

1
2
3
4
5
6

**Fremont County Planning
& Zoning Regular Meeting Minutes
April 12, 2010
6:00 pm
County Annex Building**

7 The Fremont County Planning & Zoning Commission met in a regular meeting on April
8 12, 2010. They met in the County Annex Building. **Members in attendance were:** Glen
9 Pond (Chairman), John Nedrow (Vice-Chairman), Sam Davis, Jim Gerber, Larry
10 Singleton, Steve Trafton, Stephen Loosli and Cathy Stegelemeier.

11
12 **Staff and others present:** Kurt Hibbert (Administrator), Lisa Benson (Planner). Joette
13 Lookabaugh, Blake Hall, Abbie Mace, County Commissioners: Skip Hurt, LeRoy Miller,
14 and Paul Romrell.
15

16

1. Welcome

17 Mr. Pond welcomed everyone and began meeting at 6:00 pm.
18
19

2. Minutes

20
21 Mr. Pond opened for motion or amendment on Feb. 22, 2010, minutes.
22

23 **Mr. Loosli made motion to accept minutes as amended.**

24 **Mr. Davis seconded. All in favor. Motion passed.**
25
26

27 Mr. Pond opened for motion or amendment for minutes on March 8, 2010.
28

29 **Mr. Singleton made motion to accept minutes as amended.**

30 **Mr. Davis seconded. All in favor. Motion passed.**
31
32
33
34

3. BOCC/P&Z Discussion

35
36 Mr. Pond stated that the next item on the agenda is the County Commissioners
37 and turned the time over to them.
38

39 Mr. Romrell stated his appreciation to the Commission for letting them come to
40 the meeting. Mr. Romrell stated that they had received the latest copy of the

41 Development code today but had not had time to go over it yet. Mr. Romrell
42 turned the time over to Mr. Hurt.

43
44 Mr. Hurt stated his appreciation to the Commission also. Mr. Hurt stated that he
45 really liked the stream setbacks changing from 300 feet to 100 feet. Mr. Hurt
46 stated that he has some issues with some lots that are up on steep slopes on the
47 riverbanks. Used the example of the lots up on Fisherman's Drive and not being
48 able to see the river and that the biggest issue that he has is with the sewer. He
49 stated that he wanted there to be some kind of formula so that they could still use
50 those lots. Stated that he didn't know if it was taken into consideration

51
52 Mr. Davis stated that they had talked about doing ridge line setbacks for those but
53 they had not finished that yet.

54
55 Mr. Pond stated that they have not got to that part in the code yet but would be
56 taking that into consideration.

57
58 Mr. Hurt stated that the reason why they are here tonight is to start to focus the
59 code down to the end. Stated that he knows some of the toughest decisions are yet
60 to be made and that there is no sense in them chasing rabbits if that is not where
61 we would like to go.

62
63 Mr. Pond stated that he thought they did spend some amount of time on this issue
64 and that it will be addressed more.

65
66 Mr. Hurt stated that he was opposed to any outside entity having any portion of
67 approval authority on subdivisions. He stated that he did not feel that was
68 protecting private property rights. Mr. Hurt talked about the open space and stated
69 that the 80/20 is too much and that the County already has lots of open space and
70 forest land. Mr. Hurt stated that he didn't think that it was the right thing to do
71 and that the County didn't have that kind of authority. Stated that the County
72 should be like what we have now and work back from that position. Mr. Hurt
73 stated that if someone wanted to put in a subdivision and they can make it look
74 like the County does now then we would offer incentives. If we are telling people
75 what they can and can't do, we might be legislating some takings.

76
77 Mr. Romrell stated that Mr. Blake Hall was invited here for this purpose; to talk
78 about takings.

79
80 Mr. Hall stated he had received a copy of the Development Code and that he is
81 only going to talk about the code in whole not one specific thing. Everyone is
82 aware that when the Home Occupation ordinance was passed there was an outcry
83 of people who stated that it is a taking. In response to that we were asked to
84 present an analysis for what constitutes a taking. Stated that when you are talking
85 about land use and what people can do with their land; it is going to cause some
86 problems. The reason that the Home Occupation passed because it can fall within

87 the United States Supreme Court (read from federal statutes.) So as you are
88 working through these ordinances ask these questions: health, safety, and general
89 welfare. There are several questions that you have to ask yourself when adopting
90 a new regulation to see if you may be doing a taking. If there is a negative answer
91 to even one question it is a taking.

92 First question - Does the regulation action result in either a permanent or
93 temporary physical occupation of the private property?

94 It has gone to the Supreme Court and sometimes people have said that the County
95 would require you to donate certain property to them or to the public entity as a
96 condition so they could get certain use of the property.

97 Second - Does the regulation or action require a property owner to either
98 dedicate a portion of property or grant an easement?

99 It is the grand daddy of all takings. Used example of someone tearing down a
100 house and wanted to build a new one. The Coastal commission stated that was
101 great but they had to give an easement for the public to the beach. The Supreme
102 Court ruled that was a taking. If you require a homeowner to make a public
103 easement - that can be a taking.

