

Commissioners Minutes

June 20, 2023 – 1:35 p.m. to 3:51 p.m.

**PUBLIC HEARING TO CONSIDER A REQUEST BY KM ENGINEERING LLP, REPRESENTING RICHARD ALBISU FOR A COMPREHENSIVE PLAN MAP AMENDMENT AND CONDITIONAL REZONE, CASE NOS. OR2022-0007 & CR2022-0015**

Commissioners Brad Holton, Zach Brooks and Leslie Van Beek

DSD Director Sabrina Minshall, DSD Planning Official Dan Lister, DSD Planner Debbie Root, Nikki Albisu and Stephanie Hopkins, Katie Van Vliet, Marnie Vandenberg, Leonard Andrew, Patti Wilson, Mary Kay Kerger, Don Caldwell, Tyson Meeks, Karl Herger, Emery Meeks, Mary Ihli-Laan, Sid Freeman, Snereding, Mary Beumeler, Mike McClurek, Greg Dean, Lance Pitcher, George Crookham, Debbie Middleton, Casey Crow, Cindy Crow, Larry Smith, Natalie Levi, Sharon Braun, Dennis Evans, Donna Evans, Barbara Albiston, Daryl Albiston, and other interested persons

Deputy Clerk Monica Reeves 

PUBLIC HEARING TO CONSIDER A REQUEST BY KM ENGINEERING LLP, REPRESENTING RICHARD ALBISU FOR A COMPREHENSIVE PLAN MAP AMENDMENT AND CONDITIONAL REZONE, CASE NOS. OR2022-0007 & CR2022-0015

The Board met today at 1:35 p.m. to conduct a public hearing in the matter of a request by KM Engineering, LLP, representing Richard Albisu, for a comprehensive plan map amendment and conditional rezone, Case Nos. OR2022-0007 & CR2022-0015. Present were: Commissioners Brad Holton, Zach Brooks and Leslie Van Beek, DSD Director Sabrina Minshall, DSD Planning Official Dan Lister, DSD Planner Debbie Root, In Favor: Nikki Albisu and Stephanie Hopkins; In Opposition: Katie Van Vliet, Marnie Vandenberg, Leonard Andrew, Patti Wilson, Mary Kay Kerger, Don Caldwell, Tyson Meeks, Karl Herger, Emery Meeks, Mary Ihli-Laan, Sid Freeman, Snereding, Mary Beumeler, Mike McClurek, Greg Dean, Lance Pitcher, George Crookham, Debbie Middleton, Casey Crow, Cindy Crow, Larry Smith, Natalie Levi, Sharon Braun, Dennis Evans, Donna Evans, Barbara Albiston, Daryl Albiston; and Deputy Clerk Monica Reeves.

DSD Planner Debbie Root gave the oral staff report on the applicants' request to amend the future land use designation from Agriculture to Residential, and a conditional rezone from an "A" (Agricultural) Zone to a "CR-R-1" (Conditional Rezone - Single Family Residential) zone. The request includes a development agreement to restrict residential development within the "R-1" zone to no more than 54 residential lots, and one common lot. The property is located northeast of the intersection of Galloway Road and Old Highway 30 intersection. A conceptual plan was submitted for the Sugar Ranch preliminary plat. Ms. Root reported on the property history, soils information and agency comments. The average lot size in the area is 27.72 acres. There are 15 platted subdivisions within one mile of the subject property that are clustered and abut Middleton's impact area. 12 of the subdivisions were platted prior to 2004, and 8 of the 15 are phases of a development. Canyon Soil Conservation District does not recommend a land use

change at this location. The surrounding property is owned and farmed by dairy operators. It is not located near city services. The applicants are proposing individual wells and septs and pressurized irrigation. Black Canyon Irrigation District will require any laterals affected by the land change to be piped. Stormwater will be required to remain on site. They will utilize existing access on Galloway Road and will add an access point to Old Highway 30. The proposal exceeds the growth forecast by COMPASS. Canyon Highway District stated current conditions do not appear to warrant a traffic impact study. The property is located next to the Amalgamated Sugar beet dump, and is located in a nitrate priority area. If the proposal is approved, staff recommends a community well and sewer system be required. The proposal does not align with several goals and policies of the comprehensive plan. Staff received many letters in opposition citing concerns with additional traffic with already existing safety concerns, incompatibility with intensive agriculture, the loss of farm ground, and the impact on services. The P&Z Commission recommended denial of both the comprehensive plan map amendment and the conditional rezone. Staff recommends denial of both requests. Following the report, staff responded to questions from the Board.

