SAN MIGUEL COUNTY PLANNING COMMISSION
MINUTES – REGULAR MEETING

March 10, 2022

Online Meeting

Present:	Lee Taylor, Chair Josselin Lifton-Zoline, Vice-Chair M.J. Schillaci, Secretary Ian Bald, Member Matthew Bayma, Member Tobin Brown, Jr. Alternate
Planning Staff Present:	Kaye Simonson, Planning Director John Huebner, Senior Planner Troy Hangen, Senior Planner
County Staff Present:	Amy Markwell, County Attorney

9:02 a.m. Chair called the meeting to order.

APPROVAL OF MINUTES

MOTION by MJ Schillaci to approve the February 10, 2002 minutes as presented.
SECONDED by Ian Bald **VOTE PASSED 4-0.**

Lee Taylor	**Aye**	**Nay**	**Abstain**	**Absent**
Ian Bald	**Aye**	**Nay**	**Abstain**	**Absent**
M.J. Schillaci	**Aye**	**Nay**	**Abstain**	**Absent**
Josselin Lifton-Zoline	**Aye**	**Nay**	**Abstain**	**Absent**
Matthew Bayma	**Aye**	**Nay**	**Abstain**	**Absent**
Tobin Brown	**Aye**	**Nay**	**Abstain**	**Absent**

PLANNING COMMISSION AND STAFF COMMENTS

Kaye Simonson said the next meeting will be held on April 21, 2022.
Two mineral exploration applications are scheduled for the BOCC on March 16, 2022.
The Lawson Hill project l is scheduled for BOCC on April 20, 2022.
The Planning Commission requested an update regarding the Society Turn project. Kaye stated that there are SMPA access issues to be worked out by applicant.
James Van Hooser, who formally worked for the Town of Telluride, has started as Assistant County Manager and will be assisting planning with special projects.

WORKSESSION:

Topics to be discussed;

1. Business ownership of deed-restricted units
2. Affordable Housing Impact Mitigation Fee Update
3. LUC Section 5-1303 Affordable Housing in the Telluride R-1 School District – Mitigation level (LUC Sections 5-1303A_F)

4. ADU Deed Restriction Moratorium on Terminations
5. County policies to create affordable housing opportunities

Kaye Simonson provided an update of the March 9, 2022 work session with the Board of County Commissioners regarding short-term rentals. There are currently 35 permitted Short Term Rentals. It is believed that there are around 125-140 total STRs in the county. Although they are not all permitted, it is believed most of them are submitting their sales tax. One permit was turned down recently as it did not meet egress requirements. It was appealed to the Building Board of Appeals and they upheld Building Official Matt Gonzales 'decision.

The Commission discussed short-term rental policies such as one short-term rental per property owner, and the requirement that it must be a primary residence. Properties are being bought and used solely as short-term rentals, which severely decreases the housing inventory in the area. It was commented that if an owner is using the property commercially it should be taxed accordingly. Amy Markwell, County Attorney said this is not how the law is written. There is some legislation in the works, but right now it is left up to the local government to regulate through local permitting or licensing programs. For example, Denver only allows short-term rentals in a primary residence. It should be noted that Denver is a home rule municipality and is not a statutory county. Because the use is residential, for the condos and homes being rented, the properties are classified as residential even though they are being rented commercially.

Planning staff and the Board of County Commissioners wish to establish the number of these units and where they are located. Much of this data can be found on-line. The Commission discussed their support of cataloging these properties, limiting the rentals to no more than 30 days, and requiring a business license for these entities with those licensing monies going towards enforcement. The commission agreed that these rentals should be limited to primary residences. This will help regulate corporations from overtaking the housing stock. It is a large concern that STRs are changing the character of neighborhoods from residential to commercial areas.

It was inquired what types of units are in the rental pool. People have listed everything from tents and trailers to studios and condos, up to entire houses for rent. Planning staff has updated the Land Use Code for health and safety issues and any reported violations have been quickly addressed by the county.

When the Community Housing Zone District was created, the regulation of STRs there was omitted and that will be a clean-up item to do. Deed-restricted properties in the area are not allowed to be used as short-term rentals.

