

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
SEPTEMBER 5, 2012**

MEMBERS PRESENT

Dean Sandoval, Chairman
Daryl Robinson, Vice Chairman
Steve Smith
Larry Baker
Mike Krauth, Jr.
Joe Lamanna
Byron Alsup

STAFF PRESENT

Bill Giordano, Planning Director
Marshall Butler, Planning Coordinator
Vicki Alley, Planning Assistant

MEMBERS ABSENT

None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- a. August 7, 2012 Planning Commission Meeting

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

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

Request approval of a proposed **amendment to the Sketch Plan and Exemptions Sections of the Fremont County Subdivision Regulations.**

REPRESENTATIVE: Department of Planning & Zoning

7. ADJOURNMENT

a. **MASTER PLAN WORKSHOP**

Continue with review of the Master Plan

1. CALL TO ORDER

Chairman Dean Sandoval called the meeting to order at 4:00 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 September 5, 2012 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Daryl Robinson moved to accept the September 5, 2012 Fremont County Planning Commission Meeting agenda as written.

SECOND

Mr. Larry Baker seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (7 of 7)

4. APPROVAL OF THE AUGUST 7, 2012 PLANNING COMMISSION MEETING MINUTES

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

MOTION

Mr. Steve Smith moved to accept the August 7, 2012 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Byron Alsup seconded the motion.

Chairman Sandoval called for a roll call vote.

Mr. Baker	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Alsup	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Lamanna	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. Robinson	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain

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

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

a. REQUEST: AMENDMENT TO FREMONT COUNTY SUBDIVISION REGULATIONS

Mr. Bill Giordano, Fremont County Planning Director, requested approval of a proposed amendment to the Sketch Plan and Exemptions Sections of the Fremont County Subdivision Regulations.

Mr. Giordano summarized the proposed amendment and answered questions from the Planning Commission. The amendment is primarily to make the language in the Subdivision Regulations more consistent with the Zoning Resolution which was amended earlier this year. Also, many of the procedures that have been followed as a matter of policy are now written into the regulations. Mr. Giordano highlighted the significant additions and changes to the Planning Commission. In the current regulations, a Sketch Plan is required if the

subdivision is to be developed in phases or is to contain multiple land uses. This amendment adds a third criterion, if the subdivision is to contain multiple filings. The intent of a Sketch Plan in the current regulations is to evaluate feasibility and design characteristics at an early stage of a proposed subdivision. The applicant comes in with a concept and the Planning Commission gives a stamp of approval. The applicant is put on notice at Sketch Plan submittal of any “red flag” issues, similar to the items discussed at a pre-application meeting. Mr. Giordano noted that under the present regulations, the submittal is required thirty (30) days prior to the Planning Commission meeting. The amendment changes this to twenty-four (24) days to make the timeframe for processing the application shorter.

Mr. Giordano highlighted a change to procedure if the applicant presents a significantly different proposal at the Commission meeting than was submitted in the application to the Department. In this case the Commission shall continue the application to the next meeting and request a Department review of the proposal. That can delay the project, but it is not fair to the Commission to have a request for approval of a proposal that the Department has not reviewed.

Chairman Sandoval asked if continuation is the same as table.

Mr. Giordano answered that they are the same.

When Mr. Giordano discussed paragraph C Required Reports, Studies and Notifications, he asked the Planning Commission if enough information is being required for topography, geologic hazards, radiation hazard, wildfire hazard, and wildlife impacts (*Subsections 3 through 7*). The proposed requirement is for the applicant to make a statement regarding these things, or note that none of the hazards exist. The thinking is that the applicant needs to be aware of these items, some of which could be crucial enough to make or break a project, and they will be required to address them in more detail at the Preliminary Plan stage. We do not intend for them to spend a lot of money on reports at Sketch Plan time because it is only a concept. Is a statement enough, or should the applicant address the effects of the geologic hazards, etc.?

Chairman Sandoval asked if the intent is to notify the applicant that these items may need to be in more detail at the Preliminary Plan stage.

Mr. Giordano answered that was the intent. He asked if the Planning Commission would feel comfortable approving a concept if the applicant is notified of those items. (*instead of having more information provided.*) Mr. Giordano pointed out that in paragraph C, subsections 8 through 13, more information is required because some of those items are more critical and would have more impact.

Mr. Alsop asked if there should be any requirements in the Sketch Plan regarding type of roads, road access, etc., or is this too early in the process?

Mr. Giordano answered that the applicant will have that information. The Sketch Plan will be a general layout of the lots. Those requirements are addressed in Section B Sketch Plan Drawing Requirements.

Mr. Robinson suggested that the proposed street surface materials be added to the requirement for street layout.

Mr. Joe Lamanna asked if the Sketch Plan regulations should have any requirements about stormwater management.

Mr. Marshall Butler, Planning Coordinator, responded that something could be mentioned so the applicant would be aware, but this stage is too preliminary to submit a lot of the information. Size of structures wouldn't be known, for example.

Mr. Giordano stated the applicant won't even know the exact location of the roads at this stage. From a concept standpoint, stormwater won't be a real issue for them at this stage. At Preliminary there is no question this should be required because then they would be determining their final designs, the locations of the roads, etc. Mr. Giordano suggested that drainage (*rather than stormwater*) be added to the requirement that discusses streams, lakes, topography and vegetation. Topography in most cases dictates drainage.

Mr. Robinson noted that the applicant will know about the soil types, but how would they address surface water?

Mr. Lamanna suggested adding oil and gas to the requirement for documentation to verify ownership of mineral interest for the subject property. Those are separate interests.

Mr. Butler said he thinks in statute they consider them all the same. The Department does. If someone presents us with a deed that has a severed oil right, we require notification.

Mr. Giordano noted that the requirement will be a notification.

Mr. Lamanna stated that technically a mineral right is different from an oil and gas right. The oil and gas rights don't go with the mineral rights, they are separate. Maybe that is a question for Ms. Jackson, Fremont County Attorney.

Mr. Giordano moved on to Section XVII of the proposed amendment. "Exemption" is related to subdivision regulations and "variance" is related to zoning, so that is why the language has been changed in this section. He introduced a change to the heading of this section, to read Exemptions / Hardships & Planned Unit Development (PUD). He discussed with Ms. Jackson the reason, which is that under the subdivision regulations, an Exemption is also a three lot Minor Subdivision, Lot Line Adjustment, etc. An applicant can request a waiver of the subdivision regulations. This is different from the variance procedure in the zoning resolution.

Mr. Butler noted the way the statute reads, the Commissioners would have the right to grant an exemption from the subdivision regulations, but it doesn't give them the right to grant a variance.

Mr. Krauth asked if there is a definition of the term "substantial detriment" in the subdivision regulations. It leaves room for open interpretation, particularly to the term "the public good."

Mr. Giordano answered no, it would be difficult to define it.

Mr. Alsup noted this kind of language gives the Board some latitude. They are elected to make these hard decisions, and this gives them some room to move around.

Mr. Giordano stated that the proposed language tightens up the latitude compared to what is presently in the subdivision regulations.

Chairman Sandoval asked if Ms. Jackson has reviewed the proposed amendment.

Mr. Giordano answered yes.

Chairman Sandoval asked if the Commissioners have had a chance to give any input.

Mr. Giordano answered no.

Chairman Sandoval asked if there was a Sketch Plan application fee in the proposed amendment.

Mr. Giordano answered the fees are not in the regulations. The fees are done by separate resolution, and we are not proposing to change the fees at this time.

Mr. Butler stated that with the parameters for having to do a Sketch Plan, the last few subdivisions we have had weren't required to have a Sketch Plan. The criteria that require a Sketch Plan are phasing, more than one zone district, and multiple filings, which could be phasing too. Another reason for Sketch Plan is for peace of mind, before jumping into the Preliminary Plan where all the money is spent because that is where you get into the detailed reports. If the developer has a good idea of market value at the end of the subdivision, they don't bother with Sketch Plan. We probably haven't had a Sketch Plan submittal in seven or eight years.

Mr. Giordano noted that during the pre-application meetings, many of these items are discussed. Sketch Plan approval does give a commitment by Planning Commission that they agree with the concept.

Mr. Smith asked why a Sketch Plan cannot be resubmitted for the same property within two (2) years of the date of denial by the Board. Why would we throw such a roadblock up?

Mr. Giordano answered in the past the applicant would make an insignificant change and re-submit, hoping a member of the Board would change their mind and the application would get approved. The Department feels that this is a waste of time and effort since it does not change the reasons why it was disapproved in the first place.

Mr. Smith said he has a problem with government putting up roadblocks. I would think that if someone is told they have certain things to do, they should be able to come back in no more than six months. Why would you require two years?

Mr. Giordano asked why the Planning Commission would want to hear the application again. If you denied the application for specific reasons and the applicant comes back in with the same application that didn't change any of the items that you denied it for, why would we want to keep wasting our time on the same application over and over?

Mr. Smith answered mainly because that is what you are paid for. It seems to me it would be better for it to come back fresh, rather than making the developer wait for two years. Two years is a long time to put something on hold.

Mr. Alsup commented that if they haven't made any substantial change in the application, the staff would have to go through it all again, it would seem to be a waste of our resources to do that.

Mr. Smith noted that the applicant has to pay a review fee every time. I would think they would want to get it right the next time, because money talks. Maybe we should increase the fee every time. It seems to me we are trying to block progress.

Mr. Giordano noted that if they do make a significant change they can re-submit sooner.

Mr. Smith asked if they can resubmit as long as they change that reason.

Mr. Giordano explained if you are going to deny, you are going to have reasons for the denial. If the applicant addresses a substantial reason, and makes substantial changes to the application, then the item will come back to the Planning Commission.

Mr. Smith asked why anyone would resubmit like that (*without changes*).

Mr. Butler commented that if there is a neighborhood objection to the application, it would be to wear out the neighborhood, because it costs them to come back to fight the proposal each time.

Mr. Smith was satisfied with the explanation. He didn't understand that if the applicant made the change, then they could resubmit. He asked who decides what a substantial change is?

Mr. Giordano answered the Department would, however we would consult with the Board, attorney, etc if we weren't sure.

Mr. Butler noted that if the application got through the Department, the Planning Commission would have an opportunity to decide if it was substantial or not.

Mr. Smith said my worry is that it won't get back to us.

Chairman Sandoval asked the Planning Commission members if they agree to leave numbers 1 through 7 under Studies and Notifications as just a matter of notification (*rather than requiring a report or evidence*). The members agreed that would be adequate.

Mr. Lamanna raised a question about the requirement "Report to evaluate previous surface and underground mining activities for the subject property and the potential for mining activities on the subject property." What about mining in the vicinity of the subject property? You could have a subdivision go in next to a mining property or a mining permit, a neighbor. One of the things we have been talking about in the Master Plan is buffers. Do we want to know if there is mining activity in the area? We could require a survey of neighboring properties that have the potential for mining or other industrial activities.

Mr. Butler stated, with regard to the potential for mining activities, statute requires a report at Preliminary Plan that if there are resources underneath the surface, they have to ensure the County that the improvements that will be made to the surface through their project will exceed the value of the mineral below. Then if the subdivision is approved, someone is not going to come back and say I have the severed mineral rights and we are going to mine and tear up your subdivision. With regard to the first requirement, "Report to evaluate previous surface and underground mining activities for the subject property", you make a valid point.

Mr. Giordano pointed out that requirement is for a report containing two things: underground mining activities and potential mining. The intent is if there was previous

mining, there is concern about subsidence and the mineral resource. The requirement should be for two separate reports.

Mr. Lamanna agreed that would take care of his concerns.

Chairman Sandoval asked Mr. Butler to define “subsidence” in this context.

Mr. Butler explained that in a coal mine, many times the roof of the mine becomes unstable and it will eventually collapse, because once the coal is exposed to air, it starts to deteriorate and break down.

Mr. Lamanna mentioned that some of the holes can become, in the dramatic sense, big. If I was buying a property, and I knew there was mining activity in the area, I wouldn’t just look on my lot, I would look around my lot too. I would want to know if there was an issue 500 feet or even 1000 feet off the lot.

Mr. Butler added that you might want to know the time period it was mined and the depth that the vein ran.

Mr. Lamanna said if you found there was mining activity there, you would try to figure out if the mine was back-filled, and how it was mitigated.

Mr. Butler noted that a possible mitigation method would be to set piers down to substantial bedrock rather than a standard foundation for the construction. There are mitigations as long as you understand what the issue is.

Mr. Lamanna stated you wouldn’t want the subdivision to put all its stormwater into the area where there was underground mining activity. That could accelerate the subsidence. It would be to the applicant’s benefit to know if that activity was in the vicinity of the subdivision.

Mr. Giordano suggested changing the paragraph to read “Report to evaluate previous surface and underground mining activities for the subject property.” and “Report addressing the mineral resources that might affect the subdivision.” At this stage, we want to make them aware that there may be a mineral resource sitting under the property they want to subdivide.

Mr. Krauth asked who would prepare this report.

Mr. Giordano answered engineers or geologists.

Mr. Butler said that would be the best, although we don’t require that at Sketch Plan. Sketch Plan is to make the applicant aware of red flags before they spend the money at Preliminary Plan. When it comes to Preliminary Plan, we do require either an engineer or a geologist to prepare the reports, with credentials to back what they are saying.

Mr. Robinson commented that it behooves the applicant to be as informed as possible, but I think it is excessive to require layers and layers of requirements on a very early concept. All these things are going to be exposed during the process.

Mr. Giordano said we could end up discouraging people from even doing the Sketch Plan if we make it too difficult.. Maybe instead of a report, we should just require them to provide us the map we have in our office and overlie their subdivision. We want to raise red flags, but we really don’t want them to spend a lot of money to solve the problem at this stage.

Mr. Robinson agreed, because a report is going to cost some money to prepare, even if it is a preliminary report. It is incumbent upon the applicant to become as knowledgeable about his property as possible. If they know about the mining, they reveal it to the best of their knowledge.

Mr. Krauth said Mr. Robinson brings up a good point. The whole intent of a Sketch Plan is to let someone bounce the idea off the office of their proposed later-date application for a subdivision.

Mr. Giordano said the applicant would be bouncing the idea off the Department, the Planning Commission and the public.

Mr. Krauth asked if we could simplify the process to where all the points in this are viewed, weighed, and measured by the applicant who does the Sketch Plan, and uses these for the sketch.

Mr. Giordano noted that there are three criteria that make a Sketch Plan mandatory, but the applicant has the right to come in and pre-meet with us. These same items could be discussed with them in a pre-meeting. If the criteria are not met, they don't have to submit a Sketch Plan application.

Mr. Butler noted that multiple land uses will also be a zoning issue, which does become discretionary, so it is to the developer's benefit to come in with a Sketch Plan.

MOTION

Mr. Alsup made a motion to approve the proposed amendment to the Sketch Plan and Exemptions Sections of the Fremont County Subdivision Regulations, with the following changes:

The following requirements were modified (shaded ~~striketrough~~) to read as follows:

IV. SKETCH PLAN REQUIREMENTS

B. SKETCH PLAN DRAWING REQUIREMENTS:

11. A lot and street layout indicating general scaled dimensions to the nearest foot **with a note specifying the type of roadway surfacing proposed.**

C. REQUIRED REPORTS, STUDIES AND NOTIFICATIONS:

3. **Drainage**, streams, lakes, topography and vegetation affecting the proposed subdivision or a statement that none exist.
11. **Report to evaluate Identify previous surface and underground mining activities for the subject property.**
12. **and Identify the potential for mining activities on the subject property.**

XVII. VARIANCES EXEMPTIONS / HARDSHIPS & PLANNED UNIT DEVELOPMENT (PUD):

SECOND

Mr. Robinson seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (7 of 7)

MOTION

Mr. Alsup made a motion to have the County Attorney, Ms. Jackson, consider if oil and gas should be added to the mineral discussion on page 10 of the proposed amendment. If she agrees that it should be added, we will do that, and if not we will leave it alone.

SECOND

Mr. Robinson seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (7 of 7)

7. ADJOURNMENT

Chairman Sandoval adjourned the meeting at 5:09 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE