

**ELMORE COUNTY**  
**PLANNING AND ZONING COMMISSION**

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**MINUTES**

**Wednesday, December 16, 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, Debbie Lord, Al Sobtzak, KC Duerig, Sue Fish, and Betty Van Gheluwe. Also present were Attorney of Record Phil Miller, Director Alan Christy and staff members Beth Westerwelle and Kacey Hulthenius.

Nettleton established a quorum.

**PUBLIC HEARINGS**

**Dan Dutton, Land Use Consultant for AirCell LLC, for an application for a Wireless Communication Facility Tower Structure (Conditional Use Permit / Height Variance) in an Agriculture zone (Case # CUP-2009-15) May 13, 2009 Ordinance.** Site is located in Section 18, Township 2 S, Range 9 E, B.M. A common means of locating this property is from Exit 95 on Interstate 84 take US Highway 20 north for 18 miles. Directly after passing Boise National Forest sign take first dirt road on right. This is the entry to the site which is gated and locked. The site is commonly known as the top of Bennett Mountain.

Christy gave staff report and background. Christy stated for the record that the applicant submitted an application for a Variance and it has come to staffs attention that a Variance is not required as stated in the zoning and development ordinance that communication facilities are exempt from height limit requirements. He stated that all fees were paid in full at the time the application was submitted and a refund will be given for the Variance application.

Dan Dutton is the applicant. He stated that he has been doing this kind of work for 20 years and has only seen one incident of interruption of communication of other towers. He stated that this is very rare. He stated that the height of this tower is necessary because this tower will be to cover wireless internet communication in airplanes. Nettleton asked if the applicant had been able to contact anyone from the Mountain Home Air Force Base (MHAFB) for any comment on this. He stated that he made several calls to several different people at the MHAFB and not one seemed to know anything about it or why they would need to comment on it at all. Nettleton stated that he would feel more comfortable if the MHAFB made comment on this as to not hold up this application with the Board of County Commissioners. Van Gheluwe asked what the applicant would do regarding the decommissioning of this tower when the time comes. Dutton stated that he has an agreement with the landowners that if they lose their license that the tower would come down within 9 months and it is Aircell's responsibility to take it down. Nettleton asked what the lifespan is on one of these facilities. Dutton stated that it is about 30 years.

No one signed up to testify.

Nettleton closed this public hearing.

**Commission Action:**

121609mins

kh

Nettleton polled the Commission Members to see if they wanted to table this item for comment from the MHAFB or to make it a condition of approval.

Lord-Condition of Approval

Osborn-Table

Sobtzak-Table

Fish-Condition of Approval

Van Gheluwe-Condition of Approval

Duerig-Condition of Approval

Nettleton-Table

Sobtzak moved to approve as it meets the conditions proposed by staff and with the additional condition that no building permit or Certificate of Occupancy be issued prior to written comment is received from the MHAFB indicating that it has no objection to the project and that it can be revisited if there are negative comments and that the structure will not exceed 105 feet in height.

Osborn seconded.

Motion carried unanimously.

Nettleton asked Miller since he owns property in very close proximity to a few of these properties if he should he recues himself. Miller stated that Idaho code 6765-06 in the Local Land Use Planning act states that a member of a governing board, Commission or Joint Commission, in this instance meaning the Planning and Zoning Commission, shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate or any other person related to him within the second degree who has an economic interest in the procedure or action. Miller stated that since Nettleton is a neighboring land owner it could be a perception that development of this property could have an effect on the value of his property therefore giving him an economic interest. Miller stated that legally he does not have to step down but Nettleton and any other Commission Member do have the right to step down if they feel there could be the perception of a conflict of interest. Nettleton recused himself from the first 5 items and will return for the last 4. Vice Chairperson Osborn stepped in to Nettleton's place. Christy stated for the record that he spoke with the applicants' representative Gordon Sorenson and they agreed that due to the geographic location of these properties that they should be heard as 3 separate public hearings.

**Ark Properties, LLC (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-19).** The site is located in Township 5 South, Range 9 East, Section 5, North ½ of the Southwest ¼ quarter, B.M. A common way of locating this property in from the intersection of Hammett Road and Old Oregon Trail, travel ½ mile east on Bennett Road to the end of the property.

Westerwelle gave staff report and background.

