

MINUTES

CARBONDALE PLANNING AND ZONING COMMISSION

Thursday August 29, 2019

Commissioners Present:

Michael Durant, Chair
Ken Harrington, Vice-Chair
Marina Skiles
Nick Miscione
Nicholas DiFrank (1st Alternate)

Staff Present:

John Leybourne, Planner
Mary Sikes, Planning Assistant

Commissioners Absent:

Jay Engstrom
Jade Wimberley
Tristan Francis (2nd Alternate)
Jeff Davlyn

Other Persons Present

Mark Chain, 811 Garfield Avenue
Donna Dayton, 315 Oak Run Road
Rick Lofaro, 105 Ptarmigan Ct, Basalt
Nancy Pazik, 365 Oak Run Road
Martha Moran, 269 Crystal Road
Jon Towne, 395 Oak Run Road
John Foulkrod, 1349 Wald Drive
Kim Spence, 295 Oak Run Road
Frank Taverna, 405 Oak Run Road
Georgia Chamberlain, 1349 Wald Drive

The meeting was called to order at 7:00 p.m. by Michael Durant.

August 15, 2019 Minutes:

Ken made a motion to approve the August 15, 2019 minutes. Nicholas seconded the motion and they were approved unanimously with Marina and Nick abstaining.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

CONTINUED PUBLIC HEARING – Crystal Acres PUD Amendment

Location: 315 Oak Run Road

Applicants: Jerome & Donna Dayton

Three letters were distributed from other owners in Crystal Acres.

John said that this is a continued public hearing for an application for a Major PUD amendment for the Crystal Acres Planned Unit Development. He said that the Planning Commission is required to hold a public hearing and either recommend to approve, deny or continue the public hearing.

John said that the public hearing was closed at the July 11, 2019 meeting, the Commission may if they wish, re-open the public comment portion of the hearing.

John continued by saying that the purpose of the amendment is to update Section 12, Special Restrictions of the PUD to better define what a "Primitive Trail" is by providing a review through a conditional use permit with review criteria and providing design and construction details for a "low impact trail." He stated that there are no proposed changes to any of the district zoning parameters

Section 12, Special Restrictions: A. Riparian Zone

John explained that this section pertains to the designated riparian zone between the building rear setback line and the Town owned Public Open Space on lots 18 through 31 along Oak Run Road. He said specifically, the section states that the indicated lots are entitled to have one primitive footpath leading to the Crystal River.

John stated that the proposed PUD language includes Staff suggestions and Commission suggestions such as no lighting, language specifying that only one path is allowed. He said that no structures such as tables, landings, shade structures, fire pits or other improvements are allowed. He said that construction methods and submittal requirements for the Conditional Use Permit are also included in the proposed language.

John stated that the P&Z did want to discuss the width of the trail. He said that there was discussion on 24", 36" or a range in-between.

John said that one of the items added for the Conditional Use Permit was that an inspection be performed before the construction of the trail and then a final inspection after it is complete.

John stated that also added is the requirement for the Town approval through a Wildfire Mitigation Permit for the removal of vegetation, which can only be removed with Town approval.

Marina asked who would be conducting the inspections.

John said either himself or John Plano.

Ken asked for clarification on the width of the trail.

John said that Staff had gone back and forth between 24" and 36" and that Staff thought it would be good to bring it up with the P&Z.

Mark Chain introduced Donna Dayton and said that they live at 315 Oak Run. He said that it is what is called the riparian zone district from lots 18-31 on the river side of Crystal Acres. He said that it goes from the top of the hillside to close to the river. He

said that the river is actually owned by the Town. Mark explained his images on the screen.

Mark said that John noted that the public comment section was closed and he said that we would like to see it opened as there are new people here.

Mark said that this application is for amending one section, Section 12 of the PUD, which is what can happen in the riparian zone district. He said that he thinks it should be called the hillside and riparian zone as the hillside is very important too. He said that the way it has always been and always should be is that there needs to be a consultation with Staff if there is removal. He said also with the Fire District under the wildfire mitigation permit process, which came in at 2012.

Mark said to make a long story short, the whole purpose is to try to get some definition of what a primitive path was. He said that he thought what the Dayton's put in was a primitive path. He said that when he looked on the internet, talked to various people as well as talked to various experts, that there is no universal definition of primitive. He said that some believe that if it is on dirt, over tree root, over rocks but that the purpose is to not take down trees just for a path.

Mark said one option besides saying don't change the text at all or adopt changes of what we have tried to suggest. He said that more of a definition of what primitive is could also be changed.

Mark said that there has been concern about the whole process for a Conditional Use Permit. He said that he is not sure of what could be done to make it reasonable of what's written. He said that you need a professional to say what should be done and how to minimize the impact in the area. He said that this is a Staff level review, which says that you need a professional in there. He said that it is a concern that this is just another bureaucratic process and we have enough of these. He said that when you are going down the hillside to the riparian area that a Conditional Use Permit is appropriate. He said that he would not go to anything further than that.

Mark said that he has a version of Section 12, with a strike through version of the changes that we have suggested. He said a lot was from Staff recommendations at the last public hearing. He said that he did not write in 24" verses 36" tread width, 24" really came from the Town. He said that if it's 36" and the path gets taken out that he thinks its more of an impact. He said that this gets into someone putting something in and then asking for forgiveness, which was not the intent in this situation.

Mark said that the Dayton's did not want contentiousness in the neighborhood. He said that we had talked about withdrawing the application, which may not serve the Town in the long run. He said that this will come again, it could be in one month it could be in fifteen years.

Mark said that if it goes a different direction that the Dayton's will probably say ok whatever the P&Z recommends and not take it to the Board of Trustees. He said that they are here to see it through, look at the changes we suggested.

Michael asked how wide the trail is.

Donna answered that it was three feet, from edge of wood to edge of wood.

Michael said that the way he read the PUD is that these property owners that are along the riverside have a right to a primitive trail today.

Mark and John answered that is correct.

Michael said that they have a right to a primitive trail today and that if they want to go in there with a machete there would be nothing to stop them. He said that there would be no regulations to define what that primitive trail would be with no checks and balances on the part of the Town in order to make sure it was done properly.

John said that is correct.

Michael asked Donna when you get down to the bottom of your path what does the river look like, do you have an opening there?

Donna said that there is a break in the willows but that there are willows down there. She said that there is city property down there. She said that their original intent was weed abatement.

Marina asked if the Commission decides the width is less than the applicant has already built will the applicant be required to revise their trail.

John explained that it could go two ways, he said that the applicant did indicate that they would bring it into conformance of the new standards or it could be considered non-conforming.

Mariana asked how much of the trail has been built because they did have to stop at some point.

Donna stated that there is about six steps left at the top.

Ken asked John what the implication of non-conforming was.

John stated that they could not maintain it and if they needed to do repairs on it or make improvements that they would have to bring it to the adopted standards.

Ken asked if they would have time to comply.

John answered yes.

Motion to Open Public Hearing

A motion was made by Ken to open the public comment portion of the hearing. Nicholas seconded the motion and it was approved unanimously.

Rick Lofaro, **105 Ptarmigan Ct, Basalt** said that he is the executive director of Roaring Fork Conservancy. He said that he has not spoken before this Commission previously. He said that he is not here to endorse a trail or speak out against a trail. He said that he would like to encourage you, as you here public comment, and make decisions on whether or not to amend a PUD, that he is really here on behalf of the river, because the river doesn't have a voice in this and in the spirit of preserving the riparian habitat and the hillside vegetation. He said that the actual riparian vegetation is fairly slim and that it is a thin strip of willow so it is important to look at the entire hillside. He said that it is important to look at what is tolerable and allowable and makes sense in that hillside area, particularly in the size of allowable trail building but also vegetation removal. He said what is important is that yes we can plant plants and they will grow back but our rivers suffer death by a thousand cuts every time a riparian property is compromised and vegetation is removed or trails are built in insufficient manor. He said that he encourages everyone to think about the river and think about the next generations of folks that come through here and the importance of protecting that valuable resource that makes up less than two percent of the entire land mass of the State of Colorado. He said that it is our most economically valuable and ecologically valuable habitat in this valley. He said that upwards of eighty-five percent of all wildlife species use the riparian habitat at some life stage. He said that from everything as tiny as a catas fly to the biggest elk, relies on the very important green ribbon of life and once it's gone it's very hard to bring back and replicate. He said whichever direction you decide to go please be very thoughtful about future generations and how were taking care of not just the rivers and what's inside of it but the very vibrant and the very important green ribbon of life that holds our soils and banks together that helps return water to the river in late season and really helps stabilize things like we had this past year.

Ken asked what a sufficient manner for building a trail was.

Rick stated that he is not an expert on trails so this is his own personal opinion but that he would be more in favor of a single track type of earth rock trail and not encouraging heavy improvements. He said that you could call it a cattle trail or game trail or a single track. He said that would be more of a responsible use in a riparian habitat and an allowable use for folks to get down to the river and enjoy it. He said that he works as a technical advisor to the Town of Basalt specifically on new development and redevelopment when there are things of this nature. He said that there are riparian projects that may or may not involve vegetation removal. He said that he is happy to participate as well and there is no charge for this service. He said that if you consider amending the PUD and increasing any of the regulations that he would be happy to be in that process to help review projects as necessary.

Nancy Pazik, **365 Oak Run Road** said that she has two reasons why she feels this PUD change should not be approved. She said an admitted mistake that one homeowner made has led to this PUD amendment and approval would send the wrong message, possibly leading to many more PUD amendments in the future. She said that this PUD amendment is deceptive and the photos of the other staircases in the PUD amendment are not from Crystal Acres. She said that they are from Crystal Village, however they are shown as though they are examples of existing staircases within Crystal Acres. She said that the riparian zone has changed to riparian hillside protection zone but it is a riparian zone and should be protected as such. She said that the maximum width of the path and stair material is not even stated in the PUD amendment. She said that heavy equipment would be allowed to build the trail as it is not excluded. She said that this could damage wildlife habitat, compact vegetation roots to the point that trees could be killed. She said as stated previously that this PUD amendment requires fifty percent agreement from owners. She said that the vote was conducted by the homeowner seeking the change however, the vote was not anonymous as our names were pre-filled on the post card that we returned to the homeowner and the vote was done long before the PUD amendment was even written. Therefore the homeowners never held a vote on the proposed amendment. She said that the post card that we voted on just asked whether the homeowner should go forward with writing the amendment and not whether we agreed with the amendment after it was written. She said that many that voted had no idea that the path allowance would be changed from primitive to low impact trail, timbered, cement, six foot wide or more. She said that there was nothing specified in the PUD as to what the width would need to be. She said that a full amendment to the PUD is not necessary and that she just wants a tighter definition of a primitive trail with 24" maximum rock and dirt materials only. She said that she would be willing to work with the P&Z to further tighten that definition.

Michael said that he is going to put one more stipulation on the public hearing, if you wrote us a letter please don't get up and read your letter because we have already read it.

Martha Moran, **269 Crystal Road** said that she is late in the game and that she wrote a letter today too. She said she was interested in this public hearing as a neighbor and she decided to inquire about it for a couple of reasons. She said that she is in the Crystal Village Subdivision. She said that she has been involved in riparian path construction as a US Forest trails and wilderness manager and that she has been an expert in her time. She said she has been involved on several river projects and she understands what primitive means. She has done fifty days of kayaking this year on the Crystal River, Roaring Fork River and the Colorado River. She said that she has observed many riparian changes and the amount of vegetation removed in the last two years is significant. She said that she is astonished that our river zoning allows so much vegetation removed for fire needs and that she thinks it has really been removed for viewing. She said she understands now also for removal of noxious weeds as she talked to the neighbor. She said that she is excited that they are going to give you some guidance because the vegetation changes are significant to the birds and the wildlife in the past few years. She said that she believes that the vegetation removal is the issue not a sustainable path. She said that the trail has been created and it will not impact the

riparian system and do not pull out the timbers. She said it was for safety and access but trampling is not good. She said many homeowners along the river corridors have purchased their homes and then they have gone and wiped out all the vegetation to get to the river and this has started to be standard practice. She said that she has built a lot of river accesses and please don't use toxic stuff into it. She said what has been created for river access is great and it makes sense. She said that the cease and desist was crazy and it was more of a nimby issue. She said creating sustainable access which is in their zoning, it is eighty percent completed, rocks fall and they are getting older. She said the PUD indicates this path is allowed and this is what was created. She said creating standards is a great practice and should be done for the riparian or anyone on the rivers no matter if it's just this subdivision. She said where she lives in Crystal Village and what happened in the last six months is pretty amazing. She said allowing timbers maybe 24" and 36" is fine and that's what we use, implemented and used for her river programs, wilderness programs and for her trails. She said that she suggests that you allow this. She showed a picture that she said she took today. She observed this access and that it looks great and pulling the timbers out will impact the stabilization of the riparian zone. She said that trampling is not sustainable and not safe. She said that defining the standard is what should be done and creating standards for river access is key. She said that she is retired after thirty years and what the path is, is not a concern from her point of view.