In the past, the commercial aspect of these properties was captured with personal property taxes. The exemption limit has been $7,500 but this last year was changed to $50,000 during Covid-19 which eliminated many of these STR properties from that personal property tax being picked up.

Amy Markwell, County Attorney, added there was a bill in 2020 that gave counties the ability to license STRs, however, we already have the permitting process in place within the Land Use Code.

Kaye Simonson, Planning Director discussed the goal of "scraping" the most common platforms to discover and account for these properties. From the Planning department side, doing community outreach with advertisements in the newspaper to get the word out that people need to get a permit may be helpful. There was an uptick in permits during COVID due to the Covid-19 protocols and those who were trying to comply with the health protocol were discovered to be unpermitted and went into compliance. Some new owners are not aware that they need a permit. The planning department is working to improve by informing permittees what their responsibilities are in regards to having a short-term rental property in San Miguel County. A good example is a property must post the info for a key contact person in case of an emergency that can immediately respond and solve the problem. The neighboring homes should also have access to that contact person's information. These are good neighbor policies.

Currently, permits are for two years. The permit fees have risen from a nominal $10 to $150, which is split evenly between building and planning.

Amy Markwell brought up that there are lodging sales tax revenues that are being remitted. From a few hundred dollars from properties in the west end, around $12,000 in Norwood, and approximately $49,000 collected in the unincorporated R-1 district.

She then segued into a synopsis of a presentation the county had been given by a company that does this analysis and monitoring work. Their fees begin at $75 per property and increase with additional items and services. With our $150 permit fee, this is not practical for the county to utilize that type of outside support at this time. An interesting element of all these platforms was a complaint button that would quickly communicate an issue to both the platform and the lister, a useful tool.

The commission asked if there could be an additional sales tax, an additional taxing layer. The county could do a tax based on what is allowed statutorily to be collected and would also have to go to the voters. Without further research, unsure what limits are allowed.

Kaye added that there is a shift in tourism, uses, and a new economy. Revocation of permits needs to be added to the code. There have been cases of over-renting to too many people and issues such as a septic system unable to handle it. Another issue is bunkrooms in houses, with much more occupancy than a bedroom. The county is addressing this OWTS issue by taking an amendment to the BOCC regarding definitions and how to accommodate additional occupancy for a bunkroom vs. bedroom. Enforcement is difficult. There is a civil complaint process, but none of this process is quick. The Town of Telluride required having the business license number on their VRBO website ads, which made them easier to vet.

Affordable Housing Impact Mitigation Fee Update

John Huebner presented to the commission the methodology regarding the Affordable Housing Mitigation Gap Fee with some scenario comparisons of calculating the Market Affordability Gap Fee. Three (3) years of sales data are used for the market study.

The presentation included increasing the minimum SF of housing required per employee for affordable housing mitigation currently identified by LUC regulations, and identifying a maximum floor area limit at which full payment of fees in lieu of mitigation may occur. To require newly constructed accessory dwelling units to be deed-restricted, whether the units are voluntary or required for mitigation. And finally, to establish the required percentage of mitigation, which is currently 37%. The BOCC discussed these issues in the March 9, 2022 meeting and they favor a 400 s.f. minimum of housing per employee and a 75% mitigation rate. Currently, the Town of Telluride has a 90% rate and the Town of Mountain Village is proposing to go to 60%. Commissioners did want to consider a graduated scale mitigation rate for locals building modest-sized houses under 2000 s.f. and favored requiring any secondary 'guest house' units built to be deed-restricted and would also include an affordable housing covenant outlining the terms of occupation for that unit. The commissioners were undecided if applicants should be required to actually build the units or to just pay the mitigation fee.

The Commission discussed the existing ADU inventory and how to utilize the inventory. It was also debated about a graduated scale with the larger, 6,000 sf+ homes being held to a higher, perhaps 90%, mitigation rate. It was suggested for smaller square footage homes they could be exempt from such mitigation fees if they voluntarily put their home under a deed restriction.

Further discussion focused on making it mandatory to build ADUs while there is still land available. If not, the only available land will be further and further out from where people work. How does building an ADU fit in with the water supply? It was commented how many local people are being priced out as many homes are being sold to non-local population and are used as second homes and no longer primary residences. It was reasoned that smaller homes should be encouraged on some level as they do not use as much energy, or materials, and are more efficient.

LUC Section 5-1303 Affordable Housing in the Telluride R-1 School District – Mitigation level (LUC Sections 5-1303A-F)

Kaye Simonson discussed current requirements for affordable housing mitigation in PUD and commercial developments. The county has allowed the dedication of other property to fulfill the mitigation. For example that is how the land for the Sunnyside property, which came from the Sunnyside Ranch development, was acquired. The Mill Creek and Deep Creek PUDs will eventually be transferring property to the county that can be used for AH development. The question is what sort of mitigation rate we want for these types of properties, which are currently at 15%. The BOCC was not able to broach this topic in their work session due to time constraints. Kaye added that our county does not have very much commercial development that is outside PUDs and zoned for commercial development. There was a study from 2005 that recommended a 37% commercial mitigation rate but the BOCC instead chose to require a 15% mitigation rate at that time. The Town of Telluride mitigation rate is 40% for commercial development and the county could consider being in line with that rate.

ADU Deed Restriction Moratorium on Terminations

The BOCC adopted a moratorium on the termination of deed-restricted Accessory Dwelling Units (ADUs) in October 2020, has extended it to late April 2022 and did express they would like to further extend the moratorium. These are the mandatory ADUs required under deed restriction that was in place from 1994-to 2007 but never had any covenants with details regarding occupancy. Some of those deed restrictions were never signed. Some of the units were never actually built. The Planning Department has collaborated with the San Miguel Regional Housing Authority (SMRHA) and the San Miguel County Attorney to investigate the existing deed-restricted ADUs in the county. There was a discussion of two examples of the wording in these deed restrictions and who can use the ADU units. There is no mention of the units having to be rented; the units can sit empty. The BOCC asked that the county, within the planning and building departments, coordinate a system so that a situation like this does not occur again with unused housing inventory and failed deed restrictions.

Potential Policies for ADUs, as presented to the BOCC on October 13, 2021

1. Establish a Termination Fee commensurate with the original payment-in-lieu fee of $80,000 with an option to adjust for inflation.
2. Initiate an incentive for owners to have qualified tenants occupy ADUs (i.e. elimination of future building permit fees, development permit fees, and OWTS fees.)
3. Terminate non-signed ADU Deed Restrictions upon request by the Owners.
4. Proceed with a case-by-case review, evaluating the merits of each request.
5. To the extent possible under the Deed Restriction and other applicable regulations, require Owners to have the ADUs occupied by qualified tenants.

The commission considered how an incentive could be created to rent these units to locals.

Business ownership of deed-restricted units

Kaye Simonson began the discussion of businesses being able to buy into the deed-restricted market. It is currently allowed in Lawson Hill and Industrial live-work residences. There are also exception agreements with Telluride Ski and Golf (TSG) and the school district to own units in Two Rivers in Ilium and a variance was granted to let BIT purchase a lot in Lawson Hill to build housing for their employees. The thought is that as businesses are buying deed-restricted properties they are displacing potential workforce buyers out of the market. The BOCC was open to businesses building their own housing to increase stock, but not to buying up existing housing stock.

County policies to create affordable housing opportunities

There is a feasibility analysis being done on the Pathfinder Pit in Matterhorn and how it could be used for housing. An amendment to the Public and Parks Zone districts to allow for housing of essential workers and on-call employees will be on a future agenda. The F zone could possibly allow for more than one caretaker unit as the well permits allow for up to three dwelling units.

In the future, staff needs to work with water providers to determine capacity and locations that can be served where density could be increased. Also, the acquisition of water rights that could be used for future residential development should be investigated.

12:17 p.m. Adjourned.

Respectfully Submitted,

Nancy Hrupcin

Nancy Hrupcin, Legal Assistant, County Attorney

Approved on April 21, 2022.

SAN MIGUEL COUNTY PLANNING COMMISSION

Mary Schillaci

M.J. Schillaci, Secretary

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