Gordon Sorenson is representing the applicant. He stated for the record that he agrees that these public hearings will be held as 3 separate public hearings. He submitted a spreadsheet table and a photo of the area. He stated that the first exhibit was tabulation of LOI applications made to the Growth and Development Department between May of 2006 and May of 2009. He stated that out of 54 applications that were heard there were 54 that were approved. He stated that the applicant submitted 7 LOI applications that were heard a month ago and all 7 were denied. He stated that prior to this there was a strong precedent set in Elmore County that these were approved. He stated that the main reason that the applications were denied was that it was not harmonious with the surrounding area. He stated that in the 54 LOI applications that were approved previously there are a great number of them that are far more remote than the 7 that he submitted and the 9 that they are hearing in this meeting. He stated that it looks

that there is one land owner singled out for denial. He stated that staff stated that this area was in the vicinity of the Old Oregon Trail. He stated that according to the BLM map that he has of the area that this is not true. He showed the Commission Members that map that he is referencing. He stated that since the time of the denials of the previous 7 LOI's that his client has contacted an attorney who informed him that a Conditional Use Permit, the way Elmore County is using it with these LOI's, violates State Statute and if that's the case there is a problem. He stated that Conditional Use Permits cannot be used when your applied use is a permanent use which was allowed in Ag A zoning under the old ordinance. He stated that single family residential is permitted use, not a conditional use. He stated that they are in harmony with the general area because there are already 5 residential lots within a quarter of a mile of this property. He stated that overall the goal of the Comprehensive Plan is to develop Elmore County in harmony with urban and rural uses and lifestyles and this is what the applicant is trying to do. He stated to deny this LOI application as they did the previous ones would be arbitrary, capricious, an abusive discretion not supported by substantial evidence. Osborn asked if the residences he mentioned that were in the vicinity of this property were all owned by the same landowner. Sorenson stated that there are 2 different landowners. Miller commented on Sorenson's statement regarding Elmore County violating state statute with a Conditional Use Permit. He stated that the attorney they spoke with perhaps did not realize that if you look elsewhere in the ordinance that the Conditional Use Permit is actually for the division of an original lot of record in to fewer than 5 separate parcels.

John McCallum is the applicant and property owner. He stated that he keeps hearing that these applications are not in harmony with the surrounding area. He stated that there are at least 100 windmills in the area and more to come that are being approved and he does not feel that those are in harmony with the surrounding area at all. He stated that a house and horse barns on 15 acres is harmonious in this area.

Osborn asked McCallum what his purpose was to divide this ground. McCallum stated that economics will dictate that. He stated that the people who are building the windmills need places to live.

Jenny Nickerson is a local resident. She stated that she disagrees with the statement that this is not harmonious with the surrounding area and requests that staff qualify that statement with facts because there are numerous homes in the area.

Gerry Gorrell is a real estate agent. He stated that people come to this area for the rural aspect of it. He stated that this subdivision should be allowed because it does fit the area and they have approved these types of splits in the past.

Miller stated that the Local Land Use Planning Act states that granting Conditional Use Permits does not establish a precedent. That Conditional Use Permit has to be looked at individually. He stated that the Commission Members are not bound to grant these just because others have been granted in the past. There was no further testimony.

Osborn closed this public hearing.

### **Commission Action:**

Sobtzak moved to approve the 4-lot Letter of Information as it meets the 9 standards as outlined and that if approved they attach the additional condition as outlined in the staff report that an attachment be placed on the deed stating that this property is in open range and any property owners wanting to exclude livestock from their property must erect a fence.

Fish seconded.

Van Gheluwe-NAY

Duerig-NAY

Fish-AYE

Sobtzak-AYE

Lord-AYE-

121609mins

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Vice Chairperson Osborn-NAY

With a tie vote the motion **FAILS** to pass from Planning and Zoning due to a lack of majority.

Christy polled the Commission Members on why they voted the way they did:

Van Gheluwe-Not harmonious

Duerig- Not harmonious. Lots are not big enough

Fish-She sees no reason not to approve

Sobtzak-Is harmonious

Lord-Is harmonious

Osborn-not in harmony

**Ark Properties, LLC (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-20).** The site is located in Township 4 South, Range 8 East, Section 12, Northeast ¼ of the Northeast ¼ quarter, B.M. A common way of locating this property in from the intersection of Ryegrass Road with Ross Road, then 1 mile north on Ross Road, land is west side.

**Ark Properties, LLC (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-21).** The site is located in Township 4 South, Range 8 East, Section 12, Northeast ¼ of the Northeast ¼ quarter, B.M. A common way of locating this property in from the intersection of Ryegrass Road with Ross Road, then 1 mile north on Ross Road, land is east side.

**Ark Properties, LLC (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-22).** The site is located in Township 4 South, Range 8 East, Section 12, Southwest ¼ of the Northeast ¼ quarter, B.M. A common way of locating this property in from the intersection of Ryegrass Road with Ross Road, then 3/4 mile north on Ross Road, land is west side.

**Ark Properties, LLC (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone Case # LOI-2009-23).** The site is located in Township 4 South, Range 8 East, Section 12, Southeast ¼ of the Northeast ¼ quarter, B.M. A common way of locating this property in from the intersection of Ryegrass Road with Ross Road, then 3/4 mile north on Ross Road, land is east side.

**ALL 4 OF THESE PUBLIC HEARINGS WERE HEARD TOGETHER**

Westerwelle gave staff reports and backgrounds.

Gordon Sorenson is representing the applicant. He stated that he wanted the record to show that he wants to re-state his previous testimony. He submitted a map from Google Earth of the area to the Commission Members.

There was no one signed up to testify in this matter.

Osborn closed this public hearing.

**Commission Action:**

Sobtzak stated that he believes it is harmonious as it fronts on a road and there is power already available.

Lord stated that she does not believe that there should be 16 homes next to a ranch because it does not

121609mins

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Approved

Approved

work with people, dogs, and cattle all in the same area. She believes it is sprawl and there are transmission lines going through the area as well which is not good either. Duerig stated that he does not think that this is in harmony with the open range in the area and with the number of lots being proposed. Osborn stated that she wanted to clarify that it goes beyond just appearance and that this would change the area just by the number of lots being proposed. Fish stated that this is getting farther and farther away from a developed area which classifies this more as sprawl.

Lord moved to deny these applications based on the fact that they do not meet standards 3, 4, or 5 that are required for approval.

Duerig seconded.

Van Gheluwe-AYE

Duerig-AYE

Fish-AYE

Sobtzak-NAY

Lord-AYE

Vice Chairperson Osborn-AYE

Motion carries 5-1

**Casa Del Norte, LLP (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-26).** The site is located in Township 5 South, Range 11 East, Section 26, Northeast ¼ of the Northeast ¼ quarter and Section 25, North ½ of the Northwest ¼, B.M. A common way of locating this property in from the intersection of Allen Road (Gopher Knoll Road) and Old Highway 30, then travel approximately ¾ of mile east on Old Highway 30 to the end of the property.

**Casa Del Norte, LLP (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-27).** The site is located in Township 5 South, Range 11 East, Section 26, North ½ of the Northwest ¼ quarter and the Southwest ¼ of the Northwest ¼, B.M. A common way of locating this property in from the intersection of Allen Road (Gopher Knoll Road) and Old Highway 30, then travel approximately ½ of mile west on Allen Road.

**Casa Del Norte, LLP (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in an Agriculture Zone (Case # LOI-2009-28).** The site is located in Township 5 South, Range 11 East, Section 26, North ½ of the Northwest ¼ quarter, B.M. A common way of locating this property in from the intersection of Allen Road (Gopher Knoll Road) and Old Highway 30, then travel approximately ¼ of mile west on Old Hwy 30 Road.

**Casa Del Norte, LLP (John McCallum) for a Conditional Use Permit for a 4-Lot Letter of Information in a Agriculture Zone (Case# LOI-2009-29).** The site is located in Township 5 South, Range 11 East, Section 26, Northeast ¼ of the Northeast ¼ quarter, B.M. A common way of locating this property in from the intersection of Allen Road (Gopher Knoll Road) and Old Highway 30, then travel approximately ¾ of mile east on Old Hwy 30 to the end of the property.

**ALL 4 OF THESE PUBLIC HEARINGS WERE HEARD TOGETHER**

Chairperson Nettleton re-joined the proceedings.

Westerwelle gave staff reports and backgrounds.

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Gordon Sorenson is representing the applicant. He submitted a photo from Google Earth of the area. He stated that all roads are paved and that there have been other LOI's approved in this area before. He asked that the Commission Members to grant approval of these applications.

There was no one signed up to testify.

Nettleton closed this public hearing.

**Commission Action:**

Osborn moved to approve the applications as they meet the standards for a Conditional Use Permit because the areas that these are located in already have divisions of property that have occurred. There are not a large number of large property owners in the vicinity. Access is very good and the interstate is in close proximity. She stated that this is an appropriate placement for a division of property. She stated that there are smaller parcels of property that are already in the area and they are not changing the essence of the area.

Nettleton stated that he would like to change one of the proposed conditions of approval regarding open range and the applicant placing language in the deeds informing subsequent purchasers that they must fence livestock out if they wish to. He stated that he has great concerns with that. He stated that he believes that these lands should be fenced prior to sale.

Nettleton re-opened the public hearing.

John McCallum is the applicant. He stated that this area is in open range and the law states very clearly what you can do in open range. He stated that the choice to fence is that of the homeowner and not Planning and Zoning.

Nettleton closed this public hearing. He stated that this is exactly what Planning and Zoning does. He stated that if you don't have a fence you have conflict. Miller stated that the Local Land Use Planning Act allows the planning body to put reasonable conditions on a Conditional Use Permit. This is a reasonable condition as to not create conflict. Duerig stated you cannot force them to build a fence around every 10 acre parcel if the property owner does not want to do so. If they want to keep the cattle out it is their responsibility, not that of the Planning and Zoning Commission.

Osborn added the additional condition to her motion stating that any portion of this letter of information is sold, must have a legal perimeter fence, from the neighboring properties, prior to the issuance of a building permit.

Duerig seconded.

Motion carried unanimously.

**OLD BUSINESS**

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

Osborn moved to approve.

Van Gheluwe seconded.

Motion carried unanimously.

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

Osborn moved to approve.

Duerig seconded.

121609mins

kh

Approved

Approved

Motion carried unanimously.

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

Osborn moved to approve.

Duerig seconded.

Motion carried unanimously.

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

Osborn moved to approve.

Duerig seconded.

Motion carried unanimously.

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

Osborn moved to approve.

Duerig seconded.

Motion carried unanimously.

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

Osborn moved to approve.

Duerig seconded.

Motion carried unanimously.

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

Osborn moved to approve.

Duerig seconded.

Motion carried unanimously.

**NEW BUSINESS**

**FCO's and MINUTES**

Lord recused herself as she was absent at the time of these public hearings.

**FCO for Felicia Gartung, Letter of Information, Case # LOI-2009-09**

Sobtzak moved to approve.

Van Gheluwe seconded.

Motion carried unanimously

**FCO for Burkett, Loesby, Curtis, Case # CUP-2009-09**

Sobtzak moved to approve.

Osborn moved to approve.

Motion carried unanimously.

**FCO for Burkett, Loesby, Curtis, Case # CUP-2009-10**

Sobtzak moved to approve.

Osborn moved to approve.

Motion carried unanimously.

121609mins

kh

Approved

Approved

**FCO for Burkett, Loesby, Curtis, Case # CUP-2009-11**

Sobtzak moved to approve.

Osborn moved to approve.

Motion carried unanimously.

**FCO for Burkett, Loesby, Curtis, Case # CUP-2009-12**

Sobtzak moved to approve.

Osborn moved to approve.

Motion carried unanimously.

**FCO for Burkett, Loesby, Curtis, Case # CUP-2009-13**

Sobtzak moved to approve.

Osborn moved to approve.

Motion carried unanimously.

**FCO for Burkett, Loesby, Curtis, Case # CUP-2009-14**

Sobtzak moved to approve.

Osborn moved to approve.

Motion carried unanimously.

**Minutes from 12-2-2009**

Osborn moved to approve.

Sobtzak seconded.

Motion carried unanimously.

**INFORMATION ITEMS**

Sobtzak stated that he would like to see an official letter from Planning and Zoning to the elected officials in support of the F-15's coming to MHAFB because of the work they have done on the Comprehensive Plan and ordinances protecting the land area around that base from encroachment. Miller stated that it would be entirely appropriate for them to do this as this is something that Elmore County has planned for. Miller stated that he would draft this letter.

Approved

Approved

**MEETING ADJOURNED**

Nick Nettleton, Chairperson

Date:



1-6-10

Attest:

Alan Christy,  
Director



1-6-10

Date: