



COUNTY OF MODOC PLANNING COMMISSION

MEETING MINUTES
JANUARY 19, 2022
10:00 AM

Planning Commissioners
Vacant , District 1
Greg O'Sullivan, District 2
Brian Cox, District 3
Carolyn Carey, District 4
Dennis Fanning, District 5

Interim Planning Director
Sean Curtis

1. Call to Order

The meeting was called to order at 10:04AM. Commissioner O'Sullivan, Commissioner Carey, Commissioner Fanning were present. Commissioner Cox was absent. Staff present was Interim Planning Director Sean Curtis, Associate Planner Jackie Froeming, and Executive Secretary Sarah Simon. There were 16 members of the public in attendance.

2. Approval, Deletions or Modifications to the Agenda – None.

3. Consider minutes – September 15, 2021 PC minutes were approved by the commissioners. Motioned Carey, 2nd O'Sullivan all in favor. October 20, 2021 PC Minutes were approved by the commissioners. Motioned Carey, 2nd O'Sullivan all in favor. None opposed.

4. Public Forum- None of the public did not have any comments on anything else that was not on the agenda.

Public Hearing

4. Opened the public hearing and Associate Planner Froeming called Mr. Scott Dunaway on the phone who is the applicant of UP2021-04, explained to him which commissioners were present (Commissioners Carey, O'Sullivan and Fanning) and proceeded to put him on speaker phone.

Use Permit: Scott Dunaway/D4 Communications, LLC

Associate Planner Froeming explained that UP2021-04 is for a wireless telecommunications facility that is going to be put at the end of county road 133C, she continued to give the project description of what the facility was going to be consisting of. Associate Planner Froeming explains the beneficial use of putting in this telecommunications site for the community. Continues to give the project site characteristics, existing/ proposed use, along with the access/requirements, proposed water/ sewage uses and the surrounding zoning and land use. Finishes up with stating that the Tower is subjected to CEQA and an initial study that is in the works. Went over the attachments that are in the project packet and what was sent out to the surrounding property owners. Scott Dunaway does have a comment he would like to make about this Use Permit since he is the applicant. He goes on to explain that the UP carrier is going to be T-Mobile since they do have very little coverage in that area. They are looking to bring coverage into that area to give the ability for better cellular communications in emergency

services and rural areas along with possible 5G internet services. Mr. Dunaway ended his comments on this UP and was open to any questions that the commissioners might have. Commissioner Fanning did ask if there were any public comments on UP2021-04. Associate Planner Froeming responded with "there were no public comments." Commissioner Fanning did ask if they were going to be premature in the consideration of UP2021-04 without the full CEQA completed? Associate Planner Froeming said they will take any public hearing for comments that would like to speak for that. Then close the public hearing. The initial study is in the process of being done, once done we will circulate it and bring it back onto the agenda with re-noticing of a public hearing. Commissioner Carey stated that they are closing the public hearing on UP2021-04 at the time of 10:11AM.

1) One member of the public had asked the question "do they have a road encroachment permit?" Associate Planner Froeming responded with the information that is in the application it is already an existing access. Fromeing then continues to ask Mr. Dunaway if he has had any discussion with the roads department about road encroachment permit or if he is going to continue to use the already existing. Mr. dunaway counited to state that they will continue to use the already existing access on County Road 133C which is already existing, so they have not applied for any road encroachment permits. They do plan on applying for a road encroachment permit once/ If this UP is approved.

2) A second member of the public had a question off of the CEQA resource side of this UP, "is there going to be a study done off the negative frequencies released from the towers?" Associate Planner Froeming had stated that the initial study for that section is still being done. Commissioner Carey closed this public hearing at 10:13am. Commissioner Carey asked Staff's recommendation, Associate planner Froeming stated that we close this public hearing until the initial study is done for this UP. Interim Director of Planning Sean Curtis stated that he believes if there is no glitches and the initial study is done and then is recirculated into the next meeting. He stated that there is a condition on the use permit that they do need compliance from all federal and state. Associate Planner Froeming asked Mr. Dunaway if he had anything else to add before ending the call. Commissioner Carey closed public hearing at 10:16 am, Commissioner Fanning seconded this motion.

