

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
AUGUST 7, 2012**

MEMBERS PRESENT

Dean Sandoval, Chairman
Byron Alsup
Steve Smith
Larry Baker
Mike Krauth, Jr.

STAFF PRESENT

Bill Giordano, Planning Director
Brenda Jackson, County Attorney
Vicki Alley, Planning Assistant

MEMBERS ABSENT

Daryl Robinson, Vice Chairman
Joe Lamanna

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- a. June 5, 2012 Planning Commission Meeting

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

a. REQUEST: VPR 12-001 FREMONT COUNTY ROAD 9A (FROM INTERSECTION OF COUNTY ROAD 2 TO TERMINUS)

Request approval of a **Vacation of Public Right of Way and alley, Department file #VPR 12-001 Fremont County Road #9A (from intersection of County Road #2 to terminus)** by Fremont County, for property owned by Noah & Diane Taylor. The right-of-way to be vacated is that portion of County Road #9A from the intersection of County Road #2 and County Road #9A to the terminus of County Road #9A, a distance of approximately 0.5 miles. The vacated portion of the road will remain a privately maintained road/driveway, and there is only one owner; therefore a boundary line adjustment will not be required. The subject property and all adjacent properties are zoned Agricultural Forestry.

REPRESENTATIVE: Department of Planning & Zoning

b. REQUEST: VPR 12-002 FREMONT COUNTY ROAD F5 (FROM INTERSECTION OF COUNTY ROAD 2 TO TERMINUS)

Request approval of a **Vacation of Public Right of Way and alley, Department file #VPR 12-002 Fremont County Road #F5 (from intersection of County Road #2 to terminus)** by Fremont County, for access to property owned by State of Colorado and Stirrup Ranch LLC. The right-of-way to be vacated is County Road #F5 from the intersection of County Road #2 and County Road #F5, to the terminus of County Road #F5, a distance of approximately 1.19 miles. The vacated portion of the road will remain a

privately maintained road/driveway; therefore a boundary line adjustment is not required. The subject property and all adjacent properties are zoned Agricultural Forestry.

REPRESENTATIVE: Department of Planning & Zoning

c. REQUEST: AMENDMENT TO FREMONT COUNTY SUBDIVISION REGULATIONS

Request approval of a proposed **amendment to the General Provisions and Definitions Sections of the Fremont County Subdivision Regulations.**

REPRESENTATIVE: Department of Planning & Zoning

7. ADJOURNMENT

1. CALL TO ORDER

Chairman Dean Sandoval called the meeting to order at 4:03 pm.

2. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Chairman Sandoval asked if there were any changes, additions or corrections to the August 7, 2012 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Larry Baker moved to accept the August 7, 2012 Fremont County Planning Commission Meeting agenda as written.

SECOND

Mr. Byron Alsup seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (5 of 5)

4. APPROVAL OF THE JUNE 5, 2012 PLANNING COMMISSION MEETING MINUTES

Chairman Sandoval asked if there were any changes, additions or corrections to the June 5, 2012 Fremont County Planning Commission Meeting Minutes.

MOTION

Mr. Steve Smith moved to accept the June 5, 2012 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Baker seconded the motion.

Chairman Sandoval called for a roll call vote.

Mr. Baker	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Smith	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Krauth	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Chairman Sandoval	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Alsup	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain

Chairman Sandoval announced that the motion passed with four Aye votes and one Abstention.

5. **UNFINISHED BUSINESS**

NONE

6. **NEW BUSINESS**

a. **REQUEST: VPR 12-001 FREMONT COUNTY ROAD 9A (FROM INTERSECTION OF COUNTY ROAD 2 TO TERMINUS)**

Mr. Bill Giordano, Fremont County Planning Director, requested approval of a Vacation of Public Right of Way and Alley, Department file #VPR 12-001 Fremont County Road #9A (from intersection of County Road #2 to terminus) by Fremont County, for property owned by Noah & Diane Taylor. The right-of-way to be vacated is that portion of County Road #9A from the intersection of County Road #2 and County Road #9A to the terminus of County Road #9A, a distance of approximately 0.5 miles. The vacated portion of the road will remain a privately maintained road / driveway, and there is only one owner; therefore a boundary line adjustment will not be required. The subject property and all adjacent properties are zoned Agricultural Forestry.

Mr. Giordano showed a video of the area and stated that the Board of County Commissioners (BOCC) requested that the Department of Planning and Zoning activate this vacation of public right-of-way. The reason for the vacation is that there is an archway over the right-of-way, consisting of logs, which sits in the right-of-way, creating a very narrow entrance. The Board gave the Taylors the option to remove the archway, or vacate, and they elected to vacate. The utilities, Century Link and Sangre de Cristo Electric, were notified, as well as the property owners, the Sheriff's Office and the Fremont County Department of Transportation, and the property was posted. One of the criteria for approval of a vacation is that the property owner will not be left without access. In this case, the road will remain a privately maintained access from the property to the County road. He noted that the Planning Commission meeting date and the BOCC meeting date are set at the time of application, unless the Planning Commission tables the item.

Mr. Alsup asked if there are any property owners who will be affected by this vacation, other than the Taylors.

Mr. Giordano answered only the Taylors are affected. The Department has not received any comments on this application.

Mr. Bob Wellott, 187 Autumn Creek Drive

Mr. Wellott stated that the sign posted in front of the Taylor property read Fremont County Road F5, which was confusing.

Mr. Giordano noted that there was a problem initially when the signs were posted. The signs for the two vacations were interchanged. The mistake was caught and fixed the same day, so the posting was completed in the required timeframe.

Mr. Baker asked if the County has been doing any maintenance on that road.

Mr. Giordano answered yes.

Mr. Baker asked if the owners understand that the maintenance will be their responsibility now.

Mr. Giordano answered yes, Fremont County Department of Transportation (FCDOT) told the Department that the owners agree.

Mr. Wellott stated that the Taylors were out three or four weeks ago re-doing the road.

Mr. Mike Krauth asked if there is one ranch or two involved in the vacation.

Ms. Brenda Jackson stated there are two vacations on the agenda. This first vacation involves the Taylor Ranch; the second vacation involves the Stirrup Ranch.

MOTION

Mr. Alsup made a motion to approve VPR 12-001 Fremont County Road 9A (from intersection of County Road 2 to terminus).

SECOND

Mr. Krauth seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (5 of 5)

b. REQUEST: VPR 12-002 FREMONT COUNTY ROAD F5 (FROM INTERSECTION OF COUNTY ROAD 2 TO TERMINUS)

Mr. Giordano requested approval of a Vacation of Public Right of Way and Alley, Department file #VPR 12-002 Fremont County Road #F5 (from intersection of County Road #2 to terminus) by Fremont County, for access to property owned by State of Colorado and Stirrup Ranch LLC. The right-of-way to be vacated is County Road #F5 from the intersection of County Road #2 and County Road #F5, to the terminus of County Road #F5, a distance of approximately 1.19 miles. The vacated portion of the road will remain a privately maintained road / driveway; therefore a boundary line adjustment is not required. The subject property and all adjacent properties are zoned Agricultural Forestry.

Mr. Giordano stated that the Stirrup Ranch does not have direct access to the County maintained portion of the roadway. Century Link and Sangre de Cristo Electric Company were notified, and the Department has not received any comments. Also notified were the State of Colorado, Stirrup Ranch LLC, the Sheriff's Office and FCDOT, and a sign was posted.

Mr. Giordano showed a video of the area. This is a similar application to the previous vacation. There is an archway over the road, not quite as narrow. The owners elected not to remove the archway, and accepted the right-of-way as private maintenance. No one is being left without access. The Department has not received any comments from anyone at this time. We do have consent, in writing, from the State for this vacation.

Mr. Smith asked if this is no longer a County road, does that mean the public is no longer allowed on that road? Does this limit access to the State land if we allow this to happen?

Mr. Giordano responded that the State has an agreement with the Stirrup Ranch to use that roadway. The State can limit access if they want to; they control access to their land.

Mr. Smith commented that if you take the access away from State property, then the public cannot get to that State property.

Ms. Jackson stated that the State controls access to their property.

Mr. Smith asked if the Stirrup Ranch could put up a gate across the road, denying access.

Ms. Jackson answered not without consent from the State.

Mr. Giordano noted the State is the property owner and they are in control of who they give access to. The road is not going away, it is just becoming a non-County maintained road.

Chairman Sandoval asked if State land is accessible to the ordinary citizen, or are there restrictions?

Ms. Jackson answered the State leases a lot of their lands, and they can restrict general access or recreational access. Access depends on what use they are making of the land. In all likelihood, this land is probably leased to the Stirrup Ranch for grazing. Often you will find State leased lands that are adjoining another ranch and they graze on the entire thing. What other limitations the State has on use of the property wouldn't change by what we are proposing to do with the road. The State can still limit use and access to their lands depending on what the State Land Board decides to do. This vacation takes away a County maintained road and makes it a State maintained road.

Mr. Giordano noted that even though it is a County road now, that doesn't mean the State is going to let the public go on their land.

Mr. Krauth asked if there is a representative of the Stirrup Ranch in the audience. *(There was no response.)*

Chairman Sandoval asked if the road is currently under the ownership of the County.

Ms. Jackson stated the road is the responsibility of the County.

Chairman Sandoval asked who owns the road.

Ms. Jackson answered the State of Colorado owns the road, subject to the right of the County to maintain and use the road. If the County vacates and gives up the right to maintain and use the road, it comes under pure State jurisdiction.

Mr. Krauth asked if that applies to the previous vacation that the Planning Commission approved.

Ms. Jackson answered the previous vacated roadway goes to the private property owner. All County roads are not owned by the County. Even if someone deeds the County a road, the County doesn't own the road. The County has the right to use the road for a specific purpose. It is in the nature of an easement; even if it looks like it is an outright conveyance, it never is, by road law. The law says as soon as the governmental entity that has the right to use the road stops using it for that purpose, ownership reverts to the underlying landowner. If there are two underlying landowners and the road goes between, you split to the middle of the road and each side takes full ownership of that property once again subject to no right of use. The effect of a road vacation is that the County relinquishes its right to keep the road on the road maps, to get highway user funds for it, and to maintain it. In this case, the road will revert to 100% State ownership. The County's right to run a grader across that road will go away. The basic ownership doesn't change, just the right of use.

Mr. Alsup asked what the motivation for this vacation was.

Ms. Jackson answered the same as for the first vacation – the archway. FCDOT is doing a County-wide survey of all County roads to make it more efficient for the road maintenance crews to do their work. They have reorganized the FCDOT, and now they are looking at cattle guards and timber archways that are in the rights-of-way, to determine if they are necessary for future uses and if they are currently necessary. These archways are decorative, but serve no useful purpose. There are a couple of archways with chunks falling off, creating hazards for the road, so the policy has become to remove obstructions on County roads. To the extent that we can remove cattle guards that are no longer used, that is going on too. It is a housekeeping inventory of all the County roads to get them maintained consistently. The archways are the issue and we identified the roads that have these archways on them. All these people were notified to remove the archways because they are an obstruction in the rights-of-way. In these two circumstances, because of the limited number of people who access the roads generally – the Taylor Ranch, the Stirrup Ranch, and the State (Division of Wildlife), they were all given the option to keep the archway or to take the road (*for maintenance*). There is a third road (*that has been in the paper*) with the same situation – an archway, but there are a lot of people who access on that road and it goes into Park County. That is a different circumstance because it is difficult to vacate a road that a lot of parcels access onto, so vacation wasn't an option there.

Keb Guralski, Colorado State Forest Service

Mr. Guralski asked for clarification on which property is owned by the State and which property is owned by Stirrup Ranch.

Mr. Giordano answered Stirrup Ranch is not really an owner (*of the road*), but they are serviced by the road.

Mr. Guralski stated that the Colorado State Forest Service is a lessee of the State Land Board, along with the Stirrup Ranch and the Division of Wildlife. As far as I know, the grazing lessee controls access. If Stirrup Ranch has that lease, they can decide to put a gate across the road right off the County road and limit access. The Division of Wildlife access is typically limited by the time of year, so they might have something to say about it if Stirrup Ranch put up a gate. The Forest Service has a lease for forest products and timber. We haven't used that road in a while.

Ms. Jackson asked if the vacation would create any problems for the Forest Service.

Mr. Guralski answered I don't see it creating problems for us because even if Stirrup Ranch does decide to put a gate on that road, we are granted access.

Mr. Krauth asked if this is State land, why is there an archway constructed on the driveway? If this is public property, why did Stirrup Ranch put an archway up?

Ms. Jackson stated that often the lease gives the lessee the ability to control the access, so Stirrup Ranch probably put the archway up there as one of the accesses to their ranch. The primary access actually terminates on a County road from their ranch property.

Mr. Krauth asked if the point of putting a gate up would be if they leased the property for the grazing rights, to keep the cattle off the County road.

Mr. Guralski answered typically, yes. They control all the fencing on those parcels as well as the gates, but they are required to give whoever has a recreation lease access. They are responsible for maintaining ingress and egress.

Mr. Giordano noted that both roads to be vacated have cattle guards on them.

Ms. Jackson commented that access would not be a County concern because that is in the agreement between Stirrup and the State Land Board.

Mr. Krauth said an indirect effect of approval of this vacation by the Planning Commission could be to restrict public access for hunting and recreation.

Ms. Jackson didn't know if there is public access for hunting and recreation now. The lease is for grazing, wildlife management, and the State Forest Service. The State Land Board designates lands for hunting each year. That kind of thing is addressed in the lease between those who are grazing and the State Land Board. The State Land Board could close that property off to hunting, no matter what. This is not like BLM land that is open for hunting all the time. State Land Board lands are quite different. They are for specific purposes, mostly revenue purposes for the State. The purpose may or may not have been hunting in the past, but certainly a vacation of a roadway would not change that. The County can't control whether it is accessed for hunting because it is not County land. That would be the State Land Board's decision.

Mr. Smith stated that even though the State Land Board owns the property, that lease is renewable every ten or twenty years, and somebody else can lease that land and make it open for hunting. If we stop this and not allow anybody to go on the access, and the lease comes up, that changes the opportunities for that land and for the citizens.

Mr. Guralski commented that typically the grazing leases are for ten years. The Forest Service lease is in perpetuity.

Ms. Jackson stated that legally, the fact that a County road runs through a parcel of land does not mean the land is open to the public for any use whatsoever, same thing with State Land Board lands. When they lease lands for mining purposes for example, they are not open to the general public, they are open only for mining. We had a case on Table Mountain where people were riding their horses recreationally through an area that was being mined, and the State Land Board closed it to public access because the land was being used for something inconsistent with recreation.

Chairman Sandoval said there are too many possibilities as to how this land could be used. This application is housecleaning for the County and although not a revenue generator, it does save revenue by the County not having to maintain the road. Land use for State owned land is not our responsibility.

MOTION

Mr. Smith made a motion to approve VPR 12-002 Fremont County Road F5 (from intersection of County Road 2 to terminus).

SECOND

Mr. Baker seconded the motion.

Chairman Sandoval called for a roll call vote.

Mr. Baker	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Mr. Smith	<input checked="" type="checkbox"/> Nay	Aye	Abstain

Mr. Krauth	<input type="checkbox"/> Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Chairman Sandoval	<input type="checkbox"/> Nay	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Alsup	<input type="checkbox"/> Nay	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Abstain

Chairman Sandoval announced that the motion passed with three Aye votes and two Nay votes.

Mr. Krauth commented that he understands the County’s intent is to save revenue. I voted no because I don’t like the fact that the entryway is the initial start of this issue and I don’t like the archway being put up. I know a lot of people who lease grazing rights from the State of Colorado and they don’t put up an entryway; they put up a gate or a cattle guard. So the implication to the public when they were using County Road 2 is that is private property, when in fact it is State of Colorado property. If the State of Colorado says no hunting, no public access or recreation access, that’s their decision.

Mr. Smith commented that his no vote is because he worries about the future. When we do things like this, it impacts us far down the road. I have concerns when you vacate things like this because there is always an opportunity for someone else to lease that land.

c. **REQUEST: AMENDMENT TO FREMONT COUNTY SUBDIVISION REGULATIONS**

Request approval of a proposed amendment to the General Provisions and Definitions Sections of the Fremont County Subdivision Regulations.

Mr. Giordano summarized the proposed amendment and answered questions from the Planning Commission. The amendment is mainly for cleanup and clarification. Many of the changes are editorial in nature. Some of the proposed changes make the Subdivision Regulations more consistent with the Zoning Resolution which was amended earlier this year. Mr. Giordano also included some wording changes to the Definition Section that Ms. Jackson recommended. Future amendments are planned to other sections of the Subdivision Regulations. The goal is to make each amendment smaller and easier to understand, rather than amending the entire document at once.

Mr. Giordano continued, the Definitions Section includes terms that are needed in the Subdivision Regulations that Webster’s doesn’t cover. Definitions have been added for Aliquot Description, Metes & Bounds Description, and Platted Land. There has been confusion on the different types of legal descriptions, so the intent is to clarify them.