Jon Towne, **395 Oak Run Road** said that he is Frank's neighbor. He said that he has no expertise, he said that he supports everything the first speaker said. He said that he is committed to conservancy, protecting habitat and sustaining the original beauty of the Crystal River. He said that this is the second attack of our riparian zone, he said four years ago was a major assault, but the board then stopped it. He said that he stands here today with what happened four years ago and that this is a lesser one. He said that the man pushing these changes was the most vociferous supporter of the riparian zone when the Town was negotiating with Frank and his partner, which were the developers of this ranch. He said that his first plea to this Board is that we pray and hope that you support this concept. He said what was said earlier today is so true, once you lose it you are not getting it back. He said that the trendy thing right now is conservancy, everyone is concerned about trying to save something. He said that this Town had the wisdom to decide to have houses but do it in such a way. He said the one thing no one has mentioned tonight, Mr. Foulkrod said last time, the Crystal River is this Town's most precious resource and that it supports the birds and everything else we hold sacred. He said that there is no need to change what it is, these things were drawn up twenty years ago. He said that it scares the hell out of him that this man here, gesturing toward Mark Chain, who fought so vigorously for this twenty years ago, isn't. He said protect our river and protect our wildlife.

Michael told Jon Towne not to get personal.

John Foulkrod, **1349 Wald Drive** said that the one point he would like to make is that we had a lot of meetings about this back twenty years ago and at the time the developers were not in favor of this but the counsel was. He said that the object was to preserve the river and that we thought this was the best way. He said because

someone comes along twenty-five years later, buys a house and just goes down there and builds a staircase and for that reason we are going to change the rules is wrong. He didn't know what the rules were and ignored them and went ahead did what he wanted to do without the understanding of what had been done twenty five years ago. He said that all that was said in his covenants that were given to him when he bought the house.

Kim Spence, **295 Oak Run Road** said that Jerome and Donna are his neighbors and that they are lovely people. He said initially he thought keep your stairs but let's not change the covenants. He said that they wanted a safer access to the river, it's very steep there, and the reality is that the primitive trail keeps people from building a trail there because it's really hard to build a trail there. He said you could dig in and put some rocks but they will erode away. He said that the term primitive trail meant a path, we have a primitive path that he has to cut back the weeds every year to access the river or through the Town lot next door. He said that he wants Jerome and Donna to have their stairs and that ripping them out is going to be more degradation to the environment than leaving them there. He doesn't want the subdivision amended because it's like a taking because if he wants to put a primitive path in to build a few steps to take his kayak in or out then he'll have to have someone come out to approve it, it has to be built a certain way. He said that twenty five years ago that he had just moved here and that he was psyched that people were protecting the riparian zone of Carbondale. He said that people fought hard for this, he said that Frank probably would have liked it if people could build paths all the way to the river as it would have been easier to sell his lots. He said that Frank acquiesced to what the Town said he had to do. He said that he thinks it is a riparian zone all the way up to the edge and that there are currents, willows, alders and oaks and that it is not just a tiny sliver at the river's edge. He said that there are bears on his back porch eating the currents. He said that amending the PUD is not what we need to do and we need to figure out a better way for Jerome and Donna to have their stairs and to continue to protect the riparian zone the way it was intended.

Frank Taverna, **405 Oak Run Road** said he will repeat some of the other things that have been said. He said that he cannot stress enough that some of the owners that have signed this petition in favor of looking at these steps have expressed the point that they don't know what this PUD amendment was about because they never saw it. He said that if we had a vote today of the homeowners in the subdivision that there would not be a majority to approve a PUD amendment. He said he would like to invite the Commissioners to do a site visit down to Oak Run to look at some of the lots to see what most of us consider a primitive path.

Georgia Chamberlain, **1349 Wald Drive** said that her property does not back up to the river so she uses the public access and Staircase Park as well as the access at the cul-de-sac. She said that she gets to enjoy the river and she appreciates the public access. She said that what Rick and Nancy said at the beginning that she agrees with him and to keep the river as wild as we can. She said that Nancy brought out some details for the Commission to keep in mind.

Motion to Close Public Hearing

A motion was made by Nicholas to close the public hearing. Marina seconded the motion and it was approved unanimously.

Discussion

- If the PUD is not amended the language stays the same, the existing language stays as one primitive path per lot owner.
- If the PUD amendment does not pass the owners would be required to remove their steps.
- If the PUD amendment does pass but the standard for the width of the path is not as wide then their path is non-conforming.
- There is more impact removing their steps than keeping it.
- If an owner has an existing path, and they want to keep it, all is good.
- If all paths were restricted then that would be a taking, which is not on the table.
- If they do not have a path and the PUD amendment goes through they would need a permit to construct one.
- Would a weed whacker or machete to clear a dirt path that did not require any improvements be subject to the regulations under the new PUD amendment?
- If a neighbor reported someone for cutting vegetation down it would be an interpretation call, site by site basis.
- Heavy equipment is prohibited for building a trail in the hillside zone.
- A single track or a basic dirt path might not be the best solution, as it could cause more erosion as well as a width undefined and has the potential to get wider.
- A minimal construction standard would provide understanding for installation and adjacent ecology. How would the path connect to the side of the river?
- What is the maximum size of tree allowed to be removed? Root mass supports the hillside and the slope, which would increase erosion.
- The water has no way to pass from one stair to another, in the erosion control plan. The water needs to pass from one side of the trail to the other.
- The ADA width of a path is thirty six inches but not a requirement by the Town.
- Primitive can mean thoughtlessness.
- Preservation is passing the PUD amendment with modifications.
- Revegetation with native vegetation, add to 2D.
- Let the Tree Board weigh in.
- If the non-conforming stairs needed repair they would need to make it conforming.
- Respect the original wording of a primitive trail, which is not thirty six inches wide.
- A trail is not meant to walk down with multiple people.
- Clarifying the definition of a primitive trail will help everyone and future development.
- The Commission discussed the proposed PUD amendments.
- The Commission stated that the maximum stair width was 30".
- Removal of the existing stairs would cause more damage, finishing the remaining steps shall be a maximum width of 30".

- Non-conforming status would be on a maintenance basis, once the steps started to degrade they would have to be brought into conformance upon replacement, which would be the width of 30”.
- The Commission would like a member or two to be at the Board of Trustees meeting for this application, John will let the Commission know the date.

PUD Amendment Revisions

- Change the language for 2B – The use of heavy equipment is prohibited, remove the rest of the sentence.
- Change the width to no more than thirty inches.
- Insert a line in the standards, no removal of trees that are over 1.5 “caliper subject to the review and comment of the Tree Board.
- Change the language for 2D – Revegetation shall be with native materials as prescribed by the Tree Board.
- Remove from the document figures 1 and 2 and the diagram.
- Add condition 4: The existing stairs at 315 Oak Run Road are considered non-conforming.
- Add condition 5: With all indicated changes as made by the P&Z.

Motion

Ken made a motion to recommend approval of a major planned unit development amendment for the Crystal Acres Planned Unit Development with the conditions and findings in the Staff report and added #5 condition with all of the indicated changes by the P&Z. Nicholas seconded the motion and it was recommended unanimously.

P&Z Recommendation for P&Z Appointment

Ken made a motion to recommend to reappoint Jeff Davlyn as a regular voting member of the Planning and Zoning Commission. Nick seconded the motion and the recommendation was unanimous.

Staff Update

John said that it has been busy and that Dr. Stein will be submitting tomorrow. He said that they have also been discussing redevelopment of the Sopris Shopping Center.

John told the Commission that Janet’s husband had passed away last Saturday.

Commissioner Comments

Marina said that the new metal building across from RVR looks like an airplane hanger.

Nick said that he will be moving outside of Town limits.

Michael stated that two members of the Commission can live outside of Town limits and currently all members live in Town so this is not an issue.

Michael asked how many meetings Tristan has missed.

John read the code on attendance, that the Commission may request that the Board of Trustees remove members who fail to attend three consecutive meetings without excuse from the Chair of the Planning and Zoning Commission.

Michael directed Staff to give Tristan the what fors and that he has 24 hours to respond. He said that if we haven't heard from him that we suggest he resign.

Motion to Adjourn

A motion was made by Ken to adjourn. Marina seconded the motion and the meeting was adjourned at 9:00 p.m.