Use Permit: Stephen Burich

Interim Director of Planning Sean Curtis explained the Staff Report of UP2021-05. He went on to talk about the zoning of where they are located and stated that there are certain rights that they have, that allows them to do certain things on their property without a permit, but he went on to explain that there are more specific uses of the property you can do with having a UP. It does have to go through the Planning Commission for that Use permit to be approved. He continued to say that we have a condition UP that allows limited commercial recreational use on this property. In placing three 14' x 23' sheds for guests for temporary stays for 2 days to a week. No short term stays such as overnight and no extended stays, these sheds shall only be used for seasonal use. Interim Director of Planning Mr. Curtis gave a description of the project site characteristics such as how large (21 acres) the parcel in question is along with the location, General plan (Rural Residential), zoning (Rural Residential Low Density) and it is in an SRA as well

as it was not with in the 100-year flood zone; it is in flood zone "X". Talks about the existing uses of this property are residential and agriculture, as well as improvements of this parcel are a well and septic one-bedroom house with a loft, garage, storage shed and potting shed. In addition to the already existing septic system they do propose to add another septic system to the additional 3 sheds they plan on putting on their property; that will be designed and approved by Environmental Health. The land uses around the property to the North and South are Residential as well as the land to the West but, it is vacant. The property to the East is Federal Forest Service Land. The zoning to the North, South and West is Residential Low Density same as the parcel that the proposal is being requested for. The zoning for the East is Open Space, Forestry and Grazing, the General Plan has the private parcel designated as rural residential and the federal ground as publicly owned. It has been determined that the use permit is exempt under section 1533 in the CEQA guidelines. Director Curtis then stated that we will take any comments from the applicant, then leave it open to the public for comments. Commissioner Carey asked Mr. Burich to give a brief description of what the actual intended use is going to be. Stephen Burich went on to state that his wife and himself are huge into the outdoors and wanted to start an adventure company that will allow training, gun safety, back country survival and first aid. Would like to hold classes and a place to stay for the guest that take these classes. Commissioner Carey opened the public hearing at 10:25 A.M. Interim planning director Mr. Curtis stated that for the record we had 3 comments received by email from; Mark Varney, George Wistos, and Jeff Nelson.

PUBLIC COMMENTS ON UP2021-05:

- 1) Public Member:** had stated that she was looking at the application and on page 87 she noticed that there was a seasonal creek and to the north of that creek was a leach field. She then asked if it is an existing leach field or proposed one? Mr. Burich responded that it was a proposed leach field. He continued to explain that it will be a long leach field that goes across that seasonal creek and that it rarely would have any water in it. Public member #1 went on to state that "knows it just a sketch, but it does not show that the leach line goes over the seasonal creek and that it is a concern of the health and safety issues that need to be considered of that community." Interim Director Curtis interjected and said that like with all projects the application is not valid without all of the other necessary permits, for this project and in this case would be the approval of the septic system and the building department.
 - 2) Debbie Hinmen:** Stated that she had a few pages to read. Commissioner Carey they stated that the commissioners were going to limit each member of the public to three minutes each for their comments. Mrs. Hinmen went on to read what she thought was vital. She believes that Mr. Burich was not forthcoming of what the actual UP was for to the Planning department. She went on to read Chapter 18.00 special uses D home occupation. Then went on to state that Mr. Stephen Burich and Ms. Minty O'Callaghan are operating three different business out of their home, in violation of this by having more that one business on their property. Mrs. Hinmen named off the three business they had on their property.
 - 2a)** Curology Visual and Media incorporated in June 17, 2020
 - 2b)** L7 Adventures incorporated in January 17, 2021
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2c) Botanical Investments incorporated in April 23, 2021

As Mrs. Hinmen continued to read about these businesses already on their property she stated that in the UP for L7 Adventures that it was just seasonal for summer and spring, but on the Website for L7 Adventures it stated that it was an adult summer camp that went on year-round. The traffic counties to increase on county road 267 and 267B, which these roads as most roads in Thoms creek estates are not maintained by the POA as often as they should be. Mrs. Hinmen stated that Mr. Burich failed to answer the environmental review and the SRA if located in a high fire response area. She stated that in December of 2020 a fire happened to get out of control in the Thoms creek estates subdivision. Mrs. Hinmen stated that her husband and her have lived in Thoms creek estates for the past 10 years and enjoy their 20 acres of peace and privacy.