Definitions for “Exemption” and “Variance” have been added to reflect the fact that the statute mentions that **variances** approved by the Board of Zoning Adjustment are related to zoning, and **exemptions** are related to subdivisions. So using the word “variance” in the Subdivision Regulations is the wrong terminology. In a subsequent amendment, some of the language that appears in this variance definition will be listed as qualifying factors to allow an exemption.

A clarification was added to the Subdivision or Subdivided Land definition to exempt from subdivision requirements multiple structures used for a single use on a property, and multiple uses in a single structure.

Mr. Krauth asked about a residential use (*in multiple buildings*), such as two dwellings.

Mr. Giordano answered that two dwellings would not be allowed (*on a single property*). That would be two primary uses.

Mr. Smith asked for clarification on paragraph RR.3.m in the proposed Definitions Section.

Ms. Jackson answered this paragraph refers to multiple uses in a single building.

Mr. Giordano added that the multiple uses were clarified by listing possible types of uses. This section is an exemption to the subdivision regulations. These two additions (l & m) to the Subdivision or Subdivided Land definition provide that one use in several structures, and several uses in one structure do not have to go through subdivision.

Ms. Jackson stated that the definition (*of Subdivision or Subdivided Land*) is patterned after state statute which refers to separate interests. The state statute defines a subdivision as any division of land that creates interests of less than 35 acres. Then the statute lists things that are not subdivisions and exempts them out. We are just adding two additional exemptions: one is multiple uses in a single building, the other is a single use in multiple buildings. They are additional exemptions that do not meet the definition of subdivision, so they wouldn't have to go through any subdivision process. The tenth exemption in the state statute says anything that the BOCC thinks should be allowed and does not defeat the purpose of the subdivision regulations can be allowed as an exemption, so the County can add exemptions to the state-given exemptions.

Chairman Sandoval asked for clarification on Phasing, Planned Unit Development, Preliminary Plan, and Site Specific Development Plan, and how they tie together.

Mr. Giordano answered that Phasing will require a Sketch Plan, which comes before the Preliminary Plan. A Sketch Plan is an over-all concept.

Chairman Sandoval asked if the Sketch Plan is non-binding.

Mr. Giordano commented that the amendment to the Sketch Plan section is being amended at the present time and we did add language that would make it binding, otherwise there is no reason to go through the process.

Ms. Jackson said once you have a Site Specific Development Plan, by statute, the Developer has a vested right to develop in accordance with the plan. Once the plan is recorded, it is vested.

MOTION

Mr. Krauth made a motion to approve the proposed amendment to the General Provisions and Definitions Sections of the Fremont County Subdivision Regulations, with the following changes:

The following definitions were re-written or modified (~~shaded-strikethrough~~) to read as follows:

- P. EASEMENT: An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, such as utilities, drainage, or access.**

- S. FLOOD PLAIN or FLOOD-PRONE AREA:** Any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.
- GG. PLAT RESTRICTION:** A restriction or statement placed on a final plat that is unique to the land depicted by the final plat; most ~~normally~~ usually items that make the property owner aware of the unique situation or a restriction placed on the development of the property through the platting process to guard the health, safety and welfare of the property residents and surrounding neighborhoods.
- HH. PLATTED LAND:** Land that has gone through a subdivision or exemption process that resulted with final plat being recorded for perpetuity in the land records of the jurisdiction where the property is located; ~~normally~~ usually resulting in the property being referenced by the subdivision name, blocks, lots, outlots, rights-of-way and easements depicted by the final plat.
- JJ. PRIVATE ROAD OR STREET:** A right-of-way that is owned, constructed and maintained by an individual owner, a homeowners association or the like, that provides access from a public roadway to a property.
- KK. RIGHT-OF-WAY:** A person's legal right, established by usage, contract or deed, to pass through property owned by another.
- VV. VARIANCE:** Official authorization to depart from a zoning requirement.

In addition, the following shall be included in a future amendment to Section XVII of the Fremont County Subdivision Regulations:

Criteria or factors for consideration by the BOZA in granting or denying a request for variance:

- 1. Such relief may be granted only if there is no substantial detriment to the public good;*
- 2. Such relief may be granted only if it will not substantially impair the intent and purpose of the regulation.*
- 3. The property owner shall clearly demonstrate that peculiar, exceptional physical conditions or topography of the property, or the particular physical surroundings make the literal enforcement of one (1) or more of the regulations impractical, create exceptional, particular and undue hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money.*

SECOND

Mr. Alsop seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (5 of 5)

7. ADJOURNMENT

Chairman Sandoval adjourned the meeting at 5:21 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE