



# COUNTY OF ELBERT

## COMMUNITY & DEVELOPMENT SERVICES DEPARTMENT

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### MINUTES ELBERT COUNTY REGULAR PLANNING COMMISSION MEETING October 9, 2008

Note: These meeting minutes are only a summary of the meeting. Duplications of the audio recording are available, for a fee, by contacting the Planning Department.

The regular Planning Commission Meeting was called to order at 7:11 p.m. by Chairman, Grant Thayer.

#### ***PLEDGE OF ALLEGIANCE***

#### ***ROLL CALL:***

Commission members present: Grant Thayer, Richard Carlson, Paul Crisan, David Hoos, Mike Kelley, Anthony Osborn, and Lisa Shipman.

Staff present: Richard L. Miller, Director – Community & Development Services  
Curtis Carlson, Planner II  
Carolyn Parkinson, Planner I  
Donna L. Martin, Administrative Assistant

#### ***STAFF REPORT ON BOARD OF COUNTY COMMISSIONER'S ACTIONS:***

A. None

#### ***CONSENT CALENDAR:***

A. A motion by Anthony Osborne, seconded by Paul Crisan was made to approve the Planning Commission minutes for September 25, 2008. The motion carried 5 to 0.

**COMMUNITY INPUT:**

- A. None

**PUBLIC HEARINGS:**

- A. RZ-08-0020 HEALD'S ADDITION 3<sup>RD</sup> AMENDMENT - A REQUEST TO REZONE 13.27 ACRES FROM A2 TO R1, LOCATED IN A PORTION OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 59 WEST, IN ELBERT COUNTY; Continued from 6/12/08, and 9/25/08. Withdrawn by the Applicants.
- B. PP-08-0022 HEALD'S ADDITION 3<sup>RD</sup> AMENDMENT - A REQUEST TO SUBDIVIDE 13.27 ACRES TO CREATE A MAXIMUM OF 10 SINGLE-FAMILY RESIDENTIAL LOTS AND ONE OPEN SPACE TRACT. Continued from 6/12/08, and 9/25/08. Withdrawn by the Applicants.
- C. VA-08-0021 HEALD'S ADDITION 3<sup>RD</sup> AMENDMENT- A REQUEST TO OBTAIN A VARIENCE TO ELBERT COUNTY SUBDIVISION REGULATIONS FOR INDIVIDUAL SEPTIC SYSTEMS ON PARCELS LESS THAN 2.51 ACRES. Continued from 6/12/08, and 9/25/08. Withdrawn by the Applicants.
- D. FP-08-0023 HEALD'S ADDITION 3<sup>RD</sup> AMENDMENT - A REQUEST TO PLAT 13.27 ACRES TO CREATE 10 SINGLE-FAMILY LOTS, TOTALING 10.37 ACRES AND ONE OPEN SPACE TRACT TOTALING .07. Continued from 6/12/08, and 9/25/08. Withdrawn by the Applicants.

Because the application was withdrawn, no action was necessary on the part of the Planning Commission.

- E. RZ 07-01-02 BANDERA PUD (aka BENTLEY RANCH) - A REQUEST TO REZONE TO PLANNED UNIT DEVELOPMENT (PUD) FROM AGRICULTURAL (A), TO ALLOW 552 SINGLE FAMILY RESIDENTIAL UNITS, A 19 ACRE COMMERCIAL SITE, A SCHOOL SITE, AND OPEN SPACE. THE PROPERTY IS LOCATED IN PART OF SECTIONS 14 & 15, TOWNSHIP 7 SOUTH, RANGE 65 WEST IN ELBERT COUNTY. Continued from 6/26/08 and 8/28/08. Request to continue to a date certain of November 6, 2008
- F. PP 07-01-01 BANDERA PRELIMINARY PLAT - A REQUEST TO SUBDIVIDE 1011+ ACRES TO CREATE SINGLE 552 SINGLE FAMILY RESIDENTIAL LOTS, A 19 COMMERCIAL SITE, OPEN SPACE/DRAINAGE TRACTS, SCHOOL SITE, AND A WASTEWATER TREATMENT SITE, PARK. Continued from 6/26/08 and 8/28/08. Request to continue to a date certain of November 6, 2008

**G. 1041 06-04-04 BANDERA (aka BENTLEY RANCH) 1041 PERMIT – A REQUEST TO OBTAIN A 1041 PERMIT AS A NEW COMMUNITY. Continued from 6/26/08 and 8/28/08. Request to continue to a date certain of November 6, 2008**

A motion by Lisa Shipman, seconded by Anthony Osborne was made to continue the hearing to date certain of November 6, 2008.

The vote carried 7 to 0.

**H. ZONING REGULATION, SUBDIVISION REGULATION, AND 1041 REGULATION CHANGES – References to the Master Plan.**

Richard L. Miller, Director for Elbert County Community and Development Services, presented the application for making amendments to removing all references to the Elbert County Master Plan.

Staff is recommending that the Planning Commission and Board of County Commissioners refrain from making changes at this time. The Zoning Regulations, Subdivision Regulations, and 1041 Regulations, and Master Plan are all in need of updating or in some cases, a complete re-write. The Housing Section of the Master Plan is currently being updated. The Community and Development Services Department has applied for a grant from the Department of Local Affairs to help with the re-writes of all of the land use documents. Community and Development Services believes that it would be better to make comprehensive changes to all of the land use regulations rather than eliminate all references to the Master Plan from the current regulatory documents.

The Planning Commission was polled to get their views on this application prior to public testimony. They had the following questions and concerns:

- Has the BOCC been advised that there is a group, or committee, that has spent hundreds of hours trying to update various sections of the Master Plan?
- This application at this time is baffling. There is absolutely no question that the regulations are antiquated and in conflict with each other. In order to do what is collectively best for the County, there have been times that the Planning Commission has had to make choices between warring paragraphs in the Master Plan versus the regulations. They've struggled to find some type of a workable solution to the application presented before them.
- This is like putting the cart before the horse; the regulations and the Master Plan should be intricately cross-pollinated and useful in their entirety. The Master Plan is the people's document. It's where different things can be handled; where better ideas can be incorporated. The Planning Commission serves at the request of the BOCC. The BOCC are the mechanism to make things happen, but the Planning Commission is the soul. As such, we have to be flexible and have a Master Plan that's well thought-out in order to make recommendations to

the BOCC. The BOCC doesn't have to agree with the Planning Commission's recommendations; it just means that the Planning Commission is of the view that the intent of the Master Plan has been met. The Planning Commission has been able to negotiate better ideas on behalf of the community by asking questions, making suggestions, etc. If we do what is contemplated, we have no lattice to negotiate. The ability to negotiate and reason is an important part of what the Planning Commission is expected to do, fully recognizing that the Planning Commission is a recommending body only and that the elected officials have the deciding factor.

- We've received a packet of letters from concerned citizens. We represent the people. If this gets adopted, there might as well not be a Planning Commission. This is way out of sequence. Finish the Master Plan first and continue with this application later.
- The Master Plan is the Vision Statement of Elbert County. It is the people's document. It's the only time the people really have input and the ability to make changes. The Planning Commission and the Master Plan are one in the same. It's been frustrating for the last year and a half trying to come up with a cohesive document, but we keep trying. To change everything right now makes no sense. We should continue on the road we're on, to put all of our documents together logically. There should be a seamless statement of what you can or cannot do in Elbert County and why. Everyone has to have parameters to work within. By taking away parts, it not only hurts us internally, it sends a statement to the public at large that we don't know what we're doing.
- When you come into the County on any road, you will see a sign that says "Zoned and Regulated." We want to keep it that way. This application is out of context. To take this and make the Master Plan an advisory document, takes away the voice of the Citizens, Planning Department, and Planning Commission. We've worked really hard on re-vamping the Master Plan and continuing into the Zoning Regulations, making them more of one document. To do this at this time is ludicrous. Let's continue to work on these documents and listen to the people of this County. When we do that, we will come up with something that is appropriate for everyone.
- This is not the appropriate time to stop work on the Master Plan; would like to see this re-visited later.
- This needs more time. We need documents that all work together.
- Doesn't understand how this could get so far out of sync.

The hearing was open to public comment; their comments and concerns were:

- For sake of clarification, the Master Plan being mandatory is not entirely correct. In the case of Spring Valley Vistas, the Master Plan was mandatory. In most other cases, the Master Plan remains advisory. It's important to understand the distinction. Where are the applicants for these changes and why aren't they at this meeting to explain the benefits to the County? We all know the BOCC is going to approve these changes as fast as they can regardless of what the PC and Community and Development Services Office recommends. Bottom line,

when you lose a law suit because you don't follow the rules, you don't change the rules, you change your behavior. These rules are there for a reason; to protect the County, the Citizens and prevent abuse. This study is incomplete. It's not adequate enough. It didn't examine the impacts to the other regulations, resolutions and compliance with State Laws. There has been no consideration for the impact that these changes would have on Open Space fees and so forth. His recommendation would be to send it back to the Community and Development Services Office and charge them with providing a comprehensive assessment of the impacts to the County and Citizens caused by these amendments.

- Commend the Staff and Planning Commission; they have proven to be fair people representing the people of the County. What we have here is some County Commissioners who have decided that since they can't do what they want according to the rules, they will get rid of the rules. They want to do what they want to do and bulldog us.
- He appreciates that there is the desire for the Master Plan to operate in concert with the function of the job of Planning Commission; it simplifies the job. We can't interpret our laws the way that it's convenient for us. The Master Plan itself says that it's the basis for land use regulation but that land use regulations are the tools of implementation. It's important to maintain the distinction between documents that are advisory and documents that are regulatory. As far as precedent goes, the Master Plan legal authority has some 38 goals that it intends to resolve – a host of things. There's no precedent value in a planning approach to justify a regulatory Master Plan. One definition of insanity is doing the same thing over and over again and expecting a different result. Stop the insanity. Affirm the advisory nature of the Master Plan.
- So happy to hear all of your comments. The main concern is to protect the County from irresponsible growth; from developers looking no further than their pocket books when we're looking toward our future and our way of life. Want to protect our way of life. Keep your voice so that you can reflect ours. We can't trust who's in office because they are not listening to us. Looking forward to the election because hopefully it will bring about some good changes.
- What we have with the Master Plan is a vision that transcends Democrat, Republican, Libertarian. It is the basis of our future. I personally have seen what happens when the Master Plan becomes an advisory document. What kinds of goals do we want to set for this County? Do we want to have Aurora come out here when the economy gets better? I am so glad to hear of all of you talk about looking at the entire Master Plan with regards to the regulations. Once it's in a cohesive form, then we can look at it becoming more of a regulatory document that has flexibility. You have to have a goal that transcends whoever is in office. Don't allow the BOCC to upset the balance in this County.
- Fully supports the recommendation of Richard Miller. Elbert County's regulatory documents need to address the County's Master Plan so that the Master Plan is an effective planning guideline. The Elbert County Master Plan, Zoning Regulations, 1041 Regulations, and other regulations are too important to the County's well-being to be drastically altered at this time. Instead, any major

changes to the County's regulations must be carefully considered and all implications weighed before any decisions are made. The language for any changes must accurately spell out the need intended. Above all, if Elbert County is going to change its documents, the County must take its time and do it the right way.

- Thanks to Richard Miller and Staff for the fabulous work. Thanks to the Planning Commission for your comments. It absolutely doesn't make sense to change things at this time. We can all quit dancing around this. We all know it's John Metli that started this and John Metli who wants this changed because John Metli didn't win. The Master Plan has always been advisory, but the law has recently changed allowing it to be regulatory. If nothing else, we need to take a portion of the Master Plan and make it regulatory, more specifically, the density portion. The three main things that people in this County are concerned with are roads, budget, and the rural lifestyle. Density is what protects our rural lifestyle from future Commissioners who want to give 1100 extra homes to a developer "just because."
- Thanks to Richard Miller and to the Planning Commission for its comments. This is a very different feel from when we were here for Spring Valley Vistas. You understand that we are the people and you are our voice. We appreciate it very much. The current Commissioners would like to stick their thumbs in our eye as a parting gift. A worry is that the proposed Commissioners think that the Master Plan is advisory. You have your work ahead of you even in January when things change. I pay taxes here and also to Douglas County Schools, which I don't even use. Now I'm paying a different tax, in the form of legal fees, because our Commissioners don't listen to us. It's just wrong for them to do what their doing. It penalizes people who love this County, want to stay here, and want it to be the best County that it can be.
- Commend Planning Commission and the Community and Development Services Department for all the work they've done for the citizens of Elbert County. Could the legal advisor to the BOCC stand beside this request? As a citizen, I just need to get it on the record that I'm tired of paying the legal fees incurred by the BOCC not following provision of the Master Plan and the regulations of this County. If I am right, we are probably paying more legal fees for Citizen's lawsuits against the County than from any outside entity. We would like to see this continued after new Commissioners take office.
- You've restored a great portion of my faith in this process. It was gracious of the Planning Commission to poll ahead of time so that they had some idea of their thoughts on this application. I am a candidate for Commissioner and who, if elected, will do everything I can to make the Master Plan have value and as much regulatory power as possible. It does protect the community decision. We have the chance to make Elbert County something very special in the future. Your open-mindedness tonight has allowed that door to stay open and I really appreciate it.
- As a purely practical matter, it seems that having Staff work on this is a waste of Staff resources, especially given the current budget issues.

- The Master Plan has to be regulatory because we don't trust the government of Elbert County any more. They've proven they can't be trusted and there's got to be rules. I understand that the current group is on the way out and God help us that we get a better group coming in. In order to live out here, it comes with a price. I have to be politically involved. I'm tired of it and I want to have some peace.

Public testimony was closed.

The Planning Commission had the following comments:

- One of the difficult jobs of this body is not to necessarily agree with everyone. Our job is to take the rules as they are written, including the Master Plan, and try to arbitrate the different conflicts in a fair and just way. To the extent that we create additional documents that are internally at conflict with one another, it becomes increasingly difficult to arbitrate or mediate the issues fairly. The resolution of this issue, the Master Plan, and other regulations has to be predictable and fair.

A motion by Mike Kelley, seconded by Lisa Shipman, was made to continue this application to a date to be determined once the Housing Component to the Master Plan has been heard and adopted and the Residential Design Guidelines to the Subdivision Regulations has been amended and approved. The motion carried 7 to 0.

#### **UNFINISHED BUSINESS:**

A. None

#### **NEW BUSINESS:**

A. None.

#### **ANNOUNCEMENTS:**

The next regular meeting of the Elbert County Planning Commission will be held on Thursday, October 23, 2008 at 7:00 pm in the regular hearing room, located at 215 Commanche., Kiowa, CO.

The meeting adjourned at 8:10 pm.