

CROOK COUNTY PLANNING COMMISSION MEETING

April 14, 2021

Meeting minutes are not a complete representation of discussions at the meeting. An audio recording is available from Crook County Community Development at plan@co.crook.or.us or (541) 447-3211.

Crook County Planning Commission Chair Michael Warren II called the meeting to order at 6:03 p.m. The meeting was conducted by WebEx, a call-in service and at the Crook County meeting room. Commissioners attending the meeting in person were Chair Michael Warren, Susan Hermreck, Linda Manning, Laquita Stec, and Gary Bedortha. Commissioner Bob Lundquist attended via phone/WebEx. Commissioner George Ponte was absent. The following County staff was present at the meeting: Community Development Director, Ann Beier and Senior Planning Tech, Hannah Elliott. Planner, Katie McDonald participated via WebEx.

Parties in Attendance:

Bobby Kennedy, Applicant
Larry Kanzler
Cheryl Kanzler

Participating via phone WebEx:

Carolyn Wilkinson

ITEMS NOT ON THE AGENDA

- NA

APPROVAL OF MINUTES

- March 17, 2021; Chair Warren asked if there were any comments on the minutes. Commissioner Bedortha asked if the decision had been signed and sent out and asked if the appeal period was up, if so was there an appeal. Staff responded that the appeal period is up on April 26th at 4 pm. Commissioner Hermreck moves to approve the minutes as presented.
Commissioner Stec seconds the motion.

No Discussion

Commissioner Manning - aye

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Lundquist - aye

Chair Warren - aye

Motion Passes 6 -0 -0

- March 31, 2021; Chair Warren asked if there were any comments on the minutes. Commissioner Bedortha stated that the minutes were a complete representation of the meeting, also on page 7, 2/3 of

the way down. Bedortha stated that in the sentence where it says 12 years or NRCS standards, it should be reflected that he felt the Commission should go with the NRCS Standards.

Commissioner Bedortha moves to approve the minutes as corrected.

Commissioner Stec seconds the motion.

No Discussion

Commissioner Manning - abstained

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Lundquist - aye

Chair Warren - aye

Motion Passes 5 -0 -1

PUBLIC HEARING

Chair Warren called the Public Hearing to order.

Chair Warren read the opening statements and introduced the item for consideration. **Crook County Planning File Number 217-21-000136-PLNG.** This is a request from Bobby Kennedy to subdivide an approximately 500-acre property into twenty lots, ranging in size from 10-acres to approximately 78 acres. The property is zoned R-10 (rural residential – 10 acre lots).

The Planning Commission will be evaluating the request against the following applicable criteria:
Crook County Code, Title 18 - Zoning, Chapter 18.92 (R-10 zone) and Title 17 - Subdivision

Chair Warren asked if any of the Planning Commission members had a conflict of interest or had any ex-parte contact with the Applicant or any member of the public.

Commissioner Manning recused herself from hearing the proposal before the Commission tonight. She has an association with the real estate agency that is taken reservations on the lots.

Commission Hermreck -no

Commission Bedortha - no

Commissioner Stec - no

Commissioner Lundquist - no

Chair Warren responded - no

The Chair then asked if any member of the public, including those participating by phone, wished to challenge any member of the Commission. No members of the public stated a challenge.

Chair Warren added that for the record there had been a site visit earlier today and that all of the Commissioners present had attended.

Chair Warren asked to hear from staff.

Ann Beier, Crook County Community Development Director, stated that this is a proposal for a 20 lot subdivision, 10 acres to 78 acres. The Commissioners are looking at the Tentative Plan for the entire subdivision

as well as approving Phase 1 (lots 1 through 7). The Applicant is proposing to start at the farthest end of the property from Davis Loop and working back toward that point.

Beier then went on to list the factors to consider when approving a subdivision and gave a brief history of the subject property's zoning change.

Beier stated surrounding land uses including agricultural land, residential uses, and an aggregate site (Goal 5 site). She had reached out to US fish and Wildlife that identified Golden Eagle use, not necessarily nesting sites. With each site plan approval staff would reach out to USF&W.

Next set of criteria included availability of utilities, services, and well and septic infrastructure. She stated the applicant is proposing shared wells, but the purchasers had the ability to drill their own wells. Other provisions to consider include the subdivision standards, lot frontage of 50 feet and a setback of at least 200 feet from the rimrock.

Beier provided a summary of the subdivision review committee (including Road master, County Counsel, Fire and Rescue, Assessor, On-Site and Planning staff) which met several weeks prior to the hearing and discussed issues including road standards. She then went on to describe the road trips per day, which determines the width of the road and base material. The main road will be paved, starting with phase 1. The crushed material will have to support Fire and Rescue vehicles. The Roadmaster has approved the slopes of the roads.

Another consideration is that the decision must demonstrate that the Applicant has the means to develop the property, before the final plat can be approved and that all of the improvements are done or they are bonded for. The sale of lots cannot happen until the final plat has been recorded.

There are a couple of typos in the staff report that will be corrected in the final decision.

Beier stated that the road access point across from High Desert Estates was approved and the interior roads are private and maintained by homeowners. The Applicant has drafted CCR's and HOA's for the subdivision and road maintenance. She suggested that there be a non-remonstrance for aggregate site.

She ended with the Conditions of Approval, some of which need to be done prior to signing of Final Plat and some as the lots develop.

Chair Warren asked about the CCR's and said it looks like they were already recorded. Then asked if the condition has already been met does it still need to be listed as a Condition of Approval.

Beier stated that if they were already recorded, then that Condition of Approval would be met.

Commissioner Stec asked if each phase of the subdivision would the new buyers get a copy of the recorded CCR's.

Commissioner Bedortha stated that the CCR's are attached to the deed and in the past the Commission has required that they still be included in the conditions.

Commissioner Lundquist asked if they were recorded then why were they not in the staff report.

Chair Warren stated that they were included in the Application.

Commissioner Stec clarified that the County Clerk's stamp is on the CCRs.

Staff further clarified that the application is not a part of the Commissioner's packet, but it is available on the website.

Beier explained that the County does not dictate the content of the CCR's it is between the buyer and seller. The County requires that they have them and they are recorded but don't enforce or require what is in them. The staff report will be modified to reflect the County Clerk's recording number of the CCR's.

Commissioner Stec asked if they require the recording of the bylaws.

Commissioner Bedortha added that it might be an overstep of the role of the Commission.

Beier added that the Commission could include a condition to have the Road Maintenance, Bylaws, and CCR's recorded which would be more information for the future purchasers.

Discussion continued regarding if the documents would need to be conditioned for recording, considering that the County does not have input in what is in the CCR's or Bylaws.

Commissioner Bedortha added that the Road Maintenance should be included in the condition as there are clear standards those should be included and the developer has already recorded the CCR's but the bylaws would not be included.

Chair Warren agreed that the bylaws would not need to be recorded as a part of the planning approval. Buyers would get a copy with purchase.

Commissioner Hermreck asked if there was a minimum standard regarding gallons per minute and a concern about the shared wells.

Beier responded that the only place in the County that requires well logs is West Powell Butte Estates. She then stated there are places in the county where property owners don't get water and choose to put in a cistern. She added that more than 3 parties on a shared well would be a Community Water System.

Commissioner Hermreck then asked about the proposed 2800 gallon cistern and asked if it should be 5000 gallons and clarified if the County does not have standards regarding sizing of cistern.

Beier replied that maybe standards for cisterns are in the Forest zone and staff could ask the Fire Marshall regarding minimum sizes.

Commissioner Stec also asked about cistern, pressure, and water standards, especially with fire sprinklers.

Commissioner Lundquist concurred with Commissioner Hermreck's concern and questions regarding water.

Commissioner Bedortha shared concern regarding about sharing a 5 gallon per minute well and the applicant has stated that the purchasers have the ability to drill their own well. He added that there should be a cutoff for the agency to comment on any wildlife issues and not come in with standards at a later phase. Road maintenance should be up to county standards. He also asked if Commission decision should be two motions or one.

Beier stated that the commission has not done two motions previously. Then stated that the agencies who have not raised an issue at the opportunity waive that right to comment and agreed that the road maintenance should be to county standard.

Commissioner Stec asked where lot 6 was on the map.

Beier stated that Lot 6 is farthest east and for the record Lot 5 and 6 look like the same number on the map.

Commissioner Stec then asked about the wells and cisterns. Also stating that the Road Maintenance agreement should include the gravel portion leading up to the part where it will be paved.

Chair Warren then said that the road agreement looked to be laid out well and they could revisit the gravel portion to be included in the maintenance.

Commissioner Stec asked if the Fire Marshall was good with the road access and a secondary access. She asked if the Fire Marshal could identify fire standards around dwellings as the phases come in.

Commissioner Hermreck then asked about the Fire Wise standards.

Commissioner Bedortha then asked if there was specific code requiring defensible space in this zone.

Beier stated that there isn't a requirement to apply Fire Wise standards, but the Commission would be able to make a recommendation.

Commissioner Bedortha then offered that the Applicant could add that to the CCR's and have it be on the individual home owners.

Commissioner Hermreck also agreed with a defensible space for fire standards and insurance purposes.

Commissioner Lundquist added that he agreed with the discussion of defensible space and he was concerned that the CCR's would contradict by the restriction of removal of trees.

Commissioner Stec responded that she lives across the street in High Desert Estates and they have defensible space requirements, but she has many trees on her property.

Chair Warren then discussed the Commissioners' role about requiring or asking the Applicant to address the Fire Wise standard, when it is not a code requirement.

Beier stated that in the future applications, staff could ask the Fire Marshall for input early or the Commissioners could look at adding it to the code language. She shared that Commissioner Ponte has brought up the issue of Fire Standards previously.

Commissioner Lundquist then stated that his observance of the property included thick Juniper Trees and this issue is important to address.

Chair Warren then stated that it was something the Commission could bring up with the Applicant.

Commissioner Stec then asked to recap the prior discussion on Golden Eagles.

Beier stated she had reached out to US Fish and Wildlife for any raptor nesting sites in the area, they responded and identified that there is Golden Eagle use but did not identify nesting. Beier followed up with an email that asked for specific concerns and the hearing is on a certain date. As of the date of the hearing there had not been a response.

Chair Warren asked each Commissioner if there were further questions for staff. None were identified.

He asked for any state agency or representative to speak.

Hearing none, he then asked to hear from the Applicant.

Bobby Kennedy, Applicant, stated that the property was in Farm Deferral in 2005, when he sold it. The buyers at that time had completed studies on wildlife and were able to get the zone changed. He wanted the Commission to know he had looked into the wildlife.

He stated that his daughter works for a bank and a bank will not loan on dwellings with wells that produce only 3 to 5 gallons per minute, without a cistern. He used the Breese subdivision for comparison and then provided his experience with wells and gallons per minute. The current wells include a 5 gallon per minute, 8 gallon per minute, 35 gallon per minute and 50 gallon per minute.

Next he stated that he has been working with the Fire Marshall regarding sprinklers and cisterns.

He has had the road maintenance agreement drawn up by a lawyer. The Roadmaster reviewed the roads, driveways and provided direction. He added that no road maintenance fees would go into effect until the entire road was paved.

Commissioner Hermreck asked if the driveways should be paved.

Kennedy responded no, they were not, anything over 2 residences required 20ft driveways. He had worked with the Roadmaster to meet County standards.

Beier then stated staff would verify the road maintenance agreement to reflect what the Applicant has stated. She added that there is a Condition of Approval that addresses the road standards, which covers all the types of roads.

Commissioner Bedortha then explained the water discussion and the Commissioners' concern. He provided some examples in other areas of the County. In his opinion, he felt that the Applicant had met the requirement. He then asked if the applicant would be interested in applying the Fire Wise standards and defensible space.

Kennedy responded that he would be very interested in defensible space, removing Junipers and having people clean up the property, but he wants to keep it as natural as possible and could ask his lawyer to draw something up.

Commissioner Stec clarified that the defensible space is only around the house. Trees within 30ft of the house would be the only trees affected by the defensible space.

Kennedy responded that he is open to that, wants to do what is right by people, and make it nice. Discussion included defensible space being a benefit for homeowners and insurance.

Commissioner Bedortha then asked if they can add a condition when there isn't a specific standard.

Beier stated options for a condition could include a reference to fire wise standards and defensible spaces be incorporated into the CCR's or Architectural Design Review. She said that staff could get a hard copy of the fire standards for the Applicant.

Chair Warren asked for any further questions from Commissioners.

Commissioner Lundquist then asked the Applicant about the timeline for development.

Kennedy stated that he hopes to have it completed in two or three years, depending on lot sales. He would like to complete it as soon as possible. He continued to explain the paving schedule.

Commissioner Hermreck agreed that paving all at once is a cost saving practice.

Chair Warren asked for any further questions from Commissioners.

Chair Warren then stated that from his experience, what the Applicant has stated regarding the wells and cisterns is correct.

Commissioners briefly discussed that the applicant has met the burden of proof, but water may be a concern for people purchasing.

Hannah Elliott, Senior Permit Technician then shared the link for the Crook County Fire Ready booklet for reference regarding defensible space. It is located on the Crook County Website, on the Sherriff's webpage under Emergency Management.

Chair Warren asked for any further comment from the Applicant.

Kennedy responded that he wants to do something nice for the County.

Chair Warren then asked if anyone else wanted to comment in support.

Chair Warren then asked if anyone would like to speak in favor, neutral or in opposition for the application.

Larry Kanzler, an adjoining property owner, said that they had been at the site visit. He wanted to re-ask his question about what happens to sprinklers if the power is shut down. Is a backup for loss of power required, as an adjacent property owner, it was a concern of his. He also said that there has been a lot of money spent to improve the property in anticipation of getting a permit. Was the applicant given a go ahead prior to this approval? He also asked if the Commissioners will be receiving any written testimony in regards to this proposal.

Chair Warren then spoke to receiving testimony, stating that when the notice was sent out, is when the hearing was advertised. The notice provided information on how to submit written testimony and then when the hearing was if people wanted to provide oral testimony. He then stated that this was the first time the Commission has seen the application and it is common for property owners to do things in anticipating an approval based on the zoning and it is a risk for the property owner.

Beier stated that the county doesn't have a clearing and grading ordinance, that any property owner can go out clear cut and put roads in, without an approval. She reiterated that it is a risk by the property owner. She then stated that there are pre application conferences and a subdivision review conference, but those people are not decision makers. The Commission is the decision maker and it is the applicant's choice to take that risk with doing work prior to an approval. A consideration for the Commission is that the work done is up to county standards.

Commissioner Lundquist then stated that a Subdivision in the R-10 zone is an outright use and just needs to meet the criteria and standards.

Beier then stated that without the code for reference but it is a permitted use in the zone, not sure if it is an outright use but there is certainly criteria that needs to be met.

Commissioner Lundquist then stated that it is the Commission's job to review the application and impose conditions, on its merit against the code.

Commissioner Bedortha added to also address any testimony brought up.

Beier then addressed the question regarding a backup power for fire sprinklers. There is not comment from the Fire Department regarding fire sprinklers and without specific requirements a defensible space is a step in that direction. An invitation may be extended to the Fire Marshal to update the Commission regarding current practices.

Commissioner Hermreck added that a gravity flow may be done.

Chair Warren then stated that fire sprinkler systems may be pressurized for a short burst but to knowledge are not designed to continually run.

Commissioner Bedortha then addressed Kanzler as a neighboring property owner, in that if there is a fire then everyone in the area is faced with that similar situation. It is not the Commission's role to impose conditions for what if situations.

Commissioner Hermreck added that the Applicant had met the burden with the Fire Marshall agreeing to the proposal.

Kanzler responded that it was brought up so the Commission could consider changing the code to include those provisions in the future.

Commissioner Hermreck replied to Kanzler that the offer from staff to have the Fire Marshall come in and provide an update for requirements, as well as sprinklers, but what they can do now is to recommend the Fire Wise standards.

Chair Warren concurred with the comments from Kanzler.

Kanzler then stated that there were two Golden Eagle nests on his property adjacent to the proposed subdivision.

Kanzler was thanked for this participation in the hearing.

Chair Warren asked if the Applicant would like to respond.

Kennedy then addressed comments from Kanzler. He stated that the location of the property owner is below the rim and doesn't see a fire hazard. He also has not seen a nesting Golden Eagle.

Chair Warren then clarified that the concern regarding that Golden Eagle nests was that the agency had not responded.

Kennedy then gave his personal experience and recollections regarding not seeing any nesting birds of prey.

Chair Warren then asked if Kennedy had any experience regarding the fire sprinklers.

Kennedy responded that as a builder and speaking with installers, they need to know if fire sprinklers would be required because the installation is different. The Breese subdivision is set up that way and the installer was familiar with that.

Further discussion regarding what ifs took place between the Commissioners and the Applicant.

Commissioner Lundquist offered that it may not be the role for the County to impose further conditions.

The Applicant stated that there is an option for property owners to drill their own well in the CCR's.

Chair Warren then asked if staff for any follow up and if they had what they needed.

Beier stated that a follow up with the Fire Marshall regarding fire standards would be helpful moving forward.

The role of land use and fire would be a good discussion moving forward. Then suggesting the Commission look through the conditions and correct any errors and that the conditions reflect the discussion today. Also for the record, Beier added that no preapproval was granted to the developer regarding the subdivision.

Chair Warren then asked if the Applicant would like to waive their 7 day period.

Kennedy waived the 7 day period.

Commissioner Lundquist then asked about procedure regarding the waiving of the 7 day period without hearing the discussion.

Chair Warren responded that the procedure will be to close the public hearing, make a motion and then deliberate on the conditions.

Commissioner Bedortha then moved to close the public hearing for deliberations.

Commissioner Hermreck seconded the motion.

Commission Hermreck - aye

Commission Bedortha - aye

Commissioner Stec - aye

Commissioner Lundquist - aye

Chair Warren - aye

Passes 5-0-0

Chair Warren then asked for motion.

Commissioner Hermreck made a motion to approve Grand Ridge Subdivision, 217-21-000136-PLNG as presented by the conditions of the staff report. Commissioner Bedortha seconded the motion.

Chair Warren then called for discussion.

Commissioner Hermreck then asked about Condition of Approval number 5, regarding how the CCR's are submitted.

Commissioners discussed how the CCR's would be addressed in the staff report and adding the recording document number to the number 5.

Commissioner Bedortha then offered the addition of a condition number 8 regarding Fire Ready booklet. Discussion included the Fire Ready booklet and how to get the information to the buyer as well as how to word the condition.

Beier stated that the Design Review Committee will review each lot for adherence to Crook County Fire Ready guidelines at site plan review.

Chair Warren asked for questions.

Chair Warren asked for questions on conditions 9, 10, and 11

Commissioner Bedortha addressed number 11 and said that the developer will maintain roads within the entire subdivision until the project is signed off by the County Roadmaster.

Chair Warren asked for questions on conditions 12, 13, 14, 15, 16, 17

Commissioner Lundquist then asked about Condition of Approval number 17 signing a non-remonstrance agreement. He asked if all lots should be signing the non-remonstrance, not just the 13-18.

Beier responded that due to the size of the lots the condition reflects those lots adjacent to the aggregate site.

Chair Warren then asked about Lot 12. Beier responded that she didn't see the lot and would add it to the condition.

Commissioner Bedortha added if the resources goes away then the property owners have the ability to have the non-remonstrance be removed (once the decommissioning is done and removed from the resource list).

Commissioner Lundquist then asked about adding a condition restricting further division of properties for all 20 proposed lots.

Chair Warren then added that the Applicant has added that to the CCR's.

Commissioner Lundquist then stated if the County does not administer the CCR's, should it be a condition.

Beier then added that the County that does not administer a subdivision CCRs. The County has had applications submitted where it is an allowed use in the County and not in the CCRs. A possible condition could state that further division not be allowed.

Commissioner Bedortha is opposed to a deed restriction. There is not guarantee on what will happen in the future for development.

Chair Warren then asked if it would protect the Planning Department.

Commissioner Bedortha then said it a part of the application process to require a title report which would show the CCRs.

Commissioner Lundquist agreed with the restriction of property owners, but the intent of this subdivision is to be a larger parcel size. In response to future development, in 50 years there would be a process to change that.

Commissioner Bedortha clarified a deed restriction, in that it stays with the property.

Commissioner Lundquist asked if a condition can be added to the decision and not have it be a deed restriction.

Commissioner Bedortha agreed and asked if Commissioner Lundquist how to word a condition.

Commissioner Lundquist stated, upon purchase of lot it cannot be divided into smaller portions and although it is in the CCR's it would be listed as a condition. Future division may be approvable, but at the time of application and Commission feels that the intent is to protect the acreage as it has been presented.

Chair Warren agrees with the intent and a subdivision is a little different than a conditional use. Because the restriction to further divide is in the CCR's it is already there and would be recorded, therefore a deed restriction.

Beier stated that the planning staff always advise to have folks check their CCRs and in decisions state that the decision does not apply the CCRs.
Commissioner Lundquist added that he is comfortable with the will of the Commission if everyone is okay with it being restrictive enough by having it in the CCRs.
Chair Warren responded that the Commissioner all agree it is a concern and called for a vote.
Commission Hermreck responded that condition 18 is not needed.
Commission Bedortha responded that condition 18 is not needed.
Commissioner Stec that condition 18 is not needed.
Chair Warren that condition 18 is not needed.

There is a motion on the table and there has been a second, then discussion with changes.

Commission Hermreck amended the motion to include the changes as discussed.
Commissioner Bedortha seconded motion.
Commission Hermreck - aye
Commission Bedortha - aye
Commissioner Stec - aye
Commissioner Lundquist - aye
Chair Warren - aye
Passes 5-0-0

Beier explained the process for the final decision, including it would be signed outside of a hearing and then sent out for a 12 day appeal period. No public hearings are being scheduled at this time and if there is something the Commission would like to have as a work-session, nothing until the end of May.

Commissioner Bedortha moved to close the meeting. Commissioner Hermreck seconded the motion.
Commissioner Bedortha seconded motion.
Commission Hermreck - aye
Commission Bedortha - aye
Commissioner Stec - aye
Commissioner Lundquist - aye
Chair Warren - aye
Passes 5-0-0

Chair Warren closed the meeting @ 8:08 p.m.