The following people testified in support of the request:

Stephanie Hopkins with KM Engineering offered testimony on behalf of the property owner and the developer. She testified the project supports several goals and policies of the comprehensive plan. Their client came to them after trying to farm the property and after pursuing other options and the reason they requested a comprehensive plan map amendment and rezone is because there are a lot of challenges in terms of irrigation and farming. They understand the concerns and are willing to look at the potential of requesting a different zoning designation that might align with two-acre lots or something larger. The subject property is approximately 71 acres and is located 1,500 feet north of Purple Sage Elementary, and is close to the Purple Sage Golf Course. There are several residential subdivisions in the area and commercial properties exist south of Purple Sage Road. The concept plan has been designed to be compatible with adjacent uses and will provide a nice transition to agricultural uses as the area starts to grow. Having one-acre lots at this location is more appropriate for the existing uses than what could potentially be in the City of Middleton. Services are not available so they will utilize individual wells and septic systems. The City of Middleton shows the subject property as having a residential designation. Ms. Hopkins reviewed the conceptual site plan and said they will make improvements to Old Highway 30 along their frontage as well as extending a public road to the site to act as a main point of access. There will be no direct lot access. Galloway Road would be improved to standards for public road access. As part of the development improvements would be made to the facilities and would vastly improve how irrigation is received by properties in the area. Following her testimony, Ms. Hopkins responded to questions from the Board.

Nikki Albisu offered testimony regarding property rights and rights of use. She understands her rights do not supersede the rights of others, however, the rights of others, including farmers, should not be given precedence either. The decisions should be based on substantial evidence

and facts, not organized community opposition, opinions, assumptions, conjecture or inconveniences. It should also recognized and prioritized personal property regarding the best use of land. The property's soil challenges limit agricultural productivity and profitability. Black Canyon Irrigation District will greatly benefit from system repair and upgrades saving them hundreds of thousands of dollars. The homes will utilize water from Black Canyon for surface irrigation resulting in a minimal impact on an already plentiful aquifer. EMS reported no concerns, and traffic impacts will be mitigated through dedication of a public right-of-way and frontage improvements. Middleton schools have sufficient space to serve the families, and this location is ideal for housing. Farmers will continue to be protected by the right to farm act, and the applicants will be proactive with signage and efforts to support them. This project does not interfere or disturb the rights of adjoining landowners or create a private nuisance. It may be inconvenient for some with more cars on the road, but there is a difference between a nuisance and an inconvenience. The property is in the Middleton future comprehensive plan. Following her testimony, Ms. Albisu responded to questions from the Board. Commissioner Van Beek disclosed she met Ms. Albisu during a comprehensive plan hearing where she was a presenter.

The following people testified in opposition to the request:

Katie Vandenberg Van Vliet is an attorney with Sawtooth Law Offices, the firm which represents Bill and Shirley Vandenberg and their dairy, and she offered testimony on their behalf. The Vandenberg Dairy, which has been in operation for over 40 years, is located two miles from the subject property. They own 217 acres that share a property line with the subject property and another 154 acres less than ½ mile away. The Vandenberg farm the fields to grow crops for the dairy herd including spreading manure on the fields. She stated the applicant made disingenuous and misleading assertions about the land not being farmable, there being plenty of room in schools to handle the kids, and that the development is compatible with surrounding uses and is consistent with the comprehensive plan just because it's close to a public school. However, those in opposition testified with a very different story. The development is averse to the goals and policies of the county code and comprehensive plan, and the proposal runs afoul of the Local Land Use Planning Act because it does not encourage protection of ag land or encourage development within incorporated cities. It is too early to develop this area, and a residential use is incompatible with surrounding agricultural uses. The right to farm act does not adequately protect farmers and it is irresponsible to allow spot zone developments where city services are not available and individual wells and septic systems will threaten the water supply.

Tyson Meeks is a fulltime farmer who farms in the area and he is opposed to the proposal and the concept that the property is not viable farm ground. It's not currently being used to its full potential but perhaps someone else could have more success on the ground. He responded to questions regarding traffic in the area.

Marnie Vandenberg is opposed to the request, and she testified about the importance of protecting farm ground. She said there is plenty of dry ground, BLM ground that can be purchased for homes, and she spoke of the accidents that have occurred in the area.

Leonard Andrew has a degree in agronomy and testified the subject property is productive. His father homesteaded in the area in the 1950s and cleared his land of sagebrush. He and his father have owned and farmed their property for nearly 65 years, and he testified about their farming operation, irrigation history, and property history. Theirs was one of the first production fields deep plowed in the area and it became a standard management practice for the area and improved crop production greatly. It also became one of Crookham Seed Company's best breeder stock seed producing fields in the area. He testified about the irrigation history with Black Canyon Irrigation District and spoke about the siphon on the property where the danger is great due to a swift moving current that could pull a person or a pet into the pipe.

Emery Meeks testified that all letters of opposition are from people who live and farm in the area and they can speak to the real-life issues in the community. He spoke of neighbors who divided property so they could qualify to irrigate some grass with their domestic well, but in the heat of the summer they expect to see a diminished flow out of their domestic well. Mr. Meeks is concerned about the traffic accidents in the area as well the potential impacts to the water table. He said as time goes on, farmers cannot afford to own more property, but they are content to lease/rent it.

Mary Beumeler testified in opposition and referred to aerial photos that show the proposed development is in the middle of productive farm ground. There are houses in the distance but if we are to develop in an orderly fashion and not fragment farm ground we should bring it in an orderly fashion up to Galloway Road. She addressed the lot size and said since it's in a nitrate priority area DEQ does not recommend nor allow lots under 5 acres to have private wells/septics as they are the worst contributors to nitrates. Ms Beumeler is concerned about water quality and quantity as wells are going dry in the valley. She testified about the importance of preserving farmland and said if you don't have permeable land with water refilling the aquifer, the aquifer is going to down. She also spoke about the safety issues on the roadways in the area.

DSD Planner Root said Southwest District Health does allow for septic and wells on one-acre parcels and they have to do a subdivision engineering report to quantify the development of those properties. She does recall DEQ indicating there are some significant concerns with the nitrate priority areas north of Middleton and in this area, but she cannot corroborate a 5-acre parcel requirement. Mr. Lister said staff did not receive comments from SWDH so we do not have their understanding of the area, staff is aware of it from other projects they have worked on. Regarding DEQ's informational comments, if the request is approved other things will have to be looked at.

Mary Ihli-Laan testified that she was born and raised in the area and her family is predominately in the agricultural field and the subject property is in an agricultural area. She has been in public education for 35 years and is concerned about safety issues such as traffic and the school in the area. Agricultural vehicles are on the road and people lose patience with school buses and the additional traffic is a safety concern to her.

Sid Freeman testified regarding traffic accidents; the economics of farming the property; and his farming experience in the area. He said the property is viable farm ground regardless of the soil types. He estimates there are 70,000 tons of beets that go into and out of the nearby sugar beet receiving station every year which is \$7.3 million annually. There are 2,540 acres in the area and if 60% of that is farm ground, you are looking at 1,524 acres on average and that's an additional \$2.2 million dollars. The higher intensive farming you have in an area, the higher that number is. On the value of the surrounding land and the sugar beet pile, you are looking at over \$48M annual renewable income spread out through the local economy and it is extremely important to have that in mind. The best use of the land is agriculture - not residential.

George Crookham testified in opposition and on behalf of the Coalition of Ag's Future, and his testimony focused on economics. On two acres the taxes are \$2,740, and the cost of services will be \$3,288 which is a net loss to the County of \$548 for every two acres. Farmland: the cost of services for every dollar they get .65 cents back in services. The income on \$17.20 for two acres and the cost of services is \$11.18, a gain of \$6.02. Sweet corn growers get paid approximately \$10,000 for every two acres of sweet corn. The cost to the seed companies in processing is another \$10,400 for every two acres so the combined economic value for sweet corn seed alone is \$20,400 but they sell it for significantly more and 90% of the income comes from outside of the state. It is a basic industry. What is the impact those two acres have on the world? The amount of seed produced off of those two acres can create 2.4 million 15 oz. cans of sweet corn. This is a matter of economics and best use.

Greg Dean works for Amalgamated Sugar and he gave testimony regarding their receiving station in the area. The company previously submitted a letter of opposition from February of 2023 which states about 200 loads on average come during the harvest operations and piling of sugar beets. On peak days the number of trucks on a 12-hour period can be as high as 400, so there is a lot of heavy truck traffic in the surrounding community and safety is their number one concern. The beet dump has been there for over 30 years and housing has come up around them and there are clashes that happen based on safety, noise, and smells. They continue to oppose this residential subdivision because they do not believe it's in the best interest of the sugar beet industry and of Amalgamated Sugar. Sugar beets have been grown on the property and they have had reasonable yields. They receive beets for 6-8 weeks and they store and periodically take beets to the factory for processing from September to February.

Larry Smith has lived across from the northwest corner of the property since 1984 and he owns 2.5 acres. His concerns include water issues, impacts to the aquifer, and traffic accidents. He believes a project with 50+ houses should have a central well rather than individual wells.

Dennis Evans lives east of the subject property and his main concern is the impact to ground water and who will pay for his well if it goes dry. He is concerned about the ability for younger farmers to lease farm ground, and he has concerns about traffic congestion and a lack of infrastructure. Mr. Evans has lost two dogs to the siphon that runs through the property. He is concerned the turn lane will be in front of his property and will take up some of his ground. He believes

complaints by neighbors about ag operations and allowing too much residential development will eventually lead to stifling restrictions on what a farmer can do.

Natalie Levi testified she is a five-year farmer who moved to this area from the city and she has learned a lot from farmers in the area. She met with the neighbors, and they are not happy with the system. She is on her second watering and is at one inch per acre and is being threatened with less water. She said subdivisions have a different mentality, but farmers are here to protect the future and the food and the animals. Ms. Levi is opposed to the development of viable farm ground.

Sharon Braun testified about her concern with road safety issues, traffic congestion, and accidents that have occurred in the area. She spoke of the need for isolation for seed crops that require aerial spraying, and is concerned about people complaining about crop dusting.

Rebuttal testimony was offered by Stephanie Hopkins and Nikki Albisu. Ms. Hopkins said the County is looking at community wells and potentially making that a requirement for preliminary plats going forward, and if this request is approved they would want the opportunity to discuss whether a community well would be more appropriate or if the individual wells would be appropriate. They designed their concept plan to make sure the lots are small enough to irrigate with individual wells. This is a nitrate priority area, and it's typically agricultural uses that contribute more to nitrate soil conditions. The applicant would include advanced treatment systems if approved and will work with SWDH. Traffic concerns are a large issue for everyone, and it is a dangerous area and there are a lot of conflicting uses that would not meld so well with a residential development but they will work with the highway district to mitigate concerns and they would be amenable to working on a traffic impact analysis to understand how this development would contribute to traffic trips, how it would be distributed and how they can potentially mitigate those concerns. They have plans to improve the right-of-way along old Highway 30 and Galloway Road which would improve conditions on frontage. Development is what brings along infrastructure and it doesn't usually happen unless it's part of the capital improvement plan and has been prioritized by the County or city or if development pays their fair share to improve the facilities. The property owner tried to farm the ground and intended to farm the ground with a specific crop that is not compatible in their opinion with this ground and so they believe the best use of this property is development and they believe it would be a benefit to the area and provide a nice transition to existing ag ground and rural residential properties.

