregard –

I think that we've seen the results of that with Logger's Lane.

Jonathan Spence –

Logger's Lane actually preceded that.

Commissioner Lacy –

We won't ever know if we don't ask.

Ryan Spaustat –

Does it work on an economic level?

Commissioner Hanlen –

That's the idea is that you can subdivide the property and you're not forced to fit say 50,000 square feet on a 100,000 square foot site. All of a sudden you can fit 4x that, but you're not forced to build that all at once. You can subdivide a corner of that building site and build the square footage that you need and then sell off the rest. I would argue that it work better regardless of what the economic situation is.

Commissioner Beauregard –

The economic community might not like to do that, but we're looking out for the whole community and not the future growth over the next 7 years. You're preserving half of your lot for future growth rather than sprawling it out on one level for future growth. From my perspective we're preserving that land and reducing sprawl.

Ryan Spaustat –

I agree with that. The thing that needs to be looked at is will these buildings work. Are the lots big enough to have a garage or have underground parking?

Brian Olson –

We just ran those numbers on a very large underground parking project and it doesn't work.

Jim Cook –

\$35,000/space?

Brian Olson –

Correct. We're challenged with developing for users. We can't build a building like that.

Jonathan Spence –

There are two ways to go about this. One is the way that it's been proposed here with the mathematical basis. We actually believe that the numbers being proposed aren't right. Another approach is to say where it's more important off of the frontage of Hwy 40 or off of the frontage of other major roadways. That's where the multi-story will be required. There are some uses that can't be located in a multi-story building.

Tom Lake –

We want to build something that's as easy to get around as possible for people that can't take care of themselves 100%. We really want to be on one story. We would like to have more of a campus feel. We don't really fit into a pure commercial zoning. We only get thrown in there because there isn't really any institutional zoning in this community.

Jonathan Spence –

We're working with the consultants on how to go about with a single story.

Commissioner Levy –

I understand that a nursing home would want to operate on a 1<sup>st</sup> floor, but couldn't that 1<sup>st</sup> floor operation be part of a multi-story building? You could have medical offices on the 2<sup>nd</sup>

floor. I was thinking of multi-generational where you have people who want to live near the assisted living people, but are fully ambulatory. Does that preclude that in your model?

Tom Lake –

It's not precluded, but I disagree that it's not desirable. We mix the daycare center with the nursing home. I hate to throw an elevator and a set of stairs into that equation. You're caring for people that aren't able to take care of themselves 100%.

Jason Peasley –

I think that this is an example where a variance is a good thing.

Commissioner Dixon –

Is it appropriate for that use in one of our commercial activity nodes then?

Jonathan Spence –

This wouldn't just apply to the activity nodes as well.

Commissioner Dixon –

I thought that you were focusing primarily on the multi-story.

Jonathan Spence –

1<sup>st</sup> story I think is what's in a lot of them and 2<sup>nd</sup> story isn't required throughout.

Brian Olson –

He gave an example.

Commissioner Beauregard –

We don't have any indication of where the two-story is.

Jonathan Spence –

No, we're proposing a frontage based two-story requirement.

Commissioner Dixon –

I'm going to agree with that. The language in here says per building. I thought that it was per development.

Jason Peasley –

I think that where we're going with this is a little bit more form-based approach to this. We would need to require the two-story frontage.

Commissioner Levy –

Are we sure that Hwy 40 is that frontage that we're focusing on? We talked about a rear lane or a potential pedestrian access along the railway. I can't imagine that Hwy 40 is ever going to be safe enough and that would be the desired place to walk along. It's possible that there could be a focus on this property towards the river. That's what I'm concerned about.

Jonathan Spence –

We're preparing the frontage for those pedestrian walkways and those plazas.

Commissioner Beauregard –

Can we look at possibly acquiring that right of way or looking into allowing us to build a frontage road that has form-based code?

Commissioner Dixon –

They will allow the frontage road.

Commissioner Beauregard –

A frontage road that has parallel parking.

Jonathan Spence –

Do we want that?

Commissioner Beauregard –

At first it wasn't very appealing to me, but if it had TND and it had the trees, sidewalk, and parallel parking.

Jonathan Spence –

He gave an example.

Commissioner Beauregard –

Maybe have a frontage road that has houses along it. Maybe we could look into it, because if you create a step back.

Seth Lorson –

He mentioned some examples pertaining to what Commissioner Beauregard was talking about.

Commissioner Beauregard –

I think that it could solve your block length issues and connectivity.

Ryan Spaustat –

Does that work with TND?

Commissioner Beauregard –

It works on that parcel.

Commissioner Hanlen –

We're trying to get density within our existing city limits. By allowing a roadway to exist outside of the property, but to do those improvements within the CDOT right of way, we get more building on the site and we're not chasing our tail out west.

Randall Hannaway –

I like the idea of form-based code a lot. You have to still make the economics work. I would hate to see you be forced to do underground parking. In our case it would probably work great. Along that section there are a lot of issues that make that very preventable.

Commissioner Beauregard –  
Are we getting rid of a lot of parking requirements?

Jonathan Spence –  
I think so.

Commissioner Beauregard –  
We're so central and we're trying to tell people where to live. People don't need their cars and we don't need their cars then why do we need to park them?

Brian Olson –  
It doesn't feel like that all the time.

Commissioner Beauregard –  
I think that's part of what we're proposing. I thought that we were going to get rid of all residential parking requirements.

Jonathan Spence –  
There's a certain demand for parking that has to be met.

Brian Olson –  
He gave an example. If there's no parking then where do you go?

Commissioner Beauregard –  
You ride the bus. If you were told to ride the bus to Steamboat 700 for the last three years then why can't we ride the bus when we live right in downtown?

Bill Moser –  
Can you identify any of the commercial nodes?

Commissioner Hanlen –  
He mentioned where some of the commercial nodes were.

Bill Moser –  
The interconnectivity, I'm wondering how you plan to create that? Was there any thought in the logistics of this interconnectivity?

Jonathan Spence –  
This is a prime example. The Hwy 40 access plan is not showing any type of full intersection. CDOT would like to see the access to the Curve off of Hwy 40. If that property would come in now then that wouldn't be realistic. If they were to develop or redevelop then we would require that they include an access onto Hwy 40. They would be required to have an access easement to the Napa site.

Commissioner Dixon –  
I would like to see public right of way dedication versus just an access easement so that it becomes a street.

Jonathan Spence –

The problem with that is that with these lots that appear to be fairly deep a lot of them are on a hillside and so aren't as deep as they appear on the map.

Commissioner Dixon –

If the City can't require it then they won't maintain it.

Jason Peasley –

The idea is through the redevelopment of these sites to create that interconnective road network.

Commissioner Dixon –

What's the reduced right of way amount?

Jason Peasley –

It's probably 30'. That's the smallest right of way that the City has.

Randall Hannaway –

When you were mentioning about that frontage road were you talking about this property that's up here?

Commissioner Beauregard –

Yes.

Randall Hannaway –

How do you feel about putting that in the back of the property rather than the front of the property?

Commissioner Beauregard –

It defies the whole intent of the pedestrian interface and the pedestrian interaction. It becomes an alley essentially.

Commissioner Dixon –

I think that you can get both. The frontage road in front wouldn't be on your property. It would be in the CDOT right of way.

Jonathan Spence –

I think that the idea of having the frontage road in the front was the presence of vehicular access.

Commissioner Dixon –

It wouldn't work if you didn't have vehicular access.

Commissioner Beauregard –

You would have all of the fancy storefronts, but they would be empty. An example is Wildhorse Marketplace and how it's like an inner mall and it's not very vibrant. If we had a

frontage road off of Mt. Werner Road, then the businesses fronting that would be more viable to access.

Jonathan Spence –  
Mt. Werner Road would be a more appropriate frontage.

Jason Peasley –  
The reason why we don't have Mt. Werner Rd. as a frontage is because it costs 6x as much to remove the snow.

Commissioner Slavik –  
Is that another discussion, because we haven't really talked about frontage roads and stuff like that? We're talking about setbacks.

Commissioner Dixon –  
It's whether TND will work or not.

Commissioner Hanlen –  
Up to this point right now Public Works would have told you that we won't allow parallel parking on that road because it's a collector road. If we're trying to change the nature of these collector roads and allow for parallel parking on them then it falls into this whole discussion. Some of these requests on our lists state that we want to have these store fronts, which are already in the requirements for the entry corridor standards that they did almost to the 'T' for the Wildhorse Marketplace, but all of the store owners put up white paper and nobody accesses the stores from that side. If we had put parallel parking there then it would have been better, but Public Works wouldn't allow the developer to put parallel parking there.

Commissioner Slavik –  
Is Public Works going to like the idea of putting a frontage road right next to hwy 40? What about the maintenance then?

Seth Lorson –  
The maintenance is also an issue because the snowplows will be accessing hwy 40 from that frontage road then.

Jonathan Spence –  
It's a separation and not an addition.

Jason Peasley –  
The interconnectiveness requirement doesn't mandate that it be in the back or the front. It just talks about having these necessary connections.

Jonathan Spence –  
He gave some examples of Jason Peasley's comment.

Jim Cook –

You're talking about the code and so I'd assume that's the only area that you're talking about as far as some of the setback standards?

Jonathan Spence –

No, the setback standards would be for the entire CC and CS zone district.

Jim Cook –

There are a lot of industrial buildings out there that have compatibility issues that just don't make any sense. He discussed his concerns regarding with going up with them and the different setback requirements.

Commissioner Beauregard –

I just saw a photo of Steamboat Springs and Old Town Pub from 1910. It has exactly what you're talking about. It has three-story brick buildings right next to a little log cabin. Now it's developed into what it is today. I think that's what the form-based code has done, they've modeled a commercial district that's worked through the eons. That's why it's so favorable in most communities.

Commissioner Dixon –

It develops out over time.

Jonathan Spence –

The development out west of Steamboat, is that a commercial district and can it be developed in that way? I don't know what the answer is to that.

Jim Cook –

I understand over here, but I'm having a difficult time understanding out west of Steamboat.

Commissioner Levy –

It is called out as a pedestrian activity.

Jonathan Spence –

He mentioned an example.

Commissioner Dixon –

Are you all happy with the suburban strip center form? Is that what I'm hearing?

Commissioner Hanlen –

It sounds kind of like: why bother making changes?

Jim Cook –

I don't think that we're saying that. He discussed some of his concerns.

Commissioner Dixon –

I'm not sure why you would think that it would block visibility and access to his business?

Jim Cook –

I think that you could make that argument in a lot of ways. What are you going to put in four-stories?

Bob Keenan –  
That's the level that you would go at right now.

Jim Cook –  
There's no use that you can put into four-stories.

Commissioner Slavik –  
The concern that he would have is that it would be sight lined along the road where we're looking at it much more closer to the road. You might have a sight line issue.

Jonathan Spence –  
He gave an example.

Bill Moser –  
There's a possibility on the west side of the city where CDOT would condemn some property to create an extra lane. If they want to go to a four-laned hwy then they would have to condemn some property in order to do so. With your 5' setbacks is that compatible?

Jason Peasley –  
The intent is to lower the number of constraints.

Commissioner Dixon –  
He's talking about constraining CDOT.

Bill Moser –  
He discussed the possibility of CDOT needing to condemn some property if Hwy 40 were needing to be expanded from a two-laned road to a four-laned road.

Jason Peasley –  
We can work closely with Laura Anderson with the Hwy 40 studies and make sure that we don't have any constraints there.

Ryan Spaustat –  
Is there any other community that's trying to do TND zoning on such a long linear stretch?

Jonathan Spence –  
Those are the challenges.

Commissioner Hanlen –  
The concern was trying to prevent spot zoning where one person tried to come in for one thing and another person came in for another thing. How do we get continuity from one end of town to the other? It seems like if we treat it all as one type to be able to apply these standards to it that over time we could have a more intended form. I agree with you when

you say traditionally evolving over time and that maybe we should be calling this a form-based code instead of TND.

Jonathan Spence –  
You can have a form-based code.

Ryan Spaustat –  
Maybe we could do a form-based code on just five miles of Hwy 40 from Pine Grove Road to the end of Dream Island.

Jonathan Spence –  
The south end I think may be more important than the west of town.

Brian Olson –  
That would be years and years down the road when you talk about having TND along that stretch of Hwy 40.

Commissioner Dixon –  
When do you start getting it right? Do you start now or do you start years from now?

Commissioner Lacy –  
We'll never start if we don't change it.

Commissioner Beauregard –  
Another perspective is that if there's a strip then we've got this huge lot that we're talking about then how are we going to prevent that from becoming twice as long of a strip as we already have? I think that's the whole concept is to intensify what we have rather than to strip out the already existing strip.

Jason Peasley –  
CC is the same as CS as far as standards. I think that we need to take a closer look at the nature of each of those and where we see those going in the future.

Commissioner Dixon –  
Brian started out talking about a big regulating plan. That might be the right thing to do. That's the imposition onto individual property owners, but not really if it's a very general. We would like to see connections. Sort of like we did at the Base Area with the preferred plan and several options. Not necessarily a very detailed plan, but regulating connections should go here. Something that guides future development into what we want it to be so that a property owner can make it's decisions and know what the intent is and make their decisions based on that versus coming in with a site plan that works for them and only works for them.

Commissioner Hanlen –  
There's predictability in the process, because the applicant is designing with those intentions in mind once they start laying out their site. As opposed to coming in 90% complete and then trying to tweak and push to whatever the whims are of Planning Staff and Public Works at that moment.

Jonathan Spence –

People have been allowed to build really dense things. We want to find a way to encourage the development to go in that direction.

Commissioner Beauregard –

I think that the compromise was what Commissioner Hanlen was touching on is that we need to be able to allow them to subdivide and leave portions vacant if we're going to make them put their destiny in one point.

Commissioner Dixon –

It has been missing, because when you subdivide you get huge setbacks. You lose a large chunk of developable property when you subdivide. We're going to change that.

Jonathan Spence –

Correct.

Commissioner Hanlen –

The newly adopted street standards also speak to that. A couple of months ago you couldn't place trees or anything within the area of no man's land or in the right of way or in an easement. Just that little change allows that subdivision process.

Seth Lorson –

What I don't understand is why we can't achieve any of this with how this code is currently.

Brian Olson –

He discussed Seth Lorson's concern.

Seth Lorson –

I think that what we're proposing right now is that the Planning Commission especially wants to go in real deep and do TND type of stuff. He explained what he is proposing to do.

Jason Peasley –

I think that our next step will be to take some of that input and put it into a more form-based form.

Jonathan Spence –

We'd be focusing on a lot of the questions that were asked tonight.

Jason Peasley –

Try to figure out what the characteristics are between the two. If we can get this to a form that you all envision then it may add a lot more flexibility for the developers to do the subdivision that will allow for things to be built up over time.

Jonathan Spence –

What we're trying to do is to create flexibility and predictability.

Tom Lake –

It may require specific differences between these two codes. When you force something into a variance it throws it open to debate. The Planning Commissioners in the future may not feel that way. Keep us posted. That's essentially our concerns.

Jonathan Spence –

He discussed Tom Lake's concerns.

Commissioner Dixon –

In a TND situation Tom Lake's project would be in a special district, correct?

Jonathan Spence –

Most likely.

Commissioner Beauregard –

I think that we should hand out our TND regulations too.

Seth Lorson –

A PUD is essentially your own zone district.

Jonathan Spence –

One of the things that we would like to do is to get rid of the PUD nature.

Commissioner Hanlen –

Get rid of the PUD process.

Commissioner Dixon –

If it really were with other municipalities then it would be a good thing.

Jonathan Spence –

It can go over run too. Other towns have been known to have up to 50 books.

Bill Moser –

What they've done with the Hwy 40 access plan is made it a conditional access. The big problem that we have is getting owners out there to sell their property. We're never going to do this. This isn't a project that will take only a year or two, it could take 20-30 years potentially to fully develop. He discussed some of the concerns regarding the Hwy 40 access plan.

Tony Connell –

I only really heard one thing, which was that the developer as a whole would be happy, but the community as a whole wouldn't be happy with that. This zone that you're talking about is our employment zone. I would like to get that developer/nondeveloper community out of this equation. Most people who are in employment have their own sets of standards. We think of developers as being very speculative. You think that all of these zones are going to be developed at the maximum density. I think that we as a community would be happier if we built a suite. We aren't going to be able to just do this on speculations.

Seth Lorson –

I think that we have enough to bring something back to you.

Commissioner Beauregard –

I think it's more predictability.

Commissioner Levy –

Is there a timeline for this?

Jonathan Spence –

We'll have it to you by the 2<sup>nd</sup> meeting in February.

Commissioner Dixon –

The biggest difference in direction here that came out of this meeting tonight is that we're going to do something different on the south versus the west.

Jonathan Spence –

I don't think that's a major difference.

Seth Lorson –

It's also something that we recognized when we were talking about the multi-story buildings in the different areas. We already are feeling that pulse.

Jason Peasley –

The format of our regulations will be the main change that you'll see. The direction is to go more towards allowing more of an attractive zone district that you can subdivide. You may need to look at side setbacks as well and see what's appropriate. We will probably need to look at minimum lot size since right now there is none.

Commissioner Beauregard –

Don't you mean maximum lot size?

Jason Peasley –

No, I mean minimum lot size. We would have a ton of nonconforming lots if we looked at a maximum lot size.

## **PUBLIC COMMENTS**

None

Discussion on this agenda item ended at approximately 6:30 p.m.

**Copper Ridge Business Park, Filing 4, Lot 2 #DP-09-05 Development Plan for Outdoor Storage. A Conditional Use.**

Discussion on this agenda item started at approximately 6:37 p.m.

**Disclosure:**

Commissioner Lacy –

Mr. Mewborn has been a client with us in the past. I haven't helped him out on this matter, but I'll leave it up to the Planning Commission to decide whether to have me step down or stay in.

Planning Commissioners and Staff agree that he can stay in.

**STAFF PRESENTATION**

Jonathan Spence –

A warehouse with outdoor storage is usually a use with criteria. In researching similar projects I found a statement in a code amendment that allowed outdoor storage as a use with criteria. On pg. 3-3 we hope to actually get that done. The applicant has demonstrated performance to be applicable with criteria to proceed with an outdoor storage.

**APPLICANT PRESENTATION**

Rick Mewborn –

I'm open for any questions that the Commissioners might have.

**COMMISSIONER QUESTIONS**

None

**PUBLIC COMMENTS**

None

**FINAL STAFF COMMENTS**

None

**FINAL COMMISSIONER COMMENTS**

None

**RECOMMENDED MOTION**

Staff Finding

With the proposed condition below, staff finds that that the proposed outdoor storage use located at the Copper Ridge Business Park, Filing #4, Lot #2 is consistent with the criteria for approval for a Development Plan for a Conditional Use:

1. Submit the permit for modifications to the wetlands/ waters of the state (if required) from Army Corp of Engineers prior to approval of building permit or grade and fill permit.

2. At a minimum a grade and fill permit shall be required prior to commencement of any construction.

3. The following items on the building permit or grade and fill permit and are considered critical improvements and must be constructed prior to issuance of any CA or CO; they cannot be bonded:

- Public drainage improvements
- Access drive, driveway, and parking areas
- Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)

### **MOTION**

Commissioner Hanlen moved to approve DP-09-05 with conditions 1-3. Commissioner Dixon seconded the motion.

### **DISCUSSION ON MOTION**

None

### **VOTE**

Vote: 6-0

Voting for approval of motion to approve: Levy, Beauregard, Dixon, Hanlen, Lacy and Slavik

Absent: Fox

Alternate position is vacant

Discussion on this agenda item ended at approximately 6:41 p.m.

**Captain Jack Subdivision #PP-09-05 Preliminary Plat to subdivide an un-platted parcel of land located south of 13<sup>th</sup> Street and west of Critter Court into two lots with associated open space.**

Discussion on this agenda item started at approximately 6:41 p.m.

**STAFF PRESENTATION**

Jason Peasley –

This is a two-lot subdivision of a previously owned of a un-platted parcel. This is a unique subdivision. It is adjacent to some existing platted lots that were done 85 years ago. Part of the application is the insulation of a waterline. Staff has found that the application has met all of the criteria for approval. There is a single variance on this in that the lot width in Lot 2 is 5x greater than its length.

**APPLICANT PRESENTATION**

**None**

**COMMISSIONER QUESTIONS**

Commissioner Dixon –

On 5-7 of their site plan they show open space on Lot 1 and they show a hatched area that has a note that says unbuildable area. What is that?

Jason Peasley –

It's an area of wetlands.

Commissioner Dixon –

Why don't they say wetlands?

Jason Peasley –

We can certainly have them note that on the final plat.

Commissioner Dixon –

It seems a little bit ambiguous. That's part of it, but it's not actually defined, but the boundary isn't called out either. It's a fuzzy line that could be here or there without any legal description of it. I don't know why this has to be on here.

Jason Peasley –

As a condition of approval under condition 1-it states 'Lot 1 shall identify a building envelope that excludes those areas that include wetlands and slopes greater than 30%'. There should be some stronger language on the area that's outside of the building envelope.

Commissioner Hanlen –

The reason I say that is to simply state that it's not buildable. If it doesn't state anything such as a steep slope, wetlands, or anything like that I would assume that you could do lay down, parking, regrade. There's nothing that indicates anything to the latter. If we want to preserve it then we need to be definitive about why we want to preserve it. If the wetland

code changes or it gets enacted then this falls lock and step with that. Also mentioning the steep slope provision just defined so that people understand why it's there.

Jason Peasley –

If there is a consensus with the Planning Commission then we could amend condition 1 to include a plat note or an easement or something that describes no disturbance of that area.

Commissioner Hanlen –

I would go as far as to say that you don't need to create a building envelope. In essence you would be creating a building envelope, but it doesn't need to be called a building envelope if the nonbuildable portion was defined there. It just seems like we're creating potential complications down the road that don't need to be there through some simplified language.

