

**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
July 12, 2005**

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:

Lynn Myers, Chair	Present
Bernard L. Zimmer, Chair Pro Tem	Present
Susan Beckman, Commissioner	Present
Rodney Bockenfeld, Commissioner	Absent & Excused
Frank Weddig, Commissioner	Present
Jack Bush, Assistant County Attorney	Present
Nancy A. Doty, Clerk to the Board	Absent & Excused
Jennifer Gayer, Deputy Clerk	Present

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

Mr. Bush said under Agenda Item 3, there are two separate matters. One is the 2005 Real Property Report from the Assessor to the Arapahoe County Board of Equalization and the other issue is the 2005 Personal Property Report from the Assessor to the Board of County Commissioners acting as the Board of Equalization. He said the Personal Property Report contains details and all the schedules that were reviewed and considered by the County Assessor during the equalization period between May and June. He said the bigger document is the report on all the Real Property matters that were considered. He said the action today is to acknowledge the receipt of the report. He said the County Board of Equalization hearings must be done with the referees, but this submittal is a statutory requirement.

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

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

ADOPTION OF THE MINUTES

The motion was made by Commissioner Beckman and duly seconded by Commissioner Zimmer to adopt the minutes of the June 21, 2005 Public Hearing.

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

CEREMONIES

There were no ceremonies.

CITIZEN COMMENTS

There were no citizen comments.

CONSENT AGENDA

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

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

GENERAL BUSINESS AGENDA

Item A – Resolution No. 050409 – Public Hearing, Case No. W05-002, Land Development Code Revision/Rural Cluster Development

Assistant County Attorney Tim Knapp established jurisdiction for the Board to consider this Item.

Melissa Kendrick of the Planning Division said Planning is pleased to be here this morning. She said Tina Axelrad from Clarion and Associates would give a brief presentation. She explained on June 21, 2005 the Planning Commission made a favorable recommendation to the Board for this case. She said at the Planning Commission meeting there was one person from the public that spoke. She said that is indicative of the work that has been done and the large public participation. She said there is a lot of support from the developers and the property owners in the eastern portion of the County. She said the Staff is making a favorable recommendation for this case based upon the three findings in the staff report. She said the primary finding is the Comprehensive Plan, which contemplated the use of clustering to preserve the rural character and the agricultural lands on the eastern plains.

Commissioner Weddig said regarding residential sub-divisions in the eastern part of the County, what problems would a landowner have if one came to the County today and proposed such a RA-zoned subdivision. He understood that is a tough process.

Ms. Kendrick said RA is a 2.5-acre lot and to do that the property owner would have to rezone. She said the rural-area Comp Plan policies don't support that and only support the maintenance of the agricultural districts, which are A1 (19 acres minimum) and AE (35-acre minimum). She said no land has been rezoned to RA.

Commissioner Weddig asked if there are any problems with regional agencies such as DRCOG regarding the 2.5 acres.

Ms. Kendrick said no.

Commissioner Weddig stated that the cluster zoning has additional benefits.

Tina Axelrad, Clarion Associates, said she would briefly recap the history. She said these amendments would add a new, voluntary option to do rural area cluster subdivisions within 400 miles of unincorporated Arapahoe County. She said this would apply only in rural areas where services are unavailable and where there are primarily 35-acre lots. She said it is an alternative to 35-acre lots and rural sprawl, where there is no review by the County for roads, safety and basic facilities. She said this would enable the County to have some control over the impacts of development in the rural area. She said there has been a tremendous amount of process. She said there is generally strong support for the regulations. She said there was a small amount of concern regarding roads and paving. She said staff worked with many landowners and developers and discussed many site plans and proposals to get a sense of the feasibility. She said it is feasible for some landowners to develop under this option. She said this would be a function of location and the ability to provide services. Ms. Axelrad said those owners with A-1 zoning would be the first applications seen by the County. She said rural development could occur under controlled circumstances. She said 60-70 % of the parcel would be preserved for open space, which is more consistent with the Comp Plan. She said after meeting with the real estate community staff sent out referrals again for the third or fourth time. She said there were many comments received and were incorporated into the latest draft. There were work sessions with both the Planning Commission and the BOCC. She said there were positive feelings from the County. She said fencing standards were added and setbacks were adjusted. She reminded the Board about the policy question regarding special districts and the Board preferred to keep the Comp Plan policy in place and not generally approve special districts for these clusters. She does expect some requests and the Board would have to deal with that on a case-by-case basis. She said clarification is necessary in that this applies to A1 and AE zoning only within the rural area. She said there is also some clean up needed for the submittal requirements and the private rural roadway standards.

Commissioner Myers asked what other issues had to be clarified.

Ms. Axlerad said the submittal requirements.

Commissioner Weddig asked about street improvements. He understood there would be pavement required within the cluster developments. He asked at what point would the streets improvements be required.

Ms. Axelrad said the regulations do not speak to the timing and the standard County procedure would apply. She suspected it would be treated the same way as sub-division applications unless there is a need to phase. She said there could be a greater incentive to have that done as long as the commitment is made to finish the paving as development occurs.

Commissioner Weddig understood that would be negotiated with the request for the sub-division.

Stacey Thompson of the Engineering Division said the Subdivision Improvement Agreement would be negotiated with each application.

Commissioner Weddig said the intent could be to see the paving done when 50% of the lots are done. He said there are several scenarios but he is not comfortable leaving the negotiations entirely to staff. He asked if there would be a threshold where, at some point, the County would be guaranteed that the internal roads would be paved.

Ms. Thompson said the developer would have to guarantee the improvements. She said staff could review the paving issue based on what the applicant wants to develop and the applicant would have to make their intent clear.

Commissioner Weddig said usually the CO is held until the public improvements are complete, but in some cases that may not be fair to the first person that has a home built in the area. He said once Certificates of Occupancy are issued, the developer should not stop building houses because of the paving requirements specific to the number of houses that are built.

Ms. Thompson explained that the County would be able to collect on the developer's collateral if the developer does not finish the roadway.

Tim Knapp said each cluster would also come before the Board for approval and the Board would have the opportunity to place any conditions upon the development at that time. He further explained that the improvement would be collateralized to ensure that the improvements would be built at a certain point in time and the County would have the opportunity to collect on that collateral if the improvements are not completed. He said building permits would not be issued until the infrastructure is constructed, but there is a lot of leeway. He again stated the Board would have the opportunity to place any conditions it believes are essential regarding the development on each case that comes to the Board.

Commissioner Weddig wondered if there would be the opportunity for the Planning Commission to deny a rezoning if the parcel does not have any of the special features as identified in the proposed zoning rules.

Ms. Axlerad said that would not be a rezoning application, so the Board would not have as much discretion. She said if a proposal is not consistent with the Comp Plan or does not meet the standards, the Board might deny the request. She said the rules are not set up to deny an application if the development does not have special features. She said all the open land in the rural area is special in some way even if it is flat with no trees or riparian corridor. She said that land contributes to the character of the area and the attempt is to encourage a land development pattern that leaves open spaces between subdivisions. She said reiterated that the Board should not deny a project if it doesn't have a riparian corridor if the developer follows the rules. She said if the Board still wants to deny, the Board would have to consider the subdivision approval criteria.

Mr. Knapp said the Board or the Planning Commission could rely on the compatibility issue, although it is not specifically set forth in this regulation. He further stated that the concern is that the Comp Plan currently does not support rural clusters, but the Comp Plan is a guide only.

Commissioner Weddig asked Mr. Knapp if he felt the document is sufficient regarding the compatibility and relying on the Comp Plan. He said the lack of compatibility is not much reason to deny.

Mr. Knapp agreed that it would be a stretch, but that is the Board's right. He said from a legal standpoint it is better to state specific criterion that were not met, but in this case, there may be some issues that are not specifically set forth and that is where the Board would have to rely on the ambiguous term of compatibility. He qualified that is somewhat subjective but is what this Board would use if a development didn't fit in to other categories.

Ms. Axlerad stated that is in the subdivision criteria.

Commissioner Weddig said since this is not a rezoning issue, what about the neighboring cities and the affects. He asked if a neighboring city objects, would that be sufficient for the Board to deny?

Ms. Axlerad said the rural cluster option does bring rural development applications through the subdivision review process and would provide an opportunity for neighborhood input. She said if the residents adamantly dislike the proposal, the Board must base a denial reasonably, i.e. the project does not meet criteria or incompatibility, but a project is not incompatible just because the neighbors say it is.

Commissioner Beckman said she is concerned because it sounds like it would be difficult to deny development. She said 400 square miles is a large area of land and she is also concerned about that. She said most land planners agree that all open space is not equal as some has more value to the community and environment. She wondered if the Board could create criteria that would consider areas of interest instead of having the code cover the entire 400 acres.

Ms. Axlerad explained that some communities limit clusters to specific geographical areas that are to be preserved. She said those are typically valuable or active agricultural lands or has special topography such as hillsides or ridges. She said the cluster regulations could go in that direction. She stated that the County's open space planning is in the works and there would be an inventory of open lands in the County, and she suggested that the Board wait

and revisit this issue until that inventory is complete. She said the Board could then see how much of the “cluster” area overlaps the open space. She said it would be helpful to have that mapping in place.

Commissioner Beckman said it is important to weigh and balance because some of the land is important, but a tremendous amount of density is being added to these areas. She said she didn’t realize the density would be as great when this project began. She asked if there has been a long-term analysis of the water impact if the Board approves 400 square miles to be completely built out to the limit of the clustering ability. She said every site would have to be self-sustainable to be approved and that would be a reason to deny, and all the developments would use ground water, which is very connected. She asked what the projected population growth is.

Ms. Axlerad said that model has not been done yet. She said the County has the right to deny on the basis of inadequate infrastructure including water supply or impacts on water quality. She said the densities would increase significantly, especially in A1. She said it would be easy to find the maximum number of lots that could be created in the A1 zone.

Commissioner Beckman said that is the process that was followed in the Comprehensive Plan project. She said there are many 35-acre lots in that area because of the lack of water. She said there would be substantial density increases and the metro area would continue to grow, but she would like some analysis for the existing residents in that area.

Ms. Axlerad said a detailed analysis was done as part of the Comp Plan and it may not be easy to find out what a certain amount of homes would do. She said the population estimates would probably not be realistic for many reasons.

Commissioner Beckman said the County has tried to make this a developer-friendly process so the developers would use it. She said the County must expect that and that they would use it as long as there is water available. She said it is necessary to have the numbers.

Commissioner Weddig said if there is an RA subdivision development and there is a floodplain area, there is not a density transfer off the floodplain or the transfer would be negotiable because a floodplain is un-buildable land. He said under this regulation, it seems that the County would be treating those floodplains the same as riparian areas. He wondered if that is a good policy.

Ms. Axlerad said she needs confirmation from the Planners whether they net the floodplain lands now in the zoning density regulations. She thought the Planners used a gross density, which was carried forward to the rural areas so no lands are netted out of the gross land area. She said that is consistent with how it is done for any other subdivision. She said no one loses out by choosing one type of land over the other. She said that varies in different communities, and some do net out over 30% slopes so the side of a mountain could not be counted.

Ms. Kendrick added that is different in a rural versus urban area. She said in the urban area, a floodplain is placed in a tract, in essence, netted out. She said in the rural area, the flood plains are left in easements because there is more land to work with and there can be development outside the floodplain.

Commissioner Zimmer said in the proposed regulations, the County is requiring paving in all cluster developments. He said once the development gets outside the urban area where the County roads may not be paved, it seems onerous to require that the internal roadways be paved and to bear that expense when it may not be necessary.

Ms. Axlerad said in the AE zone, there could be 2 or 3 homes and there might not be any internal subdivision roads and the access may be from the unpaved County Road. She agreed that that could be an issue but the policy has always been to require paved roads for rural clusters and the County roads would be paved per County policy. She mentioned that there is a study underway to look into alternative financing mechanisms to pave County roads other than requiring the developer to do that. She said the densities in the A1 zone like the country life but also like paved roads.

Commissioner Zimmer said he would like to see a statement that does not require paved roads and each case could be considered individually.

Ms. Axlerad said if that is the Board's direction, that change could be made.

Commissioner Weddig said the tradeoff would be to have the developer agree to pave the portion of the County road that is in front of the property. He said there might be instances where the internal road is less important. He said the rural cluster process only applies to the middle section and does not go all the way to the eastern end of the County.

Ms. Axlerad agreed and said the clusters would stop at Price Road because of water issues. Ms. Kendrick presented a map of the proposed cluster areas and referenced Price Road. It was clarified that land east of Price Road is not subject to this application.

Commissioner Weddig said regarding the public hearings, the only requirement is notices to adjacent property owners fourteen days in advance of a Planning Commission action. He wondered if that is enough. He said under a standard rezoning, a publication would be necessary. He said there would be 70 homes in one cluster and someone down the road could be surprised about 300 cars passing every day.

Ms. Axlerad said the goal is to expedite the processes as much as possible and that is why there is detail in the regulations-so the Board feels comfortable that there has been a public process and acceptance of the standards and the results of development. She said the tradeoff for the up-front work is the expedited process and one way to do that is to get the applications through in a short period of time. She said the original draft had no requirement for public hearings at all. She said now there would be a full public hearing at the Planning Commission stage only, and unless the Board asks for a public hearing, the request would go on the consent agenda. She said the Board would still have the ability to pull the item from the consent agenda for discussion. She said the issue is that this issue is a land division, which currently has no process.

Commissioner Weddig asked if there would be a legal published notification in the newspaper. He said the County must be cautious when using the term "full public hearing process" so people are not misled to believe that the process would be the same as regular rezoning cases. He said this should be considered a modified public hearing process and wanted to know which process applies.

Ms. Kendrick said the proposed process is more notice than what the County currently gives for a subdivision. She explained that a subdivision comes on the consent agenda only. She said there would be a 30-day referral period and a 14-day notice prior to the Planning Commission and that is more than what is done currently for subdivisions.

Commissioner Weddig said the difference is that for a subdivision, the zoning is already known. He said this proposal is basically a rezoning.

Ms. Kendrick said it is the same process as a rezoning. She said that doesn't mean that staff shouldn't take more time up front to make sure everyone knows about a request. She said typically, by the time the case gets to public hearing, adjacent property owners would have been notified. She said the referral period usually gets the word out and staff would be doing an on-site analysis prior. She said more than just the adjacent property owners could be notified earlier.

Commissioner Weddig suggested a sign on the property.

Ms. Kendrick said that is already required. She said letters are also mailed.

Commissioner Beckman said the process should not be expedited to the extent that any public input is lost. She said there is a very big difference between subdivisions and the rural area; the County wants to be sure that people know what is happening. She said because of the density, internal paving should be required. She said developers would be interested in clustering and the County should encourage it, but it is a huge benefit to landowners and developers

because of the money making potential. She said there was a discussion regarding the tradeoff of having the developer pave exterior roads. She wondered if there is a way, within the code, to encourage that.

Ms. Axlerad said she doesn't know.

Commissioner Beckman asked when the cost analysis was done regarding internal paving for 70 homes, was there also a cost analysis of what increase in value that property has.

Ms. Kendrick said the increased cost was 25% by every three or four lots. She said that came from the development community. She said staff was told that that would help compensate for the paving costs.

Commissioner Zimmer stated that, on a recent tour, there was discussion regarding rural land use planning where lots are designated for future development, but there was no requirement for the immediate development. He said he was in favor of removing the exterior paving requirement because he could see using some of those ideas in Arapahoe County. He said a piece of land that is designated for 70 homes could only have 1 or 2 homes for a time. He said to put a paving requirement on that situation where the County road is not paved seems to be prohibitive for the original 1-2 homes. He said there are some areas where that could be practical.

Ms. Axlerad said if the applicant knows up front that they might only release one or two lots and then waited for a few years, they could do a phasing agreement as part of the subdivision approval. She said there are risks and unless the Board wants to change the policy regarding internal road paving, there is some leeway for developers to work with the County on phasing improvements, but beyond that, the County is not accommodating.

Ms. Thompson said the initial draft of these regulations was based on the current subdivision regulations, which require paved roads for all subdivisions. She said the internal roads would have to be paved. She further stated that if the subdivision fronts to a County road, it must be paved as well. She said that became a deal breaker with the development community. She said a finance study is now being done to find other resources to get the County roads paved versus putting the burden entirely on developers.

Commissioner Zimmer said he would like to see some flexibility built into the regulations in case a phased development is proposed. He said a developer would probably want to use all the lots available in a cluster and develop all of them immediately. He said the Board took a trip and saw a number of developments and talked about areas where a specific number of lots were set aside for future development.

Ms. Thompson said if a developer has a 70-acre subdivision and the intent is to only develop a few lots initially, there could be a restriction. She said lots would be created and the infrastructure could be phased.

Commissioner Zimmer reiterated that he would like flexibility.

Ms. Kendrick said there is a mechanism in place to do that. She said the project could be phased and could accommodate the infrastructure through the SIA.

Mr. Knapp clarified the publication process. He said the way this regulation is written, an application would come to the Board on the consent agenda, not in the public hearing under general business. He said the Board could pull the item from the consent agenda and open the issue to the public. He said if the Board wants to change that, staff should be directed to make that change.

Mr. Knapp said currently there is not a scale system for the PC or BOCC to consider regarding an applicant meeting certain requirements, yet there are five bonus provisions. He said he is not sure how to interpret those or how this Board or PC would apply those to the overall decision. He said it seems that those are add-ons and credits if the developer does these things.

Ms. Axlerad said the density bonuses are purely discretionary. She said the Board could say yes or no to those in any amount up to the maximum stated. She explained that the bonus goes on top of the built in density increase. She said there is a potential of a 40% density bonus, which is calculated at 1.75DU plus 40% in the A1 zone.

Mr. Knapp said, for example, if a developer was going to include water and sewer, then the density could be increased by 40%, which is 20% per each infrastructure revision.

Ms. Axlerad said yes, up to 40%. She clarified that the Board has discretion to give anything less.

Mr. Knapp asked about specific criteria.

Ms. Axlerad said typically there is some kind of criteria regarding how or why the Board would approve the density bonus. She suggested that in the process provisions of the subdivision amendment that there be a subsection called Approval Standards, which defines the standards. She said a sentence could be added to address bonus density.

Mr. Knapp said if there is an increase in the gross density, is there any change in the minimum conservation area?

Ms. Axlerad said generally, no, but there is room for the County to accommodate the bonus by reducing the set-aside area to no less than 60%. She said at first, the lot size should be determined while maintaining the 70%. She said there could be an exception if this is an exceptional development. She referred to page 3 of the zoning regulations.

Commissioner Weddig asked if there is an additional 10% bonus if the developer does not sell the water from the conservation area.

Ms. Axlerad said there is a 10% bonus for retaining water rights on the conservation area and the bonus could go to 50%. She said there is a cap on the cumulative. She explained that through the bonuses, the gross density could not be increased by more than 50% in the A1 zone or 100% in the AE zone.

Commissioner Weddig said he is troubled that at some point in the future a landowner in a cluster would need to drill a well on the conservation easement and buy the water. He said he would like to see a negative instead of a bonus if there are no water rights rather than a bonus if the developer hasn't sold the water rights. He said if there is no water to be had under those 45 acres, it should go the other way and go against the development.

Ms. Axlerad said anyone could sell his or her water rights without a penalty in the County land development review process. She said she is against a penalty when no one else is penalized for any other process.

Commissioner Weddig suggested taking out the bonus.

Ms. Axlerad clarified that the bonus encourages people to keep the water rights.

Commissioner Beckman said the paving of the interior roads was discussed through this process but wondered if there was also discussion regarding assistance in paving some of the connecting County roads.

Ms. Axlerad said there was a provision that the applicant would be responsible for paving a portion of the abutting County road that would give access to the subdivision.

Commissioner Beckman said it was stated that that provision became a deal breaker with developers.

Ms. Axlerad said yes, and about a year was lost in the process.

Commissioner Beckman asked what is being done in other counties.

Ms. Axlerad said Douglas County requires all paved roads and are getting them without a fight because of the market there. She said Larimer County has minimum standards for gravel roads but no mandatory standards for paved roads. She said she is not sure about Adams County. She further stated that some roads have impact fees and that is currently an option in Arapahoe County.

Commissioner Beckman said there are other counties that require additional paving. She said with the significant issue that Arapahoe County has with its rural roads and the impacts because of population, when the density is increased significantly, it concerns her to back away from that element. She said if it could be done in Douglas County, it should be done in Arapahoe County. She qualified that there may be legitimate reasons for that. She said the Board is trying to have better growth, not just allow development. The goal is to have smart growth and all the issues must be considered.

Ms. Axlerad said the cost to maintain the roads must also be considered if that responsibility falls on the homeowners.

Ms. Thompson said in the interim, before the Rural Road Financing Study is complete, each case would be considered on a case-by-case basis and staff would negotiate for the frontage road improvements.

Mr. Knapp said the Board should consider the fugitive dust issue. He said if there are a lot of vehicles driving on gravel roads, the County is responsible and liable for the air quality and would have to use the taxpayers' money to treat those roads.

Ms. Axlerad said there is a portion of this area that is in the Air Quality Basin for the Denver Metro Area.

Cherice Kjosness, Arapahoe County Assessor's Office, said she is responsible for the Assessor's values in the entire cluster area. She said she is very excited because if people can be kept from doing 35-acre lots, it would simplify things for the Assessor's office, the Treasurer's office and will offer a lot of protection to the buyers. She said when people buy a 35-acre parcel, they are buying raw land and many times the realtors don't make them aware of exactly what the responsibilities they will have or the little protection they have. She said there are many problems with these areas and often there are deputies in the area several times per week because there is a lot of dissention with the people that live there regarding who should do what. She said in the far eastern sections of the County the only access is County Line Road and it is going to be difficult to sell clusters that have paved roads because the maintenance would be very high and will fall to the homeowners. She said in Lincoln County the current cost to maintain roads is \$4,600 per year, not including labor, per mile. She said her concern is not the cost to install the road but who and how the road would maintain the road. She said in Lincoln County she avoided paved roads because they were in such bad shape, they could damage cars. She supported Commissioner Zimmer's suggestion that each case be considered individually.

Commissioner Weddig asked if Lincoln County is decreasing the miles of paved roads because they cannot afford the maintenance.

Ms. Kjosness said yes.

Commissioner Weddig found that interesting because the gravel maintenance is more difficult than paved maintenance.

Ms. Kjosness said it is cheaper for Lincoln County to buy gravel because there is so much of it.

Glenn Kunkel, Eagle Contractors, 1686 S. Ula Court, 80231, said he worked for Arapahoe County for eight years as an engineer and has been a land developer/builder for 19 years and is a second-generation farmer/rancher. He said he runs 2,000 acres in Arapahoe and Elbert Counties. He said the whole point of this proposal is that the County has fought 35-acre subdivisions for years. He said there are issues with road maintenance, infrastructure, modular housing and foreclosures, and there must be another option. He said every day the Board waits, more 35-acre sites are being developed. He said there are subdivisions every day and soon there won't be much of a County left and there would be a 35-acre pattern from end to end. He said regarding paving costs, the farmers and ranchers in the AE zone have no money and would not pave the adjacent roads. He said their children go to college and don't stay to farm. He said internal paving in the A1 zone is reasonable. He said the County would maintain those roads. He said the internal paving would be a benefit to the lots but in the AE zone, the value of land has not changed for years. He said he has subdivisions that have been there for 5-8 years and he has sold 3 houses. He said that development would not happen for years. He said if developers like Richmond, US Homes and Village don't move

into towns like Bennett, it would be a long time before they get to Byers. He said the benefit would be to Arapahoe County residents. He said those owners might want to break off a piece of land for extra money to retire or for their children. He said in A1, there would be small developers that would get some density. He said the cluster subdivision that would be presented to the Board first has hundreds of thousands of dollars up front for the plans and designs. He said a farmer would not be able to do that financially. He said the Board must create some kind of basis to allow a different form of development to occur. He said the regulations are a great way to do that even though there could be some future revisions.

Mr. Kunkel said the subdivision he is currently working on has already gone through Bennett's process and he is going to have 358 lots on 2260 acres. He said there is a lot of riparian area on the site and the proposal is for 25 single-family lots on the eastern side of the creek. He said the big developers can get the engineers to sign off on changing the flood plain and they then build houses on the site. He said the idea of protecting the riparian corridors and open space is the idea of creating cluster regulations. He said putting a lot of restrictions would scare everyone, including farmers who are limited on their knowledge of urban densities, and would resort to 35-acre parcels.

Mr. Kunkel said the state controls the water rights and regardless of how many homes are built in an area, the water would still be taken from the aquifer. He said he disagrees with Planning staff regarding the 10% bonus. He explained that the developer would not get that because the only time one can use water rights for irrigation is if there is a "grandfather" clause for 3rd and 4th generation farmers. He said to keep the water rights as a developer is stupid and to be able to transfer the water to other projects and the money made from that far outweighs the benefit of keeping it and getting 10%. He guessed that the developers would instead create 35-acre lots and sell the water anyway. He said not many people would transfer water rights if they are 10 miles away from I 70 because no one would want to run 10 miles of pipe to Byers.

Commissioner Weddig said there has been a lot of discussion today and there are many concerns but there is one Commissioner missing. He said suggested that the hearing be continued.

The motion was made by Commissioner Weddig regarding Case No. W05-002, Land Development Code Revision/Rural Cluster Development, that the public hearing be continued until October 11, 2005.

Seconded by Commissioner Zimmer.

Commissioner Beckman said it is important that the County proceed with some type of clustering regulations. She said the County wants to create a new kind of development patterns. She said the 35-acre developments have been a thorn in the County's side for many years because of maintenance, services and what they do to the landscape. She said she believes that any proposal should be heard in a public hearing as a general business item instead of a consent agenda item. She said there would be strict requirements for the Board to turn down an application. She said most of her concerns apply to the A1 zone. She said the densities are concerning because there will be little subdivisions in that area and she wants to ensure the impact costs are covered. She agreed that certain areas of the County must be preserved and that some land is more valuable than others in clustering scenarios and the amount of land mass should be reduced from 400 square miles. She said she is not extremely concerned about the paving issue in the AE zone. She said a development of 70 houses does create impacts and the County doesn't have the money to pave those roads. She qualified that there is a tremendous push for the County to do more for County roads because of the population, which will increase. She complimented staff and Clarion for their work and all the public outreach. She felt that the County would have regulations in place in a few months.

Commissioner Myers agreed with the comments from Commissioner Beckman. She said a cluster regulation is an excellent idea and she also thanked staff and Clarion. She felt that it is proper to continue this hearing. She said the tours were helpful and said the County should have regulations in place that will look good in fifty years. She said the goal is for Arapahoe County to be a leader in clustering. She said the tours and discussions have brought up issues, which need to be further defined. She said October 11th is agreeable to staff. She said the County would continue to keep the public informed.

Ms. Kendrick clarified that the continuation would be to get very specific things done. She said Commissioner Beckman discussed four items. She clarified that the first one had to do with public hearings.

Commissioner Beckman explained that she would like each application to be a general business item in public hearing instead of having the application on the consent agenda.

Ms. Axlerad asked if all applications should be heard in a public hearing at the Planning Commission and BOCC levels.

Commissioner Beckman said yes. She said when there is an application for 70 units on the plains, there could be some public input and people should have that opportunity. She said there also might be a situation where the Board does not support an application and turns it down. She said for that it would be important to present the application as a general business item because there would be findings as to why. She said it would not take much time.

Ms. Kendrick agreed. She said the second issue is that there was discussion regarding the A1 zone and density and the Board wanted to know what the overall population increase would be.

Commissioner Beckman clarified that she would like to have that information so that when the Board makes its decision, it feels confident that the right decision is being made for the County. She said she asked about the projected density increases and asked for a comparison to the Comp Plan Water Analysis. She said she does not want an extensive, expensive study.

Ms. Kendrick said that request could be accommodated.

Commissioner Beckman said regarding the land mass issue, she is concerned that 400 square miles are being considered for clustering. She said all open space is not equal and the Board would like to look at areas using the GOCO green printing process. She suggested staff recommend some areas so that the County is not dealing with the entire big chunk of land.

Ms. Kendrick said she would schedule a study session to do that because there are maps available. Ms. Kendrick said the fourth issue had to do with the paving issue and it seems like there is a desire for flexibility in the AE zone regarding internal roads.

Commissioner Zimmer said that is correct.

Commissioner Beckman said she would also like flexibility in the A1 zone to address connecting roads. She said if there are areas of Douglas County that are requiring the developers to pave, then Arapahoe County should find out why this issue became a deal breaker in Arapahoe County. She said she would like to discuss that in the study session. She said she feels that a cluster is 8-10 homes with great land use. She said when she starts envisioning a subdivision of 70 homes, there are other concerns about the possible impacts.

Commissioner Myers said there should also be further discussion regarding the water and the bonus.

Commissioner Weddig said he would like to have more discussion regarding the fiscal impacts of these developments on the County's surfaces. He said he would like to know what services the County normally provides for these types of subdivisions and increasing that over 10 years. He said there are also off-site impacts and if the subdivision rules apply to these types of developments, that takes care of a number of his concerns. He said now a project could be denied because it had 70 homes and the access is a gravel County road. He said under subdivision rules, the County can require that the road is paved.

Ms. Kendrick said a regional solution is needed for the paving of County roads.

Ms. Axlerad said on a case-by-case basis, if a study is done based on 70 or 200 new homes and the paving is justified, the engineers would have to have facts. She said that has to be a reasonable condition of approval.

Commissioner Beckman said that could happen during the application process. She said the Board's concern is regarding the developer pay for some external paving. She acknowledged that staff is looking at the "big picture" but in the A1 zone, the density is being increased significantly and must be considered separately.

Ms. Axlerad said the Board could do that now as part of the subdivision review process, on a case-by-case basis. She said that could be done without impact to the work that has already been done by staff.

Commissioner Weddig asked if this regulation would allow the County to impose an off-site impact fee for transportation? He said that would be unfair to the first cluster if they did not have to do that and then the next cluster would be assessed if the issue gets out of hand.

Ms. Axlerad said the entire system should be considered and would be a worthwhile exercise. She said in the meantime the Board could deal with each application individually.

Commissioner Beckman wondered if the density of the project could be tied to the requirements of the paving of the roads and not do that on a case-by-case scenario. She said it is very difficult for staff, but she is concerned with the density of the larger subdivisions.

Ms. Kendrick said she is clear on what could be done immediately and what issues would require a study session. She stated that the issues that need further discussion or clarification are:

1. Add public hearings at the BOCC level
2. Conduct an analysis regarding what the increase in population is based on using the rural clustering regulations in the A1 zone
3. Staff would study land mass areas to be preserved
4. Paving in the AE area and not requiring paving; having flexibility regarding paving in A1
5. Water bonus issue; currently the County requires that the water stays with the conservation area
6. Fiscal impacts related to the subdivisions
7. Off-site impacts regarding paving the roads; should that be required and when?

Commissioner Weddig said according to the regulations there is an expedited process. He wondered if the County is making any commitments that staff would get something done within 90 days? He said if so, what if six applications come in at once? He said he wants to make sure that staff reserves the right to tell each applicant that the process would take longer than 90 days, if necessary.

Ms. Kendrick said there has not been a specific time commitment yet. She said the bigger concern is that the County has not done this before and staff wants to ensure that the process is done well. She said staff is committed to processing applications as quickly as possible, but would be realistic regarding the times.

The motion passed unanimously.

Commissioner Comments

Commissioner Zimmer commended staff for the Larimer tour and forcing the Board to look at what other jurisdictions are doing and causing the Board to consider other possibilities. He said staff does very good work but considering other projects and making the Board aware of other possibilities is to be commended and he thanked staff.

Commissioner Weddig echoed Commissioner Beckman's comments regarding the concept of cluster zoning. He is excited about this proposal, which is a good tool to use between the cities and the rural areas of the County. He said he would like to see this be successful and if used property would make a better County. He said it is worth the extra time and is sorry that the Board was not ready to proceed.

There being no other business before the Board, the Chair adjourned the hearing at 11:20 AM.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

**NANCY A. DOTY, CLERK TO THE BOARD
BY JENNIFER GAYER, DEPUTY**