

ROUTT COUNTY PLANNING COMMISSION

MINUTES

JANUARY 3, 2019

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Acting Chairman Troy Brookshire and Commissioners Andrew Benjamin, Roberta Marshall, Brian Arel and Karl Koehler. Commissioners Steve Warnke, Bill Norris, Paul Hebert, Geoff Petis, Peter Flint and John Merrill were absent. Planning Director Chad Phillips and staff planner Tegan Anderson also attended. Sarah Katherman recorded the meeting and prepared the minutes.

PUBLIC COMMENT

There was no public comment.

MINUTES - December 6, 2018

Commissioner Marshall moved to approve the minutes of the December 6, 2018 Routt County Planning Commission meeting, as written. Commissioner Benjamin seconded the motion. **The motion carried 7 - 0.**

SUNSHINE LAW RESOLUTION

Chairman Brookshire reviewed the Sunshine Law Resolution in accordance with C.R.S. § 24-6-402 and specified the locations of postings for notices of meetings of the Routt County Planning Commission.

MOTION

Commissioner Benjamin moved approve and authorize the Chairman's signature on the Sunshine Law Resolution for 2019 as presented, with the correction of the date in ¶ 4. Commissioner Arel seconded the motion. **The motion carried 5 - 0, with the Chair voting yes .**

ACTIVITY: PL-18-201

PETITIONER: Ron Wendler

PETITION: Vacation of portions of Placer Street and Eighth Avenue, Hahn 's Peak Village

LOCATION: Adjacent to Lots 1 - 8, Block 4 and adjacent to Lots 1 - 4, Block 4, located in the northwest corner of Hahn 's Peak Village

Mr. Ron Wendler reviewed the application for the vacation of portions of the right-of-way for Placer St. and portions of the right-of-way for 8th Avenue. He indicated that location of the areas proposed for vacation on a site plan and added that the roads are not constructed in these areas. He pointed out the location of an emergency vehicle turn-around at the end of the constructed portion of Place St. Mr. Wendler also pointed out the site where a home is to be built in the northeast

corner of Block 4. He indicated the access route to that homesite. Mr. Wendler acknowledged that he had built the addition onto his home illegally. The addition extends through the required setback and 6" into the Placer St. right-of-way. He said he wants to "come clean" by bringing his structure into conformance in order to be able to build a garage on his property. The additional land would provide the required setback from the property line for his existing structure. Mr. Wendler stated that he would not be eligible for a variance because the circumstances creating the non-conformity were created through his own actions. He noted that the surveys in all of Hahn's Peak Village are off from the official platting by approximately 30 ft. This accounts for the parcel overlay on the aerial photo being offset from how it appears on the plat map.

In response to a question from Commissioner Arel, Mr. Wendler said that the cabin was built in 1995-96 and the addition that encroaches into the setback was built in 2005. Regarding the proposed home in the northeast corner of Block 4, Mr. Wendler said that the owners would probably employ a holding tank for domestic water and construct a septic system. He noted that he used to own all of Block 4. He said that he had had a civil engineer assist with the design of the subdivision of Block 4 into six building sites to ensure that each parcel could each accommodate a building site and the required services. He noted the significant number of illegally built structures in Hahn's Peak Village and the number of road vacations that have been approved.

Mr. Wendler pointed out the location of the Poverty Bar Trail, which allows non-motorized access to the State Lands to the north. He indicated the location of the access points onto the trail and onto the State Lands.

Ms. Anderson reviewed the petition and indicated on a site plan the areas proposed for vacation. She said that each right-of-way is 80 ft. wide. She stated that the reason for the vacation request is to bring the existing illegal structure into conformance to allow for the construction of a garage on the property. She said that neither Placer St. nor 8th Ave have been constructed in the areas proposed for vacation. Ms. Anderson called attention to the issues for discussion listed on page 2 of the staff report. She said that in the absence of an overall plan for the community, the decision on whether the vacation is appropriate should be based on 1) whether the public is using the right-of-way currently, and 2) whether there is possibility that the right-of-way would be used by the public in the future. Ms. Anderson noted that in addition to the letters included in the packet, four additional letters had been submitted: three in opposition to the proposed vacation and one in support of it. She also noted the letters submitted by the GIS Department and the Road & Bridge Department. She stated that the legal description of the property cited in the letter submitted by GIS has been corrected.