Commissioner Dixon –

I agree. I would think that the building envelope, if it's a building envelope would be everything that's not shaded or hatched.

Jason Peasley –

Since there are wetlands and slopes greater than 30% our code requires that they put a building envelope on there. If they were to expand that open space to include all of those areas and then Lot 1 could just stand on it's own. That's an option or we can do a different description.

Commissioner Dixon –

This open space that's delineated here is that just the minimum required?

Jason Peasley –

Yes.

Commissioner Hanlen –

I thought that they only had to provide a building envelope if that was the only buildable portion allowed. Then you had to designate a building envelope. In this case where they're present on the same lot I didn't think that a building envelope was necessarily required.

Jason Peasley –

Yes, it is required.

Commissioner Hanlen –

In Lot 1 it's 2.8 acres, which is a fairly large lot. I assume that the impetus behind this is that he's just trying to separate the existing house from the large portion behind it. At some point later this is going to get resubdivided. Doesn't implementation of the building envelope complicate that if we know that this is going to be further subdivided?

Jason Peasley –

We don't know that it's going to be further subdivided.

Commissioner Dixon –

Assume that it is. Then how does it complicate.

Jason Peasley –

I don't think that it does, because they would be in that new subdivision required to put in new building envelopes.

Commissioner Hanlen –

Can you subdivide across a building envelope? Is that something that would potentially be an issue at the point of resubdividing? I don't want to impede further subdivision of this site.

Jason Peasley –

I don't see it being anything that would prohibit the further resubdividing of this site. The building envelope is there to inform where the buildable areas are.

Commissioner Hanlen –

I'm just making sure that we're not putting unnecessary encumbrances that shouldn't necessarily be there.

Jason Peasley –

I don't think that we are in this case. It's something that's required by the code.

Commissioner Dixon –

My point is that it's ambiguous at this time. It's this nebulous line that needs to be defined with leaps and bounds.

Commissioner Hanlen –

What's the difference between the open space and the unbuildable portion?

Jason Peasley –

I think that's something that you can discuss with the applicant's representative. They may have been trying to meet the minimum requirement for open space or they're trying to use the area to gain a greater FAR.

Commissioner Hanlen –

When it's named open space does it get dedicated to the City automatically?

Jason Peasley –

It gets dedicated to the owners of the subdivision for the purpose of open space.

Scott Heggston –

Jason Peasley was correct in saying that the minimum requirement for the open space was used. The wetland area has been defined through the wetland survey. We wanted to use the minimum requirement, because Mike Kortas wants to be able to sell Lot 2 and keep the homes. He didn't want to take any more open space so that he could use ratios for in the future if he wants to put a building or something else in there then he may need that land area. There was condition #3 where the lot does border Block 10 of the Miller-Frazier Addition, because there was a 50' vacated alley out in front of those lots.

Jason Peasley –  
That's a technical issue that we can deal with.

Scott Heggston –  
Mike Kortas does appreciate the Planning staff and how he and they worked through this process.

**PUBLIC COMMENTS**

None

**FINAL STAFF COMMENTS**

None

**FINAL COMMISSIONER COMMENTS**

Commissioner Hanlen –  
The discussion that we just had about further defining the nonbuildable portion can that simply be criteria for approval? Does this need to move forward or does it need to be tabled in order to make those adjustments?

Jason Peasley –  
I think that you can make an amendment to the condition for this condition 1. I think that the first thing that it should say is 'Lot 1 shall identify by leaps and bounds the building envelope that excludes the areas of wetlands and slopes greater than 30%'. We can either add another condition or expand on that one to say 'there needs to be an explicit note to that effect regarding what type of development would be permitted outside of that building envelope'.

Commissioner Dixon –  
You're talking about activity and not just development.

Jason Peasley –  
Correct.

Commissioner Hanlen –  
It needs to define wetlands and it needs to say that on the plat. It needs to define steep slope and say that on the plat. Otherwise if you go 5-10 years down the road and people don't know why that line was created or the lot is pertaining to steep slope, which change or adjust or the wetlands change or adjust then it needs be there in order to be understood.

Jason Peasley –  
I think that's a reasonable request.

Commissioner Dixon –  
Is that condition 6?

Commissioner Hanlen –  
Expanded condition 1?

Jason Peasley –  
Would you be agreeable to these requests?

Scott Heggston –  
I can't speak directly to what Mike Kortas would say. When he comes back in to define an envelope, as it stands right now you can't put an envelope in the wetlands area. I don't know why we would plat at this time if this said that we had to come back with all of this information.

Commissioner Hanlen –  
The purpose is that if someone bought lot 1 and they see a building envelope. To me that defines the extent of where a building can be placed. What about parking, lay down, storage, or regrading? Unless you know why this area was excluded in the first place and you understand what the definition is then you understand further what you can and can't do in those excluded areas rather than just defining it with a building envelope. I'm trying to prevent potential issues down the road due to lack of clarity on the plat. At the end of the day this is all that people are going to see and they're not going to be able to see the rest of the conversations that led up to this.

Scott Heggston –  
I thought that you hit it on the head when you mentioned that the wetlands and the slopes could change, but the building envelope wouldn't change.

Commissioner Hanlen –  
If it did get resubdivided and those rules did change then potentially that could be adjusted. Right now I'm saying that the hard line that you drew in the sand is the open space line. That's why if you define what's wetlands and if those regulations were to change then if this were to be resubdivided it could be revisited versus right now it just says nonbuildable.

Commissioner Dixon –  
You would understand why that line was there. If you don't understand why that line is there and it's just set in stone and 20 years from now nobody is going to understand that it was wetlands and now things have changed and they can move it.

Jason Peasley –  
I think it's more of a clarification.

Scott Heggston –  
He agreed to the requests of the Planning Commissioners.

Commissioner Hanlen –  
Is that an expanded condition 1?

Jason Peasley –  
I added condition 6, which says add plat note to restrict uses outside of the building envelope for Lot 1. I had as an amendment to condition 1 to define each on the plat.

## **RECOMMENDED MOTION**

### **Motion**

Planning Commission, upon a finding that the proposed subdivision meets the criteria for approval of a Preliminary Plat with the associated variances, recommended the City Council approve the Captain Jack Subdivision with the following conditions:

1. Lot 1 shall identify a building envelope that excludes those areas that include wetlands and slopes greater than 30%.
2. The water mains must be situated within easements such that there is a minimum horizontal distance of ten feet from the main to the edge of the easement.
3. The proposed easement adjacent to block 10 of the Miller-Frazier addition does not physically abut the lots, thus the lots would not have legal access to the proposed water main. Therefore, the easement will have to be moved slightly eastward such that it abuts lots 1-28 within block ten.
4. The southern easement boundary of the easement located on lot 20 of block 10 of the Miller Frazier addition shall line up with the southerly right-of-way line for the unnamed spur coming westward off of Critter Court.
5. Approved civil construction plans are required prior to final plat approval. Civil construction plans shall meet the criteria identified within the Standard Specifications for Water and Wastewater Utilities in existence at the time that civil construction plans are submitted for review and approval.

Added condition:

Jason Peasley –

I added condition 6, which says add plat note to restrict uses outside of the building envelope for Lot 1. I had as an amendment to condition 1 to define each on the plat.

## **MOTION**

Commissioner Hanlen moved to approve PP-09-05 with the 6 conditions of approval listed. Commissioner Lacy seconded the motion.

## **DISCUSSION ON MOTION**

Commissioner Levy –

You're wording about outside of the building envelope, technically would that preclude a driveway? Would the building envelope be everything outside of the wetlands?

Jason Peasley –

I think that there's adequate room for a driveway.

Commissioner Levy –

It sounded like what Commissioner Hanlen was leaning towards is that he just wanted to make sure that the wetlands weren't disturbed and not concerned with what happens on the buildable portion of the lot.

Commissioner Hanlen –

Correct.

Commissioner Levy –

The building envelope will essentially include all of the buildable parts of this property?

Jason Peasley –  
Yes.

**VOTE**

Vote: 6-0

Voting for approval of motion to approve: Levy, Beauregard, Dixon, Hanlen, Lacy and Slavik

Absent: Fox

Alternate position is vacant

Discussion on this agenda item ended at approximately 6:59 p.m.

A 2-minute break was taken.

**Rendezvous Trails, Filing 1, Lot 27 (Henderson VHR-Cleftstone) #DP-09-06 A Conditional Use application to allow for a Vacation Home Rental use at 2718 Burgess Creek Road. The applicant has requested review of their Vacation Home Rental as a Conditional Use as they do not meet the criteria for approval for administrative approval of a Vacation Home Rental, specifically, access to the rental.**

Discussion on this agenda item started at approximately 7:01 p.m.

Commissioner Beauregard –

I'm friends with the Thrashers who were included in the letters. Do you guys have any problems with me being included in this? I don't judge this one impartially.

Commissioners and Staff agree that he stay in.

**STAFF PRESENTATION**

Bob Keenan –

The public comment letters were from Bill and Kathy Moser, the Shaws, Bill Jameson, and Sandy and John Thrasher.

Commissioner Dixon –

Which is the shared driveway?

Bob Keenan –

The Shaw. Planning staff is recommending denial on this application due to noncompliance with the criteria for approval. The applicant hasn't been able to come an agreement with the adjacent property owner regarding shared access. For that reason we're not recommending approval of this application. We didn't find any real convincing reason to bury that particular item. This is a conditional use hearing. We can vary or we can waive some of the VHR requirements. Planning Commission will have to find that it is in compliance with the criteria for approval. If the Planning Commission does go in that direction then I would suggest adding some conditions of approval that mitigate some of the impacts that would then be addressed by some of the neighboring properties. It would also add a condition that includes all of the VHR requirements aside from the shared access.

Commissioner Slavik –

What does the shared easement say right now?

Bob Keenan –

I don't have that language. In my consultation with the staff attorney was that any direction that Planning Commission goes would not create an easement. If you were to approve it and say their access agreement didn't allow for commercial use then your approval wouldn't hamper the neighbor's ability to go to court to settle that dispute.

**APPLICANT PRESENTATION**

David Henderson –

He gave a brief background of the house. We expanded the apartment and started operating it as a VHR. We've been operating it for the last 14 years legally. We obtained the VHR permit in 2002. We live on the property. We've never had any issues with any of

our renters. We don't choose to rent it as a long-term rental. We have the right to choose this without any of the VHR regulations and none of the shared access agreement requirement. We choose to not do that, because we don't want those types of impacts on our life or on our neighborhood. Ironically if we were to choose to rent long-term the shared access agreement goes away, but the impacts increase. I recognize that over the years this has been a very emotional issue for our neighborhood. For our family it was a way for the last 16 years for our family to be able to buy a home. At the end of the day all of the commotion, philosophy, and ideology aside there is a legal issue. The legal issue is covered under Colorado Statute Title 38 Section 3A and it clearly states that 'no local government can prohibit the use of a property that was being used legally prior to the change of an ordinance. No local government can come in and change the ordinance to make that use illegal'. I have that on advice with Dan Foote. We are here applying because this was the City's recommendation to us. If there is an aspect of the VHR ordinance that's in noncompliance then we apply for a conditional use permit. The fact that it is being recommended that we don't get by Planning Staff, I'm confused and the fact that they are recommending that we don't get it because we don't comply with the VHR ordinance, which is the reason why we're here applying for the conditional use permit. The bigger legal question is whether or not the City has the authority to grandfather us in when we were operating legally and with a permit. When the ordinance was changed in 2007 it took away our right. In the City Council meeting prior to that new ordinance there was a discussion about grandfathering in already existing VHR's. That didn't make it into the new ordinance. It's highly questionable whether or not this is legal for the City to do.

### **COMMISSIONER QUESTIONS**

Commissioner Hanlen –

Since Dan Foote didn't grace us with his presence tonight can you speak to the discrepancy between staff recommending denial of this, but Dan Foote saying that City Council is going to approve it anyways? That's what it sounded like Tom Leeson was saying in our worksession on Monday.

Bob Keenan –

They are going to look at the legal aspects at City Council. The way it's written it contemplated existing VHR's expiring and having to comply with the new criteria. That's the regulations and that's the way they were crafted by City Council with consultation of Tony Lutnidge.

Commissioner Hanlen –

Tom Leeson was saying that Tony Lettunich and Dan Foote would both legally state that the VHR ordinance couldn't be enforced in this case. I'm confused as to where the discrepancy is occurring.

Bob Keenan –

I don't know for a fact that's what's going to happen at City Council.

Commissioner Hanlen –

In work session, Tom Leeson made it sound like that was their stated opinion on this matter and that this was something that would be approved and that they legally can't deny this.

Based off of that statement I'm confused why staff couldn't recommend approval or why this got caught in a gray area?

Bob Keenan –

Right now Planning Staff is looking at the current rules and regulations for VHR's. Until those change we will look at those as they are written in the code.

Commissioner Hanlen –

Staff is looking at this stating that this is the way the ordinance reads while the City attorney and City Council's attorney is saying that's all well and good but legally this is what we can keep the City from being sued. We have to recommend approval.

Bob Keenan –

They don't have to recommend approval. The attorney is going to give council to City Council on the potential ramifications of the denial.

Commissioner Slavik –

You mentioned that when the VHR requirements were set up that there was contemplation that existing permits would expire and they would have to comply with this. Could you go into a little bit more detail on that? Is that really what we wanted?

Bob Keenan –

That was their intent. They realize that we have 30-40 VHR's that already exist and it's written into the VHR ordinance that those would go away and they would have to reapply under the new criteria. It's up to Planning Commission and City Council to decide whether there are extenuating circumstances waiving one of the criterion.

Commissioner Slavik –

There are other VHR's that have this same issue that the VHR does not meet all of the requirements, specifically the access agreement?

Bob Keenan –

Not necessarily ones that have been previously approved. The majority of ones that can't meet it have applied since that time. There may be a few that were approved in a similar situation with the access issue.

Commissioner Slavik –

In those cases has staff recommended?

Bob Keenan –

This is the first one.

Commissioner Lacy –

You stated that you've been operating this VHR for 14 years.

David Henderson –

Correct.

Commissioner Lacy –  
Since April 2008 you've been operating without a permit?

David Henderson –  
We've been operating legally since April 2008. We haven't been advertising as a VHR. We've had one paying short-term rental and we've had some family and friends live in it.

Commissioner Beauregard –  
If someone currently has a VHR that's legal and they have this letter of acceptance and that neighbor has a change of heart, what happens at that point? Can they renew on that letter or the property owner changes hands and the new owner doesn't want the VHR next to it?

Bob Keenan –  
I believe so since it's renewed every year and there's an opportunity to do that.

Commissioner Beauregard –  
Every year there's an opportunity for the neighbor to object to the VHR sharing their driveway?

Bob Keenan –  
I believe so.

Commissioner Beauregard –  
My thought is just that it's in flux. If the community decided that this is going to be an issue and they left it open for the neighbor to object to it. If you have a current VHR that's got a letter of acceptance from that neighbor and that neighbor has a change of heart.

Commissioner Slavik –  
Maybe that's why there was no grandfathering in.

Commissioner Beauregard –  
Exactly, that's opposite of grandfathering in. It's looked at every single year.

Commissioner Dixon –  
Are you taking a position of whether that's good or bad?

Commissioner Beauregard –  
I think that the position that the community decided is that this is an issue and that they're going to look at it every single year if that's true.

Commissioner Lacy –  
It would depend on if there was an actual access that's agreed upon by the two property owners originally. If it specifically allows for commercial use of that easement.

Commissioner Beauregard –  
We talked about that on Monday that that's the City's regulations and not the access agreement or the plat.

Commissioner Levy –

If someone had a language that said any activity could be used on the shared driveway then somebody would have to bring that forward and show it to us. We have to assume that's not particularly part of this discussion and so therefore they need a separate agreement as per the code. That might exist, but we don't have any evidence that it does. As far as we know they don't have an agreement for commercial use.

Commissioner Slavik –

If the easement was specific and said that they could use it for whatever purpose they wanted, then they could have provided that as evidence of the agreement.

Commissioners all agree with Commissioner Slavik's remark.

Bob Keenan –

I did ask this question of the staff attorney regarding the language of these access agreements. To his knowledge he doesn't know of any of these shared access agreements on the plat that talks about commercial uses.

Commissioner Hanlen –

I would assume that any attorney would assume that just implies access. It doesn't get into the definition of residential or commercial. It just simply states access.

Commissioner Lacy –

The code is pretty clear on the definition of access easements. It says that 'access easements must expressly acknowledge that the property will be used for commercial purposes either by reference to the VHR or by description of such use'.

Commissioner Hanlen –

You're reading that out of the ordinance?

Commissioner Lacy –

Yes. It's subsection (d)(2), definition of access easement at the bottom of pg 6-8 of the staff report.

Commissioner Hanlen –

Are you implying then that a property that was platted 35 years ago that just simply states driveway access easement that they now have to go back and amend the access easement and that it allows commercial?

Commissioner Lacy –

They don't have to necessarily do that. They can just get permission like what we've been talking about. I don't think they can make a claim that they have that permission to use that for commercial purposes without either an amendment to the easement or an actual permission letter like what we've been talking about.

Bob Keenan –

In this application form we have the easement agreement language, which they signed.

Commissioner Beauregard –

It's a nonstarter if you came in today after the ordinance was adopted. If they don't have the letter then you don't even get to apply. You have to ask your neighbors for permission and then apply. What you're saying is that you have to go back every year and the neighbor has the opportunity to object. When it was in this huge debate through the City they decided that the neighbor's agreement is critical.

Commissioner Levy –

I think it is.

## **PUBLIC COMMENTS**

Gary Shaw –

It's my property that this driveway goes across. I've lived there for 31 years. I can guarantee that if I thought that there was going to be any commercial next door that I wouldn't have built next door and I would have certainly done a different driveway. That driveway comes off of Burgess Creek Road at a 150-degree angle and it has a 14% grade. When there's people driving around there that don't know how to drive or have the wrong kind of car or when there's shuttle buses going in and out of there I'm worried about liability. I've never signed a letter for permission nor do I intend to. I object to this conditional use permit.

Bill Moser –

One of the things that happens with these shared accesses is that they are used predominantly to get over some topographical problems. In this instance there's a 14% grade. The other person that wrote this had a similar situation. It is very difficult to share this with someone that's going to use it for a commercial activity. These people who are petitioners are probably the least offensive. The Shaw's are sandwiched in between another VHR. I would like you to think this over carefully since the code states that written permission be given.

John Thrasher –

The whole VHR issue has been going on for the better part of the decade. It has resulted in the deterioration of our neighborhood. I think that it's important for this Commission to understand that it was the intent of the Council members who firmly believe this that adjacent neighbors who share driveways with VHR suffer the deepest impact. We happen to live between two properties. I'm fearful that if you approve this petition tonight that it's going to create a situation where these adjacent homeowners have absolutely no say in their destiny of their property.

## **FINAL STAFF COMMENTS**

None

## **FINAL COMMISSIONER COMMENTS**

Commissioner Slavik –

It seems to me that it's relatively straightforward with what our job is in terms of looking at this and what's been recommended. The staff has followed the requirements and reviewed it according to the VHR requirements that are in place right now and have come up with a

couple of areas where they're not consistent. Based off of that, I recommend that we don't approve it. I don't know if it really should enter into our decision and what we think the Council may or may not do and what the City attorney may recommend to the City Council to do or not to do. We have to stay within what the requirements are. Am I thinking of that wrong?

Commissioner Beauregard –  
I agree with that.

Commissioner Lacy –  
I do to. I think that without the benefit of our City attorney being here to discuss the legality of the issue I don't see how we can even have that as part of our discussion.

Commissioner Beauregard –  
I think that if we were to approve it according to future litigation then we enact a precedent that it changes the code when our job is to apply the code and not change with this application.

Commissioner Slavik –  
The recommendation from staff that we've gotten is really the only recommendation that we could have come to. I haven't heard anything that would convince us to change that. So we recommend that to the City Council. We don't tell them what to do and how to do it. That's how I would envision it.

### **RECOMMENDED MOTION**

Staff finds that the Development Plan for Rendezvous Trails Subdivision, Filing 1, Lot 27 requesting approval to operate a Vacation Home Rental is **NOT CONSISTENT** with the Criteria for Approval for a Development Plan.

#### Recommended Motion

The Development Plan, # DP-09-06 is not consistent with the required criteria for approval of a Development Plan.

### **MOTION**

Commissioner Slavik moved to deny DP-09-06. Commissioner Beauregard seconded the motion.

### **DISCUSSION ON MOTION**

Commissioner Lacy –  
I would make a friendly amendment to state that DP-09-06 is not in compliance with CDC section 26-65 (d)(4) access.

Commissioner Slavik –  
I would accept that.

### **VOTE**

Vote: 5-1

Voting for approval of motion to approve: Levy, Beauregard, Dixon, Hanlen, Lacy and Slavik

Against: Hanlen

Absent: Fox

Alternate position is vacant

Discussion on this agenda item ended at approximately 7:35 p.m.

## **APPROVAL OF DECEMBER 10, 2009 MEETING MINUTES**

### **MOTION**

Commissioner Lacy moved to approve the Planning Commission Meeting minutes from December 10, 2009 as written. Commissioner Dixon seconded the motion.

### **VOTE**

Vote: 6-0

Voting for approval of motion to approve: Levy, Beauregard, Dixon, Hanlen, Lacy and Slavik

Absent: Fox

Alternate position is vacant

### **DIRECTOR'S REPORT**

None

### **ADJOURNMENT**

Commissioner Dixon moved to adjourn the meeting at approximately 7:36 p.m.

Commissioner Lacy seconded the motion.

### **VOTE**

Vote: 6-0

Voting for approval of motion to adjourn: Levy, Beauregard, Dixon, Hanlen, Lacy and Slavik

Absent: Fox

Alternate position is vacant