

**ELMORE COUNTY  
PLANNING AND ZONING COMMISSION**

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**MINUTES**

**Wednesday, December 2, 2009 at 7:00 pm**

Chairperson Nettleton called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Chairperson Nick Nettleton, Vice Chairperson Patti Osborn, Al Sobtzak, Sue Fish, and Betty Van Gheluwe. Also present were Attorney of Record Phil Miller, Director Alan Christy and staff members Beth Westerwelle and Kacey Hultenius.

Nettleton established a quorum.

**PUBLIC HEARINGS**

**CONTINUATION FOR FELICIA GARTUNG for a Conditional Use Permit for 3-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-09).** Site is located in the Township 4 South, Range 6 East, Section 7, South East quarter Lot 3 Desert Edge Ranch Subdivision, B.M. A more common means of locating this site is from intersection of Airbase Road and Highway 51, turn on to Highway 51. Proceed approximately 2 ½ miles turn right onto Old Grandview, proceed approximately 3 miles, the property will be on the left hand side. The address is 7633 Old Grandview Highway.

Felicia Gartung is the applicant. She provided a map of the area to the Commission Members. Christy stated that it could be entered as an exhibit. He stated that this exhibit is just to differentiate the proposed driveways and lot lines and where the lots will access a public road. Osborn asked for clarification as to why this was being heard again. Christy stated that the Mountain Home Rural Fire District (MHRFD) was under the impression that a new road was possibly going to be constructed or that they wanted to see a new road constructed for the flag lots. Gartung stated that she has done some more research on this and has obtained copies of different ordinances where this is allowed.

Eric Howard is with JJ Howard Engineering. He stated that the applicant asked him to speak to the Commission Members about the LOI and what was done. He stated that this is basically a 29 acre parcel that has been split into two 10 acre parcels with the remaining parcel at about 8.8 acres. He stated that the intent was not to create any public roadway. They are driveways. He stated that they have a 30 foot front for each one that faces Old Grandview Highway. He stated that there are some concerns about fire issues from the MHRFD but what they are requesting is a public road built to highway district standards to access the end of the property and what that does is place the applicant with an undue hardship. He stated that he would be more than happy to work with the MHRFD to come up with a good standard for a driveway because he cannot find one.

Felicia Gartung stated that she would never have submitted this application if she had known of this requirement from the MHRFD. She stated that she was never informed of this at any time. She stated that she has met all requirements and ordinances.

There was no further testimony.

Nettleton closed this public hearing.

**Commission Action:**

120209mins

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Osborn stated that she was not at the last meeting where the MHRFD testified. Nettleton stated that in his recollection they want good access the lots capable of handling their equipment. Sobtzak stated that he is uncomfortable with this even though flag lots like this are part of the ordinance. He stated that when you have multiple back lots with multiple flag poles he thinks that it's poor planning. He stated that it would better serve the future uses of these lands to have a road to the back as requested by the MHRFD.

Sobtzak moved to deny the application as it does not meet the 9 standards required for a Conditional Use Permit, specifically standard 5-The proposed conditional use permit will be served adequately by existing essential public facilities and services such as highways, streets, schools, police, drainage structures, refuse disposal, water and sewer or the person responsible for the establishment of the proposed conditional use shall adequately provide any such services. He stated that it cannot be adequately served by the MHRFD. Sobtzak stated that the applicant must meet the requirements from the MHRFD to gain approval.

Van Gheluwe seconded.

Motion carried 3 to 1 with Osborn abstaining due to the fact that she was not present at the prior meeting. and Fish voting NAY due to the fact that she feels the 9 standards have been met and that flag lots are allowed.

#### **THE FOLLOWING 6 ITEMS WERE HEARD TOGETHER**

**Mike Burkett, Michelle Loesby and Janelle Curtis to Amend the Conditional Use Permit for a 4-lot letter of information in an Agriculture Zone (Case # CUP-2009-09).** The site is located in Township 1 North, Range 10 East, Section 18, Anderson Ranch Bluff Survey Parcel 22, B.M. A common means of locating this site is from in between Pine and Fall Creek, intersection of Lake Creek Road and Lester Creek Road; 0.7 miles south on Lake Creek Road to South Aspen Drive to Parcel 22.

**Mike Burkett, Michelle Loesby and Janelle Curtis to Amend the Conditional Use Permit for a 4-lot letter of information in a Agriculture Zone (Case # CUP- 2009-10).** The site is located in Township 1 North, Range 10 East, Section 18, Anderson Ranch Bluff Survey Parcel 23, B.M. A common means of locating this site is from in between Pine and Fall Creek, intersection of Lake Creek Road and Lester Creek Road; 0.7 miles south on Lake Creek Road to South Aspen Drive to Parcel 23.

**Mike Burkett, Michelle Loesby and Janelle Curtis to Amend the Conditional Use Permit for a 4-lot letter of information in a Agriculture Zone (Case # CUP-2009-11).** The site is located in Township 1 North, Range 10 East, Section 18, Anderson Ranch Bluff Survey Parcel 24, B.M. A common means of locating this site is from in between Pine and Fall Creek, intersection of Lake Creek Road and Lester Creek Road; 0.7 miles south on Lake Creek Road to South Aspen Drive to Parcel 24.

**Mike Burkett, Michelle Loesby and Janelle Curtis to Amend the Conditional Use Permit for a 4-lot letter of information in a Agriculture Zone (Case # CUP-2009-12).** The site is located in Township 1 North, Range 10 East, Section 18, Anderson Ranch Bluff Survey Parcel 25, B.M. A common means of locating this site is from in between Pine and Fall Creek, intersection of Lake Creek Road and Lester Creek Road; 0.7 miles south on Lake Creek Road to South Aspen Drive to Parcel 25.

**Mike Burkett, Michelle Loesby and Janelle Curtis to Amend the Conditional Use Permit for a 4-lot letter of information in a Agriculture Zone (Case # CUP-2009-13).** The site is located in Township 1 North, Range 10 East, Section 18, Anderson Ranch Bluff Survey Parcel 26, B.M. A common means of locating this site is from in between Pine and Fall Creek, intersection of Lake Creek Road and Lester Creek Road; 0.7 miles south on Lake Creek Road to South Aspen Drive to Parcel 26.

**Mike Burkett, Michelle Loesby and Janelle Curtis to Amend the Conditional Use Permit for a 4-lot letter of information in a Agriculture Zone (Case # CUP-2009-14).** The site is located in Township 1 North, Range 10 East, Section 7, Anderson Ranch Bluff Survey Parcel 27, B.M. A common means of locating this site is from in between Pine and Fall Creek, intersection of Lake Creek Road and Lester Creek Road; 0.7 miles south on Lake Creek Road to South Aspen Drive to Parcel 27.

Westerwelle gave staff report and background.

Dick Curtis is representing the applicants. He stated that at the time of the lot split they were required to erect a legal fence to keep the cattle out. He stated that it was ok at the time because there was already a fence in place. He stated that upon further inspection they realized that this was not a legal fence. He stated that shortly later when some of the surrounding property owners split their property they were given a waiver to the fencing requirement simply because they thought it was easier to notify possible new owners that it is open range and if they do not want cattle there must be a disclaimer on the deed of trust. He stated that they had made attempts to amend the CUP a long time ago but neither Bonnie Sharp nor Beth Westerwelle were available and that is what took them so long to amend. He stated that they fully understand the open range law and have a good working relationship with the cattlemen in the area and any issues they have had they have been more than willing to take care of. Nettleton asked if it was his intent to allow cattle on to this property. Curtis stated that they have had cattle on this property for more than 30 years. He stated that the majority of this property is over the rim to the Anderson Ranch reservoir and that cattle are not going to swim across the reservoir and go up there. He stated that the only way for cattle to approach this property is to go across other home owners' property first. He stated if they aren't required to have a fence then they shouldn't either as the cattlemen have accommodated them with any problems in the past. Nettleton asked what kinds of problems they have had. Curtis stated that in the late spring time that have had to clean up cow pies and fix a broken sprinkler head occasionally but this is their responsibility as land owners to take care of that.

Ron Davison is a cattleman who runs cows in this area. He stated that this area is in open range and that they try to be good neighbors. He stated that they are not objecting to their subdivision but he thinks they need to be fenced as not to create any problems. He stated that this property was all fenced in at one time but they have all but disappeared over time. He stated that he has run cattle in this area for over 20 years. He stated that they try to accommodate the property owners but they cannot come running every time they call. He does not want his cattle going on to anyone's lawn.

Dick Curtis responded to the public testimony. He stated that this property in question is just sage brush. There is no lawn for cattle to come on to. No one lives there and there are no buildings. There is nothing there but wide open spaces. He stated that what Davison was referring to was another property that they have their home on which has nothing to do with the piece of property being discussed. Nettleton stated that these wide open spaces are all buildable lots. Curtis agreed and stated that when the property is sold it shall state on the deed of trust that if the owner does not want cattle on their property that they must erect a legal fence which is what was granted to other homeowners in that area and that is all that they are asking for. Nettleton stated that perhaps Curtis could get with neighbors and erect a perimeter fence. Curtis stated that is a discussion that they may have at a different time.

Mike Burkett is one of the applicants and is Curtis's brother in law. He stated that they do understand the need for a fence but it should be up to the property owners to fence cows out if they choose to do so. He stated that his main concern is that other property owners have been granted a waiver on the fencing and they want to be given the same opportunity. Osborn asked staff for clarification on which properties they granted the additional language as per the applicants' request in this area. Westerwelle went to the map and pointed to the properties that are owned by Mr. Livers and Mr. Summers. Christy stated that they are to the north and west of these properties in question.

There was no further testimony.

Nettleton closed this public hearing.

### **Commission Action:**

Nettleton stated that he wanted to point out on Mr. Livers lot split that when he came before the Planning and Zoning Commission he convinced them that cattle do not come into this area and that was his main argument. Sobtzak stated that he does not believe they would be accomplishing anything by requiring a fence. Nettleton stated that he thinks they are by keeping cattle off of the properties that are before this Commission at this time. He stated that this would correct some of the problems with the Anderson Ranch Bluffs Survey. Sobtzak stated that he believes the applicant has a valid point when he states that other property owners in the area not subject to this condition and this request should be granted.

Osborn moved to approve the amended Conditional Use Permit.

Sobtzak seconded.

Motion carried 4 to 1 with Nettleton voting NAY stating that it is a terrible mistake.

### **NEW BUSINESS**

#### **FCO for McDaniel Amend Conditional Use Permit, Case # CUP-2009-06**

Osborn moved to approve as written.

Fish seconded.

Motion carried unanimously.

#### **FCO for BSU, Conditional Use Permit, Case # CUP-2009-08**

Sobtzak moved to approve as written.

Osborn seconded.

Motion carried unanimously.

#### **FCO for BSU, Height Variance, Case # VAR-2009-09**

Sobtzak moved to approve as written.

Osborn seconded.

Motion carried unanimously.

#### **FCO for Ark Properties, LLC Letter of Information, Case # LOI-2009-16**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

#### **FCO for Casa Del Norte, Letter of Information, Case # LOI-2009-12**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

#### **FCO for Casa Del Norte, Letter of Information, Case # LOI-2009-13**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

**FCO for Casa Del Norte, Letter of Information, Case # LOI-2009-14**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

**FCO for Casa Del Norte, Letter of Information, Case # LOI-2009-15**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

**FCO for Casa Del Norte, Letter of Information, Case # LOI-2009-17**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

**FCO for Casa Del Norte, Letter of Information, Case# LOI-2009-18**

Commission consensus was to postpone this item to December 16<sup>th</sup>, 2009 for additional language.

**FCO for Revocation of Conditional Use Permit, McElroy Gulch Subdivision**

Osborn moved to approve as written.

Van Gheluwe seconded.

Motion carried unanimously.

**Minutes from October 28, 2009 Workshop**

Osborn moved to approve as written.

Van Gheluwe seconded.

Motion carried unanimously.

**Minutes from November 18, 2009**

Osborn moved to approve with one correction.

Sobtzak seconded.

Motion carried unanimously.

**INFORMATION ITEMS**

Christy reminded the Commission Members about the Ordinance Revision Workshop Meeting scheduled December 9, 2009 at 6:30 pm at the American Legion Hall.

**MEETING ADJOURNED**

Approved

Approved

Nick Nettleton, Chairperson

Date:



12-16-09

Attest:  
Alan Christy,  
Director



12-16-09

Date: