Erda Planning Commission Minutes

3/28/2023 – 7:00 pm

Erda City Office - Fire Station

1. Roll Call
    a. Kathleen Mallis, Russ Brimley, Cory Warnick, Mark Gull, Diane Sagers, Jerry Hansen
    b. Jennifer Poole-City Recorder, John Brems-City Attorney, Rachelle Custer-City Planner

2. Pledge and Prayer
    a. Cory led the pledge of allegiance
    b. Jerry led the prayer

3. Approve Minutes from 3-14-23
    a. Cory moved to approve the amended meeting minutes to state that Mark gave the opening prayer on 3-14-23, Russ seconded the motion.
    b. Voting was unanimous to approve the amended meeting minutes from 3-14-23.
    c. Minutes from 3-14-23 Approved with amendments

4. Administrative Items- No public input **(Timestamp 3:20)**
    a. Jerry moved to change the order of items 4 and 5 on the agenda, Diane seconded the motion.
    b. Voting was unanimous to approve the moving of item 4 and 5 on the agenda.

    a. **(Timestamp 20:15)** Erda Estates is seeking extensions under the following requirements Chapter 9 Planned Unit Development (Tooele County) **Preliminary Plan Extension** per code 9-6(7) Subject to an extension of time granted by the planning commission,
    b. **CUP Extension** code 9-7(5) However, upon written request of the applicant, the one year period may be extended by the planning commission for such time as it shall determine for good cause shown, without further hearing.

c. John Brems- To give background on these requests, on Dec 4, 2019. The Tooele County Council approved a PUD for this project. It was then appealed to the Tooele County Council, then it was appealed to the district court, then the court of appeals and that court decision was made on Nov 10, 2022. I've thought about this, it is my thought, he is vested in Chap 9 of Tooele County. So the question is what do we do now? What I have done is I've looked at Chap 9 which was repealed, trying to figure out what to do. Chap 9 it's self says subject to an extension of time granted by the Planning Commission unless a preliminary plan covering the area designated in the concept plan. (Remember in Nov 2019 is when this was approved by the Tooele County Council as the concept plan) has been filed within 1 year the date the planning commission grants concept approval, the planning commission's approval and concept plan shall automatically expire and be rendered void. So it's been 3.5 years almost. He's coming and asking for an extension under this provision. I've asked his attorney to give some analysis as to what we should do? There is a concept called tolling, meaning if you can't move forward the time is stopped on the time limit until they are able to move forward. His attorney couldn't find any authority tolling on a zoning ordinance. So it's really going to be your call, in a matter of fairness and equity. The city incorporated then adopted a moratorium and he couldn't have filed then anyway. He came in June 2022 and said he wanted to proceed. The city council looked to me, and I said I don't think he could until the legal dispute is resolved. That was resolved in Nov 22. He is asking for an extension. I don't know how long it's for, there is no legal authority for that tolling concept for a zoning ordinance, if you want to grant it you can. He has to submit a preliminary plan in the time frame, or within the extension if you grant it.
d. Kathleen- The concept plan was granted to the county?
e. John-Yes they approved it and said good and move forward. He has a couple of Ombudsman's opinions and they agree he's vested. And he certainly is Vested in Chapter 9.
f. Diane-If he brings in changes to the plan, what are our limitations?
g. John-He brings in the concept plan, that's already approved then he moves to the preliminary plan with adjustments. He's already submitted a new preliminary plan which I think is better.
h. Kathleen-He could present the same plan or something new?
i. John-He already presented something new in March.
j. Rachelle-Chapter 9 allows for an amendment to the concept plan

k. Cory- John I have a question, in the courts were there any appeals or orders issued to stop him?
l. John-Not that I'm aware of. It's a tough issue, if you do grant the extension we can use the concept of tolling, if not we can say that it didn't apply. Also there is an issue in Chapter 9 that with the CUP that was approved that a building permit must be issued within 1 year and construction begun.
m. Kathleen-I'm really struggling with dealing with a repealed law.
n. Diane- To be fair he really did have his hands tied until November. I think we need to consider that.
o. John- There was nothing stopping him from coming to the Planning Commission and getting an extension while the court cases were being considered.
p. Derald- John gave a little timeline but I think there are a few more important things that happened. On Dec 4,2019 then 29 days later appealed that approval, I'll admit there was a 29 day window there. But once it was appealed we couldn't move forward. That was Jan 3, 2020, to Feb 15, 2021 when it was finally decided upon. We couldn't move forward. We were waiting for the Tooele County appeal authority to hear it. Then on Feb 16th, 2021 Tooele County Council opened an appeal hearing and denied the appeal. 29 days later on March 17th 2021 the ECA filed a lawsuit against Tooele County including me for approving the PUD. Then from March 17, 2021 till November 10th, 2022 it was in the courts whether district or appellate. We couldn't move forward. As John said the first 6 months Erda was incorporated they had a moratorium. In June I approached the city in the the minutes from the 6/23/22 meeting it states that councilman Droubay commented "Derald was here last week to know who to talk to about Erda Estates, Councilmen Smith- Derald has a question about those they are PUD, in my opinion until the court decides we should do nothing. John Brems agrees." (Derald read from the minutes from this meeting) It is clear to me from the answer we got back in June that there was a tolling in effect. That it wouldn't be appropriate to move forward with this until the courts had made a decision. When you look at the dates, we had 29 days at the beginning, then there was a second 29 day window, then it began again after the lawsuit was final on Nov 10th 2022. We are well under the year. It falls well within these windows. Another important item is, I had the opportunity to present to the City Council last Tuesday night, and they were very receptive to me asking the Planning Commission for an extension. And that way we have the time to work together to make the best plan with Erda City. I agree that Chap 9 is

very confusing. We need time to have those important discussions and get our timelines together. If we don't get an extension then we are back to the approved concept plan and have to work with that. I know there is a better PUD option and would like to work with the city to do that.

q. Cory- I had a couple of questions while you were speaking. You said that you couldn't move forward. I asked John, were there any cease and desist or temporary restraining orders placed on you, that would have prevented you from asking the County Planning Commission for the extensions needed?
r. Derald- There wasn't a court order, it wasn't in the courts. It was sent to the Tooele County appeal authority and until they resolved that appeal they wouldn't let me move forward or submit anything. The PUD was approved then it was appealed to the appeal authority. They were stuck they can't move forward with the next steps until the appeal authority made their decision.
s. Cory- I understand what you're saying. So did you approach them to ask for an extension at that time?
t. Derald- I can't ask for anything to be approved even an extension they don't want to open themselves to legal action.
u. Diane-There is logic to that.
v. Cory- If there has been tolling, that means the year isn't up and then what's the purpose for the extension?
w. Derald-To get the preliminary plan it's going to take months to get. If this doesn't get approved then we will have the plans made for what's been approved already. If you do grant this extension, then we can make this better design and have more input from the City. There are still outstanding questions, because Chap 9 is confusing. I've asked a couple of questions and need to know when deadlines start. We haven't gotten back on what some of those answers are. We need the time to work with Erda City.
x. Mark- What does that extension look like and what are those terms?
y. Derald-I would ask for a 1 year extension, I'm open to a 6 month extension. I'd say let's give us more time to get this right. But 1 year is my request.
z. Russ- I remember when you came and submitted those drawings to us 1 year ago, are you saying your idea of what that looks like has changed? If there is an extension granted is there a way to get this plan more in line with the current city plan?
aa. Derald-When I first approached the city I showed the approved concept plan, but I know we can do better. If you think about this, this PUD will

improve with the input of the Planning Commission. I want to work with you. If you don't approve this extension, then we are stuck with what is. The second question is Erda doesn't have any zone that fits what this is and covers what this is. But I'd like to work with you on improving this.

bb. John-You all received an email from Allison Kipp, she requested that this be continued till the next meeting for the info that she is looking to get from the GRAMA request.

cc. Rachelle- Are you asking for the extension of 1 year from concept to preliminary and CUP?

dd. Derald-I am asking for a 1 year extension of concept to preliminary and the extension on the CUP of 1 year. We still don't have the definite on when that CUP begins. I would like the time to have these discussions. I understand her desire to wait, but I dont' have the time to wait on getting my options moving forward.

ee. Cory- John, can we offer an extension with conditions?

ff. John-The ordinance is not clear, it would be good if the applicant agreed and there would be no fight.

gg. Derald- That is why we need the time, we need the time to get the answers for everyone to know what is going on.

hh. Diane- As these more dense housing areas are developed, we will get some infrastructure that we need. There will be some roads and sewer lines. Those things are going to matter to us down the road. I think this needs to be considered.

ii. Kathleen- Disregarding everything that's going on whether we should or shouldn't be giving this extension. The plan that was given to us wasn't satisfactory to me. This doesn't fit the medium density that's in the general plan. Where do we get the opportunity to decide that's the kind of development we want in our city. I believe we should get the same option to approve or not approve the density he is bringing in. I get density brings more money and other utilities. The 1 acre lots that's been our goal, I think there are ways of doing this.

jj. Derald-I think that's right on, I heard you say that the Planning Commission wants input on what this looks like. The extension is what gives us the ability to do that. The approved density is 2.3 units per acre. That can give us a lot of flexibility on what we want this to look like.

kk. Kathleen- I just think you and I are so far apart on this and that's what I'm struggling with. We are way far apart.

ll. Mark-I did some quick math on the suggested time frame here. There is just over 5 months to work with Erda and submit that for approval. With all of the unknowns I don't think that's adequate time. The ruling came back

that he had vested interest. Erda got handed things and I know the residents didn't want this. This was passed and we can't just look at this to pass this down the road and not allow Derald the ability to improve his development within Erda. He doesn't want to go to 1 acre lots why would he? I know Erda City thinks this is a black eye. The fact of the matter is this was done legally or deemed acceptable by the courts. There have been enough things going on that justice should allow him some additional time and means to work with people to get what we want. While we don't need to grant an extension, I think it could be beneficial to all parties to allow the time especially for Erda city to have more input on what this will become. I think an extension in this matter could be appropriate.

mm. John-The Nov 10, 2022 court did not say he had vested rights, it was a technical issue saying that the ECA didn't have standing to file the suit. But I do have the opinion of the ombudsman saying he has vested rights.

nn. Kathleen-If we did not grant an extension you'd just move forward with the concept plan already approved?

oo. Derald- If we don't have that time we only have 5 months to submit a preliminary plan to Erda CIty. We only have enough time to have our Engineers draw the plans of what's been approved by the county.

pp. John-If you don't approve it, you're saying there was no tolling and they have lost their vested right.

qq. Mark-That's important here he has diligently pursued this. He hasn't been sitting around and waiting. He's been meeting with people, he's been trying, there hasn't been a lack of action on his part. You could look at this as legality but that doesn't seem right or fair.

rr. Diane- It's been through a process that says to me the people who know the laws are okay with this. I do think we need to do revisions. I agree with Kathy on this. I do think he needs a fair fighting chance.

ss. Cory-I'm with Mark, when this was granted by the county he has the vested rights in Chap 9. As such he is bound by Chap 9. My concern is if we vote to extend this we are breaking the law. If there was no tolling, the time on this is up. There have been many projects that we've been stuck with. We've had to follow the law, we've had to accept many things that we did not want. I think we need to follow what chap 9 says. In Chapter 9 it lists many things that should be included in their concept plan, I haven't seen a number of those things the scale is off, number of bedrooms ect. One of the big things to me is 9-2. "No change alteration modification or waiver authorized by this chapter shall authorize changes the uses permitted". For example just because it's a PUD they can't be commercial or do commercial type activities. The second part after that says "or a

modification with respect to any standard in the zoning district. So the way I read that is this is still an RR5 zone. The PUD he has that is vested is an overlay, and he can not modify a standard. Well some of those standards include 225 ft lots which doesn't exist in this plan, 30 ft setbacks from the front 10% building coverage is the max. I think that he's got to be able to comply with everything in this chapter. I think there has been no tolling. Derald has said he didn't think the County would have accepted anything, but he could just have been assuming, he didn't submit anything to find out. Derald talked about trying to make this fit Erda, I don't think that there is any way we can make this fit what the citizens of Erda would want.