- 3) Public Member:** She stated where she and her husband lived in Alturas, and continued to say that they owned three properties up in the Thoms Creek Estates. Explained what the Zoning and General plan of those properties. Her husband and herself have owned those properties for 27years and have lived in Alturas for 14 years. In the recent two years they have noticed an uptick in traffic. Stated that at the time they were living there, there was a POA and she served on the board, their concern was most of the roads were taken into the county system but a number of them are not. Which means the roads that are not maintained by the county the residents of this subdivision maintain their parts of the roads. She then reads that in the project description of this UP it states “requesting conditional use permit to allow all limited commercial recreational use.” She continues to read the definition of recreational use and commercial recreational use. Commissioner Carey stated that she had 30 seconds left. She wrapped it up with stating she believes that Mr. Burich has not been forthcoming of his actual intended use and that she strongly opposes this project. The husband stated that the noise from his shooting range would disturb the horses and the buffalo. Commissioner Carey asked “Has anyone complained about this prior? Frankly this is a completely separate issue that what we are looking at today.” Commissioner Carey took their comments and concerns and told them she understood.
 - 4) Dave Thompson:** Starts off by addressing Mr. Burich and saying that he has put us in a very uncomfortable position, but we are going to fight till the end. Commissioner Fanning interjects and asks that he address himself to the chair. Stated his name was Dave Thompson and continued to state which pages were incomplete in the Use Permit Application. Mr. Thompson stated that in the modification it said these are not going to be sheds they are going to be built to live in. He continues to say that nothing is mentioned of the ADA (American Disability ACT), and goes on to state the requirements of the ADA since these are going to be accessible to the public. Mr. Thompson then states that we can not get through everything that Mr. Burich is going to need to open such a business. He also mentioned that he talked to the Roads department about this. The zoning code is low density housing and they would like to keep it that way.
 - 5) Willis & Retha Roberts:** Mr. Roberts just wanted to mention a few more concerns he had. Is that L7 is not just located in Modoc County, it is national. Has nothing against the project personally just believes that it should not be done in area with zoning being considered residential. Also believes there are too many open ends still to this use permit that was
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somewhat mentioned earlier. Finished by stating that he is opposed to this project. Mrs. Roberts also spoke up and stated that she opposed as well.

- 6) **Mike Ynez:** Said his family is going to be the ones that are most affected by this. What he can see is that what has been stated has not come to your attention before today. States that what has been said so far is a pretty good reference to what the issues are and he would like to hear from the other side on how they can logical put something like this in our area.
- 7) **Pat Murphy:** Mr. Murphy stated where he lives and continues to say that he is opposed to this project simply because it is in a residential area. If they wanted to do something like this they should have bought a piece of property that was not in a subdivision.
- 8) **Jo Thompson:** She states where she lives and that she has lived there for 25 years and that she is opposed to this project.

Commissioner Carey moved on to rebuttals. Dave Thompson spoke up and said that he had one more thing to say; if he could that he had forgot to say earlier. If the planning commission considers this project that the road on Warner Mountain Dr. needs to be taken into the county system. This last statement opened up more opponents to comment.

- 9) **Mike Watkins:** He is opposed to this project.
- 10) **Ed Wistos:** He said not only is it going to disturb our horses and the deer that are still rough around there the dogs around don't like the loud noise.
- 11) **Jeff Tatro:** He began to state that his wife and him own 100 continuous acres and they are still in the process of getting their livestock operation up and running. He is not opposed to any entrepreneurial ventures that anyone would want to undertake. However, the impact that he has seen so far on warner mountain drive has been extensive. Mr. Tatro then gives examples such as; people showing up to his property, more traffic on the road, and having to give correct directions to people who obviously weren't from town. Mr. Tatro stated that he was used as an example of being one of the many residences that maintain the road and that it is a collective effort of The Thoms Creek Estates residence to keep that road maintained. One of the many reasons that he maintains that road from his drive way to Co Rd 267 is so that his elderly father and wife can get in and out. His primary concern is the increased traffic on that road.
- 12) **George Wistos:** Mr. Wistos called in a comment at 8:51 AM on 1/19/2022. In this comment he stated that he opposes UP 2021-05 and that he owns the parcel that is directly to the north of the project site.
- 13) **Public member:** She began to state when she was looking at the lot she purchased the realtor had told her that she was only allowed one permanent residence there and could not have any other accessory dwellings for family or rented out.

Commissioner Carey moved on to proponents of this project. Stephen Burich started off by apologizing to the present public members and stating that he did not mean to come off as dishonest in the application at all, but this Use Permit was strictly for the use of the sheds. He went on to state that he did not realize that he needed to get certain permits for his property. He continued to state that the only have L7 adventures up here that their other operations they have only have the address in Alturas so they can receive their mail from them. Mr. burich said that they would love to contribute to the

maintenance of the roads and to help the community and not be against it. Commissioner Carey thanked Mr. Burich for his comment, she then proceeded to close the public comment portion of this meeting at 10:58 A.M. Commissioner Carey then looked to Interim Planning Director Mr. Curtis for the options of what the commission can do for this Use Permit. Mr. Curtis went on to state that they had a few options of what they could do for this UP; they could deny the permit, approve it or continue the permit and direct staff to do additional research of the concerns that were raised and bring it back at a future date. Commissioner Carey said that the last option would be what she would like to be put out to be considered, because there are still a few unanswered questions and it requires more staff investigation. Commissioner Carey asked if we need to make a motion to continue the hearing. Associate Planner Froeming stated that we did need to have a motion and a second. Commissioner O'Sullivan said he had a comment and that he is not in favor of counting this Use Permit and that he feels more inclined to decline the Use Permit. The UP submitted by the applicant and the information was enough and he thanks Mr. Burich for looking to Modoc county to bring in business. Commissioner O'Sullivan does not believe that this particular use is not in the formal use of the property. He believes that it has gone now from residential to commercial with this. Commissioner O'Sullivan genuinely believes that it is a lodging facility for the intended use. He is not taking into consideration the use of the shooting range but it is also a commercial use. Commissioner O'Sullivan finished by stating that he is not in favor of the UP. Commissioner Carey stated that she has the opposite opinion, she would like to continue it pending further research and review. Believes that there are still too many unanswered issues to make a full decision at this time. Commissioner Fanning stated that he would hate to turn any business down, but you obviously have issues with your neighbors. He believes that Mr. Burich needs to rethink everything, maybe get some input from his neighbors that they believe would be acceptable too and their needs to be more communication between the community and him. Interim planning Director Sean Curtis apologizes to the commission for missing a comment by Mark Varney, Mr. Curtis had told him that we would give a call during the public hearing to receive his comment on file.

14) Mark Varney: His first concern is the extreme fire hazard that this may cause. MR. Varney states that the applicant has pictures on his FB page of a control burn when everyone else was advised not to burn during this time. His second concern is the noise that this gun range is going to bring, into this rural residential low-density subdivision. Thirdly he states that L7 adventure is a year-round Adult summer camp that is contrary to the application. Fourth, due to the drought believes that extra bodies tapping our aquifers will be dire.

The Commissioners will now motion on what to do with UP2021-05. Commissioner Carey asks All in favor of continuing pending further staff investigation say aye. Commissioner Carey is in Favor. She then asks who is in favor of being opposed? Commissioners Fanning and O'Sullivan are both opposed to continue. All commissioners believe the UP2021-05 that was presented to them today needs to be completely redone and thought out better. Closed the public hearing at 11:24 AM. Associate planner Froeming stated that we need a motion on the table to deny the UP. Commissioner Fanning motioned to deny UP2021-05. Commissioner O'Sullivan 2nd the motion to deny the permit. (all-in Favor) Commissioners Fanning and O'Sullivan stated they think it's a good idea just not in the location Mr. Burich had chosen.

5) Staff Report- Commissioner Carey started with the camping ordinance revisions. Director Curtis stated that this is just a discussion not an action item. The purpose of the modification was to clarify the

meaning of camping. Director Curtis stated that we have a very clear ordinance as to living in RVs for thirty days out of the year in a RV park. What was discovered that it was not clear that you can camp in something other than an RV (i.e. Unpermitted structures, tent, cars, trailer etc.) there was indirect language in this. Believes the language that was approved at a previous meeting it cleaned up the ordinance and defined items that weren't before but confused the board. The board said to try again at the language of the ordinance to make it a bit clearer. Director Curtis did state that they did add a definition of camping that means habitation on a property except with in legal established dwellings. He said that this definition takes care of unpermitted dwellings, tents etc. Commissioner O'Sullivan said that this ordinance is the one that he sees that's most abused. Director Curtis stated that the other addition to this ordinance that did not exist before that is on page 114. He continued to state what he would propose to do is bring us back to the next meeting and prior to the next meeting have the county counsel look at it and make sure they are happy with it. The intent of this is to make it crystal clear.

6. Planning Director's Report

Director Curtis gave a very brief report and said where we stand with staffing. Sarah Simon is the executive secretary and Jackie is full blown Associate planner/ trainer. Director Curtis stated that he would be "irrelevant" in the next few months.

- 7. Adjourn-** The meeting was adjourned at 11:55 A.M. Motion made by Commissioner Carey seconded by Commissioner Fanning to adjourn the meeting. In favor were Commissioners Carey, O'Sullivan, and Fanning; Commissioner Cox was absent. (3-In favor, 1-absent). The next meeting is set for Wednesday March 23, 2022 at 10:00 A.M.
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