

APPROVED JANUARY 12, 2016

The regular meeting of the Douglas County Planning Commission was held on Tuesday, December 8, 2015 in the Douglas County Commissioner Meeting Room of the Douglas County Administrative Building, 1616 8th Street, Minden, NV.

PLANNING COMMISSIONERS PRESENT: Frank Godecke; Kevin Servatius; Margaret Pross; Jo Etta Brown; James Madsen; Anje de Knijf and James Beattie.

STAFF PRESENT: Cynthea Gregory, Deputy District Attorney; Mimi Moss, Community Development Director; Hope Sullivan, Planning Manager; Heather Anderson, Associate Planner; Ted Kozak, Associate Planner; and Laure Penny, Clerk to the Board.

Call to Order and Determination of Quorum.

Chairman Godecke called the meeting to order at 1:02 p.m. and determined a quorum was present.

Pledge of Allegiance.

Vice Chairman Servatius led the Pledge of Allegiance.

Public Comment. (No Action Can Be Taken)

No public comment.

For possible action. Approval of Agenda.

No public comment.

MOTION by Brown/de Knijf to approve the agenda; carried unanimously

For possible action. Disposition of the November 10, 2015 Meeting Minutes.

No public comment.

Hope Sullivan, Planning Manager asked if they could continue the approval of the November 10, 2015 Minutes until the next meeting as due to the length of the meeting, the minutes were only recently made available, and staff needed more time to review them as well as having some questions regarding the attachments.

Cynthea Gregory, Deputy District Attorney informed the Planning Commissioners that they could continue the approval of the November 10, 2015 Minutes past the 45 days if good cause was shown and she believed the issues raised where a good cause to continue the approval.

MOTION by de Knijf/Pross to continue the approval of the Minutes; carried unanimously.

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

Public Hearings.

1. For Possible Action. Discussion of Redevelopment Plan for Redevelopment Area No. 2, and adoption of Report and Recommendation regarding approval of the Redevelopment Plan to the Douglas County Redevelopment Agency pursuant to NRS 279.570.

Zachary Wadle, Deputy District Attorney reviewed the process to date. Per NRS the Redevelopment Plan now needs to be submitted to the Planning Commission for its report and recommendation to the Board of Commissioners as to whether the Redevelopment Plan generally complies with Nevada law requirements and the Douglas County Master Plan and related planning documents.

Member Pross commented on a letter from Tahoe-Douglas Fire Protection District saying it can't support the Redevelopment Plan because of concerns regarding adequate funds and manpower. Mr. Wadle responded county staff is aware of the issue. As this process moves forward a report which details the financial feasibility analysis and impact of the proposed Redevelopment Area will be provided. That is when issues that the Fire District has will be analyzed and reviewed by the Board of Commissioners.

Member Brown asked Mr. Wadle if there is a document that can be attached that will reference the NRS codes he has mentioned. Mr. Wadle responded that was a document that was produced to the Planning Commission in its entirety when the preliminary plan was originally in front of them. It wasn't reproduced in this packet.

Member Madsen is concerned about the word "appointed or appointment". He'd rather have the Board members elected. He wants to make sure all groups are represented. Mr. Wadle responded the Redevelopment Agency of Douglas County is the Board of County Commissioners. Member Madsen was glad to hear this.

Vice Chairman Servatius wanted to know when this would be approved. Mr. Wadle responded if all goes well the Redevelopment Area and Plan will be formally adopted by the end of February 2016. Vice Chairman Servatius asked if there was any additional noticing to the general public, other than the formal noticing that's typically required, to make sure the public is completely informed about the proceedings. Mr. Wadle responded that once the Ordinance creating the Redevelopment Area is introduced by the BOCC, there is a four week weekly noticing requirement where Notice of the Consideration of the Issue has to be posted in the paper.

Member Pross commented her understanding was the different projects could be financing infrastructure improvements like water and sewer. Mr. Wadle responded those are possibilities. Member Pross then asked if it was possible for the Redevelopment Area to use development money to line effluent ponds. Mr. Wadle responded it's possible, but he wanted to research before giving a definite answer.

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

PUBLIC COMMENT

Alan Wechsler, Attorney for the Tahoe-Douglas Fire Protection District wanted to clarify the comments in the letter submitted. He commented the Tahoe-Douglas Fire Protection District isn't against development or business, it just has some concerns about how this affects the District financially and how that will affect its ability to provide services to the community. He stated the Tahoe-Douglas Fire Protection District just wants to be involved in the process so they can voice their concerns and make sure those concerns are addressed. Mr. Wechsler stated that at this time the district withdraws their objection. The district doesn't object to the Planning Commission's recommendation of approval to the BOCC. However it is reserving their right to object at a later date if it is needed.

Public comment closed.

Vice Chairman Servatius commented this Redevelopment Area makes sense to him so as to help the citizens up at the Lake and get the employment numbers back up.