tt. Joe- For clarification, we did make an application to Tooele County they didn't accept the application. We did try. But we also get all of the county code at that time, so in Chap 7-10 unless there is substantial action under the conditional use permit within one year, it will expire. The code states that actively defending a CUP in court does consist of substantial action. The second problem you have is the justice and equity part. To take a concept plan to a preliminary plan will cost up to $240,000. That is a major investment, the financial isn't just for what ends up being. It isn't fair to the developer to put up that money without any sort of agreement that it would be used. It does have to be fair and just.

uu. John-They did not request an extension, but Tooele County would not allow them to file a preliminary plan until litigation was over.

vv. Mark- Is there any reason the individual Allison Kipp, is there any reason to discuss or hold off on our decision to wait for those additional items?

ww. Kathleen- There are all kinds of issues with the application, and it goes to that and the statues that were violated.

xx. Diane- It's been through the courts and it's been decided.

yy. John-The ombudsman has said they do have standing in Chap 9.

zz. Diane- From what I've understood it's a done deal, but from what I've read she wants us to go over her appeal again.

aaa. Russ- John so if we favorably decide to extend does that also mean we agree they can go do whatever they want? Or does that mean they can come work with us and make it better. If we say no tonight and it goes to court and then they say we have to do what was approved. What does it tie us to?

bbb. Mark- If we choose not to extend they still have their 5ish months they can still go through the process and get the preliminary plan approved.

ccc. Rachelle- You can give an extension and get things back in return in working with the developer. You are stuck with the density. If you deem

the tolling is in effect. Keep that in mind. There are some changes to some lot sizes, and the townhomes. But you are stuck with the density.

ddd. Russ-So there are 2.3 homes per acre?

eee. Rachelle- The point of a PUD is to give you clustered development with some amenities.

fff. Cory-They are throwing around this 2.3 number, I've never seen this as part of the application. Are we tied to this table that has already been approved?

ggg. Mark- If it comes to Erda City and we can't come together on a plan then he can go back to what's been approved.

hhh. Diane-I listened to part of the City Council meeting and they are impressed with the new idea. It's better than what's been approved. But the placement might make all of the difference.

iii. Mark-I think we need the time. If we are breaking the law I don't think our legal counsel would allow this to come before us. Is there something there that would be acceptable to us as a middle ground?

jjj. Jerry-Having worked with engineers a little, it's a lot of work. Having to wait on engineers to get their work done has been frustrating. But not using any emotions, I think we ought to give an extension, I've done everything I can do to prepare for this. I just think we ought to give him the opportunity or else we are just going to get something we all don't want.

kkk. John-There are 6 of you, to pass this 4 of you have to approve this.

lll. Kathleen- John you did say, if we don't' pass it then where are we?

mmm. John-There was no case law for tolling, if we don't grant the extension he'd file some type of appeal and we'd let the appeal authority decide.

nnn. Cory-Mark asked a good question, I'd like to see that it fits with the rest of Chap 9, if we are going to let him get back and he has to do the things that were missed the first time.

ooo. Mark- I get that, but this is what was approved, approval means acceptance of what was presented. I don't think we get to second guess this. In my mind there has been enough here, there's been natural delays in everything. I'm willing to give them the opportunity to be diligent in doing this. I am an engineer. I like to see well planned out things and there is value in that. At the end of the day if we decide we don't like the plan, he's going to submit what's been approved originally. I can't vote no on the extension. To me that's not how I would like to be treated. In my mind there has been just cause.

ppp. Diane- I think this is an opportunity for us to move forward with what we could do to make this better for our community. We can't keep looking back and saying what if what if. This is not a simple question.

qqq. Jerry-Moved to approve the extension requested for CUP and Preliminary Plan extension for 1 year from today, Mark seconded the motion

rrr. ROLL CALL VOTE: Mark -Yes, Kathleen-No, Diane-Yes, Jerry-Yes, Cory- No, Russ-No.

sss. Motion FAILS

ttt. Diane- I make an alternate motion to put this on hold to look at the amended concept plan he has sent, listen to the city council meeting and table to the next Planning Commision Meeting, Mark seconded the motion

uuu. Roll CALL: Russ-Yes, Cory-No, Jerry-Yes, Kathleen-No, Diane-Yes, Mark-Yes.

vvv. Motion to Table this item until the next meeting PASSED

5. Legislative Items – Public input **(Timestamp 4:00)**
   a. Rez (01-2023) MMD Properties and Michael Pressley are requesting to rezone 09-023-R-0030 (5.01 acres) and a portion of 01-421-0-0012 (13.31 acres) from RR-5 (Rural Residential) to CG (Commercial General)
   b. Rachelle Custer- Derald Anderson and Michael Presley are requesting a rezone from RR5 to Commercial General. This encompasses Presley residential property of 5 acres and 13.3 right along SR36 owned by MMD Properties. The access will have to be a frontage road on the east side of the Presley property. It does fit the general plan. We recommend that 1. Traffic study with input from Erda City be completed prior to any commercial construction to ensure there is adequate and safe access for the residential and commercial uses. 2. Frontage road on the west side of 353 E Cimmarron Way be constructed prior to any construction on the site and the traffic study to recommend the width of the frontage road.
   c. Diane- The part about Cimmaron way is kinda temporary. If I am hearing you correctly Cimmaron will be closed once 33rd is completed?
   d. Rachelle- It is only closed as it connects to SR 36. The rest of the road will remain open.
   e. Cory moved to open the public hearing, Russ seconded the motion
   f. Voting Unanimous to open the public hearing

      i. Open Public Hearing

         a. Joe White- The road or easement is already there to 33rd Parkway. It is supposed to go just west of the motorsports park. It is supposed to be that as soon as the light is built on

SR 36 then other construction can begin and there is an easement to make the frontage road go up to 33rd parkway.

b. Derald Anderson- The rezone is in line with the Erda City General Plan, it fits right in with what it's calling for. It also lines up with the commercial that is already there. It would go up in line with what is already there.
c. Jim Harrell- I've talked to several of the neighbors, they want to know where the request for commercial stops? I think in the general plan that there is some more commercial area, but where does this request for commercial stop? Are we going to cut loose and make all of Cimmaron all commercial? What are the next 2 properties going to come and ask if they can rezone? The neighborhood wants to know, what is the plan for expected commercial area? That's the concern for the people in this neighborhood, we want to know what the plan is. Should we just rezone it all now and get it over with? I just don't think the citizens on Cimmaron Way are expecting it to be commercial, that is now what was intended.

ii. Close Public Hearing
   a. Mark motioned to close the public hearing , Russ seconded the motion to close the public hearing.
   b. Voting was unanimous to close the public hearing.
   c. Public Hearing Closed

   d. Russ-In the master plan for the city there is an allowance for those homes next to Hwy 36 to change to commercial. The applicant is utilizing the master plan to get this changed to the commercial general.
   e. Cory-I have a copy of the general plan here and you can see on erda.gov the master plan.
   f. Jim-I think it's the first 2 lots and then it stops.
   g. Joe- We've applied for a right in and right out, there on Hwy 36. It's part of the plan there.
   h. Russ- I think if it stays on the west it lines up with the right of way that is already there.
   i. Mark-This is pretty open and shut, it meets the requirements. I think the staff recommendations are good.

j. Rachelle- The current residential home there will become a non-conforming use, and they know they can't add to it and they are okay with that.
k. Cory-Made the motion to give a favorable recommendation to the City Council with the two stipulations from the city planner, Mark seconded the motion
l. **Roll Call Vote: Russ-Yes, Cory-Yes, Diane-Yes, Kathleen-Yes, Jerry-Yes**
m. **Roll Call Vote Unanimous to give favorable recommendation to MMD and Pressley Rezone Application (REZ 01-2023) (Timestamp 20:00)**

6. Comments from Commissioners
    a. No Comments

7. Adjournment
    a. Jerry moved to adjourn the meeting, Kathleen seconded the motion to adjourn the meeting.
    b. Meeting was adjourned.

8. Commencement of WORK MEETING after adjournment of regular Planning Commission Meeting.
    a. Discussion of Erda City Code Title 16 Subdivision Code, roads and trails requirements.

NO WORK MEETING WAS HELD

Note: these minutes represent a summary of the meeting and are not intended to be verbatim.

Prepared by: Jennifer Poole, Erda City Recorder

PASSED AND APPROVED by the Planning Commission this 11th day of April, 2023.

ERDA

Diane Sagers

Diane Sagers, Planning Commission Chair

ATTEST:

Jennifer Poole

Jennifer Poole, City Recorder