

**MINUTES OF THE REGULAR MEETING OF THE
ARAPAHOE COUNTY PLANNING COMMISSION
TUESDAY, FEBRUARY 19, 2019**

ATTENDANCE	<p>A regular meeting of the Arapahoe County Planning Commission was called and held in accordance with the statutes of the State of Colorado and the Arapahoe County Land Development Code. The following Planning Commission members were in attendance:</p> <p>Mark Brummel; Jane Rieck, Chair; Richard Sall, Diane Chaffin, Kathryn Latsis, Jamie Wollman, and Randall Miller.</p> <p>Also present were: Robert Hill, Senior Asst. County Attorney; Jason Reynolds, Current Planning Program Manager; Caitlyn Cahill, Zoning and Animal Control Manager; Larry Mugler, Planner/Project Specialist; Kelsea Dombrowski, Planner I; Jan Yeckes, Planning Division Manager, and members of the public.</p>
CALL TO ORDER	<p>Chair Rieck called the meeting to order at 6:30 p.m. and noted a quorum of the Board was present.</p>
DISCLOSURE MATTERS	<p>There were no Planning Commission member conflicts with the matters before them.</p>
GENERAL BUSINESS ITEMS:	
APPROVAL OF THE MINUTES	<p>The motion was made by Ms. Chaffin and duly seconded by Ms. Wollman to accept the minutes from the February 5, 2019, Planning Commission meeting, as presented.</p> <p>The motion passed unanimously.</p>
REGULAR ITEMS:	
ITEM 1	<p>Case No. LR18-005, Comprehensive Plan (Four Square Mile Subarea Plan Land Use Map) Amendment for 1841 S Dayton Street from Single-Family to Employment – Larry Mugler, Planner/Project Specialist, Public Works and Development (PWD)</p> <p>Mr. Mugler introduced the application. He explained the application was for a Comprehensive Plan Amendment and not a rezoning. He stated the Planning Commission (PC) was the decision-making body for Comprehensive Plan Amendments. Mr. Mugler gave some history on the current designated land use and the requested change.</p>

He stated the hearing had been properly noticed and the PC had jurisdiction to proceed. He distributed copies of additional written comments that arrived after the staff report was distributed. He noted that comments were pretty evenly distributed between citizens in favor of the request and citizens opposed to the request.

Ms. Wollman asked for clarification on setbacks that would be of concern to staff if the property was rezoned for business.

Mr. Mugler explained the 50-ft setback requirement from property lines adjoining residential properties.

Robert Bruce, Attorney for the Applicant, Mohammed Ben Massoud, initiated the presentation.

Mr. Ben Massoud introduced himself and stated he had been in Colorado for 42 years. He stated he owned six properties in the area and that he paid his taxes. He reported having been a resident since 1980. Mr. Ben Massoud said he had an automobile business at Peoria and Iliff. He felt the proposed use was consistent with other uses in the area and that his property was currently vacant. He stated the surrounding area along Parker was 90% commercial. He noted that the other areas around him were about 75% commercial.

Mr. Bruce and Mr. Ben Massoud explained the nature of his automobile business.

Mr. Massoud reported having called three real estate companies who all indicated the property was not suitable for building a house. He stated, last year he paid \$3,600 in taxes, and next year he would pay \$5,000 in taxes. He stated the car sales were from his Iliff and Peoria location. He explained the property on Dayton would be used for car storage and for detailing the automobiles. He said there would be no automobile motor repair such as oil changes or generation of hazardous wastes often associated with auto repair. He indicated the property was in very poor condition with weeds and trash when he bought it. He reported having cleaned up the site and installing a fence to screen the automobile storage.

Mr. Bruce showed a location of the property on the map.

Mr. Massoud showed a photograph of his property and noted a large building behind the property that he stated was a commercial bunker-style building with a lot of equipment and four bays. He stated it was in a residentially zoned area and was being used for a moving business.

Mr. Bruce noted the adjoining property was already under the land use category of Employment.

Mr. Ben Massoud wanted to incorporate his property into that existing Employment boundary. He stated he had spent \$5,000 on the property. He was upset that many of the neighboring properties were in worse condition and were being used for business purposes, even though they were residential lots or parcels. Mr. Ben Massoud stated he met with Bill Skinner and Larry Mugler of the Arapahoe County Planning Division staff and stated he would like to comply with what the County required; which is why he took steps to amend the Subarea Plan.

Mr. Bruce and Mr. Massoud showed additional photos of an electrical substation and a large metal building on residential property used for a dog training business.

Mr. Massoud stated that with these surrounding uses already in place, the property was not usable to build a house. He reported having three letters indicating residential was not a suitable use of the property. He said even the president of the neighborhood association had business equipment on his lot.

Mr. Bruce showed the Four Square Mile land use map. He noted staff had indicated the use was not supported by the County for a couple of different reasons. He said the staff report noted that the application was consistent with the process. Mr. Bruce said the staff report stated a major repair facility would not meet the required setbacks; however, the property would not be used for a major repair facility. He felt it could comply with the setbacks. He stated that Mr. Ben Massoud as before the PC in full transparency about his proposed use for the property. Further, Mr. Bruce stated the staff report commented there might be a possibility for assemblage of properties along Dayton St. for residential uses. He commented that was a long-term view; however, at present, Mr. Ben Massoud owned the property, which was not suitable on its own for residential use. Mr. Bruce noted letters from Cherry Creek Properties and from Remax real estate companies indicated residential use was not a good use for the land. He stated the land use plan map proposed a use that was not suitable in the current configuration and market. He said Mr. Ben Massoud was paying taxes on the land. Further, Mr. Bruce and Mr. Ben Massoud noted two adjoining property owners supported the proposed use. He felt the people in opposition of the proposal were demonstrating hypocrisy, given the uses on their own land. Mr. Bruce noted the County had a process for amending the

map and wondered if the map made sense today. He stated that it didn't make sense to amend the map, in particular, given the Employment designation on the immediately adjacent property to the south. Mr. Bruce observed the neighborhood association had referred to the automotive use as "a dirty use," which it was not. He explained the site would not be used for heavy automotive work. He believed the neighbors were bringing forward opinions to scare the PC about the uses that might occur. He represented Mr. Ben Massoud in asking for their approval of the change.

Mr. Ben Massoud asked the PC to be pragmatic, impartial, and rational. He said the area was dynamic. He said it had changed and was no longer residential in nature. Mr. Massoud stated other people in Four Square Mile felt the area was changing. He wanted to use his land and continue paying taxes on land that couldn't be used as residential. He said some neighbors stated they could not support the change in use out of concern about how other people will react. Mr. Massoud said if he was successful, he may be able to buy the adjoining property, and it may be that the area would then be more feasible to redevelop for a residential use such as condominiums.

Ms. Rieck opened the public hearing for comment. She asked people to limit their comments to the Comprehensive Plan Amendment request for the land use map.

Donald Pritchett, Colorado Avenue, said in 2005, the work session between the County and neighborhoods included a process that established appropriate areas for Employment uses. He said it also distinguished residential qualities to be protected. He supported the staff recommendation to not change the Subarea Plan land use map.

Lori Kennedy, Colorado Avenue, stated the applicant's slides were excellent. She reported owning the property with the large metal building on residential land and noted it was approved by the County. She and her husband, Don, who was also present, said they had seen a number of new community-based residential uses move into the area. She reported Heritage Electric was south of the subject property, she was to the west, and J&J Tree business, zoned Industrial, was north of her property. She explained the orientation of these uses to each other and stated that, during the Comp Plan process, some of those lands went into Employment and that the word "hardship" was used by staff in reference to using those properties for residential purposes. She stated the property owners around her (referenced as Virgil, with an equipment storage business) and she had kept their property in excellent condition and cleaned up properties that were previously in poor shape. She stated

she was sorry the property owner purchased land without understanding the limitations on how it could be used. She reported having submitted a letter to the Planning Commission with additional comments. She noted another property that had someone living in a tent on the land. She asked the Planning Commission to support those who opposed the change.

Don Kennedy, Colorado Avenue, stated he owned a moving business located elsewhere. He said, on occasion, he drove a truck home overnight and then drove it to work the next day. He stated he did not run a business out of his property. He reported the 21 cars stored on the property were only two feet from the property line and not meeting setbacks. He said cars were being painted and the work was close to body work.

Several individuals signed in and stated they were in favor of the development.

Kevin Gross, a member of the Four Square Mile (4SM) Neighborhoods Association Development Committee, stated the 4SM group had met with Mr. Moussad some time ago. He stated the properties referenced were not being used as businesses. He said changing the Comprehensive/Subarea Plan for a single lot was not appropriate. Mr. Gross felt he should have investigated how he could use the land before starting a business. He said Mr. Moussad had run electrical lines and water hoses from an adjoining property rather than installing these for a business. He stated there was a process for establishing a business on a property. Mr. Gross noted there were several properties in similar locations being redeveloped for higher-density housing. He stated the proposed use didn't fit into the subarea plan and asked the Planning Commission to disapprove the application.

Lynn Sauve, also a member of the 4SMNA committee, expanded on comments made by Mr. Gross about meeting with the applicant. She said the rule was to listen to the prospective applicants and to provide feedback. Ms. Sauve said she acknowledged his predicament. She understood he had purchased the property from a realtor who represented it as employment; however, he did not conduct his due diligence in researching the property. She reported 4SMNA committee stated they could not support a change to the subarea plan map based on a mistake in purchasing property. She asked the PC to oppose the change to the map.

James Parrot, Dayton Street, showed an exhibit of the 4SM Subarea plan with notations to several properties that were included in the

4SMNA comment letter sent to staff during the referral process. He stated the residential properties that Mr. Ben Massoud referenced as being used as businesses are actually not commercially used other than the public utility/electrical substation. He stated the 4SMNA believed a land use map should not be amended to comport the plan to properties being used inappropriately. He clarified some references that had been made by the applicant's representative from the 4SMNA comment letter. Mr. Parrot stated the map was consistent with uses in place today. He referenced the "dirty 13" list of uses from the 4SMNA that included certain automotive uses; they believed the proposed business fit within the use on the list. He explained the association also felt that a change to a single parcel should not be supported under planning practice at the request of an individual who wished to change the use of the property.

Ms. Latsis asked whether the residential properties in the immediate area were in compliance with the designation of 1 to 2 du/acre density and lot sizes. She asked whether the 4SMNA supported the idea of changing the area to a higher-density residential designation, as has been mentioned.

Mr. Parrot felt assembling properties for consideration was a key element to any change.

Kim Duleff noted the types of activities that were not part of a home-based business. He reported having a home-based business and stated he had lived in his home for 35 years with no complaints. He stated none of the people he had spoken with, including the chair of the homeowners' association, supported the use change. Mr. Duleff presented a letter to the Chair to this effect.

Mr. Homberger stated 4SM area residents, under direction from the Planning Commission, had set up a committee to plan for the future of the 4SM area. He asked that the PC not change the plan that resulted from this work on the basis of lack of due diligence on the part of the applicant in purchasing the property. He reported "Remax" and "Cherry Creek Realty" did not determine this land use should be changed, but rather individuals who worked for these realtors made those assertions.

Mark Lampert, Chair of the 4SMNA, wanted to clarify several issues. He reported, what the photos shown did not reveal was the two single-family homes to the north of the property. He said Heritage Electric used a residential structure for its office. He said the photos did not accurately portray those immediately adjacent lots. He noted the large metal building behind the lot was a

contentious application that the 4SMNA fought, but was approved by the Board of Adjustment as an accessory building for a residential home. Mr. Lampert noted Mr. Kennedy owned an acre of land and he could park his work truck on his property. He noted several other homes in the area. Mr. Lampert stated the many cars being brought in by the applicant is what caught their attention. He reported an extension cord from another property was being used for electricity and that a water hose from another property was being used for water, due to lack of utilities in place. He reported the water district and building division shut this down. Mr. Lampert referenced the list of uses the 4SMNA had identified as being of concern as “the dirty 13.” He explained the top three were sexually oriented businesses, 24-hour businesses, and auto detailing/repair/storage. Mr. Lampert talked about “home occupations” and how those differed from commercially established businesses. He also stated the proposed use change was similar to spot-zoning through a spot-change to the subarea plan map. He stated the plan was the vision of residents who worked consistently for nine months to establish the plan. He noted several requests that had come to the Planning Commission on the basis of changes that had occurred in the area. He stated each time, it was determined the changes in the area did not support a change to the subarea plan map. Mr. Lampert stated the 4SMNA encouraged Mr. Massoud to work with his neighbors to assemble the properties into a subarea plan request for higher-density residential redevelopment; he cited several examples of other similar developments in the area. Mr. Lampert noted a number of residential uses, including a senior housing project in the nearby area. He said the intent was not to encourage high-density multi-family, but perhaps something in the range of three to four du/acre.

There were no further comments. The public hearing was closed.

Mr. Bruce stated the decision on whether the subarea plan should change was the Planning Commission’s and not the 4SMNA. He stated the position taken was that the problem was Mr. Ben Massoud’s errors and that he was a bad man. Mr. Bruce noted he was following the County’s established process to propose a change to the plan. He noted Mr. Pritchett had stated the subarea plan was intended to be equitable; he was asking for equity for the applicant in being able to use the land. He reiterated the property was not suitable for building a home and that justification for leaving it under the land use category was that other businesses in the area were on properties that were grandfathered or support home-based businesses. He asked for an equitable decision.

Mr. Massoud thanked the PC members for their time, reiterated the other uses on nearby properties, and asked for a practical decision. He stated he was different because he came here to try to comply; whereas, others continued to operate without going through the appropriate process. He stated he met with 4SMNA twice and felt their reaction was offensive. He was told, “that’s your problem” that his property couldn’t be used for his business. He stated everyone knew no home could be built there, but because of conflict of interest will not go on the record with that statement.

Ms. Latsis asked about the size of the parcel.

Mr. Massoud gave approximate dimensions and stated Bill Skinner helped him come up with the design and the number of cars that would be appropriate for the site.

Ms. Wollman asked the County attorney, if the property was rezoned for a business use and then was later assembled with other properties, would it have to be rezoned again to allow for residential development.

Mr. Hill responded that yes, it would require an additional rezoning back to residential.

Mr. Miller asked Mr. Mugler what options were available to Mr. Massoud if he couldn’t build a house.

Mr. Mugler stated the land use category provided for some related non-residential neighborhood businesses. He gave the example of an office that sits within the 1 to 2 du/ac land use category.

Mr. Miller asked about the example of a flower shop and whether that might be allowed.

Mr. Mugler thought it would not require a subarea plan amendment, but the land would have to be rezoned to allow a commercial business. He explained that land use case would go through the current Planning group. He said there might be a use that could be established with limited parking.

Ms. Rieck said she had taken a drive through the area. She stated this was not an easy decision. She believed the work to establish the 4SM plan was important, and also noted the number of commercial businesses not far from the property.

Ms. Chaffin stated she agreed.

	<p>Ms. Latsis said she also drove the area and believed it would be difficult to make the lot successful as a residence. She reported there was a City of Aurora high-density residential across the street. She struggled with whether the current designation was appropriate and noted the plan was 15 years old. She felt the plan should be reviewed periodically and ensure that other sectors of 4SM were represented.</p> <p>Ms. Chaffin stated she was also struggling with making a motion. She said she would not buy this property for a residential use.</p> <p>Ms. Rieck noted that rezoning would be a separate process.</p> <p>It was moved by Mr. Brummel and duly seconded by Mr. Sall, in the Case of LR18-005, Four Square Mile Subarea Plan Comprehensive Plan Amendment for 1841 S Dayton Street from Single Family to Employment, to deny the application.</p> <p>The vote was:</p> <p>Ms. Rieck, Yes; Ms. Chaffin, Yes; Mr. Miller, No; Mr. Brummel, Yes; Mr. Sall, Yes; Ms. Latsis, Yes; Ms. Wollman, No.</p>
<p>ITEM 2</p>	<p>Case No. LDC19-001, Agricultural Estate (A-E) Lot Width Revision, Land Development Code Amendment – Jason Reynolds, Current Planning Program Manager, Public Works and Development (PWD)</p> <p>Mr. Reynolds, representing the County as applicant for the proposed Land Development Code Amendment, noted the hearing had been properly noticed and the Planning Commission (PC) had jurisdiction to proceed. He explained the purpose of amending the minimum lot width within the A-E zone district (lots with a minimum lot size of 35 acres) from 1,320 feet to 600 feet. He noted a change as a result of receiving comments on the proposed amendment, since the discussions had at a previous study session. Mr. Reynolds explained the change would deem existing properties with a lot width of less than 600 feet to meet the minimum lot width, provided they met all other requirements of the zone district. He provided examples of affected properties.</p> <p>Mr. Brummel asked how staff would know that the lot was existing prior to adoption of the amendment.</p>

	<p>Mr. Reynolds noted the Assessor's Office tracked "parcel birth dates."</p> <p>Ms. Wollman asked what the minimum lot width would be under this provision.</p> <p>Mr. Reynolds said based on the lots they have looked at, the minimum would likely be in the range of 300 feet. He explained if the setbacks could not be met, or if adequate separation could not be provided with the well and the septic tank, the County could still deny a building permit. He stated that land would have to be used for farming or pasture.</p> <p>Ms. Rieck noted people in the area seem to do whatever they wanted anyway. She said we seemed to keep making the requirements less to work around people who didn't comply. She asked if they would even come in to get a building permit?</p> <p>Mr. Reynolds explained the challenges of catching these, as the Clerk & Recorder's Office must record whatever walked in the door. He noted some other problems that could result from the statutory exclusion of 35-acre lots from the subdivision process, such as lots being created and sold to people who couldn't get a mortgage because the property is not within a fire district. Mr. Reynolds reported staff was doing outreach with surveyors to make them aware of the minimum requirements.</p> <p>Mr. Brummel noted some people conveyed property without ever recording a division of land.</p> <p>Mr. Reynolds said that non-recorded parcels could not qualify under the provision that allowed smaller-width existing parcels to be found conforming.</p> <p>Ms. Wollman noted there were outliers to every situation.</p> <p>Mr. Reynolds stated staff believed bringing the County's lot width requirement closer to the other counties would reduce the frequency of lots that did not comply.</p> <p>Ms. Wollman asked how other counties were enforcing their lot width requirements.</p> <p>Mr. Reynolds and Mr. Hill stated that the County's enforcement mechanism was to not issue building permits.</p>
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Mr. Brummel asked for clarification on how lot widths were defined.

Mr. Reynolds explained how that was determined, but also noted some irregularities in how staff had treated this, in years past, based on the location of the driveway to allow the longer dimension to be considered the front property line. He stated that did not comply with the County's definition of lot width. He explained the access could be determined from access from a private road or a public road.

The question of whether a depth to width ratio could be used was raised.

Mr. Hill noted those would also likely not be met, given staff was not afforded the opportunity of reviewing a subdivision.

Ms. Rieck opened the hearing for public comment.

Bhil Scott, 6591 S County Rd 185, felt the PC members had not ever seen a plot map. He brought his in and showed it to the PC members. On the issue of enforcement, he noted his tax statement showed the property size and stated the Assessors would be in charge of the size of the lot. He reported he was required to give a 60-ft easement around each parcel; he did not know what this was for. He now thinks it was to meet the 1,320-ft lot width. He stated that, when he bought his property, the easement was not there, and he was not told that there would be a problem getting a building permit. He reported his daughter was denied a building permit. He felt that people not informed of this should be given a letter stating the properties under 600 feet would qualify for a building permit, so they didn't have this problem again.

Rachel Lei, 6954 S County Rd 181, Reported when they purchased their property, it was zoned A-E. She said they wanted to have cattle and other livestock, a home, and outbuildings. She said they did their due diligence and called the County. She said the lot was 38 acres and they didn't want a long, narrow lot, but that was what was available in the several counties where they looked. She said their pole barn was denied a permit, even though they already had a home. She noted there were new lots being sold as 35 to 40 acre lots for \$115,000; Zoning should tell them they don't comply before these are sold. Ms. Lei said a real estate agent helped to subdivide the lots in her development. She felt the real estate agents also need to be educated, and not just the surveyors. She agreed with grandfathering lots already created, but that it would create some responsibility for the neighbors to monitor and enforce what would be newly created.

	<p>Ms. Lei state that, even though the lots were narrow in comparison to depth, a homeowner could still have peace and quiet.</p> <p>There were no further public comments. The public hearing was closed.</p> <p>Mr. Reynolds stated the speakers highlighted a number of issues that rural residents had to contend with. He stated he would talk with Mr. Scott, after the meeting, to better understand the issue of the easements he referenced.</p> <p>It was moved by Mr. Brummel and duly seconded by Ms. Latsis, in the case LDC19-001, A-E Zone District Lot Width Reduction, Land Development Code Amendment, that the Planning Commission reviewed the staff report, including all exhibits and attachments, listened to the applicant’s presentation and any public comment as presented at the public hearing, and moved to recommend approval of the application based on the findings in the staff report, subject to the following condition:</p> <ol style="list-style-type: none"> 1. Staff will make corrections and revisions to the proposed language as directed by the County Attorney prior to incorporating the approved amendment into the Land Development Code for publication. <p>The vote was:</p> <p>Ms. Rieck, No; Ms. Chaffin, Yes; Mr. Miller, No; Mr. Brummel, Yes; Mr. Sall, Yes; Ms. Latsis, Yes; Ms. Wollman, Yes.</p> <p>Mr. Reynolds noted the case was scheduled before the Board of County Commissioners for April 2, 2019.</p>
<p>ANNOUNCEMENTS</p>	
<p>MARCH 5, 2019 – LOCATION CHANGE FOR PUBLIC HEARING</p>	<p>Mr. Reynolds noted the March 5, 2019 public hearing, on a Land Development Code Amendment proposal to allow backyard chickens and bees, would be held at the Arapahoe County Administration Building in Littleton. The Planning Commission was provided an updated meeting calendar noting the change.</p>
<p>ADJOURNMENT</p>	<p>There being no further business to come before the Planning Commission, the meeting was adjourned.</p>