104 Third - Does the regulation deprive the owner of all economically visible
105 uses of the property?

106 This is fact driven and can go both ways. The preferred land use map shows land
107 owners how the County will look in 10 years and people come in and try to get
108 the property re-zoned if they do not agree with this.

109
110 Mr. Davis asked if the economical use that is being talked about includes non-
111 existing potential uses.

112
113 Mr. Hall stated that he was not sure what the question was.

114
115 Mr. Davis asked if someone wanted to put in a project to make money off of later
116 that did not exist now, does it fall under this same class.

117
118 Mr. Hall stated that he thought that would fall into the next question.

119 Fourth – Does the regulation have a significant impact on the land owner’s
120 economic interest?

121 There was some property in Blaine County and they wanted to have a commercial
122 development there. The County Commissioners stated that they would not let
123 them develop it commercially which caused the owner to lose property value
124 therefore it reduces its value. It went to the Idaho Supreme Court which stated
125 that it did decrease the value but not enough to say that it was a significant loss.
126 If you have a bunch of lots that have been platted and divided within the County
127 and they are along rivers and there is a setback of a 1,000 feet and now they can’t
128 get a building permit on this property – you run the risk of having a someone
129 come in and say they have destroyed the economic value of this property based on
130 this regulation so there should be just compensation. Stated that he was sure that
131 this is something that has been looked at.

132 Fifth – Does the regulation deny any fundamental attribute of ownership?

133 Fundamental right of ownership - it isn't that you can use your property for any
134 purpose. It can't be used to adversely affect the health, safety and general welfare
135 of others. Generally the fundamental rights mean the right of this individual to
136 exclude others. Stated that if someone comes on their property they can ask
137 anyone to leave whenever they want to; so one of the fundamental rights is to
138 dictate who is allowed to use their property.

139 Sixth - Does this regulation serve the same purpose that would be served
140 by directly prohibiting the use or the action?

141 Example - So what you do is say that we are not going to directly condemn that
142 property but it would be nice to have a park there. So we say you can't develop
143 that property but we would really like a park there but we can't afford it to do it.
144 Are you attempting to accomplish through a regulation what you would be
145 accomplishing through eminent domain? If you do that the Supreme Court would
146 say that is a taking. If that individual would be harmed and others would benefit;
147 it would be a taking.

148 Seventh - Does the condition that is imposed substantially advance the
149 purpose of a taking?

150 Example - If we have a government purpose and adopt a regulation that imposes
151 that regulation on a private individual to the exclusion of the public as a general;
152 that is a taking. Be careful not to run afoul of these questions. If you can answer
153 yes to any of these questions the Attorney General has stated that is a taking. You
154 need to keep these in mind so that there will not be a large cost burden on the
155 County. There are General Police powers of the County; being we are doing this
156 for the general health of the County. This ordinance deals directly with the safety
157 of the County and its people and within your police powers. Where you start to
158 get into trouble is when you let the burden fall on individual property owners;
159 with a benefit for the general public. Mr. Hall gave examples of this. We need to
160 compensate people for their property if, as property owners, we do not allow them
161 to use their property for any other purpose. Those are the seven tests. The
162 Attorney General has a manual on this issue on the web site that you can get.

163
164 Mr. Nedrow stated that it is actually in the draft and starts on page 152 and goes
165 to 153.

166
167 Mr. Trafton stated that when we were listening to public comment on the Home
168 Occupation ordinance many comments were made that this ordinance would
169 constitute a taking. One person stood up and stated that he owns a piece of
170 property next to a cabin rental so at what point is his private property rights being
171 taken away.

172
173 Mr. Hall stated that the County has a right to abate any kind of nuisance. One
174 could argue that someone using their home for a rental is in violation of the
175 existing ordinance. The ordinance that was passed can actual make it legal. It is
176 intended to make sure your use of your property does not become a nuisance to
177 your neighbor's property. If it is being violated then it could mean the permit

178 would be pulled. There have been 52 requests for the takings analysis from the
179 public, there has been no comment back from the public yet.

180
181 Mr. Gerber asked what the bottom line was on your test.

182
183 Mr. Hall stated that it passed with flying colors. There is a copy of that with
184 Abbie Mace. Asked if there were any other questions and thanked the
185 commission.

186
187 Mr. Romrell stated that he would like to compliment Blake on the papers he
188 prepared.

189
190 Mr. Miller stated that he would like to express his appreciation also and that he
191 would like to commend their hard work. Stated there are a couple of areas that
192 have come up for him. Parker Reef was an issue and that he has a lot of concern
193 about why Fish and Game had any regulation on private property and that the
194 commission's job is to manage and protect private property rights. As I read over
195 what you have in the development code, there is much that I had a hard time with.
196 I had to laugh when I read one portion of it that the developer would have to be
197 educated to run maintenance. Stated that he doesn't know how a developer is to
198 tell people to buy land and to be educated in the habitat area

199
200 Mr. Miller stated that if a developer wants to visit with Fish and Game, he can
201 but not have the fish and Game regulate what he does. The other thing that has
202 been an issue is the preferred land use map. Egin and Chester are in rural
203 conservation area and didn't think that it should be any different than Wilford and
204 Twin Groves areas. We are surrounded by wildlife areas and can't see anyway
205 that you can determine where the migration route is – it is changed by the hunting.
206 Mr. Miller stated that he has seen it himself, he stated that the corridors are open
207 and that you never know when or where game is going to show up.

208
209 Mr. Romrell stated that he would like time to look through the document and
210 submit any comments in writing to Mr. Pond.

211
212 Mr. Pond stated that would be great.

213
214 Mr. Hurt stated that he would like to echo what Mr. Miller said under division 2 –
215 Natural Assets and Critical Areas - #8 is requiring the developer to prepare and
216 implement a wildlife and mitigation plan. That is going back to what Blake and
217 Mr. Miller said we are requiring a developer to comply with these 9 or 10 issues
218 here before we will validate their development. The Fish & Game doesn't ask us
219 to put our concerns on the development of their ground and he stated that he
220 doesn't feel that the developer should have to do the things within section 8.
221 Stated that they appreciated what has been done so far.

222

223 Mr. Gerber stated that he would like to let them know where we are coming from
224 on the 80/20 rule. It is the basic belief that the people in the County would like to
225 be able to see the open area in the years to come. So that when they come back in
226 30 to 40 years they would still like to see the open areas. If that is to be believed
227 then we have to enforce some kind of rule on how it is developed so there is not a
228 house on an acre all over the county. So our answer to that is an 80/20 or 70/30
229 that is still undecided. So you can develop the 20% of property and to achieve the
230 open space with the other 80%.

231
232 Mr. Hurt asked would you like a lot of little 20 acre subdivisions scattered
233 throughout the County. Mr. Hurt stated that was not typical of Fremont County
234 once you get past these areas that we talked about earlier.

235
236 Mr. Gerber stated that yes that is what we want so that it would look open and
237 rural. Even though you have these clusters kind of scattered around. The
238 alternative is to have 1 dwelling per 5 acres and you get that standard uniformed
239 look of housing everywhere.

240
241 Mr. Romrell stated that when Mr. Hall was reading the #2 question – is the set
242 20/80 a taking. Asked Mr. Hall to give his opinion.

243
244 Mr. Hall stated that he didn't know. Suggested that they stop and think if that is
245 really what the County wants. The way he has seen this issued addressed in the
246 past is they have said let's look at where our concentration of housing currently is.
247 If it is in the impact area we want to see it developed more like a city and not a
248 county – not stating this is the way it has to be just the way that he has seen it
249 before. Suggested that they start drawing pictures and ask if the policy we are
250 adopting is going to have the consequence that we want. These are policy
251 decisions that would have to be looked each specifically to answer those
252 questions.

253
254 Mr. Hibbert asked if he could pass out a table showing the densities and what can
255 be developed. Stated that this table gives you an idea as to what is available under
256 our code now. This is the available range based on the LESA and other things.
257 Passed out table to everyone. Read through table.
258 Stated that we felt a little more liberal compared to what we have had in the past.
259 It is a good table to help people compare.

260
261 Mr. Trafton stated that setting aside what happened with Parker Reef – there is
262 nowhere in the document that gives the Fish and Game any regulatory authority.
263 There is one part that states to consult with the state agencies as appropriate (read
264 part of code). Stated that personally – the reason to get a Fish and Game involved
265 it is that unlike the consultant who is paid by the developer to come up with the
266 plan the Fish and Game is a public service and closest thing to a honest broker.
267 Mr. Trafton stated that he would like to appeal the Commissioners to take that

268 into account as you think about the role that they play with these developments
269 and if we can get them involved in a non-regulatory way it could benefit us all.

270
271 Mr. Hurt stated that he agreed with Mr. Trafton. Stated that he supports wildlife
272 but in the code it states is “shall be” required and the plans shall identify 8 or 10
273 different steps. Stated that he would rather it say the developer is encouraged to
274 consult them. Somewhere along the line that someone could say that you didn’t
275 do all the things that they required so you are not going to be able to develop that
276 land.

277
278 Mr. Trafton stated that it was a failure at this level. It should have been just as
279 recommendation and not a requirement. There is a large difference between
280 requirement to consult and actually giving the agency regulatory authority.

281
282 Mr. Miller stated that is where he comes from and that it should be a requirement
283 and not a regulation that there would be no problems. But that we have to be very
284 careful how it is written in the Development code, they don’t want to see
285 something come to them again like Parker’s Reef.

286
287 Mr. Romrell stated that he thinks there was a letter of recommendation from Fish
288 and Game somewhere along the way it was moved to a requirement.

289
290 Mr. Hurt stated that to him these statements in the code need to be flushed out
291 more because all of you people won’t be here in a few years. We need to protect
292 the wildlife as much as we can but don’t leave it so wide and open that a panel
293 can sit up here and deny a subdivision like Parkers Reef.

294
295 Mr. Singleton stated that we have been meeting on this about 2 times a month and
296 asked if more time was needed.

297
298 Mr. Romrell stated yes that was fine and that they wanted it done right.

299
300 Mr. Miller stated that this has never been something that needed to be done before
301 elections.

302
303 Mr. Pond stated that there was a meeting about 6 months ago where as a group
304 you were pretty insistent that this get done. It was committed to you that we
305 would have something to you by April and here it is April and you still don’t have
306 it. So the feeling that he had was that either they move it along or you take over
307 and get it done. Stated that now we are missing about hour and half on this work
308 meeting trying to get this done; it appears that with what has gone here tonight we
309 are going to be about 2 months behind by going over what Mr. Hall has given us
310 and that it would not be to you before election time.

311
312 Mr. Romrell stated that he would be happy with that.

313

314 Mr. Pond stated that he had a question for Mr. Hall. Asking for an understanding
315 about takings and the health and general welfare of the public when we develop
316 property and it is developed here and there. We end up having lots of septic
317 systems everywhere that affect ground water but if you cluster that impact you
318 can treat the sewage and it is a health and public safety concern. How would that
319 relate to a taking?

320

321 Mr. Hall stated that was an excellent question and to require sewer systems is
322 within the health and safety of the public. What has been done in the past is; if
323 you are going to require a septic system we would require this level of density.
324 But once you would get above this level of density a public sewer system would
325 be required. Stated that he hopes we will always do what we can to legally protect
326 the aquifer and legally protect the wildlife and our way of living. You can do
327 things that directly impact health and safety.

328

329 Mr. Pond stated that we spend a lot of time on the roads and access and not as
330 much time thinking about what is going back into the ground and what is being
331 taken out of the aquifer.

332

333 Mr. Hall stated that he had heard the Commissioners talk a lot about the Island
334 Park sewers. We have to meet those minimum requirements that the state law
335 requires.

336

337 Ms. Stegelemeier asked that the 20/80 how can that fall into the health and safety
338 concern? We can desire to have the open space but is that something that we can
339 force on the land owner.

340

341 Mr. Hall stated that again you get into a balancing act and these are very fact
342 driven so I would have to answer I don't know. When there is a particular set of
343 circumstances we can look at it based on case law.

344

345 Mr. Loosli asked that once we are done with the draft would it be sent to him for
346 review first before the public hearing so that there is no time being wasted.

347

348 Mr. Hall stated that it would be up to the elected official but believes that it is
349 inappropriate to give advice on this.

350

351 Mr. Loosli stated that he was concerned about the public hearing and having the
352 public think this is the way it might go but it later significantly altered.

353

354 Mr. Hall stated that when you have that public hearing you are getting public
355 input and can make all sorts of changes based on that information.

356 The Commissioners will be going through it with a fine tooth comb for both legal
357 and policy issues. We wanted to come tonight and give you the general principles
358 to help while you are adopting these policies.

359

360 Mr. Davis stated that he appreciated the commissioners taking time out of there
361 day and that the 80/20 has just been left in there and is not set in stone. That we
362 have a very diverse County and that maybe some of this needs to be done as a
363 variable and not the same for the whole county.

364
365 Mr. Hurt stated that all three commissioners are for clustering within the county.
366 Mr. Hurt stated that he would like Fremont County to look the same as it does
367 now in 30 years and still protect personal property rights.

368
369 Mr. Romrell stated that he just didn't want to see any sprawl like as in other
370 Counties. Mr. Romrell stated that he likes clustering and that they would come
371 anytime that they were asked to come. Expressed thanks to the commission.

372
373 Mr. Pond stated that he expressed his gratitude to the commissioners too.

374
375

4. Code Revisions

376
377 Mr. Pond stated that the next item is on the agenda is Code Revisions and turned the time
378 over to Mr. Hibbert.

379
380 Mr. Hibbert stated that he appreciated that information and it is something that we needed
381 to review. We have gone through the chapters and are on chapter 5. Talked about
382 development types and water and waste water types; referred to the table on the last page
383 of the book. Read through the table. Stated on page 56 the items in yellow are things that
384 either needed changed or need to be talked about. Performance standards items – There
385 are nine different divisions within the performance standards.

386
387 Mr. Trafton asked if the version that was handed out tonight is a lot different than the one
388 that was sent to them.

389
390 Mr. Hibbert stated that we were not going to use the reference to the Comp plan (if used
391 as a regulatory concept) and some other things that had been asked to changed from the
392 last meeting.

393
394 Mr. Loosli stated that we had gone through division 2 but didn't get into the
395 slopes/wildfires.

396
397 Mr. Hibbert stated that Joshua had made some amendments to the table and noticed that
398 he had made some mistakes and would be fixing that. So that part will be skipped tonight
399 until Joshua has finished making his edits.

400
401 Mr. Trafton stated that he is concerned that the comp plan is being filtered out.