Mr. Phillips stated that although the applicant would be allowed to Mr. Wendler acknowledged that his case would not meet the criteria for a variance.

Ms. Anderson reviewed the prior vacation requests in Hahn's Peak Village that have been approved and those that have not. Mr. Phillips clarified that state statute stipulates that when a right-of-way is vacated, the resulting property is to be split evenly between the adjacent property owners. In the Wendler case, the entire portions of right-of-way would pass to Mr. Wendler, as these rights-of-way are on the perimeter of the platted village. He said that the lands would be conveyed via a resolution that would specify that Mr. Wendler owns the existing lots and the adjacent vacated areas.

Commissioner Marshall asked about the inconsistency between the plat and the survey and the noted the recommendation from GIS that the entire subdivision should be re-platted. Mr. Phillips said that the difficulty and cost of doing so makes it very unlikely that a complete replat would be done in the foreseeable future.

In response to a question from Chairman Brookshire, Ms. Anderson said that neither the utility companies nor the North Routt Fire Protection District had responded to referral requests. Mr. Wendler stated that he had spoken with Fire Chief Mike Swinsick. He offered that the fire department knows the properties up there very well, but acknowledged that some additional signage would be beneficial. Regarding the utilities, Mr. Wendler said that he assumes that easements for utilities would be required. He said that since there is no central water or sewer service and few people install phone lines anymore, electric is about all that there is.

Commissioner Marshall asked if the County has a policy regarding vacated property. Mr. Phillips said that vacated rights-of-way are generally released to the adjacent property owners. He said that the additional property would increase the land value and the related property taxes. Ms. Anderson said that the additional lands would become part of the existing lot and would not become additional buildable lots. Mr. Phillips clarified that once the lands are conveyed, the owner could submit an application for a replat that could then result in new buildable lots. Following a discussion of how such buildable lots might be configured, Mr. Wendler stated that additional lots is not what is being requested, and suggested that creating new lots would probably not be allowed. Chairman Brookshire suggested it might be appropriate to add a COA to any approval recommendation to address this concern. Mr. Phillips referred back to the issues for discussion of whether the public is using the right-of-way not, or could be expected to use it in the future. He said that any further activity on the parcel would be subject to the subdivision regulations in effect at that time.

Commissioner Marshall asked about the email from County Commissioner Monger included in the staff report. She asked why the vacation request for the lower portion of Placer St. was denied. Mr. Phillips reviewed the case and the rationale for denial. He noted that the findings of fact of the denial are included in the staff report.

Mr. Phillips clarified that the regulations allow for an exception to the setback of 25 ft. that applies to all of Hahn's Peak Village, which can be granted administratively, if it can be shown that a subject property meets the historic setback of the surrounding three block area. He noted that many of the older structures on the southern side of Hahn's Peak have minimal setbacks. Mr. Wendler stated that a survey of structures in Hahn's Peak Village (including homes, sheds, etc.) indicated that most setbacks are well under 25 ft. Ms. Anderson noted that the existing Wendler structure extends through the required setback and over the property line by 6".

Public Comment

Mr. Larry Johnson stated that he lives in an illegally constructed home to the south of the requested vacation. He said that he had inquired about a possible vacation of the right-of-way on which his house is built, but was told that there was nothing that could be done, and that the existing structure would have to be removed if he wanted to build on his property. He reviewed the history of his home and indicated its location on a site plan. Mr. Johnson said that the portion of Placer St. being considered for vacation is being used by 4-wheelers, and would be used by more members of the public if it were not so close to the Wendler home. He stated that if Placer St. is vacated, the street would become a dead end. He expressed concern that in the event of a fire or other emergency that he would not be able to use the route from Placer St. to Eighth Avenue and over to the Roadhouse to CR 129 to escape.

Mr. Paul Hoffmann offered that this is a case of a dispute between neighbors. He said that even if vacated, in the event of an emergency, anyone would be able to use the vacated portion of Placer St. to get out. He also noted that the Poverty Bar Trail provides public access. He stated that the question is whether these portions of Placer St. and Eighth Ave. are ever likely to be used in the future, and whether something would be taken away from the public if these areas are vacated. Mr. Hoffmann noted that the County does not maintain the constructed road now. Placer St. is maintained and plowed by Dr. Wilkinson (a neighbor) and Mr. Wendler. He acknowledged that Mr. Wendler had made a mistake in building into the right-of-way, but offered that the proposed vacation is a way to clean up the situation. He said that if the vacation would not take something away from the citizens of County, it should be approved.

In response to a question from Chairman Brookshire, Mr. Wendler reviewed the locations of the gates that provide access to the adjacent public lands to the north. He added that there will be a new cul-de-sac constructed near the end of Main Street near the home to be built on the northeast corner of Block 4. He said that many people ski, hike, etc. up Main Street to access the State Land.

Hearing no further public comment, Chairman Brookshire closed public comment.

Roundtable Discussion

Commissioner Arel stated that Mr. Johnson has stated that the public does use the right-of-way. He added that there is a chance that in the future, public use might increase. He said that he agrees with the comments made by County Commissioner Monger that piecemeal vacations are not the best way to address problems in Hahn's Peak Village. Commissioner Arel also cited the opposition to the vacation request by the Road & Bridge Department. He stated that he could not support the petition.

Commissioner Benjamin stated that the request is being made in order to solve a problem on a technical level for a violation of the existing zoning regulations. He suggested that if the vacation is approved, he would want there to be a 25 ft. easement along the western border, perhaps for a future utility. He also suggested a partial vacation. He said he would be more inclined to support a smaller vacation that would retain some width of right-of-way. Commissioner Benjamin stated that he did not think the proposed solution was the proper way to address the problem.

Commissioner Koehler said that the public is evidently using the right-of-way and that there is a possibility that the public could use it in the future. He cited the letter in opposition submitted by the Zehners regarding possible future utilities. Commissioner Koehler also expressed concern regarding the larger issue of piecemeal vacations in Hahn's Peak Village. He suggested that a community-based approach based on a comprehensive strategy for the community would be more appropriate. He also offered that Mr. Wendler is "coming clean" because he wants to do something on his property.

Commissioner Marshall agreed that the opposition expressed by the neighbors was a concern. She cited several of the letters stating that the public uses the right-of-way. She said that everyone's interests need to be considered. She stated that she agrees with Commissioner Koehler's comments.

Chairman Brookshire expressed concern that vacating a right-of-way in order to remedy a setback issue would create a precedent that this is a legitimate solution according to the County. He noted that the petition request is for all of the adjacent portions of Placer St. and Eighth Avenue, even though this is much more than is needed to address the setback issue. He proposed that the east half of Placer St. could be vacated, leaving a 40 ft. right-of-way. He offered that there was no need to vacate any of Eighth Ave. He asked if this would be allowed, given that it is less than what was asked for and advertised.

Mr. Phillips confirmed that this would be an option. He stated that consideration must be given to where pipes would be installed in the event central water and/or sewer service comes to Hahn's Peak in the future. He noted that if such services were ever installed, the lots could be much smaller, and Placer St. and Eighth Street might be needed to access new lots. Mr. Phillips reviewed the findings of fact for the denial of the southern portion of Placer St. in 2010. He noted that not

only was the potential use by the public cited, but also the lack of an overall plan for access.

Commissioner Benjamin expressed concern with using the vacation process to address a problem with setbacks. Commissioner Arel stated his opposition to the County giving up a significant swath of property bordering on state land. He offered that the area could be used for a public parking area to increase access to the public lands.

Mr. Wendler said that he could understand the rationale for a smaller vacation. He said that although he does not think there will ever be water and sewer service in Hahn's Peak Village, or that the area would be used for a parking area, he would be fine with a vacation of the eastern half of Placer St. in front of Lots 1 - 8. He said it was not his goal to increase the value of his property. He added that allowing the option of vacating a portion of the right-of-way while maintaining an area for public access would provide a solution and send a message to people not to build illegally.

Regarding the future of Hahn's Peak, Commissioner Benjamin asked if the only way for the County to solve problems is through piecemeal vacations unless there is a comprehensive plan. He cited concerns regarding the lack of utility easements. Mr. Phillips offered that if the right-of-way were vacated the land could be maintained as a utility easement.

MOTION

Commissioner Arel moved to deny petition to vacate the portions of Placer St. and Eighth Avenue in Hahn's Peak Village, with the findings of fact that the preponderance of public comment from residents of Hahn's Peak was opposed to the vacation, statements that the public does use the property and a letter submitted by the Road & Bridge Department stating its opposition to the vacation.

Commissioner Koehler seconded the motion.

The motion carried 4 - 1 , with the Chair voting no.

In explanation of his dissenting vote, Chairman Brookshire stated that although the petitioner had created the problem through his own actions, he feels that the rights of the public would not be diminished if only a portion of Placer St. were vacated, leaving an area for public access. He suggested that if the applicant were willing to accept a smaller vacation, he should propose this to the Board of County Commissioners.

There was a discussion of how right-of-way vacations, setback encroachments and other issues in Hahn's Peak could be resolved on a community level, and whether there was community support for the creation of a comprehensive plan to direct future decision making. Mr. Phillips said that the impetus for creating a comprehensive plan generally comes from the community, not from staff.

DISCUSSION RE: TOPICS FOR THE JOINT MEETING WITH THE BOARD OF COUNTY COMMISSIONERS

Mr. Phillips said that the joint meeting is scheduled for March 7th. He stated that Ms. Winser is compiling a list of possible minor amendments to the Master Plan that would modernize the document and bring it up to date. He said that these amendments would not entail a major overhaul or re-write of the Plan.

Commissioner Benjamin suggested a comprehensive plan for Hahn's Peak Village as another topic of discussion. Mr. Phillips reiterated that while the County would be willing to direct such an effort, the impetus for a community plan generally comes from the community. He said that staff has not heard from the Hahn's Peak community that they want to do this. Chairman Brookshire noted that there is no homeowners' association or district, and that there does not seem to be an interest on the part of the community. Mr. Phillips noted that the Upper Elk River Community Plan is 20 years old and is in need of a targeted update. He suggested that incorporating Hahn's Peak Village into that plan might be an option. There was a discussion of the inconsistent surveys of Hahn's Peak.

Regarding the Routt County Master Plan, Mr. Phillips reviewed the outreach that was done in 2016 that re-confirmed the community's continuing support for the Plan. He suggested that a focused update might be appropriate, along with a formal reaffirmation of support for the Plan. Chairman Brookshire offered that Planning Commission could reaffirm the Plan on its own, and that there was no need to discuss this with the Board of County Commissioners.

Chairman Brookshire suggested that strengthening the County's policies regarding the protection of wildlife as a topic of discussion. Mr. Phillips offered that this could be accomplished through a targeted revision of the Wildlife chapter of the Master Plan

Commissioner Arel suggested that revisiting the Urban Growth Boundary (UGB) should be discussed. Mr. Phillips reviewed that the criteria for development in the UGB had been revised and yet there still had been no action on the part of the City to annex lands in the UGB.

Commissioner Arel suggested that the County needs to figure out how to extend the core trail to the west. Chairman Brookshire agreed that transportation and connectivity would be a good topic for discussion.

ADMINISTRATOR'S REPORT

Mr. Phillips reported that the regular meetings scheduled for January 17th and February 7th had been cancelled. He said that the Board had not made any land use decisions since the last report.

Mr. Phillips reviewed the violations of the SUP for the zipline that had been addressed by Planning Commission in the fall. He stated that all three violations

were to have been resolved by December 31st, but were not. The three issues are: 1) the clean-up of un-used vehicles and other junk on the site; 2) the use of the property for operations and storage related to Steamboat Snowmobile Tours; and 3) the secondary dwelling unit on the property that had been constructed without a building permit. Regarding the removal of junk, Mr. Phillips said that the operator did not complete the clean-up prior to winter, but has a plan to finish by June 1st.

The storage of snow machines on the property is not eligible for a permit, but the operator has proposed using an exception (stated in Section 5.1.1 of the Zoning Regulations) for non-hazardous material storage. Such storage can be approved by the County without a permit. Mr. Phillips suggested that Planning Commission should review this request, given that one of the concerns with the permitted use was intensity of use on the property. A specific request will be submitted by January 18th.

Regarding the secondary dwelling unit, Mr. Phillips said that the size and location of the unit conform to current regulations. He said that the operator has until February 8th to submit a building permit for the unit. The unit remains a non-conforming structure until a Certificate of Occupancy has been issued.

In response to a question from Chairman Brookshire, Mr. Phillips stated that all three violations were addressed through a single COA which stipulated each violation must be resolved by December 31, 2018. Following discussion, it was decided that the plan for compliance with the clean-up of the site and the secondary unit was acceptable. The request for approval for outdoor storage will be heard by Planning Commission.

Chairman Brookshire suggested that closing the loop-hole in the regulations that allows the County to approve outdoor storage on any property in the County should be amended. Mr. Phillips said this would be discussed at the staff level.

The meeting was adjourned at 8:15 p.m.