

## Planning Commission Minutes

May 16, 2023

**Member Present and seated as Board:** Chair Cary Aloia, Mike Mitchell, Andrew Atchley, Travis Cross, Jerry Gallegos, Russell Pratt and Martha Williamson. Dixie Diltz – Secretary.

Russell Pratt was seated in Charles Stillings seat.

Andrew Atchley was seated in Leonard Brown's seat.

**Members Absent:** Leonard Brown and Charles Stillings

**Others Present:** TJ Dlubac – CPS. LLC, Andrew Bowen – CPS, LLC, Dusty Hicks, Dan Robert, Norma Walker, Darrin Ehardt.

Mike Mitchell made a motion to approve the minutes of the April 18, 2023 meeting with the correction to the spelling of Aloia in the second paragraph, Russell Pratt seconded, motion passed unanimously.

Chair Aloia opens the public meeting and turns the floor to Andrew Bowen of Community Planning Strategies, LLC for presentation of the draft code book amendments.

Andrew Bowen gives a general overview of the Code book amendments for sections being presented for review and adoption at today's meeting. Manufactured Homes, Cottage Industry, Vacation Rentals and Summitville Mine Overlay District. The River Corridor Overlay and RV Parks regulations are not going forward in today's meeting and will be discussed with the public at the open house this evening. The sub-tasks that that kind of spun off from the main tasks as we work through this process are Accessory dwelling units on small lots, OWTS on small lots, wetlands protection and enforcement. Of the codes sections we are discussing the only new code is the Summitville Mine Overlay, all the other sections are amendments to the existing code. The Enforcement section was drafted and added by the County Attorney.

Task 1 Manufactured Homes: all references to small and large manufactured homes were removed and now the code treats all manufactured homes the same regardless of size.

Task 3 Vacation Rentals: the drafts were provided by the County; the notable changes would include some of the submittal documents that are required for application and renewal process and the requirement for a fire escape ladder.

Sub Task 1 Minimum lot size for Accessory Dwelling Unit: this was also a very targeted amendment only stating that the minimum lot size to have an accessory dwelling unit is 1 acre.

Sub Task 2 OWTS on small lots: This is for onsite wastewater treatment systems, a foot note within section 2.04 was added stating that no new lots can be subdivided less than 2 acres unless they are attached to a public wastewater system.

Sub Task 3 Wetlands Protection: this is an expansion of section 6.03.h.7 setting a 25' setback from identified wetlands in Rio Grande County.

Task 9 Cottage Industry and Home Occupations: the notable changes made, were that we removed the size benchmark and added the commercial well language relating to employees.

Task 10 Summitville Mine Overlay: This creates a simple buffer of ½ mile that adds a higher level of review for any development in this area giving the County a higher level of oversight and adds a higher level of agreement between the County and the Applicant.

Sub Task 4 Enforcement: This section was provided by the County Attorney and addresses a change from the criminal process to a civil process.

Mike Mitchell asks for clarification on the HCP and states that as he has been talking to people in the community the HCP has come up and there is a feeling that the HCP is an item that is just floating around out there that nobody is paying attention too. He feels we need to make people aware of it and the importance of it, as he understands it the County is responsible for it and if the County is deemed not following the rules does that mean that all agricultural gets drawn into a process that nobody really wants and have been trying to prevent? Cary Aloia clarifies that the Habitat Conservation Plan (HCP) is a coalition of all 6 Counties in the Valley, Rio Grande County is a member of the steering committee of the Board for the Habitat Conservation Plan for the Southwest Willow Flycatcher. It allows for normal agricultural activities to occur, but it does not cover development, this is one of the points for the River Corridor Plan, which we are not discussing today. However, because development is not covered under the HCP, if there is “take of the willow riparian habitat” the HCP could go away and then everyone doing normal agricultural activities would be required to do a section 7 consultation for things like burning ditches or cleaning a ditch. So, it’s something to be very aware of, especially if there is any development going on.

Chair Aloia asks if anyone on the board has any questions regarding the items presented for today’s discussion and decision. None of the Board had questions.

Chair Aloia explains that she will open the floor for public comment and explains that the way she wants to do it today is to go by “task” and anyone in the audience that has comments about a specific task will have 3 minutes to speak per task.

The first task is Manufactured Homes and Cary asks for comments. Dusty Hicks says that as for the manufactured homes he agrees with what has been done. No other comments on this task were offered.

Chair Aloia calls for public comment on the Vacation Rental task. Dusty Hicks says this appears to be ok as well, he only questions if the price increase was discussed to make it so that there is enforcement for it and has the County considered putting any caps on the number of units allowed like South Fork did? Secretary Diltz explains that the price increase was across the board for all Land Use Fee schedule items and yes, the intent of the increase on vacation rental permits was to help offset the cost of hiring another Land Use employee to help with enforcement. As for his second question, the County has had discussion regarding placing caps on the number of rentals allowed but has not made the decision to move in that direction as of yet. Dusty Hicks states that this is good on both accounts, so as written he is good with the regulation. No other comments from the public.

Cary Aloia asks if anyone in the audience has a comment on the proposed cottage industry amendments, no public comments were offered.

Dusty Hicks questions why the Airport Overlay was not included on the resolution. Andrew Bowen explains that no amendments were made to the regulation, the only thing Community Planning Strategies provided was a map of the airport zones to make it more “visual” and easier to understand. Dusty Hicks says that he believes we need to adopt an airport overlay, he is on the Airport Board. He feels it is inadequate what was prepared, not because of what CPS did, but because of what CPS, the P&Z And Staff were given inadequate information. The airport’s recommendation to have this was so that Building Department and Land Use

would have some type of map that they could show to people who own property in the area of the airport and be advised of the noise and impact of living near the airport. With future growth this could potentially become a lawsuit for the County. Dusty feels this did not get conveyed to the P&Z from the Airport advisory committee correctly. T.J. states that CPS did a GIS file that the County can overlay on the maps. Dusty states that there should be one more overlay that is noise only, as that is the number one case of complaint with an airport. He suggests a work session with the Airport Board to work on this.

Chair Aloia moves on to the Summitville Mine Overlay and opens the floor for public comment. Dusty Hicks questions if there are any plans to do more with this, such as added regulations or special zoning districts up in the alpine areas.

Chair Aloia asks if there is any public comment regarding the Accessory Dwelling Unit amendment. No comments from public.

Chair Aloia asks for comments on the Minimum lot size for OWTS's. Dusty Hicks asks that the P&Z delay making a decision on this. He feels that this regulation is an overstep of the County in that we are making more regulations than the State has on OWTS. He understands that the State is ok with ½ acre. Darin Ehardt agrees with Dusty's comments. Dusty states that by making the 2 acres only would make property more expensive and price out those who need this the most. Randy Kern addresses Dusty's comments and asks where the information on the State being OK with ½ acres. Randy clarifies that the State does not have a minimum OWTS size and the ½ acre was an effort to deal with Alpine Village and similar subdivision's that were subdivided before the County was zoned. Mike Mitchell comments that from his history with the County and what brought the County up to this 2-acre limit was the understanding that these systems don't last forever, so when there has to be a replacement of the OWTS system, if you on a ½ acre lot, there simply is not enough room to put in a new system engineered under today's standards. He remembers that was one of the reasons for requiring the larger lot. Secretary Diltz states that the 2-acre minimum is not a new regulation. This has been in the Code Book since before she started working for the County. In 2018 when the County did a complete rewrite of the Code book, this footnote somehow got dropped, although it was not discussed at that time. This is an attempt to bring the footnote back into the code book. Dusty Hicks states that he feels it should not be put back into the code. Darin Ehardt agrees with Dusty and states that he does not think we should have these "One size fits all" codes and each property should be reviewed as an individual property.

Chair Aloia moves on to Wetland protection and asks if there is any public comment. Darin Ehardt states that he grew up here, moved away and has now returned. His family has been in the tourism business for a long time. They have two large river properties in Rio Grande County. He thinks the Wetlands regulation seems to pull from the river corridor project. He has spoken to a lot of people and 98 percent don't even know this is happening. He thinks that piecemealing the Wetlands out from the River Corridor regulations is not a good way to do it. He questions when the public will get a chance to speak about this. Dusty Hicks states that this regulation is in direct contrast to what we say on Floodplain regulations, its Core of Engineers, let the feds handle it. But in this regulation, we're saying that we are going to handle it, we are going to set some regulations like 25' from wetlands that we have no authority over and no way to enforce. We have way overreached here. He states that none of us know what Wetlands are and he knows what he is doing, he shut off the irrigation on the flying W and eliminated much of the wetlands on the property. Let the Core handle the wetlands enforcement.

Chair Aloia brings forth the Enforcement Regulation and opens floor to public comment. Dusty Hicks states he likes the Enforcement article and the way that it is going, except the one comment that states, "deny or withhold all entitlements.....until an alleged violation is corrected" Alleged is the problem there, the wording needs changed.

Dusty Hicks states that he feels that better notification and stakeholder meetings should have been had. Darin Ehardt agrees that more notification was needed. TJ from CPS states that we knew these two items, River Corridor and RV Parks, would need more public input and that is the purpose of the meeting tonight. He explains that if we came to the public with a blank sheet of paper and said we wanted to put an overlay over the river, the response would be empathetically "NO". We had to do our due diligence and come up with some plan to open the discussion, then we get feedback from the public and tweak the drafts as warranted. That's the process, that's what we are doing now.

With no further public comment Chair Aloia closes the public comment portion of the meeting. Secretary Diltz advises the Board that they are now to the point of deciding if they wish to make a recommendation to the Board of County Commissioners, they can make a recommendation for approval, a recommendation for denial or table the matter for further consideration. They can also make a recommendation for part of the proposed regulations and but not all of them.

Chair Aloia summarizes for the Board, there was no adverse public comment on the tasks, Manufactured Homes, Vacation Rentals, Cottage Industries, Summitville Mine Overlay and Accessory Dwelling Unit on small lots. The only concern with the proposed Enforcement regulation is the word "alleged" which is preexisting in the current code book and not included with today's proposed amendments. She then asks if the Board has any further comments on these items. With no Board comment Chair Aloia asks if there is any discussion from the Board on the proposed 2-acre minimum lot size for OWTS regulation amendment. Travis Cross says he remembers the boards having conversation around this regarding the County's desire to protect and maintain the agricultural integrity of the County. Although he does not remember the 2-acre conversation he does recall that we the discussion that we don't want to have the County filled with houses upon houses, that we want to maintain the agricultural aspect and not be overdeveloped. Cary Aloia states that we had discussed how the 2-acre minimum fits with the minimum lot size for the rural residential zoning district as it is defined in the code book. Russel Pratt states that in the rural residential zone if you have a home, some livestock corals, a barn, or outbuildings, 1 acre or ½ acre would not work, you couldn't maintain decent buffer areas. Randy Kern states that he feels this could be better worded. He thinks that it could simply state that minimum lot size is X if wastewater must be treated on site, or X if you are served by a community wastewater treatment system. Cary Aloia states she likes the 2-acre minimum and is opposed to the postage stamp. TJ explains that the State OWTS regulations do not set a minimum lot size but defers this to the County's to determine. He also reminds the Board that in another section of the RGC Land Use Development code we do require that if a property is within 400 feet of an existing public wastewater treatment system, they are required to attach to the public system already. Travis Cross questions Dusty Hicks if the large property just west of Del Norte were to be subdivided would each lot created have to have individual septic. Dusty Hicks replies that would depend on what type of subdivision it was. He feels that if someone came in with a well-developed subdivision plan or PUD, this regulation would already be saying no to having any lots less than 2 acres. Randy Kern states that if they came in with a well-planned subdivision plan with lots less than 2 acres and have provided a wastewater treatment system then this regulation would not have any effect, all this regulation is stating is that lots less than 2 acres would be required to be connected to a public wastewater treatment system. Mike Mitchell says that as long as he can remember it has always been 2 acres even when he was married back in 1976 it was a 2-acre minimum, whether it's been well documented or not it's always been enforced and accepted. Martha Williamson says that she feels the conversation around future lot size and future development of the County is a much more intense conversation and should be included with the zoning or comp plan discussions we have planned, and as for now we should stay with the 2 acres as has historically been done until we have those more directed intense conversations. Andrew Bowen agrees that the conversations around where the County can or wants to urbanize should be had when doing the comp plan. Martha Williamson recommends putting it forward as written knowing that there is more conversations to be had when we do the master plan or comp plan. Mike Mitchell agrees, Russell Pratt says it has worked in the past, let's leave it as it is.

Chair Aloia asks the Board for discussion on the proposed wetlands protection regulations. Cary Aloia states that in the language it says, "has been federally noted as a wetland", that means jurisdictional, so it does not include non-jurisdictional wetlands. Dusty Hicks says the language needs to be changed, it says jurisdictional or not. Andrew Bowen clarifies that the code language says, "no permanent structure shall be permitted within 25 feet of a delineated wetland." Martha Williamson questions if this is duplicative of the Army Corp regulations. TJ states that Army Corp does not have setbacks so no, this is not duplicative. TJ reminds the board that the intention of this was an off shoot of the River Corridor protection overlay where the intent was to protect the water and we realized that not all the water needing protected is in the river and some of the wetlands are vital to that water network. Mike Mitchell suggests that this regulation be tabled and follows the same process as the River Corridor regulation. Travis Cross states the River Corridor and Wetlands regulations are very closely related. Cary Aloia explains that the County has already lost over 50% of the natural wetlands and talks about the importance of the Habitat Conservation Plan and keeping the HCP active. Martha Williamson explains that keeping the HCP in place means that ag uses that are exempted under it can continue on and getting outside the HCP or nullifying that because of activities means that ag uses would have to go under individual permitting. Mike Mitchell motions to table the wetlands protection district to the talks with river corridor overlay district.

Chair Aloia confirms that the items on the list for recommendation to the Board of County Commissioners include updates to the Manufactured Homes Regulation, Vacation Rental Regulations, Cottage Industry Regulation, Summitville Mine Overlay, Accessory Dwelling Units on Small Lots, 2-acre minimum lot size for OWTS, and Enforcement.

Mike Mitchell moves to recommend approval of the amendments to regulations as listed by Cary with the addition that the motion makes note that the Wetlands Protection regulation is being tabled for further discussion. Russel Pratt seconds and the motion passes unanimously.

With no further business, Mike Mitchell makes a motion to adjourn, Jerry Gallegos seconds. Meeting adjourned at 3:34 pm.