



**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
August 4, 2009**

State of Colorado, County of Arapahoe. At a public hearing of the Board of County Commissioners for Arapahoe County, Colorado held at 5334 S Prince St. Littleton CO 80166 there were:

Susan Beckman, Chair	Present
Rod Bockenfeld, Commissioner	Absent & Excused
Pat Noonan, Commissioner	Present
Jim Dyer, Commissioner	Present
Frank Weddig, Commissioner	Present
Kathryn Schroeder, County Attorney	Present
Nancy A. Doty, Clerk to the Board	Absent & Excused
Joleen Sanchez, Assistant Clerk to the Board	Present

When the following proceedings, among others, were had and done, to wit:

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

The motion was made by Commissioner Noonan and duly seconded by Commissioner Weddig to adopt the Agenda as presented.

The motion passed 4-0, Commissioner Bockenfeld absent and excused.

ADOPTION OF THE MINUTES

There were no minutes to adopt.

CEREMONIES

There were no ceremonies.

CITIZEN COMMENTS

There were no citizen comments.

CONSENT AGENDA

The motion was made by Commissioner Dyer and duly seconded by Commissioner Noonan to approve the Consent Agenda as presented.

The motion passed 4-0, Commissioner Bockenfeld absent and excused.

GENERAL BUSINESS AGENDA

Item A – Resolution No. 090614 - Public Hearing: Heritage Electric Rezoning from Residential Agricultural (R-A) to General Business, Outdoor Display (B-4)

Tom McNish established jurisdiction.

Sherman Feher, Senior Planner, explained that the applicant is requesting approval of a rezone from R-A to B-4 on a 2.05-acre lot. He said the property is located on the northwest corner of Jewell Avenue and Dayton Street. He said the purpose of this rezone request is to bring into compliance uses that are not allowed in the R-A zone district. He said the current uses on the property are an electrical contracting business and vehicle storage; both uses are allowed in the B-4 zone.

Commissioner Noonan asked if there is a deadline for the proposed landscaping changes to be completed, prior to the rezoning.

Mr. Feher said normally the landscaping is not done prior to the rezoning but if the Board desires, the Board could stipulate a specific timeframe with which the landscaping must be done as an additional condition of approval.

Commissioner Weddig asked for further explanation.

Mr. Feher said normally the landscaping is not done prior to the rezoning but if the Board desires, the Board could stipulate a specific timeframe with which the landscaping must be completed.

Commissioner Weddig asked what the penalty could be if the landscaping is not completed other than the zoning is not effective. He said this case is coming forward because of concerns from the neighborhood and the landscaping is a huge part of this approval. He said the landscaping must be installed and maintained and he wondered how the County can control the time table. He further stated that once the zoning becomes effective, there are many other uses that could be allowed on the site and he would like to see the fencing and landscaping happen before the applicant asks for other changes.

Mr. Feher stated that the last condition of approval talks about the need for a subdivision development plan if there are any other changes. He said that is one control.

Commissioner Weddig said the current situation could exist for five or ten years before the applicant wants to do something different. He said it is imperative that the Board ensure that the improvements meet the normal criteria

before the zoning is final. He said the rezoning is a minor thing but the upgrade of the site is what everyone wants to see.

Mr. Feher said if that is the Board's desire, then the Board has to stipulate a specific timeframe with which the fencing and landscaping should be done as a condition of approval. He said that would be a requirement related to the rezoning.

Commissioner Weddig proposed an additional condition that would say that the landscaping would be completed in accordance with the approved rezoning exhibit in so many days of approval of this rezoning. He wondered how that would happen after the zoning becomes affective and how long that would take.

Mr. Feher explained that if the Board approves the request today, the rezoning would take place immediately then the rezone exhibit would go through the mylar process. He said once that is signed by the Board, the rezone is official; that normally takes 30-45 days. He said any other conditions of approval that are not completed within the stipulated timeframe would become a zoning violation and the County could penalize the owner.

Commissioner Weddig said the history of the County's zoning violation enforcement leaves him wanting something additional. He said in 45 days, there would be a mylar for the Board chair to sign. He wondered if the Board could postpone the signing of the mylar until the landscaping and fencing is complete.

Mr. McNish said that could be done but the applicant would like to address that condition, as that could place an undue burden on the applicant. He said normally the applicant is given nine months to install the landscaping.

Mr. Feher stated that Chuck Haskins from the Engineering Division would like to comment.

