

**Fremont County Planning  
& Zoning Commission  
Minutes  
September 17, 2007  
6:00 pm  
County Annex Building**

The Fremont County Planning & Zoning Commission met in a regular session on September 17, 2007. They met in the County Annex Building. **Members in attendance were:** Kirk Mackert (acting chairman), Ron Kynaston, Tom Atchley, Steve Pinther, Cindy Miller, Vance Derricott, and John Nedrow.

**Staff and others present:** Jeff Patlovich (P&Z Administrator), Letta Laux (P&Z Secretary), Karl Lewies (Prosecuting Attorney).

1. Welcome

The chairman called the meeting to order at 6:00pm

2. Election of Planning and Zoning Chairman and Vice Chairman

Mr. Mackert asked the board to nominate a new chairman.

**MR. DERRICOTT MOTIONED TO NOMINATE KIRK MACKERT AS CHAIRMAN. MR. ATCHLEY SECONDED. ALL IN FAVOR. MOTION PASSED. MR. MACKERT ACCEPTED THE NOMINATION.**

Mr. Mackert asked the board to nominate a new vice chairman.

**MRS. MILLER MOTIONED TO NOMINATE JOHN NEDROW AS VICE CHAIRMAN. RON KNYSTON SECONDED. ALL IN FAVOR. MOTION PASSED. MR. NEDROW ACCEPTED THE NOMINATION.**

3. Public Hearing Continuation – Cold Water Canyon – Jim Hirrlinger

Mr. Mackert stated that the public hearing on this issue had been closed, and the board is to continue discussion.

Mr. Mackert stated there were questions with the LESA valuation, the Nitrates, and Fremont/Madison water distribution.

Mrs. Miller stated Mr. Pinther had a question regarding the building envelope.

Mr. Mackert stated he was going with the questions outlined in the motion.

Mr. Mackert questioned Mr. Lewies regarding the LESA evaluation, and said this came to them before the Loosli amendment was adopted.

Mr. Lewies stated the law that is applicable is the law that was on the books at the time the application was filed.

Mr. Mackert asked Mr. Patlovich if it was scored as productive crop land.

Mr. Patlovich stated it has been in CRP for 18 years and in his opinion it is not.

Mr. Mackert stated they are getting paid for CRP, and questioned if that makes it exempt.

Mr. Patlovich read from the LESA, page 15.

Mr. Derricott read from LESA and stated it is reserved from crop production, and it appears to him that it applies.

Mr. Patlovich stated that would go against how they have decided in the past, and that it goes against the code.

Mr. Lewies stated he reads it the same way Mr. Derricott does.

Mr. Derricott stated since they are receiving rent, the LESA should apply.

Mrs. Miller questioned what “reserved” means, and asked for clarification.

Mr. Lewies stated that removing the “not’s” from the statement reads that the LESA applies.

Mr. Mackert read from LESA, and stated that it does apply.

Mr. Patlovich stated in his experience if ground is in CRP for 10 consecutive years that it is exempt from LESA, and this land has been in CRP for 18 years. Stated if the board wants to change that, he’ll have to go back and rescore it, but there is no more time.

Mr. Lewies stated if it has not been used as crop land, in his opinion, the CRP has to go through a LESA evaluation.

Mr. Mackert questioned even if it has been in CRP for 18 years?

Mr. Lewies stated if it has not been used as crop land or has not been in CRP in 10 years then LESA does not apply, but if it has been used as crop land in the past 10 years, it does apply.

Mr. Patlovich questioned Mr. Lewies how they can have this discussion when there has not been a LESA evaluation done in this review.

Mr. Lewies stated it depends on the board's evaluation.

Mr. Mackert stated the main question they had was on the timing of the Loosli amendment, and if the LESA evaluation applied.

Mr. Pinther stated he reads it differently. Stated if it has not been used as farmland or crop, the LESA does not apply. Stated they have clearly identified two reasons why the LESA would not apply. Stated the LESA purpose was to redirect development away from productive farm ground, and not to stop development.

Mr. Mackert stated in the case of CRP, they are receiving payment and is not "unproductive."

Mr. Pinther stated the purpose of LESA is to direct development to less productive farm ground, and usually ground in CRP is the least productive.

Mr. Derricott stated there is a lot of productive farm land that is in CRP.

Mr. Nedrow stated there are other circumstances besides just the productivity of the soil. Stated if no one can be found to rent it or if the prices are poor the farmers can make more profit by putting it into CRP.

Mr. Kynaston and Mr. Nedrow discussed the definition of "not productive" relating to making a profit on farm ground.

Mr. Mackert stated the question before them is how does this apply, and how is the P&Z need to apply it.

Mr. Lewies stated if property owners put their farm ground in CRP, they can develop 1 house per 2 1/2 acres. Stated if they put it in CRP, it would be exempt from LESA, but if the CRP does have to go through the LESA, then the decision has to be made on the productivity of the land.

Mrs. Miller stated unproductive farm ground could have a LESA evaluation and the soils might prove to be very good. Stated that raises questions.

Mr. Pinther read from the LESA amendment. Stated it is to direct development away from productive farmland, and not to try to stop development.

Mr. Atchley stated he agrees with Mr. Pinther.

Mr. Lewies questioned if it is possible to put the most productive farm ground in CRP.

Mr. Nedrow stated it is possible if it meets certain criteria.

Mr. Derricott and Mr. Lewies discuss scenarios of farm land being placed in CRP.

Mr. Patlovich stated the board needs to take a vote. Stated they need to vote on the question does this have to go through a LESA evaluation, or is it exempt?

Mrs. Miller questioned if it would apply to this case only.

Mr. Patlovich stated they will be setting the policy for the County as to how LESA is applied or not.

Mr. Mackert stated they looking at the previous LESA as well with an amendment, and they are not clear on that amendment.

Mr. Patlovich stated the CRP issue is the same for the old and the new amendment, it can still be made to go through a LESA or not.

**MR. PINTHER MADE A MOTION TO STAY CONSISTANT WITH APPROVED LEGAL DOCUMENTS AND HISTORICAL RULINGS, THAT GROUND IN CRP OR GROUND THAT HAS NOT BEEN USED IN 10 YEARS WILL BE EXEMPT FROM LESA. MR. ATCHLEY SECONDED.**

Mr. Patlovich and Mr. Lewies helped to explain the motion made by Mr. Pinther.

Mr. Pinther stated he wants to be sure that the motion includes that they be consistent with the law.

Mr. Kynaston stated that it should have to be in CRP for 10 years before LESA would apply.

Mr. Patlovich stated the motion is saying to keep it as it is written on page 13, that the 10 year rule applies, and if ground is in CRP or some other Federal program, or not in crop land or pasture, it is exempt.

Mr. Mackert asked if everyone was clear on what they are voting on. Stated the motion on the table is that land in CRP is exempt from the LESA.

Mr. Nedrow stated he disagrees. Stated his opinion is that if ground is in CRP, it has to go through the LESA.

Mr. Derricott stated he reads it like MR. Nedrow.

Mr. Lewies questioned Mr. Pinther if his assumption is that land in CRP is not productive.

Mr. Pinther stated it assumes that they want to direct development to areas that have the least adverse impact on agricultural production, and that CRP ground is the least productive ground. Stated that is the purpose of LESA.

Mr. Mackert stated there is land in FC that was in CRP that has been brought back into production.

Mr. Derricott stated he would like to hear an example of how this was done in the past.

Mr. Lewies stated the previous administrator did not use the LESA. The decision was that if there was a crop, it was productive. Period.

**MR. MACKERT TOOK A VOTE ON THE MOTION MADE BY MR. PINTHER: THOSE OPPOSED: MR. MACKERT, MR NEDROW, AND MR. DERRICOTT. ALL OTHERS IN FAVOR. MOTION PASSED.**

Mr. Patlovich stated in regard to the nitrate issue for this development, it is only an issue on a non-domestic, community wells. Stated there is going to be individual wells in this development, therefore it is exempt.

Mr. Mackert stated the concern was that this area is in a priority 1 nitrate area, and they want to make sure, for health reasons, that is known and not overlooked.

Mr. Mackert asked if Fremont/Madison was contacted.

Mr. Patlovich stated he does have a letter from Fremont Madison. Read from the letter stating their concern that the runoff from hard surfaces in the subdivision and surface water contamination from septic systems in the Conant Creek.

Mr. Mackert stated there was also a concern about the placement of the septic systems.

Mr. Patlovich stated the issue with the septic systems and the runoff, and gave examples of other areas that have less distance from septic systems and the ground water.

Mr. Pinther stated he was more concerned with the setbacks from the vista.

Mr. Patlovich stated he would rather they take care of that issue now.

Mr. Mackert stated he did not think they need to add anything about the water issue, and asked for other comments.

Mrs. Miller stated there is a big concern with the water rights, and do not know if they have them.

Mr. Patlovich stated they do not know that as a fact, and have not heard from anyone if that is an issue.

Mrs. Miller asked if they could state that as a condition for approval.

Mr. Patlovich stated they need to resolve those issues before they come back with a final. Stated it isn't the board's issue to solve it, and there is no clear law that says they need too. However, the board can require it to be taken care of before they come back with a final.

Mr. Atchley questioned if they need the water rights.

Mr. Mackert stated they do not need the water rights, but it is leaving something unresolved.

Mr. Pinther questioned if they need the water for fire protection.

Mr. Mackert stated they have a letter from the fire district, and clarified the rule in regard to water for fire suppression.

Mr. Kynaston stated the Island Park fire district requirement for subdivisions.

Mrs. Miller questioned if they can put that down as a requirement.

Mr. Patlovich read from the code regarding fire protection. Stated in his scoring he gave them a zero. Stated there should never be a zero.

Mr. Pinther stated he does not see where this applies in this subdivision.

Mr. Patlovich stated he gave them the worst score possible, and they scored the maximum negative of zero. Stated the issue for them having water for fire protection was given a score of zero. Stated the code does not require them to have water for fire protection, but Island Park does.

Mr. Pinther stated that other areas require water rights. Stated if it was required by North Fremont, they could require it, and the board can't require it.

Mrs. Miller stated they can recommend they have the water rights for fire protection.

Mr. Patlovich stated all they can do is score them.

Mr. Atchley stated they cannot hold it against the developer, and he does not see how they can stop them because of it.

Mr. Patlovich stated even if they recommend to them they do this, and they choose not to, they still have a passing score.

Mr. Mackert questioned if they are sure that NF Fire District does not require water for fire protection.

Mr. Patlovich stated they have to stay within the record, and he has nothing from the fire district.

Mr. Mackert read from the minutes from the public hearing that the county can require them to do a nitrogen pathogen study.

Mrs. Miller stated she recommends they should take advantage of that.

Mr. Lewies questioned if the code says they have to.

Mr. Patlovich stated this is a high nitrate issue, but there is nothing in the code that requires them to do anything about it. Stated the fire district is different, and because they chose not to say anything, the law says they did not have anything to say.

Mr. Pinther stated this is a high nitrate area, but the development is low. Stated it is obvious that development is not always the cause of nitrate problems.

Mr. Mackert stated for the safety of people that are going to live in that area, they have the right to know about the nitrate levels.

Mr. Kynaston questioned if the DEQ said was that when population went up the nitrate levels went down.

Mrs. Miller asked Jeff to note that they do want studies done on the nitrate levels.

Mr. Mackert questioned if there are more concerns to be discussed.

Mr. Pinther stated he wanted to bring up the discussion about the building envelopes. Stated building envelopes should be designed so they have the least impact on the river. Stated the setbacks are a joke.

Mr. Patlovich questioned what they want to see.

Mr. Mackert questioned the lot size and the building envelope.

Mr. Patlovich stated he had advised them about the potential problem.

Mr. Pinther questioned if they can require the least adverse effect on visual impact.

Mr. Lewies stated all the board can do is to enforce the written provisions in the code, and they cannot make up law.

Mrs. Miller questioned if they can require a size for the building envelopes.

Mr. Lewies stated only if it is written in the code that allows them to. Stated the developer has the right to know what the law is before they develop it.

Mr. Pinther stated he can't find it. Asked if it could be under buffering or river corridors? Mr. Pinther and Mr. Lewies discussed scoring with Mr. Patlovich.

Mr. Pinther asked what Mr. Patlovich gave them for Y.1 and Y.2?

Mr. Patlovich stated he gave them a zero score because it is discussing landscaping as a buffer. Stated it is not relevant to this discussion. Stated the problem with what Mr. Pinther wants to accomplish with the views is that there is not a view that will be blocked. Read from the code.

Mr. Pinther asked about appendix K.

Mr. Patlovich stated the purpose of appendix K is for landscaping requirements.

Mr. Lewies stated the greatest leverage comes at the sketch plan stage where they can give them initial guidance and recommendations.

Mrs. Miller stated they are asking now.

Mr. Mackert questioned if the board wants to go through the scoring sheet.

Mr. Pinther questioned if they can look at the building envelopes at the final plat.

Mr. Patlovich stated the code is very specific in that they can add conditions at the final plat.

Mr. Pinther stated if they don't see the envelopes reduced maybe they could add buffering requirements.

Mr. Mackert questioned if they were ready to make a motion.

**MR. ATCHLEY MOTIONED TO APPROVE THE COLD WATER CANYON PROJECT WITH THE CONDITIONS MET FOR THE NITRATE PATHOGEN STUDY, THE WATER RIGHTS ISSUE, AND THE BUILDING ENVELOPE SIZE ISSUE. MR. PINTHER SECONDED. MR. NEDROW OPPOSED. ALL OTHERS IN FAVOR. MOTION PASSED.**

#### 4. Public Hearing Continuation – Seventh Heaven – Kaye Albiston

Mr. Patlovich stated they have a subdivision that does not meet density requirements because the board denied the variance. Stated the board had given Mr. Albiston time to resubmit which he has chosen not to because he does not want to loose the lot the board asked him to.

Mr. Mackert questioned the history of the lot splits. Asked where the code requires developers to include previously built-upon lots in a development.

Mr. Patlovich stated chapter 12.d of the code. One piece was split off as an allowable split, and then two more were split illegally.

Mr. Mackert questioned if it was done before 1992.

Mr. Patlovich stated it was after 1992. Stated Mr. Albiston was required to bring two of the lots back in to legalize the parent parcel. Stated he could not subdivide the property without correcting the illegal splits.

Mr. Pinther stated they denied the variance with an alternative that he could achieve his goal by resubmitting his application and dropping a lot from the subdivision to meet density requirements. Stated he did not take their advice.

Mr. Mackert questioned if there were any other comments or discussions.

**MR. PINTHER MOTIONED TO DENY 7<sup>TH</sup> HEAVEN APPLICATION. MR DERRICOTT SECONDED. ALL IN FAVOR. MOTION PASSED.**

5. Final Plat – Conant Creek Estates – Royce Klingler

Mr. Mackert questioned if there is any thing they need to know.

Mr. Patlovich stated this is ready to go, and he has been through the preliminary and the final plat with the developer. Read report.

Mr. Nedrow questioned if there are any problems.

Mr. Patlovich stated there are none and he has followed this closely.

Mrs. Miller stated to recommend they consider not fencing off that area which would trap the wildlife that uses the area.

Mr. Patlovich stated instead of recommending they remove fencing, to give them the option of putting in wildlife-friendly fencing. Stated it is in the plat note already as a recommendation from the IDF&G, and is already taken care of.

**MR. ATCHLEY MOTIONED TO APPROVE THE FINAL PLAT OF THE CONANT CREEK ESTATES. MRS. MILLER SECONDED. ALL IN FAVOR MOTION PASSED.**

6. Sketch Plan – Bed & Breakfast – Dan Creel

Mr. Mackert questioned if Mr. Creel is present. Mr. Creel was not present.

Mr. Patlovich stated if he is not here, they are not introducing this project.

Mr. Mackert stated he can reschedule another hearing for himself, and asked for a motion.

**MRS. MILLER MOTIONED TO DISREGARD MR. CREEL'S SKETCH PLAN AS HE IS NOT PRESENT, AND HE WILL HAVE TO RESCHEDULE ANOTHER HEARING. MR. ATCHLEY SECONDED. ALL IN FAVOR. MOTION PASSED.**

#### 7. Sketch Plan Dune Echoes Resort – Jamie Smith

Mr. Mackert asked if Jamie Smith was present. Jamie smith was not present.

**MR. ATCHLEY MOTIONED TO DISREGARD MR. SMITH'S SKETCH PLAN AS HE IS NOT PRESENT, AND HE WILL HAVE TO RESCHEDULE ANOTHER HEARING. MR. NEDROW SECONDED. ALL IN FAVOR. MOTION PASSED.**

#### 8. Administrators Report

Work session is scheduled for Thursday, September 20 at 6:00pm. Stated to plan on meetings being scheduled for both Thursday and Monday for the future.

#### 9. Adjournment

Adjourned meeting at 7:27pm.