



MINUTES OF THE BOARD OF COUNTY COMMISSIONERS

MONDAY, JANUARY 23, 2023

LAND USE HEARING

The Board of County Commissioners met at 3:00 p.m., with Alyssa Martin, Planner. Chair Shadduck-McNally presided. Commissioner Kefalas and Commissioner Stephens were present. Also present were Michael Whitley, Community Development Senior Planner; Lesli Ellis, Community Development Director; Tatum Hastings, Traci Hicks and Samantha Mott, Community Development, Connor Sheldon, Engineering; Noel Udell, Health and Environment; Frank Haug, County Attorney; and Deirdre O'Neill, Deputy Clerk.

Chair Shadduck-McNally opened the meeting with the Pledge of Allegiance.

PUBLIC HEARING CONSENT ITEMS:

1. CEDAR SPRINGS 2ND AMENDED PLAT OF LOTS 11 THROUGH 13, BLOCK 3, AND EASEMENT VACATION, FILE NO. 22-LAND4266: This is a request of the amended plat of lots 11 through 13, block 3 of the Cedar Springs Estates Subdivision, Second Filing to adjust the common lot line to correct a building encroachment and to vacate the existing 5-foot utility easement on lot 13.

Lots 11 and 12 are located at 440 Wren Place, Drake, CO, owned by Lyn Westergard and Peter Hunwick. Lots 11 and 12 contain a single-family residence, built in 1985, according to the Larimer County Assessor. Lot 13 is located at 485 Wren Place, Drake CO, owned by Joseph and Stephanie Krueger. Lot 13 contains a single-family residence, built in 1996, according to the Larimer County Assessor. Both lots are zoned O – Open and are part of the Cedar Springs Estates Subdivision, Second Filing, platted in 1967.

Lots 11 and 12 and Lot 13 were part of an amended plat in 2006 (File No. 06-S2538) to adjust lot lines, combine lot 11 and lot 12 into one lot, and vacate existing utility easements. However, the lienholder for lot 13 at the time did not sign off on the final plat and lot 13 was removed from the application. As a result, the amended plat application was turned into a Lot Consolidation to combine

Commissioners shall consider the original reason or circumstance for a condition or note on a plat when approving a change.

DEVELOPMENT SERVICES TEAM RECOMMENDATION:

The Development Services Team recommends approval of the amended plat of lots 11 through 13, block 3 of the Cedar Springs Estates Subdivision, Second Filing and Easement Vacation, File No. 22-LAND4266, subject to the following conditions:

1. All conditions of approval shall be met, and the final plat recorded by July 23, 2023, or this approval shall be null and void.
2. The property will be subject to all restrictions, covenants, and conditions as set forth in the plat of record for the Cedar Springs Estates Subdivision, Second Filing.
3. Prior to the recordation of the final plat, the applicant shall make any required corrections noted by the Land Surveyor of the Larimer County Engineering Department, the Larimer County Assessor's Office, and Larimer County Planning.
4. Final transfer of ownership and resultant deeds must be submitted and recorded as part of this amended plat.
5. Any future uses on the resultant lots shall obtain approval through the applicable review procedure as established in the Larimer County Land Use Code prior to commencement of the use.
6. The Findings and Resolution shall be a servitude running with the property. Those owners of the property or any portion of the property who obtain title subsequent to the date of recording of the Findings and Resolution, their heirs, successors, assigns or transferees, and persons holding under applicants shall comply with the terms and conditions of this amended plat approval.

2. PROSPECT ENERGY LLC CELL TOWER ADMINISTRATIVE SPECIAL REVIEW, FILE NO. 22-WCFOO75: This is a request per the applicant for an Administrative Special Review approval for a new 60' stealth Monopine wireless facility in the RR2-Rural Residential zone district.

Members of the public wished to remove item number two, Prospect Energy LLC Cell Tower Administrative Special Review, File No. 22-WCFOO75 from the consent agenda for a full hearing.

MOTION

Commissioner Stephens moved to approve the remaining item number one on the consent agenda for January 23, 2023 subject to the conditions in the staff report and further authorize the Chair to sign the Findings and Resolution

3. The recommendations of referral agencies have been considered and adequately addressed.
4. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the Comprehensive Plan.
5. The applicant has demonstrated that this project can meet applicable additional criteria listed in Article 3.0, Use Regulations.

DEVELOPMENT SERVICES TEAM RECOMMENDATION:

The Development Services Team recommends approval of the Prospect Energy LLC Cell Tower Administrative Special Review, 22-WCF0075 subject to the following conditions:

1. The site shall be developed consistent with the approved plan and with the information contained in the Prospect Energy LLC Cell Tower Administrative Special Review, 22- WCF0075 except as modified by the conditions of approval or agreement of the County and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the Prospect Energy LLC Cell Tower Administrative Special Review.

2. This application is approved without the requirement for a Development Agreement. In the event the applicant fails to comply with any conditions of approval or fails to use the property consistent with the approved Administrative Special Review, the applicant agrees that in addition to all other remedies available to County, County may withhold building permits, issue a written notice to applicant to appear and show cause why the Administrative Special Review approval should not be revoked, and/or bring a court action for enforcement of the terms of the Administrative Special Review. All remedies are cumulative and the County's election to use one shall not preclude use of another. In the event County must retain legal counsel and/or pursue a court action to enforce the terms of this Administrative Special Review approval, applicant agrees to pay all expenses incurred by County including, but not limited to, reasonable attorney's fees. County may conduct periodic inspections to the property and reviews of the status of the Administrative Special Review as appropriate to monitor and enforce the terms of the Administrative Special Review approval.

3. The Findings and Resolution shall be a servitude running with the property. Those owners of the property or any portion of the property who obtain title subsequent to the date of recording of the Findings and Resolution, their heirs, successors, assigns or transferees, and persons holding under applicants shall comply with the terms and conditions of the Administrative Special Review approval.

4. The owner is responsible for obtaining all required building permits for the cell tower and paying all applicable fees, including permit fees.

5. This Administrative Special Review approval will automatically expire without a public hearing if the use is not commenced within three years of the date of approval.

The applicant, Michael Powers, and Engineer Robbie Caristan gave their rebuttal on some of the comments made by the members of the public. Mr. Powers wanted to reiterate that they have applied for commercial use on an industrial property not a residential property and have met all of the administrative requirements including setbacks and stealthing. He also spoke about the landscaping and the need for coverage in the area and has a severe impact on first responders. An entire team has worked on this application for the past 10 months and there has not been any wildlife issues that are a concern to professionals. Mr. Caristan, radio frequency manager at Dish Network spoke about the height of the tower. If the tower is moved, the issue of connectivity will still not be addressed.

The Commissioners did have some questions on the 60/40 split of landscaping and discussed an 80/20 mix of evergreens and broad leaf trees instead.

The Commissioners thanked everyone who came out to speak today and the Commissioners do feel that public health and safety do take precedence and that the public deserves to have access to more reliable cell phone service. The Commissioners do believe that the criteria have been met for this application and are in support of this proposal.

MOTION

Commissioner Kefalas moved that the Board of County Commissioners approve the Prospect Energy LLC Cell Tower Administrative Special Review, 22-WCF0075 subject to the 8 conditions in the staff report with adding another condition of approval with an 80/20 mix of trees evergreen to deciduous and as mature as possible.

Motion carried 3-0

2. CORTEZ SHORT-TERM RENTAL ADMINISTRATIVE SPECIAL REVIEW AND APPEAL, FILE NO. 22-ZONE3328: This is an Administrative Special Review for a 5 bedroom, 10 guest Short-Term Rental in an existing home.

Tatum Hastings, Community Development, gave a brief presentation stating that the subject property is located at 79 Windom Court, Livermore, CO 80536. The property currently contains an existing single-family residence and is zoned RR-2 – Rural Residential. The applicant requests Administrative Special Review approval for a small Short-Term Rental (STR) located in the existing 5-bedroom single-family residence with a maximum occupancy of ten (10) total guests, two (2) guests per bedroom.

Administrative Special Review for an STR requires both Planning Division and Building Division approval. For this case, Planning Division review and Building Division review were conducted concurrently. In general terms, the Planning review process involves:

1. Pre-application conference and application submittal.
2. Staff and referral agency evaluation and comment review.
3. Community notice and community comment review.

this is instructed in the operations manual and during the booking process. Outside burns will not be tolerated. There are no other short-term rentals in the immediate vicinity. While many residents are not in favor of STR's, if the property is well managed, it can be a great asset to the community. They bring in tax revenues and potential home buyers to the area.

Ms. Cortez also spoke about safety and stated that their property manager is located within five minutes from the home. No one under the age of 25 will be able to rent the property and in order to even view the listing on AIRBNB you must be a verified five star user. It is a high end rental with rates starting at \$350/night with a \$300 cleaning fee. There are security cameras outside the home and surrounding the property.

There were questions from the Commissioners on the HOA policy of STR's as well as the requirements of the property managers.

Chair Shadduck-McNally opened the hearing to public comment.

The following members of the public offered comments: Alan Judd, Dee Judd, Tamara Bartz (property Manager) spoke in support of the short-term rental. Jim Petrie would like to limit the amount of short-term rentals in the area.

Chair Shadduck-McNally closed public comment.

The applicants gave rebuttal and explained the goal is to eventually make this their permanent home.

The Commissioners believe that the application does meet the review criteria of a short-term rental administrative review and thanked everyone for their input.

MOTION

Commissioner Stephens moved to approve the Cortez Short-Term Rental Administrative Special Review and Appeal, FILE NO. 22-ZONE3328 subject to the conditions in the staff report.

Motion carried 3-0

The Board took a brief recess.

The Board returned to session.

3. ATKINSON SHORT-TERM RENTAL ADMINISTRATIVE SPECIAL REVIEW, FILE NO. 22-ZONE3365: This is a request for an Administrative Special Review to convert an existing single-family residence into a short-term rental.

Tatum Hastings gave a brief presentation and stated that subject property is located at 32189 W Highway 14, Bellvue, CO. The property currently contains an existing single-family residence and is zoned O- Open. The applicant requests Administrative Special Review approval for a small Short-term Rental located in the existing 1- bedroom single-family residence with an additional sleeping area

The Commissioners did have some questions on the structure being located above the floodplain overlay. Staff responded by stating there was a hydraulic study done on this property in 2004 and that the access driveway is not in the floodplain. The issues that had been previously identified have been adequately addressed.

The applicants were invited to approach the Board. Brandon and Sarah Atkinson, property owners, explained that they spend a lot of time in the mountains and have purchased a cabin for themselves and are hoping to have it as a STR to offset the costs when they are not staying there. They wish to use it for themselves as much as possible. They understand the concerns of the neighbors and have mitigated the risks as much as possible. This cabin is their dream home, and they wish to be good neighbors. They mentioned that they discovered a potential way to allow themselves to afford their dream cabin, through a STR while also being able to use it throughout the year. They themselves spend almost every weekend at the cabin enjoying the amazing views and wildlife. Each person who wishes to rent the cabin will be reviewed as well as their ratings on the website will be looked at. Only those with a 5-star rating will be considered. By turning off instant book they are decreasing the amount of bookings by 52%. They have a team of people who will help them if there are any issues. Mr. Atkinson's brother will be the main contact as property manager as well as the cleaning company as a backup for the 24/7 coverage.

There will be no fire pits of any kinds allowed. There are fire extinguishers in every room. Only the cleaning crew will empty out the ashes from the fireplace. There will not be more than 4-people staying at the cabin at any given time.

Chair Shadduck-McNally opened the hearing for public comment.

The following spoke to the Board: Loren Johnson spoke in support of the application stating that the Atkinsons are great neighbors and have done an enormous amount of work on the property.

Chair Shadduck-McNally closed public comment.

The Commissioners did have some concerns about the property manager (brother) living in Loveland which is not within one hour of the property. The applicants stated they will hire a company called Decked out to be the full time property management company since they are within distance. There were also some concerns about noise and they did recommend installing sound sensors if they receive any noise complaints from neighbors. The applicant did state that the cabin is on the river which is fairly loud especially as windy as it is at the cabin. But they will look into a sound sensor if they do receive any noise complaints.

The Commissioners deliberated and stated that they are in support of this application and that it meets the criteria. They appreciate their openness to be good neighbors.

MOTION

1. The proposed use has minimal impacts on existing and future development of the area.
2. Any impacts associated with the environment, wildlife, access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, odor, and other adverse impacts have been adequately addressed and/or mitigated.
3. The recommendations of referral agencies have been considered and adequately addressed.
4. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the Comprehensive Plan.
5. The applicant has demonstrated that this project can meet applicable additional criteria listed in Article 3.0, Use Regulations.

DEVELOPMENT SERVICES TEAM RECOMMENDATION:

The Development Services Team is not making a specific recommendation on the Great Day Getaway Bed and Breakfast, File #22-ZONE3190, and has presented all the information by which the Board of County Commissioners may base their deliberation and decision.

The Commissioners did have some questions for staff on the septic concerns of neighbors stating that the undue burden on the amount of occupants using the septic system and has not been improved in the last 20 years.

Staff stated that the health department did determine that the septic system is adequate for the number of occupants in the proposal.

The Commissioner invited the applicant to approach the Board.

Jessica Baradell, owner explained that she purchased the home a little over a year ago. She wants to provide a unique cabin experience that is close to town. The property is on over 2-acres with stunning mountain and lake views. The owners will be on-site and readily available if needed by guests or neighbors.

Chair Shadduck-McNally opened the hearing for public comment.

Connie and Marissa Mattos spoke about their concerns about the dirt road and the dangerous curve by the canal and that the property does not fit with the existing homes.

Lance Smith spoke in support of the application.

Chair Shadduck-McNally closed public comment.

1. **PETITION FOR ABATEMENT OR REFUND OF TAXES**-Ninth and Denver LLC, R0341029, Tax Year 2021

AGREEMENTS:

1. **CROWDSTRIKE TERMS AND CONDITIONS**
2. **AMENDMENT NO 4 TO FIBER USE LICENSE AGREEMENT**

APPOINTMENTS

- 1 **RECOMMENDED RE-APPOINTMENT TO THE GRASSLANDS PID**-James Brauer

LIQUOR LICENSE: ETALEM INC. DBA BRANDING IRON LIQUOR-RETAIL LIQUOR STORE-FORT COLLINS; LA ESPERANZA LLC DBA HACIENDA REAL-HOTEL AND RESTAURANT-FORT COLLINS; G2G LEGACY LLC DBA MASONVILLE MERCANTILE-TRANSFER OF OWNERSHIP-LOVELAND

RESOLUTION

1. **RESOLUTION FOR CONVEYENCE BY BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO-CDOT-ROW8**
2. **RESOLUTION FOR CONVEYENCE BY BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO-CDOT-ROW2**
3. **RESOLUTION FOR CONVEYENCE BY BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO-CDOT-ROW1**
4. **RESOLUTION FOR CONVEYENCE BY BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO-CDOT-ROW6 AND ROW7**
5. **FINDINGS AND RESOLUTION DENYING THE LEMERS SHORT-TERM RENTAL ADMINISTRATIVE SPECIAL REVIEW**
6. **FINDINGS AND RESOLUTION DENYING THE ROTH APPEAL**

DEEDS

1. **SPECIAL WARRANTY DEED- ROW2**
2. **SPECIAL WARRANTY DEED- ROW8**
3. **SPECIAL WARRANTY DEED- ROW1**

DISCUSSION ITEMS

6. DISCUSSION OF MEMORANDUM OF UNDERSTANDING WITH REPUBLIC SERVICES FOR NEGOTIATIONS TO DESIGN, BUILD, CONSTRUCT, FUND AND OPERATE THE NORTH LANDFILL, CENTRAL TRANSFER STATION AND MATERIALS RECOVERY FACILITY (RECYCLING CENTER). Laurie Kadrach, Assistant County Manager and Duane Penney, Solid Waste Director. Laurie Kadrach gave a brief presentation stating that Larimer County's existing landfill is nearing capacity and will be permanently closed. It is necessary to construct a new landfill and transfer station. Additionally, the existing Recycling Center will be replaced with a new Materials Recovery Facility. Staff issued two requests for proposals to seek private public partners to design, build, construct, fund and operate the new transfer station, landfill, and materials recovery facility.

Republic Services is being recommended by the review committee to be the County-awarded vendor for this project. Staff negotiated a memorandum of understanding to serve as a framework for contract negotiations. Staff is seeking direction from the Board of County Commissioners to continue with contract negotiations. Staff reviewed the memorandum of understanding with the Solid Waste Policy Council during their January 12, 2023, meeting.

The Solid Waste Policy Council expressed concerns regarding a private partner for the new landfill and request more time to evaluate this option. The Council expressed concerns regarding the County's approach to this decision and did not feel that agencies were able to contribute to this potential decision. The Council did make a motion to direct the County to include the agencies technical staff in any further modifications to the Memorandum of Understanding or contract development in the event the County moved forward with a private partner. That motion passed 6-1. There were no further motions.

Duane Penny, Solid Waste Director, went over the terms of the MOU and stated that the county would own the property and retain control over rates and how they would impact residents, but Republic would pay to build and operate the facility, handle all permitting and be responsible for any containment that might occur. Mr. Penny discussed the terms, initial rates, construction, equipment, and improvements to the Board.

The county estimated the new landfill would cost \$65 million but it only had \$50 million in reserves. Partnering with the private sector enables the transfer station, landfill, and half of the new recycling facility to be constructed with private sector money. The county will pay for half of the recycling center and the costs associated with improving the roads in and out of the new landfill-CR 70 and CR 9. Working with a private partner enables more facilities to be constructed sooner and waste diversion programs to begin in a timelier manner. The goal in seeking private partnership for these core operations is so the county can focus on diversion strategy.

The new landfill is part of a regional effort across Northern Colorado to build more infrastructure for solid waste management and diversion. Larimer County North Landfill will open in phases, allowing it to take waste from the current landfill before it reaches capacity.

On the weekends approximately 1200 self-haul customers come to the landfill each weekend day and dispose of materials from either their home or business which is why we wanted to keep the new transfer station near the current landfill because it is centrally located.


JODY SHADDUCK-MCNALLY
BOARD OF COUNTY COMMISSIONERS

ANGELA MYERS
CLERK AND RECORDER

ATTEST:


Deirdre O'Neill, Deputy Clerk