Chuck Haskins said he would like to address three issues that came up in the Planning Commission hearing. He said there was testimony that the ground cover for this project wasn't typical of a residential development. He said staff acknowledges that but it is not too different from some of the adjacent sites. He said the drainage study was revisited by staff and it was determined that the study was properly analyzed. He said there were some allegations of illicit discharge coming from the site. He said Steve Miller, the Arapahoe County Environmental Manager, conducted a field investigation and found no evidence to substantiate that claim. He said the third issue was related to the access onto Dayton Street, which is controlled by the City of Aurora and is not at an ideal location. He said this project qualified for a waiver of a traffic impact study. He further stated that there are opportunities to relocate the access onto Jewell, but that would be completely voluntary. He said that may create some ingress/egress challenges to the current site. He said Engineering expects the applicant participate in all Engineering requirements at the time of the subdivision development plan application.

Commissioner Weddig asked Mr. Haskins when Engineering would expect all the improvements to the site to be completed.

Mr. Haskins explained that if the applicant applies for a subdivision development plan, all the engineering requirements for frontage improvements, contributions, and analysis would have to be fulfilled. Mr. Haskins said that is documented on the zoning document and he just wants to be sure the applicant fully understands.

Commissioner Weddig asked about the plans for frontage on Dayton Street. He said it is unclear in the exhibits what additional right-of-way (ROW) might be needed in the future.

Mr. Haskins said that was pursuant to some discussions with Aurora. He said that is under Aurora's jurisdiction and there is a plan for that, but Aurora did not recommend any improvements at this time.

Commissioner Weddig asked if the City of Aurora has annexed the ROW or the future ROW.

Mr. Haskins said Aurora has annexed the actual ROW. He said Aurora has title to the ROW but Arapahoe County has an understanding with them that they will maintain the facility.

Commissioner Weddig asked if there is any dedication needed in the future to complete Dayton Street to its full expected width.

Mr. Haskins said that would be analyzed at the time of the subdivision improvement plan, but he doesn't think so.

Commissioner Weddig said one plan indicates that there is only ten feet between the center line of Dayton Street and the landscaping.

Mr. Haskins stated that it is hard to evaluate without an actual proposal because there could be auxiliary lanes and sidewalks.

Nancy Kerr, Sky to Ground, LLC, representing Heritage Electric, 450 E. 17th Avenue, #400, said she is working with Virgil Versteeg who owns Heritage Electric. She presented a PowerPoint, a copy of which has been retained for the file. She said Mr. Versteeg purchased this property in 1996 and has been using it as an electrical contracting business since then. She said Mr. Versteeg has been paying business property taxes on this property and it was brought to his attention a couple of years ago that this was a non-conforming zoning. She said he has been working through the planning process to bring this property into conformance. She said there is no proposed change to the site and business would continue as it. She said there would be no additional buildings. She presented an aerial photo of the site. She explained that the 4 Square Mile area (4SM) is experiencing some gentrification but there is a patchwork of uses. She said this site has a small, 1940's house which is approximately 1,000 square feet on two acres. She presented a map of the area and referenced Dayton Street to the right and Jewell to the south. She said immediately to the west is the Xcel substation, which has 60-foot transmission towers. She said there is a 25-foot ROW that has been dedicated between Heritage Electric and the substation; each property is fenced so there is no use for this strip that was going to be a street. She said to the north there are some trailers which are on property that belongs to the Kennedy's. She said initially, the Kennedy family had reservations about this application but the applicant has been working with them and the Kennedys have since submitted a letter of support. She said one reason is because the zoning would require a 20-foot buffer. She said Mr. Versteeg would pull the fence back 20 feet and that area would then be landscaped and the Kennedys would be involved with the plant selection. Ms. Kerr said the next parcel over is vacant and has never been utilized. She said on the east side of Dayton there are multifamily rentals in the City of Aurora and to the south is a residential use with two small, modest homes owned by John Warford, who is in favor of this application. She presented a photo of wires that are suspended over the property and said this is a challenged site; there are easements on one side and through the middle. She said the hum from the power lines can be heard inside the office so this is not an ideal site for many other uses other than commercial. She further stated that this business has been in operation and is locally held. She said this is a small business employer that is contributing to the overall economy, and in these times, supporting a business would be a worthy endeavor.

Ms. Kerr then addressed Commissioner Weddig's concerns. She said the overall improvement of the site is the applicant's goal and there would be no pushback. She said the applicant voluntarily appeared before the Board of Adjustment to get the increased fence height and an 8-foot wooden fence was approved in addition to the landscaping. She said this is not a cheap endeavor, as the improvements will cost approximately \$60,000. She asked the Commissioners to consider the time frames for the landscaping. She said the applicant feels that the landscaping could be completed by the end of May 2010. She said that would be one fall planting season and one spring planting season. She said the applicant feels that that is a reasonable time frame which would meet the Board's concerns.

Commissioner Weddig said the improvements are a big deal. He said there would be no use changes for this property and he wondered if there would be a problem with holding the zoning mylar until May of 2010. He said that is plenty of time but that is enough time to get financing to get this done properly. He said he said he doesn't want to see the official zoning change until all of the improvements are completed.

Ms. Kerr said that is the Board's discretion. She said the owner of the property has been through a lot to get this far and has been honorable and there is no reason to think Mr. Versteeg will not do the improvements. She said he would be glad to make the improvements and is prepared to wait for the signing of the mylar.

Commissioner Beckman asked how the County would go about enforcing the landscaping if the mylar is not held back.

Mr. Feher said normally when any rezoning is presented, whether it is a PDP (preliminary development plan) or FDP (final development plan) or a regular rezone, the idea of doing the landscaping is embedded in the plan and the approval is granted, the mylars are signed, then within a year, if the landscaping isn't done, then the Zoning Administrator requires a letter of credit or collateral to cover that. He said often there are problems with installing landscaping in during the winter so that is a standard procedure. He said this is a "chicken and egg" situation that he has never been confronted with. He said as long as there is a specific condition of approval, and if there is a stipulation to have the landscaping done by a specific date, then there is a zoning violation. He said one of the interesting conundrums is that this is currently a zoning violation and if the Commissioners condition the landscaping and wait until May, then the violation continues. He said it is up to the Board to decide on that but it is better to approve the rezoning with the condition that the landscaping be done by a specified time.

Commissioner Weddig said this property has been a problem for the neighborhood for a long time and has had violations for a long time and it has taken a long time to get to this point. He said the rezone is to make the property conform to the other uses of the property and he is willing to do the landscaping improvements and from a procedural standpoint there have been difficulties getting updates to this property. He said this zoning allows many other uses and he is very reluctant to approve this request. He said he would rather see the zoning fail if the improvements are not done by the end of May. He said this neighborhood deserves something better than a promise to file an action if the landscaping isn't done. He said this case took two and a half years to get to the Board and he doesn't want to wait another couple of years to get this landscaping and fence done.

Commissioner Beckman said this is a good segue to the public comment and asked Mr. Feher to think of enforcement tools during the public comment period.

Mr. Feher said he would defer to the County Attorney's Office.

Commissioner Beckman said the Board's concern is how to enforce the landscaping. She said this property has been noncompliant for a long time.

Public Comment

Jeff Hetzel, 9520 E. Colorado Avenue, said this is a multi-use neighborhood and what Mr. Versteeg is doing makes sense. He said that is a big property with a small house and he is trying to use the land legally. He said there are a lot of neighbors that are doing the same thing, but illegally. He said Mr. Versteeg's property looks nice. He said there is a huge Public Service substation behind this property. He said he doesn't know why anyone would worry about fences and landscaping because the substation is big and ugly and it doesn't matter what is there because the substation would always be there and is always an eye sore no matter what Mr. Versteeg does. He said Public Service built that substation about 30 years ago and is an RA zoned property, which has never been changed because the County has never made them change it. He said Mr. Versteeg has been paying commercial taxes on this property for years and keeps it mowed and maintained. He said there are 25 other properties that don't even compare to this one. He said this is a good idea and this is two and a half acres of land that is in the heart of Denver and it shouldn't sit there with a 1,400 square foot house on it. He said this is a great idea and is something that should be allowed because this neighborhood needs this. He said there are other properties that have weeds or are nothing but dirt. He said this makes sense for this neighborhood. He said many years ago when the area was zoned RA, there were a lot of fields and there were small houses, but now in 2009 it is time to change and this is a great idea.

Donald Hood, 1773 S. Uinta Way, said he lives on the other side of Parker Road. He commented that he supports this rezoning and said he was involved in the 4SM master plan that included this property several years ago. He

said he went to every meeting except one and this property was brought up in addition to others in the neighborhood. He said there didn't appear to be any opposition. He said he has driven by this property for 27 years on his way to work and he is well aware of the challenges this property has, specifically the public service. He said it looks awful and said the pictures that were presented don't do justice to how awful the public service substation is. He said there are lots of businesses and these are good people that are trying to make a living and there are trailers and trucks and tractors he thinks that is okay. He said he is in favor of this proposal and it is a realistic goal. He stated that the ideal thing would be to scrape the property and make it a park but that isn't going to happen and this is the reality of the situation.

Commissioner Weddig commented that this zoning change will open up the kinds of uses on this property and to allow an increase in activity by five or ten fold, theoretically, B4 is a very heavy zoning and there could be a body shop, warehouse, storage, etc. He said the neighborhood needs to be aware that a change of uses would have to come before the Planning Commission and the Board to get a change approved, but the new zoning opens the range of uses that could be on this property. He said the concern is that this property improves so that it is not a detriment to the neighborhood. He said the Board wants to see this property become an asset but the neighborhood must continue to be vigilant.

Mr. Hood stated that previous Board pointed out that there would be public hearings and the neighbors' intend to be vigilant.

Larry Sweet, 9732 E. Hawaii Place, said his home is about two blocks from the subject property. He said he has lived there almost five years now and said he has seen nothing but continuing improvements. He said he has no problem with the rezoning and feels that the business is an asset to the community.

Gary Gilbert said he has lived at 2851 S. Lansing Way since 1982. He said he uses Dayton often. He said before Mr. Versteeg bought this property, it was a run down house and had a field of weeds with a bunch of junk and it looked awful. He said then the substation was built and there is ample evidence to prove that those high tension lines, which run both ways across the property, cause cancer. He said if there were a park there, no one would bring their kids to play there. He said he was with a fire department for 25 years and substations blow up and he would not want a house anywhere near a substation. He said since Mr. Versteeg came, the house has been fixed up and the property looks great. He further stated that he can't see anything but positives coming from this.

Bruce Peterson, 2161 S. Alton Way, said he has been a resident of 4SM for 31 years. He said the reason Commissioner Weddig wants to delay the signing of the Mylar is because of the County's hesitancy to go forward. He said initially the County required a cost from Mr. Versteeg's pocket of over \$125,000 and as the process began, the County realized that that was a higher sum than what was actually necessary in order to improve the property. He said Mr. Versteeg has attempted, from the very beginning, to pay his taxes at a higher zoning than what was required. He said that ought to be taken into consideration. He said Mr. Versteeg could have put up a fence with no landscaping whatsoever, and he wouldn't have had to go through this process. He asked Commissioner Noonan if it would be appropriate to reduce his taxes until the rezoning has been approved. He said he doesn't know if that is out of context or not but that is up to the Board. He said he is in favor of this application. He said there was only one person that spoke at the 4SM meeting that was in opposition; other than that the entire 4SM meeting approved of this project.

Commissioner Weddig commented that the Assessor's Office applies the taxes to the use of the property, not on the zoning. He said there is a cattle grazing on industrial property that pays less taxes than Mr. Versteeg does. He said the Commissioners have nothing to do with that.

Public comment closed.

Mr. Feher said the County Attorney's Office and the applicant are willing to put the condition of the rezoning until the landscaping is done by a date certain, such as May 2010.

Commissioner Beckman asked if there could be conditions on a rezoning case.

Mr. McNish said yes although it is unusual.

Commissioner Beckman said the Board would approve the rezoning with a condition.

Mr. McNish said a date certain would be necessary.

Commissioner Weddig referenced the landscape diagram and said it is not an actual plan. He wondered how Public Works would enforce the “plan” and what kind of ground cover there would be. He said the diagram doesn’t detail what type of border there would be and if there is mulch. He asked what the intent of the property owner is and how future zoning inspectors would monitor this parcel.

Mr. Feher explained that with a PDP or a rezone, staff doesn’t normally ask for specific zoning. He said the applicant came up with the conceptual drawing and the zoning department would look at that to make sure that the plants are planted according to that particular drawing. He said if there are questions about ground cover that would get resolved. He said the main thing he would look for in landscaping is shrubbery and trees and the proposal meets the requirements even though the County doesn’t have the legal basis to do that for a rezoning.

Commissioner Weddig asked what document future zoning officials would use to ensure compliance. He said Mr. Versteeg might not own this property for ever and he wants to know how the County can keep the exterior of this site looking the way it should.

Mr. Feher suggested that the conceptual landscape plan be referred to.

Commissioner Beckman said this is straight zoning, which is usually done in cities, and the County usually does PDP and FDPs. She said the Board is concerned that the Board would not see this case again for any kind of approval of the enforcement. She said her concern is that there would be conditions on straight zoning.

Mr. McNish said the Attorney’s Office concurs with Mr. Feher and said there is case law in Colorado that says that the Board can put conditions on a rezoning approval.

Commissioner Beckman said if this property changes in any way, the owners have to come back to the Board for another zoning change.

Mr. Feher said the last condition of approval in the staff recommendation says if the applicant decides to add another building the applicant would have to go through a subdivision development plan, which was referred to earlier by Chuck Haskins. He stressed that that specific process does not go through a public hearing, but referrals are sent out. He said that would be done for a site plan. He further explained that if the applicant were to choose any other uses besides what is contained in the B4 zoning district, then there would be a PDP or straight rezone process.

Commissioner Beckman asked about the “Dirty 13” (prohibited uses in the 4SM) and the protections on this property from those uses.

Mr. Feher said the “Dirty 13” is a list of thirteen uses that the 4SM area doesn't want. He said it has been very easy to say that those 13 uses are prohibited in a PDP because that is a custom zoning district that allows that restriction; that is the conundrum with the straight zone because it cannot be customized without making it a PDP.

Commissioner Beckman asked if the Stormwater Authority has any outstanding issues with this proposal.

Mr. Feher said no, unless there is a future change to the property.

The motion was made by Commissioner Dyer in the case of Z08-004 – Heritage Electric Rezone, that the Board of County Commissioners has read the staff report and received

testimony at the public hearing. The Board of County Commissioners finds itself in agreement with staff findings 1 through 7 including all plans and attachments as set forth in the staff report dated July 14, 2009, and approves this case subject to the following conditions:

1. That the applicant makes any minor modifications to the plans and plats, as requested by the Public Works and Development Department.
2. The applicant agrees to address all Division of Engineering comments and concerns as identified within the attached report.
3. The applicant will need to have a 20-foot landscape buffer on the north side of the property and on the rezoning exhibit.
4. The applicant will need to move the designated parking spaced on the rezone exhibit, so that they are at least 10 feet from the east and south property lines.
5. Any future proposed expansion and/or redevelopment of the site with allowed uses would require a Subdivision Development Plan with associated Planning and Engineering requirements and conditions of approval.
6. The rezoning of this property is expressly conditioned upon the applicant's compliance with the approved rezoning exhibit, incorporated by reference and made a part hereof, and all conditions of approval.
7. All landscaping and fencing of the property shall be completed in accordance with the approved rezoning exhibit by May 31, 2010, after the approval of this rezoning.
8. All parking of vehicles and outdoor storage on the property shall be in accordance with the approved rezoning exhibit.
9. County staff in future zoning enforcement should use the landscape exhibit supplied with this proposal.
10. The mylar from this rezone shall not be signed until completion of the landscape requirements shown in the rezone application.

Duly seconded by Commissioner Weddig.

The motion passed 4-0, Commissioner Bockenfeld absent and excused.

Commissioner Beckman said the property has been rezoned and she hopes that Mr. Versteeg's business prospers this year.

Item B – Resolution No. 090615 - General Business Item: Case No. P05-002, Southcreek Filing No. 7, Request for Cash-in-lieu Fees Reduction

Ron Hovland, Program Manager, explained that this is a request for a settlement agreement to be resolved by the BOCC concerning Southcreek Subdivision No. 7 located at the southeast corner of S. Jordan Road and E. Broncos Parkway. He stated that the subdivision was approved in 2005 and there were 105 lots. He said at the time of the recording of that final plat, the Planning staff mistakenly did not collect the cash-in-lieu fees that are required under the Land Development Code) LDC. He said those fees were spelled out specifically in the Planning staff report and are part of the resolution approved by the Board. He said staff recognizes that staff made a mistake and tried to correct that with the applicant, but the applicant has proposed a settlement agreement that would allow the applicant to pay all the cash-in-lieu fees owed to the Cherry Creek School District No. 5. and to waive \$50,000 of the \$73,000 for public parks. He said this is money that is collected then placed in a fund, separate from the Open Space sales tax fund, that is used to purchase and improve public parks. He said the Open Space Division was advised of this and does not support a waiver and has indicated that they would like all of the money. He said this is a Board decision and the staff report provides several options. He said if the \$50,000 were to be waived, there is no way that that could be collected anywhere else; that money would just be gone from our open space cash-in-lieu funds.

