

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
OCTOBER 4, 2011**

CHAIRMAN DEAN SANDOVAL BROUGHT THE OCTOBER 4, 2011 MEETING OF THE PLANNING COMMISSION TO ORDER AT 4:04 P.M.

MEMBERS PRESENT

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

STAFF PRESENT

Bill Giordano, Planning Director
Marshall Butler, Planning Coordinator
Donna Monroe, Planning Assistant

MEMBERS ABSENT

Byron Alsup, Secretary

4. CALL TO ORDER

5. PLEDGE OF ALLEGIANCE

6. APPROVAL OF AGENDA

7. APPROVAL OF THE AUGUST 2, 2011 PLANNING COMMISSION MEETING MINUTES

8. DISCUSSION ITEMS

Discussion of any items or concerns of the Planning Commission members

9. DISCUSSION REGARDING THE PROPOSED AMENDMENT TO THE FREMONT COUNTY ZONING RESOLUTION

Request approval of a proposed amendment which would add the following regulations to the Zoning Resolution:

1. General Provisions:
 - i. Definitions
2. Procedures for Amendments, Supplements, Changes, or Repeals:
3. Application submissions for Zone Change, Conditional Use Permit, Special Review Use Permit, and Commercial Development Plan:
4. Zone Change Requirements for Classification # 1:
5. Zone Change Requirements for Classification # 2:
6. Conditional Use Permits and Special Review Use Permits:
7. Commercial Development Plan:
8. Temporary Use Permits:

10. ADJOURNMENT

11. PLANNING COMMISSION WORKSHOP

- General Master Plan discussion.
-

1. CALL TO ORDER

Chairman Dean Sandoval called the meeting to order at 4:04 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 October 4, 2011 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Steve Smith moved to accept the October 4, 2011 Fremont County Planning Commission Meeting agenda as written.

SECOND

Mr. Daryl Robinson seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

4. APPROVAL OF THE AUGUST 2, 2011 PLANNING COMMISSION MEETING MINUTES

Chairman Sandoval asked if there were any changes, additions or corrections to the August 2, 2011 Fremont County Planning Commission Meeting Minutes.

MOTION

Mr. Daryl Robinson moved to accept the August 2, 2011 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Larry Baker seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

5. DISCUSSION ITEMS

Chairman Sandoval stated that he would like to begin the “Discussion Items” of the agenda with a brief presentation he prepared for today.

Over the past couple of weeks I have discussed some of this presentation with most of the Planning commissioners. I ask, and thank you for your continued indulgence as I continue on.

As many of you know, at the last Planning Commission meeting on August 2nd, it was decided by the Planning Commission to include an “open” public comment item for future Planning Commission meeting agendas. However, since the issue raised was not included in advance on the posted agenda for the August 2nd meeting, the Planning Commission’s decision is not valid.

This information was brought to my attention by the County Attorney, Ms. Jackson, after she reviewed the minutes from the August 2nd Planning Commission meeting. Ms. Jackson is here today to provide any needed additional information regarding this issue once I conclude my presentation.

The Planning Commission, today, still has the option of addressing the need for an “open” public comment item on the monthly Planning Commission agenda. If this option is chosen to

address, it would then be posted on next month's agenda as an item to vote upon. Since it would be on the posted agenda, the Planning Commission, as well as the general public, would have an opportunity to prepare any applicable comments regarding this issue.

But, before we proceed with a possible discussion of the need to have "open" public comment as a regular agenda item, please allow me to give everyone here a history of how public comment has been addressed at Planning Commission meetings in the past.

I have been on the County Planning Commission since November, 1997. I am the fourth chairman of the Planning Commission during this period of time, a position I have held for 2 years. Public comment has always been allowed per the desires of the Planning Commission and the direction of the Chairman. But, comment has always pertained to agenda items and not to an "open" format. It has been respectfully requested of the public speaker to keep his presentation brief and relative to the agenda item, as well as avoiding redundancy. I have often seen a Chairman ask for a show of hands from the audience to assist the Planning Commission with determining the public sentiment regarding an agenda item. Public comment has never been denied.

The County Planning Commission is an advisory council to the Board of County Commissioners. A Planning Commissioner is appointed by the Board of County Commissioners. The Planning Commission hears planning and zoning requests as determined by the Planning and Zoning Department or by the direction of the County Commissioners. The Planning Commission, thus, is not an agenda-creating body. The County Commissioners are not obligated to mirror our votes, but only to take our decisions and comments under advisement.

As Chairman, I am in favor of public comment that pertains to established agenda items as determined by the Planning and Zoning department. I am not in favor of "open" public comment that would allow comment that does not pertain to items that the Planning Commission, or the remainder of the public, have not been able to prepare for.

I propose that if an individual, or an organized group of individuals, would like to address the Planning Commission, then they should do this via the channels that the Planning and Zoning Department has established for requests that relate to planning and zoning. This established method allows the Planning Commission and the public to properly prepare of whatever issue is presented.

The Planning Commission is a volunteer body. We have full-time occupations and our volunteer time is valuable. Thus, being a Planning Commissioner is not a full-time or paid position. This is why we need to be presented only with those items that are within our means to address and this also means having a structured presentation that follows guidelines the Planning and Zoning Department provides.

Open public comment, as a regular agenda item, I feel, would be counter-productive for what we, as Planning Commissioners, have the time to provide for formal agenda items.

Besides agenda items, the Planning Commission has also been given the responsibility of developing the Master Plan. Let me read a passage from the Fremont County Planning

Commission By-Laws, which were approved and accepted in 2007. This falls under the category, Powers, Functions and Responsibilities:

Master Plan:

It is the duty of the Planning Commission to make and adopt a Master Plan for the physical development of the unincorporated territory of the county. When the Planning Commission decides to adopt a Master Plan, the Planning commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a Master Plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan.

I would now like to summarize what has happened with the Master Plan process so far and what is planned for the immediate future.

Two years ago the Planning Commission began the review process of the Master Plan, which was last reviewed and updated in 2002. The task of coordinating this review was given to the County Engineer, Don Moore. The Planning Commission at that time, by consensus, chose to pursue the review process without the county Engineer, in hopes of eventually securing a professional planning consultant to guide the Planning Commission through the review process, which includes public comment.

Over the past two years, the Planning Commission has experienced numerous changes due to member resignations, non-reappointments, or city council representative changes. There have been at least six changes during this period of time. I am the only Planning Commissioner that has been on the Commission for more than two years. Hopefully, with some continuity in place, the Planning Commission can now concentrate up on the Master Plan review process, which I will now outline for you.

Marshall Butler, Planning Coordinator from the planning and Zoning Department, has provided the Planning Commission with a worksheet process to facilitate our review of the Master Plan. What we hope to accomplish with this initial review is to develop what we are calling a "Scope of Work" needed for the comprehensive Master Plan review. The "Scope of Work" will enable us to quantify anticipated modifications to the existing Master Plan. By quantifying anticipated needs, the Planning Commission, the Department of Planning and Zoning, and the Board of County Commissioners will be able to determine the level of professional consulting necessary for the comprehensive review, and thus be able to budget for this need accordingly.

For those of you familiar with the current Master Plan, we are currently reviewing chapters 4-6, which summarized; pertain to Goals, Objectives, Planning Districts, and Implementation. We consider chapters 4-6 to be the heart of the Master Plan, thus our initial need to do a worksheet review of these chapters.

Chapters 1-3 consist of introductory information and demographic data that needs to be updated. We are currently using a demographic profile prepared by the Southern Colorado Economic Development District. This profile, generated over the past year, has some useful, updated demographic data for Fremont County.

The worksheets developed by Mr. Butler are being summarized in a pie chart format for the Planning Commission to review via a workshop process. I anticipate that it is going to take a number of workshops by the Planning Commission to develop a "Scope of Work". Because of this, it is quite possible that the formal public input process will not occur until mid 2012 or later. The public should then expect numerous cycles of public input and Master Plan drafts before the final Master Plan is adopted by the Planning Commission.

I am respectfully requesting your patience while the Planning Commission attempts to diligently complete this initial review process. The Master Plan is not being rewritten or changed during this review process. Please continue to compile relevant Master Plan comments that we can utilize later on during the public input phase of developing an updated Master Plan. This is not to say that we do not welcome input from you at this time, but drafts and specific changes proposed by you may be too specific or voluminous to utilize at this time. Please look forward to an organized process being developed to obtain relevant information from the public for the Planning commission to consider.

Chairman Sandoval asked if there were any comments or questions.

Mr. Joe Lamanna stated that his only comment is that Chairman Sandoval summarized everything very well.

Mr. Steve Smith stated that he thinks the main thing to get across is that the Planning Commission will take input; we just need to have time to get through the Master Plan as we go and we welcome the public's input. He thinks it is very necessary; the public is much more in tune with what is going on in their area and he welcomes what they have to say. He thinks what the Chairman said is correct in that first the Planning Commission needs to get through the process and then we welcome everything.

Mr. Daryl Robinson stated that he would like to withdraw the motion to put the standing agenda item (public comment) on the monthly agenda. His impetus was to allow the public to be heard but as the Chairman stated, it needs to be in a constructive and organized way. His motion was made from the viewpoint of the City Council which is a legislative body similar to the County Commissioner's, not an advisory commission as we are on this Board. Therefore, he thinks that it is not appropriate to have a standing agenda item so he would like to formally withdraw it.

Mr. Smith asked what the motion was.

Mr. Robinson stated that it was to put "open" public comment as an item on the agenda which violated the procedural aspects of it.

Mr. Smith inquired if this stops any comments. He stated that we want to be open and allow comments. He inquired if there is another process that the Commission needs to go through. How do we do it properly? He strongly encourages input, not necessarily on the Master Plan but the public should be allowed to tell us what's on their mind.

Mr. Robinson stated that he agrees but as the Chairman stated that the public has never been restricted from giving their input; even on items that are not necessarily on the agenda; like it was reflected in the minutes from last August. This is a more formal situation where we have before had a more informal agreement to take public input even if it wasn't relevant to or pertaining to the agenda items. He doesn't think that there is a formal action that needs to be

taken. As the Chairman said, in his fourteen (14) years, public comment has always been taken. The official procedure does not need to be implemented.

Mr. Lamanna stated that he has a question about that because there have been a couple of incidences when he has received some information from private citizens; he has sent it out in email form. Is that proper procedure; to send it out to all of the Planning Commission members to make sure that everyone is seeing the same thing?

Chairman Sandoval stated that what is trying to be established as policy is to have the public present their information to the Planning and Zoning Department. That way Planning and Zoning can document that they received the information and make sure that each one of the Planning Commission members receives the same information. It should not be individually our responsibility to make sure that the information is distributed.

Mr. Robinson stated that the information that has been given to them tonight is email documentation of several weeks of comments. He has been getting follow up with electronic emails also so he has printed and electronic messages.

Chairman Sandoval stated that they all received an email yesterday evening from General Maye and from the heading it looked like it was sent first to the Department of Planning and Zoning and then they automatically forward those items to the members.

Ms. Monroe, Planning Assistant, stated that the email was sent by General Maye to "Comments" which has each of the Planning Commission members, the Director, the Coordinator, and the two (2) Planning Assistant's email addresses in it.

Chairman Sandoval stated that unless it becomes problematic and they start getting overwhelmed by a bunch of information then they don't necessarily need to filter the information.

Ms. Monroe stated that in instances like Mr. Lamanna just experienced, if someone is having problems with their computer, the Department doesn't know if everyone has received the information.

Chairman Sandoval used General Maye's email as an example; he didn't receive that email before he left his place of work and then when he opened up his computer at home he had the same email with the same address. He assumed that since it was past 5:00 pm that there was an avenue to send this material to them.

Ms. Monroe stated that "Comments" was not set up for people to email random information to the Planning Commission members, nor for the general public to get individual member's email addresses. The comments link has been discontinued so that all comments will now come to the Department and we will distribute the emails to the members.

Chairman Sandoval stated that he would like to address the issue of the public having a time to speak. What he tried to portray and what he just read was that we have never had an issue of unsolicited comments or items that were not agenda items. The Planning Commission meetings have never been used as a place for people to come in and make comments as a sounding board. It is probably established that way because it is practical, we don't have to deal with information

that we're not prepared for. It's the same kind of consideration we ask for when Planning and Zoning sends us information. A number of years ago we would receive our packets from Planning and Zoning with only one weekend between the time we received our packet and the Planning Commission meeting. There was a request made to the Department to get us our planning packet earlier so that we, as working people, had two (2) weekends to go through the agenda. In the past there were some pretty large packets full of information and it took a long time to go through them. This has never been an issue before because we are here for one purpose and that is to advise the County Commissioners on the existing agenda.

Master Plan has obviously been an issue to make comments about but we are developing a process so we can start pulling in that information and keep it organized. If we start receiving a lot of information, many of us are going to build up a stack of stuff that we aren't going to be able to find later on. There will be a time that we are addressing specific parts of the Master Plan where we will have this information readily at hand that has been provided to us by public input.

Mr. Robinson stated that with regard to his time on the City Planning Commission, they did not have a standing agenda item for "comments" that were not pertaining to the specific agenda. This is more in line with the established policies and procedures that the City uses and where he made the motion was more about the Council. They are not the same type of body.

Chairman Sandoval inquired if the discussion could be laid to rest.

General Maye stated that first of all he is in violent agreement with a lot of what was just said. It never was the intent to have people come in here and talk about their neighbor's chickens and as he said in his email last night, the only intent was that it should be specifically only those items and he would have to give Commissioner Bell credit for talking this out with him. It should be only items that the Planning Commission has purview over, responsibility for. He thinks everybody is in agreement, and the Commissioners took a strong stand after it was challenged once, they were requested to take over oversight of it and they said "no". The Master Plan is under purview and responsibility of the Planning Commission. Now beyond that talking it through, what we are talking is scope and it's been narrowed a little bit. We were concerned that there wasn't going to be public comment about things on the agenda. There are the two kinds, the things that are on the agenda and items that aren't on the agenda. He got the sensing of the Commission that we will always have a chance for comment on the items on the agenda. Number two, the items not on the agenda, the only recommendation that he made was that it should be clearly delineated and restricted to items that are on the purview of the Commission, that being the Master Plan. There may be a little debate on the second items. You are responsible and the start point for all zoning and land use issues and if there are issues there, it may be appropriate to bring something up. He also said if there is a decision not to have the open one, he really sees both sides of that, just so there's an opportunity like if there's an issue that needs to be brought up, like the gentleman that brought up the milling and a couple of the members said "yeah, we ought to get up to speed on that," that's an important issue. That was a good input and it triggered some things that you thought needed to be looked into. That was just a simple request. However, arguing on the other side, he thinks they all got bit by an unsolicited input, even in the Board of County Commissioners where people rolled in that weren't on the agenda and actually made specific recommendations to remove two (2) respected members of the Planning Commission at that time. And because it wasn't on the agenda there was no one

there to answer that. Quite frankly, we've had a little review and a little discussion, there were fallacious charges made that shouldn't have been made. Unfortunately that was picked up by the staff and acted on; in fact they were kind of acting at the request to chastise those gentlemen and eventually they are gone. He understands the bad part of unsolicited items. He will go back to the beginning.

In violent agreement, just so we get a chance to make public comment on any issue before the Planning Commission. If there's something pressing that the public feels is being missed, such as the milling subject or something, he understands now that the public can submit information to the Planning and Zoning Department requesting such item be put on the agenda. That's all we ask and then it is up to the Directors judgment; is it pertinent, is it useful for your decision making. It would be the Directors decision and the person who submitted the request can be notified; no, this is out of our purview, it doesn't come under it. If that is allowed it can be as discussed at the last meeting; restricted to five (5) minute portions so it wouldn't take much of the time or energy or focus away from the tasks at hand which are multiple.

General Maye stated that the Planning Commission all have a lot of respect and support from a lot of the community. He regrets that the public comment issue got elevated this high. All they are trying to do is keep in front of them what the County has been good about. The Commissioners have always had the "open door" policy; they have always tried to adhere to all the principles. Not only the principles, not the legalities, but the principles involved in the Sunshine Act and to have it open and make sure that we are listening to the citizens and from all aspects. The idea that we have co-oped the attention when anybody can come to the meeting, anybody can put inputs in, but some folks chose to criticize us for legitimately putting legitimate inputs in because they didn't.

Again, I am in violent agreement, and we appreciate you listening and believe me we are here to support you and make sure every view point is heard from.

Mr. Krauth stated that just for clarification, we are not going to take public comment during the Master Plan workshop and number two; public comment will be invited for agenda items that are put on the agenda under a "Public Comments" section or under specific items like the CUPs, land use issues. In other words, with the Public Comments section, when we reach that after our review then at that particular time we will take public input but we're not going to get into the habit of taking random comments or during the workshop, because there is really no decision making process at this point. It is just a review of the actual document itself.

Chairman Sandoval stated that what he sees happening with trying to fulfill various forms of public comments is to actually have the group or individual go through the normal process like any applicant would if the item is related to a Planning and Zoning issue; it would go through Planning and Zoning. That way Planning and Zoning can determine whether or not it is actually relevant to issues that County Commissioners want us to address. Another suggestion is, say for instance an individual or group of individuals does not meet the parameters or the guidelines that Planning and Zoning has, then possibly we could suggest that the individual or group go to the Board of County Commissioners and ask for it to be an agenda item for the Planning Commission. The County Commissioners can determine whether or not it's an agenda worthy item. He doesn't know how the Planning Commission members, as volunteers and as entrée Planning Consultants, with full-time jobs, can possibly determine what an agenda worthy item

is. That's not really the role of the Planning Commission. He cannot be part of a Commission that is asking him for more work than he is already coming close to being able to do.

Mr. Krauth stated that his questions for clarification regarding that are directed at setting in place a procedure that is fair and firm to all. In other words, they as a Planning Commission shouldn't be in a position where they are making a discretionary decision of what agenda item is appropriate and what is not appropriate. That is not our task, what has been given to us under our appointment. It needs to be policy of the County so if that policy is challenged then that goes to a different level than the Planning Commission. We just review what is on the agenda and act accordingly. He doesn't think anybody on the Commission is opposed to or in objection to Public Comment but it needs to be done in a fair and firm fashion.

Ms. Jackson stated that she would like to make a point of clarification. There were some suggestions made to this Commission by citizens at the August meeting, that they should take formal action to add an item to all future agendas. The Planning Commission took a vote to add public comment as a permanent agenda item. That formal action and vote should not have happened because it is in violation of the Sunshine Law. Agendas must be posted and notice given to the public at least twenty-four (24) hours in advance of a meeting. The formal action taken in August is invalid because it violated that Sunshine Act. If you have the ability to put it on the agenda, it must be put it on the agenda and properly posted.

She asked Chairman Sandoval to give her the opportunity, since General Maye mentioned unsolicited comments and had sent information to the Planning Commission members, making certain accusations against her and bring up history that has been resolved for more than two years now. The information suggested that there was some kind of misconduct out there that hadn't been resolved. She thinks that she should have to opportunity to let you know that all of those accusations were resolved two years ago by the Office of Regulation Counsel, which did the investigation. There were two requests for investigation made about her, in respect to her license and practicing law. She was accused of criminal conduct and unethical conduct, fraud, dishonesty, acceptance of bribes, among other things. The only reason she was investigated was because of the East Fremont Alliance and the Tallahassee group; one or more of their members requested the investigation. This was not some independent thing that arose; it came from two citizen complaints. Ms. Jackson distributed a handout from the Colorado Supreme Court, Attorney Regulation Council website. When a complaint is made, it is investigated and then is referred to further, formal action, or is dismissed. These two complaints were investigated and were dismissed in the entirety. Ms. Jackson then discussed the obligations she has to the Planning Commission, as their advisor and attorney.

Chairman Sandoval inquired if there were any other comments, hearing none he stated that they would move on to the next item on the agenda which is the discussion regarding to the proposed Amendment to the Fremont County Zoning Resolution.

Mr. Giordano began the review of the Proposed Amendment to the Zoning Resolution by noting that the Board of County Commissioners requested that the Department remove the definitions of mine, mining operation and prospecting from the amendment and defer them to a later date. By deferring them to a later date the current definition of mining will not be changed.

Mr. Giordano noted that most of the amendment consists of adding procedures and processes that are currently in place and being used that are not part of the regulations. He also noted that many of the changes are to correct inconsistent language and requirements. He noted that many of the general procedures and processes that are repeated in numerous sections have been put into one section. He noted that he would be specific in his review for items that were new or ones that he felt needed discussion, however if there were any concerns with the item, interrupt his review at any time so they can address them.

Mr. Giordano noted that the reference to “commercial” in the definitions of Recreational Facility, Rural, Recreational Facility, Urban and Recreational & Outdoor Amusement or Amusement Park, is being requested to be removed. The reason is that whether it is commercial or not, does not change the impact of the use, which is what the Planning Department and Planning Commission evaluates when considering approval of an application. In addition, Mr. Giordano noted that the Department added a minimum 35 acre requirement to the definition of Recreational, Facility, Rural, which may or may not be acceptable. The reason for the requirement is that all previous applications have been greater than 35 acres, however after further consideration the Department is not sure it should be a requirement because this use is allowed only as an Special Review Use Permit, therefore we can require that the lot be capable to handle the proposed use which may not require a minimum of 35 acres. He noted that the Planning Commission should take specific action as to whether this should or should not be a requirement.

As to the Zone Change sections Mr. Giordano noted that the Department created another zone change application process. The reason for creating the second zone change application process was to separate residential zone changes from commercial zone changes. The reason for this is that many of the commercial zone change requirements should not be required for the residential zone changes, such as parking areas, buffering, lighting, signage, etc. By creating the two applications it will be clear as to what is required for each type of zone change. Again, many of the changes are clerical and made to eliminated inconsistent language and requirements.

Mr. Giordano noted that in the Zone Change # 2 classification the Department added a final grading plan requirement. The reason for this is to make sure that all stormwater runoff is diverted to a detention or retention pond, if one is required.

Mr. Krauth inquired if there is a definition for the “grading plan.”

Mr. Giordano stated that they didn’t create a definition as it is a part of the drainage plan requirements if a detention pond or drainage facilities (ditches) are required. It is required by the reviewing engineer if a pond is needed. Instead of the engineer having to make it a requirement as part of his review it should be required with the initial application.

Mr. Krauth stated that it doesn’t need to be complicated, it could be something like “plot shows grading plan which shows positive drainage away from structure within so many feet;” that way it’s simple.

Mr. Giordano stated that it is his understanding that the building code requires a slope from the building for a distance of ten (10) feet. What we want to know is how the storwater will get to the detention pond if required. He thought that it may be a good idea to define it so we don’t get

something we don't need. Another solution is to add the requirements to the drainage plan requirements since we don't need a grading plan for the entire lot. Mr. Giordano noted that he would provide the Planning Commission with some additional information addressing this issue prior to the next meeting.

Mr. Giordano then reviewed the Conditional Use and Special Use Review section. He noted that most of the changes in this section were to correct inconsistencies in language and requirements.

Mr. Lamanna asked about the term limit of three (3) years on the submittal of applications that start out in cessation. At the end of three (3) years, do they have to reapply?

Mr. Giordano confirmed that the applicant would have to reapply because things change in three (3) years.

Mr. Krauth inquired if that would include Conditional Use Permits (CUPs)?

Mr. Giordano confirmed that it does.

Mr. Giordano went on to state that the most significant change to the Commercial Site Development section was the name change from Site Development along with cleanup of the language and requirements.

As to the Temporary Use Permits (TUPs) which normally the Planning Commission does not review, the Board of County Commissioners specifically requested that the Department add a section in the regulations that allows an application to be approved administratively by the Department with certain requirements having to be met in order to allow it. He further noted that the applicant still has the option to go in front of the Board if they wish; they may want the free advertising of the event, as the Board meetings are televised.

In addition, the regulation will now allow the applicant a choice as to how notifications are completed. The applicant will be able to either send a registered notice letter or have their request letter signed by the agency, (which is what is currently required). A possible drawback to allowing a copy to be mailed would be that the agency will have a ten (10) day period of time to respond to the letter. If no response is received it will be treated as they had no comment. The applicant still has the option to go in front of the Board; the only benefit that he sees to that is that the event would get some free publicity because the meetings are televised.

Chairman Sandoval inquired as to what type of permit the Over the River Project will require.

Mr. Giordano stated that it will be a TUP.

Mr. Robinson inquired if because he serves on the City Council, which made a public statement in support of that project, will he need to recuse himself from voting on the TUP.

Ms. Jackson stated that if it comes to the Planning Commission he should probably disclose that information but he still could vote on it.

Mr. Giordano inquired if there were any questions.

Mr. Giordano stated that he did want to make it part of the record that the Department did receive some comments regarding the proposed Amendment which were provided to each of the Commission members. The first one received was from General Maye who provided a number of documents that had to do with the Walker issue and Ms. Jackson already addressed those and they have no pertinent relevance to this issue. He noted that the document that starts out with "EFA input re zoning resolution amendment" is all basically geared to mining, which is no longer being considered, at this time. Mr. Giordano stated that there are some items within the document that could be considered. One being the five hundred (500) feet notification distance, however it appears that it was only in relation to mining.

The Department also received a comment letter from Tina Phillips and her comments were regarding the definition of families and the type of fencing materials. The comments were more philosophical in nature and not specific to content.

There was also an email from Larry McGee who addressed basically the same issues (milling and mineral processing) that Mr. Alter had previously mentioned at the last Planning Commission meeting. Again, this has to do with the mining which will be discussed at a later date.

Mr. Robinson inquired as to how long the County Commissioners want to put the mining issues on hold.

Mr. Giordano stated that the County Commissioners have not set a time frame.

Mr. Krauth inquired about 8.15.4, are you just going to call it the three (3) year rule? Since the County Commissioners have asked us to table anything regarding mining, 8.15.4 could impact CUPs that have life of mine status. So should we table 8.15.4 at least in this application?

Mr. Giordano and the County Attorney both noted that it would be a conflict with the cessation requirement and it should be addressed or removed from the CUP/SRU requirement. The Department will review and provide the Planning Commission with additional information addressing this concern.

Chairman Sandoval asked if there was any public comment regarding the Proposed Amendment.

General Maye stated that he will withdraw all of what has the sensing of the Commission being superfluous and off target. He thought there was some connection because it was a case study of what can happen on the CUP. He will withdraw all of that. He would like to keep for your consideration and thought, if you want him to present it next week he can do that, it is the separation zone between residential communities and mining activities. The idea that just notifying property owners within five hundred (500) feet and then to have a large industrial operation or a large strip mine to move into an area and the idea that it doesn't impact well beyond five hundred (500) feet, he thinks that is something that needs to be looked at. He has stated before, one of the most pressing and most discussed issues in the County has been relationships between residential communities and mining activities. He thinks a lot of time has been spent that didn't need to be if the Commission or County Commissioners and so forth would step up and just define what constitutes a reasonable distance between already defined residential areas that have been approved by this Commission and the BOCC and a mining

operation. What is a reasonable distance there and what kind of buffering should be there. There is extensive language in the Master Plan now and in the zoning resolution that said all that should be considered extensively. Is it compatible? Is it going to affect property values? That is all in, so what you have is a way of guidance now. So that is the one area that he thinks, and he would be more than willing to help work on it. He will withdraw his input. He thought he got it in before it changed, but he will withdraw that input now and just resubmit that one specific item and maybe one (1) or two (2) definitions.

Chairman Sandoval stated to General Maye that he will have the opportunity to do the presentation to the County Commissioners.

General Maye stated that for just a quick closure, we have an agricultural zone that with a lot of guidance for it, we have a residential zone with a lot of guidance for it. If you will check, there is a thing about that thick (showed measurement with fingers) about what a residential developer has to do, what requirements he has to make and so forth. As Mr. Baker knows, they've been dealing with it down in Florence; there is a large book about oil and gas exploration and so forth. Whether it's good design or not, there is nothing really that addresses the biggest industry in the County which we fully support and hope it's successful but he thinks it stands to reason that there should be that same kind of attention about what level of control and what specific guidance should be on the mining industry. He is just asking for equal playing ground. It might be worth considering should there be a mining zone. There's an agriculture zone, a residential zone. Should there be a mining zone? There are lots of pluses and minuses because it might not be easy to designate ahead of time. He understands that, but just a thought on that line. He apologized for continuing discussion later because he really thinks they have run an extremely fair meeting, appreciates being heard and will be back to support in any way he can.

Mr. Robinson stated to General Maye that he doesn't see a specific distance mentioned. Is there a recommended buffer zone that he would like to see?

General Maye stated that there was a vast array of discussion in the past as the County attorney and an attorney representing several of our organizations, which he would really like to have the Commission respect those organizations because they have done an awful lot of due diligence study, they are some of the most knowledgeable citizens in the county and there have been different proposals. He thinks that would lead that up. He thinks it is great; there was some conservation by some people when the two (2) members were removed from the Commission. He stated that he knows that the separation out at Cotter is a big issue, with Tallahassee and Black Range it is certainly a big issue. He just doesn't want mining next to the residential properties in Penrose. He thinks the Commission needs to call in experts and really look at it. It's a little ludicrous to say that you're going to have a major industry or mining and only have people within five hundred (500) feet notified. That provision has been used to slip through some stuff.

Chairman Sandoval inquired about the distance of operation, is that even applicable?

Ms. Jackson stated that it is not.

Chairman Sandoval stated that whenever the mining issues come about, then that would be addressed.

Chairman Sandoval stated that another thing to look at is that we are doing the Master Plan review and that could very well be one of the items in the scope of work that needs particular attention and that will help us determine whether or not we can amend it..

Mr. Krauth inquired if the Commission needed to have a motion made to put “Public Comment” onto the agenda prior to a motion for recommendation to the County Commissioners regarding the Proposed Amendment.

Ms. Jackson stated that the Amendment item is already on the agenda. And, the Planning Commission has always invited public comment on any item that is on the agenda. Just because the Amendment is on the agenda doesn’t mean that you have to take action tonight if the Commission isn’t ready to take action. You can take formal action on the agenda, you’ve already invited public comment so you are at the decision making stage now. If you’re not ready to make a decision, you want to give it more thought, then you can save it for the next meeting.

General Maye stated that there were some other folks who were going to come tonight but they were lead to believe that the Proposed Amendment was not scheduled for public comment tonight and that it would be at the next meeting. So he would recommend that the Commission consider that.

Chairman Sandoval stated that all the Commission members are a little bit gun shy because we want to make sure we do things properly in terms of the public comment. It says here on the agenda “discussion” and it is a little vague.

Mr. Steve Smith stated that he doesn’t see any hurry in this item. Why not just table it until the next meeting, we can vote on it, and the people have the chance to come and comment on it. He didn’t see any controversy. He would like to just table it to the next meeting.

Mr. Robinson stated that he would be in support of tabling it and perhaps Mr. Giordano would not need to give the full presentation again. We can just hear the public comment and not spend as much time on this issue.

Mr. Krauth stated that he thinks the Board is relatively close to taking action but what we are wanting to do is support the public with proper notification and the opportunity so that it has time to be on the agenda, that way if members of the public do want to say something before we take action on it then we can shed that light to the public.

Mr. Larry Baker stated that the agenda does say “request approval” of the Proposed Amendment.

Mr. Krauth stated that he doesn’t have a problem with tabling the item if it allows enough opportunity for the public to comment.

Mr. Robinson inquired if there are issues coming forward that will be caught in between the amendment, will we be hurting anybody by putting it off?

Mr. Giordano stated that there is nothing pending at this time.

Mr. Lamanna stated that he would clarify two (2) things too because General Maye is bringing up the separate issue with the mining buffer vs. what is on for our approval of the zoning. There are two (2) separate issues. If General Maye is asking us to discuss that particular issue then that would be something as a separate agenda item.

General Maye stated that he would be very happy to have the buffer distance and the notification distance be discussed where it should be first strategically as you do the Master Plan. There is an underlying point here; he doesn't think anybody should be changing the result that the resolution ought to come out of strategic guidance for the Planning Commission as they develop the Master Plan to pre-empt it and change stuff which may be a big issue. He heard that we had the opportunity if they wanted to put it in as a separate subject for discussion on the agenda. He doesn't think that needs to be done yet unless something comes before the Board that brings it up again or somebody wants to start a mining activity somewhere. He thinks the logical sequence is; you all provide and it's your responsibility, not the staff's, but your responsibility to provide the strategic guidance on what you think are the (something) areas, that's carried out by following along the regulations and resolutions and there is some consummation that this was jumping the gun, trying to get ahead.

Mr. Robinson stated that he thinks that this ties in with the discussion regarding the definitions. He thinks they are all related.

Chairman Sandoval asked if there was anymore discussion; hearing none he stated that a formal motion needs to be made to table the Proposed Amendment.

MOTION

Mr. Robinson moved to table the decision regarding the Proposed Amendment until the November meeting.

SECOND

Mr. Baker seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

6. ADJOURNMENT

MOTION

Mr. Robinson moved to adjourn the October 4, 2011 meeting.

SECOND

Mr. Baker seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

Chairman Sandoval adjourned the meeting at 6:10 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE