

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
September 9, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on September 9, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Krenning, and Prior. Members absent: Commissioners Crescibene and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Mr. Bob Paulsen, Current Planning Manager**, explained that **Ms. Kimber Kreutzer, Planning Commission Secretary**, would be sending out an email each Friday prior to Planning Commission meetings, and encouraged the Planning Commissioners to contact Planning if they see an item on the agenda that might require other city staff to attend. **Mr. Paulsen** stated that if needed, arrangements could be made as late as 5:00 p.m. on meeting days to have a city staff representative available.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

There were no comments.

APPROVAL OF THE MINUTES

Chair Meyers asked if there were any corrections needed in the August 26, 2013 meeting minutes. Needing no amendments, **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Prior**, the meeting minutes were approved unanimously.

CONSENT AGENDA

St. John Parish Vacation of ROW

1. This is a legislative matter and public hearing to consider a request to vacate a public right-of-way within the St. John Addition and Hill Top Addition. The right-of-way to be vacated consists of a remnant portion of Truman Avenue that is no longer in use as a public street.

The subject portion of right-of-way does have public utilities within it and will need to be retained as a public utility easement. If the Commission recommends granting the request for vacation, Loveland Municipal Code Section 16.36.010.C.3 also calls for the Commission to recommend a form of ordinance to Council. The proposed ordinance is attached to this staff report as Attachment 3. City development review offices have reviewed this application and supports approval with the recommended condition.

Chair Meyers asked for a motion to approve the St. John's Vacation of ROW.

Commissioner Middleton moved to make the findings listed in Section VIII of the Planning Commission staff report dated September 9, 2013 and, based on those findings, recommend that City Council approve the requested vacation of public rights-of-way subject to the condition listed in Section IX, as amended on the record. **Mr. Middleton** further moved to recommend to the City Council the form of vacation ordinance attached to the staff report dated September 9, 2013. Upon a second from **Commissioner Dowding**, the motion was passed 5-0 with **Commissioner Molloy** recusing himself from the vote.

REGULAR AGENDA

Big Thomson Farms

2. This is a public hearing to consider a parcel-specific Comprehensive Plan amendment to amend the recommended land use category of property within the Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Residential District to DR-Developing Resource District.

Staff supports the requested Comprehensive Plan amendment and rezoning because information has been submitted to demonstrate that there are Economically Viable Mineral Resources underlying the site. CRS 35-1-305 (1) and (2), as well as Sub-section 18.52.040 of the Municipal Code stipulate that the City may not zone any property in a manner that interferes with the extraction of a commercial mineral deposit. At the time of annexation and initial zoning, a report was provided to the City indicating that there were no commercial mineral resources underlying the site. However, with changes in the market, the existing mineral resources have now been determined as economically viable.

Mr. Brian Burson, Senior Planner, addressed the Commission and explained that the item before the Commission was a proposed Comprehensive Plan and rezoning for the Big Thompson Farms Addition, tracts A and B, located northwest of Wilson St. and 1st Avenue. Tract A is currently zoned R1, and tract B is currently zoned DR—Developing Resources. The request asks for consideration of a parcel-specific Comprehensive Plan amendment to amend the land use category of the property from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Density Residential District to DR—Developing Resource District.

Mr. Burson stated that there are no uses by right in the DR zone. Certain uses that can be approved by Special Review include farming, greenhouses, garden supply, public utility, public parks, storm water detention areas, and extraction of commercial minerals.

Mr. Burson went on to explain that City Municipal Code 18.52.040 precludes the city from applying zoning to property in a manner that interferes with extraction of identified economically viable minerals. When the property was originally annexed back in the 1980's, it was determined that it was not economically viable to extract the minerals. However, with the change in the economy, the applicant has presented the city with an updated extraction report indicating that the minerals are now, in fact, economically viable for extraction. It was noted that mining has been ongoing in the adjacent area for many years.

The policies currently in the Comprehensive Plan specifically address issues related to "growth" and "development". The definition of growth and development does not include the extraction of minerals. Staff concluded that the rezoning findings in city policy either do not apply or have been already met.

Staff is recommending the approval of both the Comprehensive Plan Amendment and the Rezoning. **Mr. Burson** clarified that staff does not currently have a Special Review application, but anticipates one in the future if the requests are eventually approved by City Council. A Special Review requires a neighborhood meeting and allows for an appeal process.

Ms. Kim Lambrecht, Landmark Engineering, stated she is representing Big Thompson Farms. She reiterated that adjacent uses allow for mining at the site. She stated that Big Thomson Farms Addition consists of 302 acres and was annexed in 1979 with R1-Developing Residential, and DR-Developing Resource zoning. At the time there were no commercial mineral deposits found on site that could be economically extracted. Subsequently in 1979, tract A was subdivided and platted into a 108 unit residential subdivision.

In 1996, the city vacated the plat as an obsolete subdivision; however the original R1 zoning remained. Currently, the entire property is being used for agricultural purposes. Viable mineral deposits are located under the eastern 2/3rds of the site. Of this, approximately 15.26 acres falls under the portion of the site zoned R1, which does not allow for the extraction of minerals. The proposal requests 15.26 acres be rezoned from R1 to DR resulting in 15.93 acres zoned R1 and 32.91 acres zoned DR.

In order for the property to be rezoned, an assessment of the land use map of the Comprehensive Master plan was conducted. The rezoning is intended to "align" with land uses designated in the Comp Plan. The Comp Plan is intended to forecast desired development in the city, with an outlook of 15-20 years into the future. **Ms. Lambrecht** clarified that the applicant's plans are more interim in nature.

Future development, more in line with a typical urban development pattern in the 15-20 year time frame, will be assessed at such time an application is put forth.

Ms. Dowding asked if this particular property is rezoned to DR, would a Special Review be required to allow farming. **Mr. Burson** responded that typically when property is annexed into the city, there is an assumption, an operation of law, which states existing legal uses can

continue unless the city comes to an agreement with the landowner to do something different. **Ms. Judy Schmidt, Deputy City Attorney**, clarified that there are parts of the code that allow for legal, non-conforming use at the time of annexation.

Commissioner Prior asked that based on the proposal of tract A, why the line for the rezoning was drawn the way it was. **Ms. Lambrecht** responded that last fall, several core drillings were conducted across the site to determine the location of the economically viable minerals. **Mr. Prior** asked what the size of the mineral deposit was determined to be. **Ms. Lambrecht** replied that the exact size of the deposit wasn't entirely known, however future analysis with specifics would be included in the Special Review application.

Commissioner Krenning questioned why the applicant did not request the entire two parcels be zoned as DR. **Ms. Lambrecht** responded that she wasn't sure that option was completely analyzed as a possibility.

Mr. Molloy stated that he understood the need for mineral extraction; however he asked the applicant what the definition of "interim use" would entail. **Ms. Lambrecht** explained that the DR assignment would allow for a "holding pattern". She explained that extraction of minerals would not be long term, much less in fact than the timeframe outlined in the Comp Plan of 15-20 years. Following the extraction of minerals, future use would be evaluated for a longer, more permanent solution.

Mr. Molloy questioned if reclamation plans would be included in a Special Review application. **Ms. Lambrecht** stated that all reclamation plans would definitely be required in the Special Review application process. Reclamation plans would also be required in conjunction with applications to the state bureau of land mining.

Mr. Molloy went on to question if the minerals were not "viable" in 1980's, why are they considered to be so now. **Ms. Lambrecht** explained that not only are the minerals more cost effective to mine now; they are considerably higher in value.

Chair Meyer stated that given the fact that an elementary school is in close proximity, would the security screen provided around the site ensure the safety of students and children. **Ms. Lambrecht** assured the Commission that the highest safety standards would be imposed.

Mr. Middleton asked if any part of the site was located in the FEMA flood plain. **Ms. Lambrecht** stated that while it was close to the flood plain, the site itself was not.

Mr. Middleton asked for an explanation of the Special Review process, for the benefit of the audience. **Mr. Paulsen** stated that the Special Review is a process that an applicant needs to go through to allow designated uses to occur within specific zoning districts. The process is designed to ensure compatibility between uses. It allows the applicant to choose among the Special Review uses and apply to for permission to do those uses through the city. The process requires notification to surrounding neighbors, posting signs at the proposed sites, and a neighborhood meeting whereby the applicant and owner must attend the meeting and

describe the intended use. City staff then works with the applicant to either approve or deny the request.

Chair Meyers opened the meeting for public hearing.

Mr. David Hollingsed, 5241 Cedar Valley Drive, Loveland, CO stated that there are residences to the south and west of the property in question, and he is concerned what the parcels will look like both during the mineral extraction process, and after it is complete. He questioned what would happen if the applicant abandoned plans mid-way through the project. **Mr. Burson** explained that the concerns **Mr. Hollingsed** raised would be addressed during the Special Review process which would focus on screening, dust control, hours of operation, and land reclamation once the project is complete. In addition, mining plans must always include reclamation plans along with any application.

Ms. Schmidt added that the Mined Land Reclamation Board would not provide a permit for mining until a local jurisdiction has zoned and allowed the land for use.

Mr. Krenning stated that the Mined Land Reclamation Board also requires the applicant to post a substantial bond to ensure reclamation activities are completed, regardless of when the project stops.

Mr. Molloy questioned if the Special Review is a formality since the state can supersede decisions regarding mining. **Mr. Burson** replied that the city will still have discretionary power through the Special Review, and would have the ability to deny the Special Review request if deemed appropriate. **Ms. Schmidt** stated that in order to receive a permit to mine, the applicant must satisfy local requirements.

Ms. Francine Webb, 377 Rossum Drive, Loveland, CO voiced apprehension about the reclamation process. She expressed concern that mining would occur in close proximity to a public school. She asked what reclamation plans might be done, other than just filling the area with water. She questioned how reclamation plans might impact potential future development.

Mr. Burson responded that given his previous experience in working with mining applicants, every effort is made to ensure reclamation returns the affected area to a usable, environmentally friendly condition. He added that in recent years, the water board has added a condition, stating that if ground water is exposed during extraction activities, mitigation of ground water is required.

Chair Meyers pointed out that concerns about reclamation would need to be addressed during the Special Review process. He added that the gravel pits have been in place since before 1982.

Mr. Burson explained that the majority of the gravel pits in the area are in county jurisdiction and all permits were granted by Larimer County.

Mr. Krenning pointed out that currently there is approved gravel mining at the site, and the request is to only get approval to mine extra acres.

Chair Meyers closed the public hearing.

Mr. Brad Fancher, 6405 Windemere Rd, Loveland, CO addressed the Commission to respond to concerns raised at the public hearing. He shared that questions about reclamation would have to be addressed during the Special Review process. He added that any mining would be closely monitored by the Mined Land Reclamation Board. He confirmed that his application for mining would require him to be fully bonded prior to the start of mining activities. The bond is required for future payment for reclamation costs. He also stated that mining activities in the area have been ongoing long before the grade school was built.

Chair Meyers asked if development of previously mined property is typical. **Mr. Fancher** responded that yes, development after the fact is very common. He pointed out that mining of the gravel would be shallow, going down no more than 15 feet from the surface.

Mr. Molloy asked if the city recreation trail would eventually travel through the area being mined. **Mr. Fancher** stated that those plans were part of an ongoing negotiation with the land owner and the city.

Mr. Krenning again questioned if the applicant considered zoning both parcels as Developing Resource. **Mr. Fancher** confirmed the idea was considered, but in the end it was decided not to do so in case the property owner decided to pursue development in the future.

Ms. Dowding shared that she also wants thoughtful reclamation, and committed to advocate that effort when and if the request comes under Special Review. She shared that she would be in support of the request.

Mr. Middleton communicated that he has been involved in the permitting and bonding process for mining in the past, and stated that it is very strict and arduous. He imparted that he is also in support of the request and feels it would be a good use of the land.

Mr. Molloy stated that given the strict Special Review and bonding process, he is comfortable with the request and will be supporting it.

Mr. Prior said he shared concerns regarding the reclamation process, however, he felt the Special Review process would help address and mitigate fears.

Mr. Krenning explained that he had no issue with the project. He added that the applicant has a strong record for mining in the area. He voiced support the request.

Chair Meyers agreed that the applicant has a solid track record for mining in the area, and is a long term resident of Loveland. He stated he would support the request.

Chair Meyer asked for a recommendation on the motion.

Ms. Dowding moved to make the findings listed in Section VI of this report dated September 9, 2013; and, based on those findings, recommend that the Future Land Use Plan, incorporated into Section 4.0 of the 2005 City of Loveland Comprehensive Plan, be amended for Tracts A and B of Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR). **Mr. Prior** seconded the motion. After **Mr. Fancher** verbally agreed to accept the conditions, or no conditions, the motion was approved unanimously.

Mr. Middleton moved to make the findings listed in Section VII of this report dated September 9, 2013; and, based on those findings, recommend approval of the rezoning of the land described in Attachment # 4 of this report from R1-Developing Low Density Residential District to DR-Developing Resource District. **Ms. Dowding** seconded the motion. After **Mr. Fancher** verbally agreed to accept the conditions, or no conditions, the motion was approved unanimously.

ADJOURNMENT

Commissioner Middleton made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by: 
Buddy Meyers, Planning Commission Chairman


Kimber Kreutzer, Planning Commission Secretary