He said the staff proposes that additional fees be applied to the remaining building permits for a dollar amount of approximately \$2,600.00 per dwelling unit to get the entire \$50,000.

Michael Sheldon, 5290 DTC Parkway, commented that this arbitrary number that's been negotiated is a \$50,000 reduction in the park fees only, with a specific condition that the applicant pay the remaining \$120,000 up front. He said the concept that the County would take the \$120,000 now and have the rest of the money paid with each permit is a different concept. He said the applicant was surprised when he saw the staff report. He said this is an unusual matter and hopefully this kind of situation would not come up again in the future. He said it was a mistake but there are some exigent circumstances that have occurred in this strange market place. He said Century Communities is a well-known builder and developer in our community and operates with financial partners and has dozens of different developments throughout the Front Range from Pueblo to Fort Collins. He said Century utilized financial partners who had money available to finance all of the requirements that the governments would impose. He said five years ago when this matter came forward, that partner was in place, but unfortunately that partner has gone bankrupt and is not in a position to fund anything additional. He said he is now talking about Century paying "out of pocket" to deal with this issue that is a mistake. He said when this came to Century's attention a few months ago, Century was told that they could have no more building permits or Cos (Certificate of Occupancy) and the builder thought permits would be allowed to go forward while this problem was worked out. He said the County has worked with the applicant and realizes that there has to be some compromise and settlement for this issue that was partly caused by the County. He said the applicant is asking the Board to find an unusual settlement or compromise. He said Century would pay the remaining \$120,000 all at once, which covers the school district and other issues, but it would be a compromise on the parks' requirements. He respectfully disagreed that the applicant should come up with \$120,000 and pay the entire amount over time with building permits. He said a compromise or settlement is appropriate and the applicant feels that the arbitrary number (pay \$120,000 and waive \$50,000) is an appropriate solution.

Commissioner Dyer said the Board understands the current market and said this is very unusual. He asked what the Mr. Sheldon's proposal is.

Mr. Sheldon proposed an additional reduction. He said if the applicant could pay \$130,000 and waive \$40,000 that might be a fair compromise for this unique circumstance.

Commissioner Weddig said the proposal is to have each one of the last 19 homes pay an extra \$2,600, and any development in Arapahoe County would have a similar cost attached to their homes. He said he doesn't know if the proposal puts this development at a competitive disadvantage because those costs were supposed to be there and there was a mistake.

Mr. Sheldon agreed that the costs were supposed to be there, and they were funded and available four or five years ago. He said the County didn't ask for the money and didn't collect it and now that money is gone.

Commissioner Weddig said that money was never spent. He said the compromise proposed by staff seems like a reasonable solution. He said he doesn't want to set a precedent; mistakes do happen but this money should have been paid up front so for the last four years someone has had the use of \$150,000 theoretically. He said the \$2,600 per home is reasonable but it might take a couple of years to collect it because of the current market.

Mr. Sheldon said the proposed compromise that has been worked through with staff and the County Attorney was to pay the \$120,000 if the \$50,000 were waived under these unique circumstances. He said his client is not interested in paying the \$120,000 with no fee waiver at all because the money is coming out of pocket even if the client were to pay on those 19 lots over time. He said it is an onerous situation for the client to come up with \$120,000 without any fee waiver. He said the compromise means that both parties have to give up something in order to find a solution.

Commissioner Dyer stated that he understands Commissioner Weddig's concern but he is trying to balance that with the exigency in the housing market right now and he is considering the area as a whole. He said under normal circumstances, the Board would not approve a fee waiver and it would be a precedent. He said in this case, there is

not a precedent for not having collected fees originally. He said in a time when there has been upheaval in the financial market place and if the source of funding is cut off, this is a lose/lose situation and it would not get any better. He said he is happy with the staff proposal but the County also has a stake in the economic wellbeing of people that build houses and buy houses and hire people. He said there is a question of how much slack the County should give in a situation that was avoidable five years ago. He said Mr. Sheldon proposed \$130,000.

Mr. Sheldon clarified that the client would pay \$130,000 if there was a waiver of \$40,000.

Commissioner Dyer said he doesn't like this situation, but he doesn't have a problem with that proposal. He said he is looking at the long-term effect and how many properties could be built and how many could be competitively sold in a market that continues to decline. He said he would not put a roadblock there but he also has to look out for the County's interest. He supported Mr. Sheldon's proposal.

Commissioner Beckman asked about the error. She said there are fees that are required for approval. She asked if the County sends a bill to the applicant or if a phone call is made or if the applicant just submits the money to the County.

Mr. Hovland said now the County sends a bill so this error would not recur. He said in 2005, the fee was a condition of approval and had to be paid, according to the Land Development Code, at the time of recording. He said the staff erred in not collecting that money right up front. He said in staff's defense, the applicant knew they had to pay that money and surely had that money set aside from the original lender. He said the fact that the staff didn't ask for the money didn't relieve the applicant from their responsibility to pay.

Commissioner Beckman asked if the applicant had the financing to pay the fee but didn't, where did the money go?

Mr. Hovland said the applicant would have to answer that because he doesn't know where the money went.

Mr. Sheldon said the financing was available and it was part of one big loan package. He explained that as part of the entire construction project, this is one of the fees and a request is made to the lender and the lender approves the request and that is where the money comes from. He said no one ever asked for this. He said in the thirty years he has been doing this kind of work he can't recall a case where the plat was recorded without the fees being collected. He said he has never heard of this before but the money was sitting in the construction draw account and that lender went bankrupt about a year ago. He said that money got involved in a bankruptcy estate and was given to the various other creditors of that lender so the money is now gone. He said now there is a successful builder that cannot obtain building COs (certificate of occupancy) or building permits unless it pays the \$170,000. He said the construction loan is now gone so there is a builder that has to pay out of pocket. He said that is why he thinks a compromise or settlement is appropriate. He said obviously the County made a mistake but to some extent, the applicant should have asked about this as well. He said this mistake merits a settlement or compromise, and the proposed compromise to pay three quarters of the total is appropriate. He further stated that he agrees with Mr. Hovland that this would never happen again.

Commissioner Weddig asked if Century Communities is a successor of the entity that went broke.

Mr. Sheldon said the financial company went broke. He said this is a one purpose LLC for this community only. He said it has no subsidiary and would not benefit from this except for having to come out of pocket to finish this development.

Commissioner Dyer said in the great economic scheme of things, he would rather see homes occupied and people paying property taxes, which will exceed the amount that would be compromised. He said the residents would buy furniture, install sprinkler systems, and add landscaping, and that would create an economic benefit. He said the economic benefit would exceed the amount the County would give up in a compromise. He said he likes the fact that staff tried to work through this but he is more interested in seeing people living in those homes and generating income and paying interest and buying the things that people buy when they buy a home.

Commissioner Beckman said she strongly disagrees with waiving fees because of the precedence; on this issue, how can the Board justify this waiver without establishing precedence.

Mr. Hovland said there will be no other precedence. He said this is the only case and when this is resolved it would not happen again because the safeguards have been put in place. He said in terms of the precedent related to the settlement, he agreed with Commissioner Dyer.

Commissioner Beckman asked what would happen if there is another developer whose lender goes bankrupt and says that it doesn't have the money to pay the fees.

Mr. Hovland said the fees are collected before the plat is recorded. He said the fee has to be a part of the up front costs, and in this case it was not.

Commissioner Beckman asked if it was an oversight on staff's part.

Mr. Hovland said yes, it was an oversight on his part, as he is in charge of that Division.

Commissioner Weddig said there are two offers, one from staff and one from the applicant's attorney. He said those kind of negotiations usually get discussed on the side and said he would feel more comfortable if the negotiations were conducted in an Executive Session. He said he would like to come back to a future public hearing and be done with this. He wondered if that is the Board's wish but he doesn't want to negotiate from the dais. He said there is a deal that could be made but there might be additional factors to be discussed.

Mr. Hovland agreed. He said the applicant has moved \$10,000 and could move more if the presser is put on.

The motion was made by Commissioner Weddig to defer Item B for two weeks. Item B is to be placed on the Consent Agenda on August 18, 2009 for settlement, duly seconded by Commissioner Dyer.

The motion passed 4-0, Commissioner Bockenfeld absent and excused.

COMMISSIONER COMMENTS

There being no other business before the Board, the Chair adjourned the hearing at 10:40 a.m.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

**NANCY A. DOTY, CLERK TO THE BOARD
BY JOLEEN SANCHEZ, ASSISTANT CLERK TO THE BOARD**