MOTION by Brown/Servatius to adopt Report and Recommendation approving the Redevelopment Plan for Redevelopment Area No. 2 and forward Report and Recommendation to the Douglas County Redevelopment Agency; carried unanimously.

2. For Possible Action. Discussion on a request for approval of a private roadway, pursuant to Douglas County Code 20.100.090, to be built at-grade to County Rural Local Road Section (DC A02) for the first 100 feet and County Unpaved Road Section (DC A26) for the remainder of the road. The private road would be used to access a total of 5 parcels (ranging in size from 1.37 acres to 90.67 acres) to be created by LDA 15-013 and LDA 15-014 (approved by the Administrative Hearing Panel on November 12, 2015). The subject parcel is located on the east side of Foothill Road approximately ¼ mile south of its intersection with Genoa Lane, within the A-19 (Agricultural-19 acre minimum parcel size) zoning district, and in the Genoa Community Plan Area. The applicant is Mark Neuffer of Alta Consulting, Ltd. APN 1319-15-000-039.

Heather Anderson, Associate Planner provided background information on the application. She provided a Vicinity Map and a map of the Proposed Private Roadway. Ms. Anderson commented the staff recommends approval to the BOCC based on the conclusion in the staff report.

Member Beattie requested the language *"if the CC&Rs are dissolved the private owners are individually responsible to continue maintenance of the road to perpetuity"*. Hope Sullivan, Planning Manager, responded staff can work with the District Attorney to detail who would have maintenance responsibility.

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

Chairman Godecke asked Cynthia Gregory, Deputy District Attorney if CC&Rs ever go away. Ms. Gregory responded CC&Rs are a private agreement amongst the property owners. Potentially they could but the way the code is written it says a Corporation or perpetual Association. So as long as that is addressed in the CC&Rs, there is some continuous body that maintains those roads.

Mark Neuffer, Applicant stated they concur with the staff report and the recommendations and they are available for any questions.

Tim Russell, Lumos & Associates provided a description of the road issues.

Member de Knijf asked if the road was going to go over the trail off of Foothill Road. Mr. Russell responded yes and they will have to have a NDOT approved access on Foothill Road and it will have to accommodate the existing trail.

PUBLIC COMMENT

Carlo Luri stated he was concerned about pedestrian safety and the vehicle traffic on the private road.

Public comment closed.

MOTION by Pross/Madsen to recommend approval to the Board of County Commissioners to allow Ranch No. 1 Limited Partnership to have a private road to serve the parcels to be created by approved Tentative Parcel Maps LDA 15-013 and 15-014, based on the conclusions in the staff report; carried unanimously.

3. For Possible Action. Discussion on a request for a Planned Development Application PD 15-002, for the following: 1) a Planned Development Overlay Zone; 2) a Tentative Subdivision Map to subdivide 18 +/- acres into 47 parcels for multi-family residential development, the smallest being 1,546 square feet in area and a 15.1 acre common open space lot; 3) a request for approval of a private road; 4) DA 15-083, a variance to improvement standards for the road right-of-way width (less than 60 feet) and roadway width (from 24 feet to 20 feet); 5) DA 15-082, a variance to improvement standards for intersection spacing; and 6) DA 15-084, a variance to reduce the useable open space. The subject property is located approximately 750 feet from the southeast corner of U.S. Highway 50 and Lake Village Drive within the R-073 SA1 (Special Area 1 of the Lake Village Area Plan) zoning district in the Tahoe Basin. The applicant is Steve Kenninger. APN 1318-23-301-001.

Ted Kozak, Associate Planner provided background information on the Application for a Planned Development. He also provided vicinity, aerial and area maps. He discussed the zoning/land use designation and provided a drawing of the proposed planned development.

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

Mr. Kozak went on to discuss existing and proposed easements; onsite phasing plan; layout plan and the typical single family and duplex designs. He provided the Planned Development requirements and the findings and recommendations that have been met.

Lastly, Mr. Kozak discussed the variances and site constraints and provided maps showing the 8% slope on the undeveloped site and the open space. He commented he has have received phone calls and letters from the Lake Village HOA along with emails and letters from neighbors asking for further information about the project. Mr. Kozak covered the variance findings and recommendations.

Cynthea Gregory, Deputy District Attorney addressed the posting and noticing requirements. She also confirmed the applicant did comply with the size requirements that were posted were identified on the County's website.

Member Madsen asked Mr. Kozak if he knew what roofing material was being used on the units. Jason Drew, NCE Planning & Engineering responded the roofing would be Class 1 Asphalt Shingles. Member Madsen commented he was concerned about where the snow would land when it fell off the roofs. Mr. Kozak responded the building official was satisfied with the building separation and it would be to code.

Vice Chairman Servatius asked Mr. Kozak if the applicant would agree to the condition the Lake Village HOA wanted put in – restriping of Lake Village Drive and U.S. 50. Mr. Kozak responded he had spoken with the applicant regarding this. Basically the TRPA's overlapping condition requires either restriping prior to construction or providing some type of maintenance of traffic operations. After speaking with the County Engineer they didn't feel they should overlap the TRPA conditions with additional conditions from the County.

Jason Drew, representing the applicant provided more detail and context on the background of the project. He then presented the key elements of the project, the community benefits and compliance of County Standards.

Member Madsen addressed Mr. Drew about his concerns with the snow and where it will fall. Mr. Drew explained in the two arches that come out on each side there is internal plumbing that captures the runoff on the roof and funnels it to underground infiltration galleries. As for the walkways they are completely covered.

Member Beattie asked how long the left turn acceleration lane is. Mr. Drew responded it is 150 feet. Member Beattie asked what the depth was from Highway 50 to the first building in the development. Mr. Drew responded it's a minimum of 200 feet.

Member de Knijf asked what the distance was between the peak of one unit to the peak of another unit. Mr. Drew responded he didn't know. Member de Knijf asked what happens if the snow doesn't melt and just continues to accumulate. Mr. Drew responded the roofs are designed to handle the required snow load which is over 10 feet of snow. Member de Knijf commented she had a concern about Burke Creek. She asked if the applicant was willing to provide an easement to the County for Burke Creek so the

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

County could perform environmental improvements. Mr. Drew responded it is a separate project and they are working with County staff and NTCD.

Vice Chairman Servatius asked Mr. Drew if they were addressing the concerns of the HOA and the restriping of the roads. Mr. Drew responded he believed there were two concerns that were outlined in the letter: the improvements to be made and the second concern is the timing of those improvements. Mr. Drew responded the mitigation measure requires the improvements be completed before there can be an occupancy in the units. He stated the widening of the road and the restriping will be done prior to occupancy, but to try and do it before that would be challenging.

Vice Chairman Servatius then asked if there were any old growth timbers identified in the EIS Statement. Mr. Drew responded yes there were and they are protecting those trees.

Vice Chairman Servatius asked if the site required fire hydrants and how many there would be. Mr. Drew responded code requires fire hydrants and there will be three.

Chairman Godecke asked why there is no RV or additional guest parking spaces. Mr. Drew responded regarding the RV parking spaces. The CC&Rs will be very explicit that no RV will be allowed to be parked on the site. Most higher end developments don't want RVs parked on site. He then responded to the guest parking. Each unit has a 20 foot or longer driveway plus a two car garage, which gives each unit four parking spaces.

Chairman Godecke commented there are no sidewalks so he has concerns about pedestrians walking into the development. Mr. Drew responded all the analysis that were done said the 20 foot wide road, given the volume of traffic, is safe.

Chairman Godecke asked why the applicant was opposed to granting an easement or a right-of-way for the Burke Creek Restoration Project. Mr. Drew responded they are not opposed to working with the County and NTCD on granting the easement but the easement needs to be written in a way that will protect the County and the owner of the property.

Member Brown asked if there was going to be any lighting. Mr. Drew responded street lighting is part of the project and is in compliance with the County code.

Member Brown asked if they found anything archeological on the site. Mr. Drew responded nothing of significance. That was thoroughly reviewed in the EIS.

Ms. Sullivan discussed the Lake Village HOA letter and the restriping of Lake Village Road and Highway 50. She stated the HOA letter referenced Condition of Approval 13 in the TRPA Approval and the applicant was referencing Condition of Approval 14. She then discussed Burke Creek. She stated the County has obtained grant funding to do restoration work on Burke Creek. There is an environmental gain to be realized and the County cannot realize that until we are able to obtain an easement. She pointed out the

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

Planning Commission has a staff report where the basis of justification for the variances and for waivers are a derivative of the environmental sensitivity of the land.

Mr. Drew commented Ms. Sullivan is correct there are two different impacts. They are associated with construction and the development. They each have separate mitigations associated with them and they are both related to the intersection of Lake Village Drive and Highway 50. For the construction mitigation it gives the project proponent two options: 1) restripe the intersection or 2) manage how construction traffic is allowed to enter and exit the site. For the development mitigation there is no option. They have to restripe the intersection prior to occupancy. In regards to the easement, conditioning this project with the easement creates a number of issues from a financing perspective and if you encumber the project site with a permanent easement that doesn't exist today it can create problems for the property owner if they try to transfer the property.

Ms. Gregory stated Mr. Drew is correct that the County and Sierra Colina have been working together for quite a while. They have worked cooperatively together in the past. The County is in the process of reviewing the easements to ensure they address Sierra Colina's needs as well as the County's. There is an existing drainage easement already on the property and the County is confident they could do their restoration work in that existing easement.

PUBLIC COMMENT

Michael Pook, Project Manager for the Burke Creek Restoration Project stated Sierra Colina has shown a strong commitment to implement environmental improvements along Burke Creek. The County and NTCD look forward to obtaining an easement from Sierra Colina and implementing a successful project.

Art Warrell, General Manager at Lake Village HOA commented their major concern is the intersection exiting Lake Village Drive and Highway 50. On behalf of the Board of Directors they would like to see the improvements at the intersection and on Highway 50 installed before the commencement of construction.

Public comment closed.

First MOTION by Pross/Brown to recommend approval for the Planned Development Overlay to the Board of Commissioners based on the discussion and findings in the staff report and subject to the conditions; carried unanimously.

Vice Chairman Servatius wanted to add the condition that the intersection improvements would be done prior to construction.

Ms. Sullivan suggested if the Planning Commissioner were to include such a condition, it utilize language parallel to the Condition 13 of the TRPA Conditions so we are using identical language. Ms. Sullivan read Condition 13 into the record leaving out the second option of managing construction traffic: *"The permittee shall implement US*

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

50/Lake Village Drive's specified intersection improvements to improve operations prior to commencement of constructions (mitigation measures 4.14.1-7a and 4.14.1-7b)"

Mimi Moss, Community Development Director suggested having the applicant explain the construction phasing. She believed it would be beneficial to get a better sense of the construction traffic anticipated per phase.

Mr. Drew stated Phase One is the undergrounding of the overhead utilities and there will be very limited construction traffic. He explained the applicant has phased the project in a very particular way to limit the amount of construction traffic. That wasn't a mitigation requirement it was something they did on their own to work with the neighborhood. The EIS did not identify any impacts that could be caused by construction traffic. Mr. Drew requested if the Planning Commission is going to condition the project, they'd like to know where in the County code there is the authority to put this condition on the project and they would like to use the exact language that's in the EIS without any sections removed.

Ms. Gregory stated if you look at the PD findings you will find sufficient references to impacts on neighboring properties including #7 – any development related adverse impacts such as traffic, noise, odors, visual nuisances or other similar adverse effects to adjacent developed neighborhoods that are mitigated by improvements or modifications either on site or within the public right-of-way.

Ms. Sullivan commented the County Engineer did have the benefit of reviewing the TRPA Conditions. And what's she's heard from Vice Chairman Servatius is consistent with the TRPA Conditions although it would be removing the "or". The Planning Commission needs to determine if the findings can be met with the TRPA condition as written.

Vice Chairman Servatius asked Chairman Godecke to recall Mr. Warrell so they could hear what he thinks. Mr. Warrell stated it would cause a significant impact at the construction level. He believes it would be prudent to make the improvements prior to construction.

Ms. Moss wanted to remind the Planning Commission the TRPA reviewed the Environmental Impact Statement and certified it. It recognized construction traffic is a temporary problem at the intersection. The issue is the upfront costs. The TRPA has set timelines in order for this project to move forward and certain things have to be done within that timeline.

Vice Chairman Servatius wanted the applicant to explain how they were going to manage construction traffic. Mr. Drew responded the traffic management plan has not been developed yet but it will have to be developed in a way that complies with the EIS and that will be a combination of a number of things.

Member de Knijf asked Ms. Gregory if now would be the time to ask for the Burke Creek easement. Ms. Gregory responded yes and if you were to add that condition you would

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

want to make sure the language stated it was mutually accessible or acceptable to both parties. The Master Plan does reference Burke Creek and the County's restoration effort. We are cooperatively working together at this time. The County has stated that they believe they could move forward with the restoration project with the existing easement and that hasn't been contradicted.

Second MOTION by Pross/Brown to recommend approval of the Tentative Subdivision Map based on the discussion and findings in the staff report and subject to the conditions as modified; carried 5-2 (Aye – de Knijf, Aye – Beattie, Aye – Brown, Nay – Madsen, Aye – Pross, Nay – Servatius and Aye – Godecke).

Third MOTION by Brown/de Knijf to recommend approval of a private road based on the findings in the staff report; carried unanimously.

Fourth MOTION by de Knijf/Brown to recommend approval of a variance to improvement standards for the road right-of-way width based on the findings in the staff report; carried unanimously.

Fifth MOTION by Pross/Madsen to recommend approval of a variance to the improvement standards for the intersection spacing based on the findings in the staff report; carried unanimously.

Sixth Motion by Pross/de Knijf to recommend approval of a variance to reduce the useable open space based on the discussion and findings in the staff report and subject to the conditions; carried unanimously.

4. For Possible Action. Discussion on a Zoning Text Amendment to Douglas County Code (DCC) Section 20.714.040, Agricultural 2-acre parcels to allow the creation of three 2 – 5 acre parcels every fifteen years in the A-19 and FR-19 zoning districts. The current regulations allow for the creation of one 2 acre parcel every five years in the A-19 and FR-19 zoning districts.

Hope Sullivan, Planning Manager provided information on the proposed text amendment. The proposed amendment will change the timing and provide flexibility with respect to size of lots, but will not change in type or intensity of development from what is currently permitted.

Chairman Godecke disclosed he is an owner of agricultural property in excess of 100 acres and this ordinance and zoning text amendment could reflect on his personal property but he has not participated in the creation of the two acres parcels as the code allowed in the last eight years. He doesn't feel a responsible person could consider that this would affect his judgement.

Cynthea Gregory, Deputy District Attorney stated she had spoken with Chairman Godecke and she concurs disclosure is appropriate but she believed he does not need to abstain.

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

PUBLIC COMMENT

Mark Neddenriep commented the agricultural community supports this amendment and doesn't consider it a big change.

Nate Leising asked if once they make an application for three parcels are they going to be required to put in all the infrastructure immediately. He's concerned if they have to put it in immediately they will be forced to sell right away to pay for it.

Barbara Byington stated they keep looking for ways to keep the view for everybody and she felt this Ordinance will help with that.

Clarence Burr commented the agricultural community provides the quality of life and he appreciates this Ordinance.

Public comment closed.

Ms. Sullivan responded to Mr. Leising's concerns. She commented the tool that would be utilized when you subdivide this land is the parcel map. The Ordinance is silent on infrastructure and improvements. The infrastructure and improvements requirement would be a derivative of the parcel map application and the review of the findings required for the parcel map.

Ms. Gregory also responded to Mr. Leising's questions and concerns. You can enter into an improvement agreement with the County where you can post security in lieu of putting in the improvements.

MOTION by Brown/Pross to recommend that the Board of County Commissioners adopt Ordinance 2016-1451 based on the ability to make the required findings; carried unanimously.

5. For Possible Action. Discussion on a Modification to the Sierra Country Estates Planned Development (PD) 15-003, a Zoning Map Amendment Development Application (DA) 15-081 and Parcel Map (LDA15-029) creating three parcels as follows:

A) Development Application (DA) 15-081, a request for a Zoning Map Amendment to re-designate three portions (0.16 acres, 0.27 acres, and 0.53 acres) of the existing Sierra Country Estates "meadow" parcel from SFR-2 PD (Single Family Residential, 2-acre minimum parcel size in a Planned Development) to PF-PD (Public Facilities in a Planned Development) for proposed Parcels 1, 2, and 3 of LDA 15-029;

B) A major modification to the PD for Sierra Country Estates relocating and increasing the area of the Conservation Easement. The proposed easement boundaries result from (a) adding portions of the "meadow" parcel which contain the ponds at the entry of the subdivision as well as portions along the northern

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

and western boundary of the "meadow" parcel not currently included in the boundaries of the Conservation Easement; and (b) removing the proposed Parcels 2 and 3, utility system parcels (ref. LDA 15-029) where the wells exist, and removing the area of the Conservation Easement in the vicinity of the existing barn/employee living quarters (4.4 acre building envelope). This modification will allow for an increase in the single family residential unit count of the PD by one additional primary residence, so as to yield 24 units rather than 23, to be located within the building envelope.

C) A Tentative Map (LDA 15-029) proposing the creation of three new community facility parcels and a new public utility easement for access over Sierra Country Circle. Proposed Parcel 1 (0.53 acres in size) will be utilized for future utility system improvements, proposed Parcel 2 (0.27 acres in size) will contain an existing community well and future utility system improvements, and proposed Parcel 3 (0.16 acres in size) will contain another existing community well. The intent is to deed these improvements to Douglas County.

The subject property is located at 261 Sierra Country Circle in the SFR-2 PD (Single Family Residence, 2-acre minimum parcel size in a Planned Development) zoning district in the Foothill Community Plan. The applicants are Jeffrey Wass, Trustee of the Jeff and Jodi Wass Family Trust, Michael McAllister, Trustee of the Michael McAllister 2000 Trust Agreement, and Douglas County Public Works. APN 1219-10-002-062.

Vice Chairman Servatius disclosed for the record he owns property in the Sierra Country Estates and stated a reasonable person would understand these changes to his neighborhood will impact both the character of the community and have a financial impact on his family. He will be recusing himself from this discussion.

Heather Anderson, Associate Planner provided background information on the Zoning Map Amendment. She also provided maps of the existing and proposed zoning changes. Ms. Anderson stated the Douglas County Code, Zoning Administration, contains the provision and findings required by the Planning Commission and Board of Commissioners for considering this request.

Heather Anderson, Associate Planner provided background information on the Planned Development (PD) Modification. She also provided drawings of the PD boundaries; modification to the Conservation Easement and proposed boundaries of the Conservation Easement. Ms. Anderson stated the Douglas County Code, Planned Development Overlay District and NRS 278A.410 contain the provisions and findings required by the Planning Commission and Board of Commissioners for considering the requested PD modification.

Chairman Godecke asked about the 23 units referenced. He stated it was his understanding a couple of properties were joined to limit the number to 22 current units. He asked if it was possible to separate those two properties and create an

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

additional unit. Ms. Anderson responded there is that possibility and the Planned Development was approved for 23 units.

Member de Knijf asked if the piece that the barn is currently sitting on is in the Conservation Easement and is going to be taken out. Ms. Anderson responded that is correct and it is approximately 2.25 acres but the building envelope, as proposed, would total 4.4 acres.

Member Pross asked if the Conservation Easement would be on the County water system or would they be using water rights for that property. Cynthea Gregory, Deputy District Attorney, responded it was her understanding it was at one time on the County water system but was ordered to disconnect so they constructed a well. The Conservation Easement has its own dedicated water rights.

Heather Anderson, Associate Planner provided background information on the Tentative Map. She also provided a copy of the Tentative Map and a map of the proposed parcels 1, 2, and 3 (LDA 15-029) Utility System Parcels.

Ms. Anderson provided the staff's recommendations, for Items A, B & C, based on the ability to make the required findings.

Rob Anderson, representing the applicants stated they agree with the staff report and recommended conditions. He confirmed the barn is served by a well. The water rights that are pertinent to the meadow area have been perpetuated in the transfer of ownerships.

Member Pross asked Mr. Anderson why the owners of the meadow property don't want to be subject to the CC&Rs. Mr. Anderson responded that property has never been subject to the CC&Rs.

Member Pross commented the individual who will reside in the home proposed to be built will maintain the property. What happens if they sell that home? Will the next owner of the property also be required to maintain the property? Mr. Anderson responded the Conservation Easement is specific in its terms relative to the responsibilities of the parties and to its condition and use. It is a matter of record and it goes with the property.

Chairman Godecke asked when the Conservation Easement was created did they create a document that attached the surface water rights to that parcel of ground so they can't be transferred. Mr. Anderson responded he believed that the Conservation Easement does contemplate that those surface water rights are restricted to the land.

Chairman Godecke commented he noticed that the State NDEP had mentioned that the lead levels in the wells were significant and he was wondering what the County's plan was for mitigating these issues. Nick Charles, Civil Engineer III responded the water quality in the wells is generally very high quality. It does have a low PH so it is acidic. They do see some elevated lead concentrations coming out of the homes in the

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

neighborhood and that's one of the main reasons the NDEP issued the violation to the water system.

Chairman Godecke asked if there was anything the County had to do to mitigate the acidity levels of the water. Mr. Charles responded they are in the process of designing a water treatment facility to adjust the PH of the water coming out of the wells.

PUBLIC COMMENT

Steven Leandro, President of the Sierra Country Estates HOA provided a Power Point presentation on what the HOA is asking for and suggestions made by some of the homeowners.

Melvyn French commented he bought his house because of the Conservation Easement and the meadow. He supports the presentation by Mr. Leandro.

Heather Maxell stated what they have learned from all this is there needs to be landownership and rights to inheritance. They are concerned that the Conservation Easement will be carved away.

Evan Maxell read a statement into the record regarding promises made and promises broken. He asked the Planning Commission to delay any decisions until an agreement can be worked out between all the parties. (See Attachment A)

Jeff Wass stated they are only grazing 16 cows this year to make sure they didn't over graze the property. They are trying to deal with the best farming practices in today's conditions with a drought.

Public comment closed.

Mr. Anderson commented just the boundaries of the Conservation Easement are being changed. There is actually an increase in the area of the Conservation Easement. Mr. Anderson stated the County is agreeable to making the public facility parcel neighborhood compatible. Mr. Anderson went on to discuss the other conditions the HOA presented.

Member Brown asked if Mr. Anderson had met with the HOA and talked about some of the issues prior to filing the application. Mr. Anderson responded yes, the Wasses, the McAllisters and the County have met with the HOA.

Member Pross asked Ms. Gregory why the CC&Rs and the HOA aren't within the Planning Commission's purview. Ms. Gregory responded CC&Rs are a private agreement amongst the lot owners, which excluded the meadow parcel. The County is not a party to it and we don't enforce it. It's called out specifically in Code 20.01.050. In regards to the Conservation Easement and perpetuity, NRS 11.420 which talks about the creation of Conservation Easements also allows the parties to modify them. Ms. Gregory also responded to the question about hooking up to the water system. She referred to a

**DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015**

letter in the packet from the State Engineer where he ordered severance of any connection that is not part of the Sierra Country Estates Water System, unless such a connection is approved by the State Engineer. That is why that parcel was disconnected and the well was drilled.

Member Pross commented the County is taking over the water system and if they don't there could be litigation. Ms. Gregory responded NDEP already filed litigation seeking a receivership and asked that the County take it over. However, the County is still subject to NDEP requirements and the County still needs to take several more steps to address the water system.

Member Pross commented one of these steps is to create a public facility zoning for the system and the wells. Ms. Gregory responded to put in treatment facilities and put the County in the best position possible to meet any future requirements placed on the water system, it's beneficial to have the parcel.

Mimi Moss, Community Development Director wanted clarification from Mr. Anderson regarding the HOA opposing the licenses to maintain the landscaping around the two ponds. She commented the ponds are going to become part of the conservation area. She asked does the HOA maintain the landscaping today and what discussions have occurred regarding the maintenance. Mr. Anderson responded the Trusts expect to ultimately grant the license that the HOA is seeking so the HOA can continue to maintain the landscaping.

(A) MOTION by Madsen/de Knijf to recommend, to the Board of Commissioners, approval of the Zoning Map Amendment (DA 15-081) to re-designate three portions (0.53 acres, 0.27 acres, and 0.16 acres) of the existing Sierra Country Estates "meadow" parcel from SFR-2 PD (Single Family Residential – 2 acre minimum net parcel size in a Planned Development) to PF-PD (Public Facilities in a Planned Development) for proposed Parcel 1, 2, and 3 of proposed Tentative Map (LDA 15-029); carried 4-2 (Aye - de Knijf, Nay - Beattie, Nay - Brown, Aye - Madsen, Aye - Pross, Aye - Godecke & Servatius abstained).

(B) MOTION by Madsen/Pross to recommend, to the Board of Commissioners, approval of the major modification to the Sierra Country Estates Planned Development (PD 15-003) modifying the boundaries of the Conservation Easement, as proposed, and allowing for an increase in the single family residential unit count of the PD by one additional primary residence, so as to yield 24 units rather than 23, to be located within the proposed building envelope of the "meadow" parcel, subject to the conditions listed below. All other applicable conditions of the original PD approval will remain in effect; carried 4-2 (Aye - de Knijf, Nay - Beattie, Nay - Brown, Aye - Madsen, Aye - Pross, Aye - Godecke & Servatius abstained).

(C) MOTION by Madsen/Pross to recommend, to the Board of Commissioners, approval of the Tentative Map (LDA 15-029) proposing the creation of three new community facility parcels, a 68.45 acre remainder parcel, and a new public utility easement for access over Sierra Country Circle, subject to the conditions listed below; carried 5-1

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

(Aye - de Knijf, Aye - Beattie, Nay - Brown, Aye - Madsen, Aye - Pross, Aye - Godecke & Servatius abstained).

6. Not for Action: Discussion and solicitation of Commissioner and Public Comment regarding locational and supplemental criteria for Utility Scale Photovoltaic Solar Facilities.

Hope Sullivan, Planning Manager provided a presentation that she has given at nine community meetings while soliciting public input. She asked that the Planning Commissioners answer three specific question regarding Location, Criteria and Supplemental Standards.

The Planning Commission, staff and the public discussed many different locations and criteria that should be included for the Utility Scale Photovoltaic Solar Facilities.

Member Beattie suggested the full detailed engineering plan of any anticipated build out for the site has to be proved and approved with the initial requirements.

Member Brown suggested listing it under the Master Plan Land Use Commercial and Industrial. She also suggested adding visual impact.

Vice Chairman Servatius stated to have a serious solar policy you need to identify in the Master Plan where the major transmission lines are; then do a thorough analysis of where you have barriers.

Member de Knijf suggested looking at a smaller volume of land.

Member Madsen believes our power grid is a security risk. He is concerned about cyber-attacks that could shut off all our power. He stated having a solar facility in Douglas County would be beneficial to the residents if something like this would happen.

Member Pross believes the solar farm is an industrial use. She also believes we should do an Environmental Impact Review and Wildlife Impact Studies. She would like the ability to deny an application when the applicant cannot demonstrate technical or financial capability to construct the project or operate the facility within the right-of-way. The applicant needs to prove they have sufficient capitalization to carry out the development including the preliminary study phase of the project and the Environmental Review and clearance process. She feels we should be consulting with other agencies; making sure the projects meet all the requirements from the Master Plan to the Vision Plan; and direct the development away from lands with high conflict. She'd like to see a deadline set on when construction needs to begin after an application has been accepted. Member Pross along with a couple of other Members felt Douglas County should benefit from the solar energy in other ways than just receiving tax benefits.

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF DECEMBER 8, 2015

Chairman Godecke didn't want to see Agriculture removed from the zoning. He agreed with Vice Chairman Servatius that we should locate the transmission lines. He suggested if the residents are completely against having a solar farm in Douglas County then they should have the County Commissioners ask our Lobbyists to lobby the Legislature to have Douglas County exempted from the statute that states we are mandated to address where we will put renewable energy facilities. However, if that was to happen he felt Douglas County or any other county that should opt out should be required to pay a higher rate on their renewable energy.

PUBLIC COMMENT

Carlo Luri explained net metering and how it is under attack by Nevada Energy. He stated Douglas County can and should participate in our Nation's clean energy future.

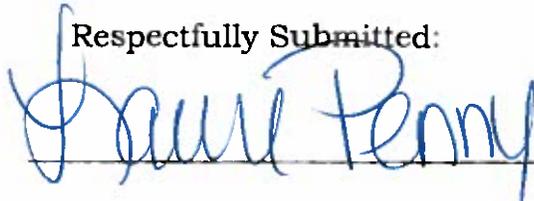
Steve Walker commented the County needs to start determining where to put the solar facilities. He stated not adjacent to residence and not on irrigated agricultural land.

Dan Aynesworth commented he thought trying to keep some of the energy in Douglas County just in case the grid does go down is a great idea. He is hopeful staff will come up with something that will work for the County.

Public comment closed.

There being no further business to come before the Planning Commission, the meeting adjourned at 5:55 p.m.

Respectfully Submitted:

A handwritten signature in blue ink that reads "Paula Penny". The signature is written in a cursive style and is positioned above a horizontal line.

Approved:

A handwritten signature in blue ink that reads "Frank Godecke". The signature is written in a cursive style and is positioned above a horizontal line.

Frank Godecke - Chairman

PROMISES MADE, PROMISES BROKEN

My name is Evan Maxwell. My wife, my daughter and I have owned 213 Sierra Country Circle since 2009.

Here is some background to put the request for conditions into perspective. In May, 2009, We bought our home from a couple represented by Marsha Tomerlin, the developer and a Coldwell Banker broker.

I had regarding the meadow, the water system and the Homeowners Association. On Memorial Day, 2009 I had a long conversation with Mrs. Tomerlin. Later she sent me the Conservation Easement and the Development Contract as the “controlling documents” for the community.

I found three promises in those documents:

- 1) There was to be an HOA beginning in about 1996.**
- 2) The water system was to be completed to code and dedicated to the county.**

- 3) The meadow was to be protected in its usable state and in perpetuity—green, irrigated pasture with 40 of the prettiest fat red cows and happy calves you ever saw.**

We relied on all three of those promises in buying our home. But the promises were not by the developer and not enforced by the county:

- 1) The Tomerlins had tried to quash an HOA for years, adopting a set of CC&Rs that required 18 homeowner votes to form a homeowners group. That is clearly contrary to state law, and District Judge Michael Gibbons so ruled in 2012.**
- 2) The water system was being vastly overpumped by the Tomerlins as early as 1999. They pledged additional water rights to the state Division of Water Resources but later took 40 AFA of those dedicated rights back. Water quality was an issue beginning in 2006 but the Tomerlins broke the law by failing to report those deficiencies to homeowners and water users. One of the failed lead tests took place while we were in escrow in 2009 but the failure was never reported to us. And the county never accepted the water system for dedication, despite what appear to be claims in this application to the contrary.**

3) While we were in escrow, Mrs. Tomerlin borrowed \$600,000 from Mr. Wass, using the conservation easement as collateral. A year later, she defaulted and the meadow changed hands. At that time, according to recent testimony before the Board of County Commissioners, meetings were held between Mr. Wass, Mrs. Tomerlin and various county officials, seeking a way to monetize the meadow so the new owner could recoup his investment. The outcome is what you see here today. (One difference: now the county seems to gain a benefit in the utility parcels.)

The previous presentation enjoys the widest community support I have ever seen. This background is offered to explain why we are united. SCE residents are very uneasy about promises and conditions contained in planning and governance documents. We had to sue to form a homeowners' association; we have been purposely and inappropriately excluded from land use and planning decisions in the meadow, we may now be stuck with a multi-million dollar bill to fix a failed water system.

So we want the strongest protections possible for our homes, our land, our water system and the easement that is literally the center of our lives. That's why we ask for these conditions.

We want to be constructive. To that end, we have sought court protection for our Interests in maintaining the community common areas. **We are negotiating in good faith with Mr. Wass to that end. We are very close to a global agreement with him.** That agreement would make this whole process a great deal smoother for us, the PC and the BOCC.

My concern is this: I am not a lawyer, but I suspect that Mr. Wass' very able counsel wants to see if the Planning Commission will give him what he wants. If that happens, he won't have to settle with us. The Planning Commission is, in my view, his last hurdle.

So I would ask for a delay of this matter to permit the last details of an agreement to be worked out. The county Public Works Department will say we must rush this through to prevent action by NDEP, but I would ask them for a status report, a discussion of the JPR water situation as it pertains to SCE, and a timeline going forward. I believe there is enough time to work out a peaceful settlement between the

homeowners and the meadow owner, saving everyone a great deal of time and money and restoring the faith of SCE homeowners in the entire governmental process.