Nikki Albisu testified that at the previous hearing, Mr. Andrews, the previous owner, admitted he said it wasn't the best farm ground and there were problems with it and he said there were irrigation problems and it was a challenge to irrigate it and when he wanted to do something about that it just wasn't cost effective to put in irrigation system. Sid Freeman stated it wasn't prime farm ground. You can grow things, but you cannot grow them well. Ms. Albisu said people are using drone technology to spray crops which sprays lower and closer to the crops.

Upon the motion of Commissioner Van Beek and the second by Commissioner Brooks, the Board voted unanimously to admit the late exhibits (Exhibit #6E, which is a citizens petition against Canyon County; Exhibit #6F, a citizens petition against Canyon County, Case No. OR2022-0007 and CR2022-0015; Exhibit #6G, a petition titled Citizen Position Against Canyon County Cases; Exhibit #7, the applicant's presentation; and Exhibit #8, George Crookham's presentation.) Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to close public testimony. Commissioner Van Beek has no recommended changes to the staff report. The area is predominately agriculture, and we are looking at the impact to the ag industry by adding a subdivision. The numbers provided do not match her recollection of traffic trips generated and that would be problematic. There are outstanding issues with the irrigation component. The Board is scheduled to look at water issues, but fundamentally there needs to be a conversation with Black Canyon Irrigation District; they have stated they would tile those but she's heard that comes at a significant cost to developers and then to tile it without the opportunity for recharge would be problematic. The average lot size in this area is 27 acres. The Board has history with land use development and the DSD Director is interested in educating and helping the County with long range planning and so while there have been some properties in that area that have developed she doesn't have approval from the City of Middleton that says this area would be. She referenced the traffic fatalities in the area, and said the schools are at capacity and they have a hard time passing bonds. There is a property that a former Board approved as an R-1 development, and it was sold to an out-of-state developer, and they went to R-3 zoning but they cannot handle the load. Impact fees were passed, but at the time Canyon Highway District presented to the Board a lot of infrastructure and roadways in Middleton were classified as failing. Rural roadways are laden with accidents, and she is concerned with safety issues. There has been conflicting testimony about the levels of capacity at Middleton schools. We have to have a way to make sure that the city's plan and the long-term development of how the County looks has to be taken into consideration. She referenced the Vandenberg Dairy operation in the area and said she does not have sufficient evidence to overturn the P&Z Commission's recommendation. Commissioner Brooks is not in favor of it. Not only is this development out of town, it is not even in the impact area, with the semi proposed density. Commissioner Holton said we are contemplating an island development outside of and not abutting any other higher density development and we have had a tremendous outpouring from the active farmers and their concern about production and safety. He is unable to support a comprehensive plan amendment with the criteria he has to measure it with and judge it off of. He is at a loss to support it. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek the Board voted unanimously to deny Case No. OR2022-0007, the comprehensive plan map amendment concerning Parcel R37934011 from agricultural to residential. Commissioner Van Beek does not support the rezone because it's not timely given there is still ag production happening in the area. There was no application for a nonviable parcel, and there is not support for the R-1 designation in this area. The applicants are willing to work on the irrigation components, which would be hugely beneficial to the farming community; however, there are a number of other things that did not overcome that. Commissioner Holton said the applicant said they would consider a

community well system and that flexibility will become more the norm than the exception. They acknowledged the property is in a high nitrate priority area and we are all trying to figure out exactly what that means, although it is not good. They acknowledged they would need to have advanced septic tank systems and they understood there are traffic issues and they would be willing to work with Canyon Highway District. He agrees with the FCO's as prepared by staff. Commissioner Brooks said the first four conclusions of law that staff presented adequately sum up his position that R-1 is not an appropriate designation for this area at this time. It is not more appropriate than the current zoning and it would not be compatible with surrounding land uses and it would negatively affect the character of the area. He does not support the rezone. Upon the motion of Commissioner Van Beek and the second by Commissioner Brooks the Board voted unanimously to deny Case NO. CR2022-0015, a conditional rezone of Parcel R37934011 from "A" (Agricultural) to "CR-R-1" (conditional rezone single-family residential) zone for the reasons put on the record. The hearing concluded at 3:51 p.m. An audio recording is on file in the Commissioners' Office.