402

403 Mr. Hibbert stated that there are specific areas that the comp plan is quoted in the
404 document. The only places where it was taken out referred to as “you shall do this
405 according to the comp plan”.

406
407 Mr. Loosli stated that Mr. Chase did correct the table.

408
409 Mr. Hibbert stated that he didn’t know it was done and that Mr. Chase is amazing. Back
410 to the definitions - There were 2 definitions put in the Wetlands and Riparian Areas. Read
411 from code the definitions.

412
413 Mr. Gerber stated 7.1 (second sentence – defensible space under wildfires) stated that he
414 didn’t think that the “crown” was going to be able to cut it and that a fire would just
415 spread. Mr. Gerber stated that he would rather see a distance of at least 20 feet.

416
417 Mr. Hibbert stated that down that same line and with appendix S we could put something
418 more restrictive there or just state to apply with Appendix S.

419
420 Mr. Loosli asked how in the world would we enforce it?

421
422 Mr. Hibbert stated that he would like to remove the paragraph completely and just say
423 comply with Appendix S.

424
425 Mr. Nedrow stated that would be a good idea to remove 7.1 and 7.2.

426
427 Mr. Hibbert stated that we will be adopting this code and we will be adopting the fire
428 code too. Stated that he could write under 7 – “that all developments that are in or
429 adjacent to forested areas or areas of flammable with brushy vegetation shall comply with
430 Appendix S”; and remove the other 2 paragraphs and leave it at that. Everyone agreed.
431 Critical areas of habitat – there was a time that we felt that the county as a whole needed
432 to protect wildlife regardless where you are in Fremont County and these standards are
433 based on this. Read through wildlife protection plan and had group discussion.

434
435 Wildlife protection and mitigation plan –

436
437 Mr. Gerber stated that they need to remove the two “consults” and change to “notify and
438 confer”.

439
440 Ms. Stegelmeier asked if it should be confer.

441
442 Mr. Davis stated that he thought that notify would be better.

443
444 Mr. Hibbert stated that he understood what Mr. Gerber is saying.

445
446 Mr. Trafton stated that there is a meaning there and it is not to just notify; stated that he
447 thought confer worked better.

448

449 Mr. Hibbert stated that maybe we should request specific information from each project.

450

451 Group discussion on what a critical area is.

452 Mr. Loosli asked if the Fish and Game is being an honest broker then what police

453 authority do we have on this.

454

455 Mr. Hibbert stated that this body can ask for any type of a study, additional studies or

456 additional help can be required.

457

458 Mr. Loosli asked what we are trying to accomplish for wildlife.

459

460 Mr. Hibbert stated that this is a mitigation plan for wildlife so it is asking if it can be

461 developed on someone private property and if it something that we need to consider on

462 the design of that subdivision.

463

464 Mr. Loosli asked what if we decided that we didn't like their plan. What are the factors

465 that we decide that we don't like the plan. It is nothing but information.

466

467 Mr. Hibbert stated that it is not our job to like anything; it is our job to bench mark it

468 against the code and make sure that it complies.

469

470 Mr. Loosli stated that his concern is that it is a tool that can be manipulated.

471

472 Mr. Hibbert stated that this is part of the reason that we have done this as a plan. But you

473 are correct we can't just say we don't like this plan.

474

475 Mr. Hibbert stated that what we are trying to do here is say identify what you have on

476 your property and tell us how you can work with that with your development. If there is

477 an impact with what you are doing.

478

479 Mr. Trafton stated that throughout this code we are asked to make decisions, not the Fish

480 & Game, this information is going to help make those decisions. In the comp plan that

481 was adopted, that Fremont County would use Fish & Game consultation.

482

483 Mr. Hibbert stated that we have rejected some of these studies that have stated that there

484 is no impact. By asking for specific information we can get rid of some of the usual and

485 unnecessary information that we do receive.

486

487 Mr. Gerber asked Mr. Loosli what he would do differently.

488

489 Mr. Loosli stated that he looks at this as a developer and we want this document to help

490 him to comply with the code. Right now it states that I am going to comply by turning in

491 some information and I am going to tell you what I think and you don't have to believe

492 me, I am just giving you a report. Stated that the bottom half of this list makes more sense

493 but not the top.

494

495 Mr. Trafton stated that is allows us to say that if the Fish & Game say this area is used by
496 certain animals and we can look at what we have been given. That will allow us to make
497 our decisions base on this information.
498
499 Mr. Loosli stated that would be fine but the tie doesn't exist right now.
500
501 Mr. Hibbert stated that the way it is administered is as a checklist.
502
503 Mr. Loosli stated that he would be reading it as busy work.
504
505 Mr. Davis stated that is says that they "shall consult" and wanted to know who would be
506 paying for that.
507
508 Mr. Hibbert stated that they do and it is like a traffic report analysis and what it is saying
509 is that it is used to gather information and create a plan. In 8.1.7 it should it be changed
510 from consult to confer?
511
512 Group discussion on using the word confer.
513
514 Mr. Hibbert asked if it is ok to change the word to confer in both places. Everyone
515 agreed.
516
517
518 Mr. Hibbert read through restrictive covenants. Mr. Hibbert stated that he didn't really
519 think that the County should be involved there. Stated that CC&R's should up to the
520 developer.
521
522 Mr. Pond stated to remove the restrictive covenants.
523
524 Mr. Hibbert stated that he would strike restrictive covenants. All agreed. Add –educate to
525 have dogs and cats attended to at all times.
526
527 Mr. Hibbert read from code about feeding animals and garbage containers; asked if he
528 could get rid of this section because it is dealt with in other areas in the code. All agreed.
529
530
531 Mr. Hibbert read from code – Native Plants group discussion; talked about removing
532 until there is a list of rare plants.
533
534 Mr. Hibbert read from code – Air Quality group discussion.
535
536 Mr. Hibbert read from code – Agricultural Resources. Group discussion on thresholds
537 for industrial scale agriculture.
538
539 Mr. Davis stated that he would like to see it as 250 head.
540

541 Mr. Hibbert stated that he would be ok with 250 head. This just means that you get a
542 different level of review. More group discussion on the amount of livestock. Read from
543 code and from the CAFO.
544
545 Mr. Davis suggested 500 head instead. More group discussion on the amount of livestock
546 before a zone change.
547
548 Mr. Hibbert stated that it would read 250 head and would be classified as a Class II
549 permit instead of a zoning change.
550
551 Mr. Nedrow asked if anyone knew when the state regulations would kick in.
552
553 Mr. Hibbert stated that he didn't know since it is regulated by DEQ.
554 Group discussion on what DEQ requires. Group asked for homework assignment on what
555 DEQ would require.
556
557 Mr. Hibbert read from code – Irrigated lands, weed control, and agricultural land. –
558 Group Discussion.
559
560 Mr. Hibbert read from code – Nuisances - group discussion on lighting.
561
562 Mr. Gerber stated that he didn't like the wording “adversely affects”. Would rather have
563 it say “prevents an electric product from operating as designed.”
564
565 Mr. Hibbert stated that this was talking about electrical interferences with other uses;
566 maybe TV or microwave. There are a lot of different things that we could be talking
567 about.
568
569 Group discussion on electrical affects. No new decision made.
570
571 Group discussion on other nuisances. Added other garbage collection services and moved
572 stormwater removal back to division 2. Everyone agreed.
573
574 Mr. Hibbert read from code – Hazardous substances – group discussion.
575
576 Mr. Hibbert read from code – Livestock on lots. Group discussion.
577
578 Mr. Davis stated that the 3 days (of keeping of pack animals) needs to be changed to a
579 week instead. Group discussion on the amount of days.
580
581 Mr. Loosli stated that is should be up to 7 days at a time.
582
583 Mr. Hibbert stated that it will be changed to 7 days instead of 3.
584
585 Mr. Hibbert read from code – Home Occupations, Home based Business, Residential
586 Facilities, and Land Use Compatibility. Group discussion on Land Use compatibility.

587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632

Mr. Hibbert read from code – Buffering, Connections, and Visually sensitive area – group discussion on visually sensitive area. Sign committee discussion and the Commissioners would be doing some recruiting for the committee.

Mr. Hibbert read from code – Public Facilities and services. Group discussion on sewer systems, water quality and having Mr. Hibbert get additional information on these. Get more information on nitrates.

Mr. Hibbert read from code – Access Standards, Roads - group discussion on roads and adding reference to the road standards appendix.

Mr. Nedrow stated that he was confused on 31p; if you have two or more lots – you need to have 2 or more accesses.

Mr. Loosli stated that it kind of reads backwards, the exemption is the 2 paragraph which says that you have to have 31 lots.

Mr. Hibbert stated that is right you have to have 30 or fewer dwellings. So what you are reading is that if you have 2 lots you would have to have 2 accesses.

Mr. Nedrow stated that yes – it says developments with multiple single family dwellings – multiple to me is more than 1.

Mr. Hibbert stated that you are right it doesn't work that way.

Mr. Nedrow stated that where he going is that he is not sure if we want to allow 30 on a single access. It seems like too much traffic on one road.

Mr. Hibbert says that it says that if you are under 30 you can sprinkle and get away without doing 2, if you are over 30 you have to have 2.

Mr. Loosli stated that it is kind of like having over lapping standards. You have a fire deal and a safe road deal too. So there is confusion on what is needed.

Mr. Hibbert stated that we are just on accesses standards and we are using the fire code to develop the access standards. We do need to reference the appendix.

Mr. Hibbert stated on page 126 it talks about the maximum length of the road. This is talking about the main road system to a subdivision and how they have to be made.

Mr. Nedrow stated that he still thinks that 30 is too high of a number and it should be around 10 or 15 for safety issues.

633 Mr. Hibbert stated that he feels the same way but that we didn't want to get too far away
634 from the fire code so we don't have to defend it. If we reduce it we need a rational basis
635 to do that and I don't have one.

636
637 Mr. Loosli questioned why don't we move 31.3, 31.4 and 31.5 to 34?
638

639 Mr. Hibbert stated that he would move 34 up above so that those are in sync.
640

641 Mr. Hibbert read from code – roads. Discussion on approval of roads before it comes to
642 the commission. Read from code on Public Access. Discussion.

643
644 Mr. Trafton questioned if 33.2 should just be a replacement for 32.1. Some of the
645 language in 33.1 is a little uncomfortable.

646
647 Mr. Loosli stated that 33.1 is a far more defensible position for the county to take. 33.2
648 sounds like a legal case of a taking.

649
650 Mr. Trafton stated that he could see a land owner making an argument about people
651 always parking on my land, so should that always be a right for them.

652
653 Mr. Hibbert stated that it is a trade; you are giving some back and it just depends on how
654 it is worded.

655
656 Mr. Loosli stated that it says that it is required.

657
658 Mr. Hibbert stated that if you are uncomfortable with it lets remove it.
659

660 Mr. Loosli stated that in our old code and in many other codes the County would do it in
661 a trade as compensation.

662
663 Mr. Hibbert stated that easements are a difficult thing and if all of those tests can be
664 passed then it is not a taking. You can design those approvals to go back and give those
665 benefits back to the public.

666
667 More discussion on Historical accesses and development.

668
669 Mr. Pond stated that 33.1 and 33.2 should be left in for the public to decide if they like it
670 or not.

671
672 Mr. Hibbert read from code – commercial development. Group Discussion.

673
674 Mr. Loosli stated that this should have industrial in the title with commercial.

675
676 Mr. Hibbert stated that he liked that and would add that it in.
677

678 Mr. Hibbert read from code – read through Large Scale Development. Discussion on the
679 trigger points within the Division. Mr. Hibbert stated that he would move the rural village
680 study requirements into the large scale development study.

681

682

683 Mr. Hibbert Read from code – Division 9 – Residential Development. Group discussion
684 on zones, open space, conservation, and design of the subdivision.

685

686 Mr. Gerber went to board and drew out an example of 80/20 and the difference with
687 70/30. Mr. Gerber stated that he thought it should be 70/30 instead of 80/20 within the
688 rural conservation.

689

690 Mr. Hibbert stated that he did show them a table tonight and asked if everyone
691 understood it. Everyone agreed – yes. Mr. Hibbert added that if you look at this table it
692 would be a big jump to change to 70/30.

693

694 Mr. Davis asked what could be done with the rest of the land.

695

696 Mr. Hibbert stated that you could do just about anything you want.

697

698 Mr. Davis asked if you could subdivide it.

699

700 Mr. Hibbert stated no.

701

702 Mr. Davis asked what it has done to the value of the rest of that land.

703

704 Mr. Hibbert stated that the value remains the same; it has the same historical use that it
705 always has had.

706

707 Mr. Davis questioned that if you can no longer subdivide it and somebody wants to buy
708 it; what has it done to the value?

709

710 Mr. Hibbert stated that you did just subdivide it by creating a subdivision.

711

712 Mr. Davis stated yes but only 20% of it.

713

714 Mr. Loosli stated that the current rule in Fremont County is 1 home in 2.5 acres; we can
715 change that to say 40 units per 100. As far as your yield of lots this proposal is the same
716 as the way it is now. Stated that the issue that comes up is that open space has to be a
717 permanent undivided piece of ground; the challenge with that is the lots are ½ acre it
718 doesn't permit a 20 acre parcel of which 19 acres is un-built.

719

720 Mr. Hibbert stated that you are not creating the checker board look but you still layout
721 and design to accommodate open space.

722

723 Mr. Davis stated that he was just concerned that we were devaluing the land.

724 Mr. Hibbert stated that you weren't devaluing the land when we just approved your
725 subdivision. In fact we just increased the value of the land. Nothing was devalued.
726
727 Mr. Davis questioned what options are left over.
728
729 Mr. Hibbert stated anything: farming, ranching, whatever. The value is the open space
730 subdivision.
731
732 Group discussion on open space subdivisions and short plats.
733
734 Mr. Loosli stated that we need to allow the open space restriction to float across property
735 lines.
736
737 Mr. Hibbert stated that it is just a definitional issue.
738
739 Mr. Loosli stated that you have an unbuildable component of the property that will be
740 added in the easement.
741
742 Mr. Hibbert stated that he was fine with that. The only issue that I have with that is the
743 maintenance.
744
745 Mr. Loosli stated that with that you are getting better design tools and not changing the
746 ratio.
747
748 Mr. Hibbert asked Mr. Davis if he would feel better with that.
749
750 Mr. Davis stated that yes he would.
751
752 Mr. Hibbert stated that he really didn't have a problem with that as long as it is for the
753 public benefit. So we can just change the language a bit.
754
755 Mr. Trafton stated that he didn't have a problem with that except if we actually change
756 the nature of the open space.
757
758 Mr. Hibbert stated that if you did have a transition between every big lot he would have a
759 problem with that too. We can't design a subdivision for somebody but we want to give
760 them that benefit right up front.
761
762 Mr. Loosli stated that he is not proposing changing the requirement that they dedicate the
763 easement. Just that there is flexibility for that guy to feel that he can put his horses out
764 there.
765
766 Mr. Trafton stated that he didn't want to see it fragment the open space.
767
768 Mr. Loosli stated that there is some very strong language here that should prevent that
769 from happening. In the event that it does happen there is enforcement.

770 Mr. Davis stated that it might help since the commissioners were not really excited about
771 the 80/20.

772

773 Mr. Gerber stated that his original point was that difference between the 80/20 and 70/30
774 could be the difference of a parking lot.

775

776 Mr. Hibbert stated that he hears him and that he is worried about sprawl and that he is
777 worried about a big shift from where we have been. Stated that he would rather see a
778 small change just in case we have made a mistake – would rather be safe than sorry.

779 From the ratios that we had before that is a really big shift to go to 70/30. Mr. Hibbert
780 stated that his recommendation would be to be conservative and change it later.

781

782 Mr. Gerber stated that with all due respect he will make a motion to change it. Stated that
783 it will give the property owner more to work with.

784

785

786 Mr. Hibbert stated that with the open space we are not completely setting it aside as we
787 are allowing the central collection, drain fields, roads. Certain infrastructure will be in
788 that open space and that frees up land.

789

790 Mr. Trafton stated that he agreed with Kurt that we should be conservative up front and
791 change it later if needed.

792

793 **Mr. Gerber made a motion to change rural conservation from 80/20**
794 **to 70/30. Mr. Davis seconded motion. Mr. Singleton, Ms. Stegelemer,**
795 **Mr. Gerber, Mr. Davis for motion. Mr. Trafton, Mr. Loosli, and Mr.**
796 **Nedrow against motion. Motion passed.**

797

798 Mr. Hibbert stated that is going to have repercussion throughout the code and things are
799 going to have to be re-done.

800

801 Mr. Pond asked if it changed everything within this chapter.

802

803 Mr. Hibbert stated that yes it does and the charts too.

804

805 Mr. Pond asked if there was any point then continuing on this chapter.

806

807 Mr. Gerber asked about the chart on pg 31 and if it made changes to that too.

808

809 Mr. Hibbert stated that everything changes, the density, the lot sizes, not sure if we want
810 to keep them the same or change them.

811

812 Mr. Davis asked if there was a consensus on the lot size; ½ or 1/3 acres lot size.

813

814 Mr. Hibbert stated that he didn't think that there was a consensus. Stated that he thought
815 it was at a 1/3 acre.

816
817 Mr. Loosli questioned if rural conservation was a 1/3 acre lot size for the minimum,
818 Questioned if we wanted to leave rural living the same.
819
820 Mr. Hibbert stated that he was unsure and would have to go back and look at it.
821
822 Mr. Pond stated that we need to let Mr. Hibbert make all the necessary changes and pick
823 it up at the next meeting.
824
825 Mr. Trafton stated that this is a huge change. Do we want to have any kind of agreement
826 on some of the other ratios so that Kurt doesn't end up right back here at the next
827 meeting?
828
829 Mr. Gerber stated that he had no intention of changing the others.
830
831 Mr. Pond asked if all the others needed to be left the same.
832
833 Mr. Loosli stated at 70/30 acres and you just went from a 40 units per 100 to 90 units per
834 100.
835
836 Mr. Hibbert stated that yes 10% at our ratio is a lot.
837
838 Mr. Loosli asked if we wanted to change the minimum lots size in rural conservation to
839 get to a lower density.
840
841 Mr. Davis stated that a 1/3 of an acre is not much and he would have no problem going to
842 a bigger lot size.
843
844 Mr. Loosli stated that 2/3 would work better for density.
845
846 Mr. Gerber stated that it is a theoretical number (referring to the number of units per
847 100).
848
849 Mr. Loosli stated that it is a real number and that the developer will do what they can to
850 maximize the yield on the property.
851
852 Mr. Gerber stated that he could see them mixing and matching the lots sizes; 1/3 here, 1/2
853 there depending on how the land lays out.
854
855 Mr. Loosli stated that is not a function of the lot size anymore, it is a function of the
856 minimum lot size that our code allows by the number of acres you can put houses in – it
857 is 90 now – they can find the way to do it.
858
859
860

861 **Mr. Loosli made a motion to change the minimum lot size to 2/3 of an**
862 **acre. Mr. Nedrow seconded. Mr. Davis, Mr. Nedrow, Mr. Loosli, Mr.**
863 **Trafton for. Against Ms. Stegelimeier, Mr. Gerber, Mr. Singleton.**
864 **Motion Passed.**
865
866
867
868

5. Adjourn

869
870 Mr. Pond asked for a motion to adjourn
871
872 **Mr. Loosli made a motion to adjourn. Mr. Davis seconded. All in**
873 **favor.**