AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Gunnison County Planning Commission Recommendation

Action Requested: Motion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

PC Recommendation - Request to legitimize illegal subdivision

Fiscal Impact:

Submitted by: Neal Starkebaum **Submitter's Email Address:** nstarkebaum@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 7/25/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 7/25/2017 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 7/28/2017

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 10

Agenda Date: 8/1/2017

Revised April 2015

TO:	**Board of County Commissioners**
FROM:	**Planning Commission**
SUBJECT:	**Planning Commission Recommendation Sciortino LUC-2016-00038**
DATE:	**July 21, 2017**
PREPARED BY:	**Neal Starkebaum, Assistant Director**
OWNERS:	**Caleb Brewer and Chad Anderson 318 Elk Crested Butte, CO 81224**
APPLICANT:	**Warren Anthony Sciortino P.O. Box 3713 Crested Butte, CO 81224 Under contract from Brewer and Anderson**
REPRESENTED BY:	**Marcus Lock Law of the Rockies 525 N. Main Street Gunnison, CO 81230**

At its regular meeting on July 21, 2017, the Planning Commission approved the following Minor Impact Recommendation on a 4-1 vote, moved by Jack Diani and seconded by Kent Fulton:

PROJECT SUMMARY:
Trey Sciortino (currently under contract to purchase the property), as authorized by Caleb M. Brewer and Chad Anderson (owners), and as represented by Marcus Lock, is requesting to legitimize an illegally created 25-acre parcel as a legal, subdivided lot, to allow the issuance of County building and onsite wastewater treatment system permits.

BACKGROUND: The following is a timeline of the conveyance of the subject parcel. On June 9, 2005 Diane K. Anderson sold a 60-acre parcel to Tad Puckett, deed recorded in the Office of the Gunnison County Clerk and Recorder, at Reception No. 554424. On January 23 2006, Tad Puckett conveyed 35-acres of the 60-acre parcel to Bersaw LLC, deed recorded in the Office of the Gunnison County Clerk and Recorder, at Reception No. 562395, resulting in a remainder tract of 25-acres (the subject parcel). This conveyance created an illegal subdivision of land pursuant to Colorado CRS 30-28-101(10)(b) and the *Gunnison County Land Use Resolution*. Tad Puckett subsequently sold the property to Caleb M. Brewer and Chad Anderson, on June 23, 2016, deed recorded in the Office of the Gunnison County Clerk and Recorder, at Reception No. 640115.

LOCATION:
The property is located directly east of Highway 135, approximately 18.5 miles north of the City of Gunnison. The property is legally described as being within the SW1/4NW1/4 Section 2 and the SE1/4NE1/4 Section 3, Township 15 South, Range 85 West, 6th P.M, consisting of 25.32-acres.

SURROUNDING LAND USES:

West – 35-acre parcels in the Reserve on the East River development, vacant (across Highway 135)

North – Colorado Department of Transportation Exempt Parcel – 23-acres; vacant - (part of 1, Section 3, the other part of Lot 1, Section 3 is a 12-acre CDOT parcel west of and across Highway 135 – Highway 135 bisects the total 35-acres. The CDOT highway maintenance facility is located on this parcel.

East – USFS – National Forest

South – 35-acre parcel (Bersaw, LLC), created through the illegal subdivision of the 60-acre parcel; 35- acre parcels in the Roaring Judy Ranch development

IMPACT CLASSIFICATION: Minor Impact Project, based upon the impact classification found in *Section 6-102: Projects Classified as Minor Impact Projects A. 2-4 Units*.

PLANS/REPORTS/SUBMITTALS:

Plans, reports, and other submittal documents informing this Decision include, but are not limited to:

- Minor Impact Land Use Change Application

MEETING DATES:

The Planning Commission held meetings on the following dates:

- January 6, 2017 Work Session
- April 7, 2017 Work Session
- May 19, 2017 Joint Public Hearing
- July 21, 2017 Work Session

SITE VISIT:

The Planning Commission conducted a site visit on April 7, 2017. The Commissioners viewed the parcel, the adjacent parcels, and the parcels comprising the neighborhood.

PUBLIC HEARING:

The Planning Commission and the Board of County Commissioners conducted a joint public hearing on May 19, 2017. At that time, no members from the public were present and one written public comment was received from William E. Abraham, President, Reserve on the East river Homeowners Association, noting they have no objection to the request, if the development was limited to one single-family residence.

Substantial time was taken to discuss the issues associated with the creation of an illegal lot and the avenues for reviewing such an application.

All testimony, both written and oral, is hereby incorporated as part of this record of review and evaluation.

COMPLIANCE WITH APPLICABLE SECTIONS OF THE *GUNNISON COUNTY LAND USE RESOLUTION:*

The request is to legitimize an illegal subdivision of land, via an after-the-fact subdivision request. The main focus of the Planning Commission's review of the standards of the *Land Use Resolution* was compliance with *Article 10: Locational Standards.*

Compliance with additional standards of the *Land Use Resolution* was discussed, but the Commission advised the applicant that they did not want the applicant to invest a significant amount of time and money in addressing additional development standards, until compliance with the Locational Standards was determined.

ARTICLE 10: Locational Standards

Section 10-101: Purpose
This Article establishes improvement standards that are intended to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights, to encourage development in areas closest to existing population centers, to foster growth that is orderly and reasonable in its rate and location, and is compatible with existing uses, and to promote the use of existing infrastructure.

Section 10-102: Locational Standards for Residential Development.

A. APPLICABILITY. *Any application for a new subdivision shall be subject to the requirements of this Section.*

1. EXEMPTION FOR PARCELS PART OF AGRICULTURAL OPERATION*. A new subdivision on a parcel on which an agricultural operation is conducted and that creates one new lot in addition to the existing parcel shall be exempt from the requirements of this Section except that subdivisions may not be obtained sequentially to avoid compliance with this Section. One such exemption per parcel shall be allowed every five years.*

Not applicable. An agricultural operation is not conducted on the property.

B. LOCATIONAL STANDARDS. *In addition to all applicable standards of this Resolution, An application for a new subdivision shall initially be reviewed for its location relative to existing development and shall be located:*

1. ADJACENT TO EXISTING POPULATION CENTER*. Adjacent to the established population centers of Somerset, Ohio City, Almont or Crested Butte South or the incorporated municipalities of Gunnison, Crested Butte, Mt. Crested Butte, Pitkin or Marble, or to a subdivision that is served by a central wastewater treatment system that was platted and approved pursuant to the requirements of the former Gunnison County Land Use Resolution.*

Noncompliant. The property is not adjacent to an existing population center.

2. WITHIN A MUNICIPAL THREE MILE PLAN AREA. *Within a municipal Three Mile Plan area.*

Noncompliant. The property is not within a Municipal Three Mile Plan Area.

The request does not meet the primary residential density standard. The proposed subdivision is not located adjacent to an existing population center or within a municipal three-mile area.

3. LOCATION RESULTS IN NO SIGNIFICANT NET ADVERSE IMPACT TO THE NEIGHBORHOOD. *When the applicant has demonstrated that a proposed residential development cannot satisfy the locational standard, the location may be approved if the Board finds that in addition to meeting all of the applicable requirements of this Resolution, the cumulative impacts of the proposed development and existing development will result in no significant net adverse impact to neighborhood lands or land uses, wildlife, visual quality, air or water quality, including impacts caused by a proliferation of individual sewage disposal systems and/or individual water wells.*

Article 2. Definitions. NEIGHBORHOOD *means an area or locality characterized by similar or compatible land uses, that may be identified by a place name and/or has boundaries composed of major streets, distinct changes in land use and/or land formations, topography or water bodies.*

The Planning Commission determined that the "neighborhood" for this project is defined as the lands adjacent to Highway 135, demarcated by a corridor extending north of County Road 813 (Jack's Cabin cut-off) and south of the Red Mountain Ranch 35-acre development. This corridor, adjacent to Highway 135, consists primarily of existing large ranching parcels (35+acre parcels) and existing 35-acre development parcels, (not subject to County subdivision review).

SECTION 10-103: RESIDENTIAL DENSITY

A. PURPOSE. *The purpose of this Section is to prevent sprawl and leapfrog development and to allow for flexibility in residential subdivision design.*

B. APPLICABILITY. *Any application for a proposed subdivision shall be subject to the requirements of this Section.*

1. EXEMPTION FOR PARCELS PART OF AGRICULTURAL OPERATION*. A new subdivision on a parcel on which an agricultural operation is conducted and that creates one new lot in addition to the existing parcel shall be exempt from the requirements of this Section except that subdivisions may not be obtained sequentially to avoid compliance with this Section. One such exemption per parcel shall be allowed every five years.*

Not applicable. There is no agricultural operation conducted on the property.

C. PRIMARY RESIDENTIAL LOT SIZE AND DENSITY STANDARDS*. Residential lot sizes and density of a land use shall change shall initially be reviewed relative to existing development.*

1. COMPLIANCE WITH MUNICIPAL THREE MILE PLAN AREA*. When the proposal is for development located within a municipal three-mile plan area, the development proposal shall address how it comports with the objectives and policies of the applicable municipal three-mile plan. The County shall consider how the proposed development has addressed those objectives and policies, and any further intergovernmental agreement between the County and the municipal government regarding the three-mile plan area. Where there is a conflict between the objectives or policies of a three-mile plan or the intergovernmental agreement, and County standards, County standards shall apply; and*

Noncompliant. The property is not within a Municipal Three Mile Plan Area.

2. DETERMINATION OF DENSITY CONSIDERS SEWAGE DISPOSAL REQUIREMENTS*. Location, configuration, and the final maximum density of lots one acre or larger in a proposed development shall be determined subject to feasibility of use of individual sewage disposal systems pursuant to the Gunnison County On-Site Wastewater Treatment System Regulations. In no case shall any lots smaller than an acre be allowed in a new subdivision unless served by a central or regional wastewater treatment system, and*

3. LOT SIZE AND LOT DENSITY CONSIDERATIONS. *Unless exempted pursuant to Section 10-103: B.1.: Exemption for Parcels on Agricultural Operation, lot size and lot density shall be substantially similar to neighborhood parcels unless the standards of either (a) or (b) are met:*

a. CONDITIONS ARE APPROPRIATE FOR SMALLER LOTS OR GREATER DENSITY*. The project shall be considered for smaller lots or greater density when all of the following four requirements are met:*

1. DEVELOPMENT SERVED BY PUBLIC WASTEWATER TREATMENT SYSTEM. *The development is or will be served by a public wastewater treatment system, by approval of the subject application pursuant to Section 12-106: Sewage Disposal/Wastewater Treatment.*

Noncompliant. The property cannot be served by a public wastewater treatment system. There is no public wastewater treatment system within several miles.

2. DEVELOPMENT SERVED BY OTHER SERVICES AND FACILITIES. *To the maximum extent feasible, the development is or will be served by a public water supply, public transportation and other public services and facilities by approval of the subject application.*

Noncompliant. The property cannot be served by a public water supply system. There is no public water system within several miles.

3. COMPATIBLE WITH NEIGHBORHOOD*. The development is compatible with the neighborhood existing when the Land Use Change Permit application is submitted. Methods of ensuring compatibility may include, but are not limited to:*

a. PERMANENT COVENANTS TO ENSURE CONTINUED COMPATIBILITY WITH NEIGHBORHOOD USES AND DENSITIES. *The proposed development includes permanent protective covenants that, at a minimum, address the following, to ensure that, if approved, it remains compatible with the neighborhood-uses and densities that exist as of the date of approval of the Land Use Change Permit:*

1. DESIGN STANDARDS*. Building exterior design standards.*

2. LANDSCAPING*. Landscaping requirements.*

3. OUTSIDE PARKING AND STORAGE. *Standards and limitations on outside parking and storage.*

4. COMPATIBILITY OF USES*. Conditions pursuant to Section 13-119: Standards to Ensure Compatible Uses.*

5. BUILDING SIZE*. Building size.*

b. SITE LAYOUT AND DESIGN. *The proposed development shall locate buildings and lots to minimize to minimize visual impact.*

Noncompliant. The density of the majority of the parcels in the neighborhood is 1 unit/35 acres or larger. The Commission determines that the application is not compatible with existing neighborhood uses and densities, and therefore permanent covenants that allow only one single family residence do not ensure compatibility. The parcel is 25-acres, however, the area of developable land is only two acres, due to the steepness of the remainder of the parcel and the significant rockfall hazard that is present on the property. The small developable area limits the options for the location of the residence, with regard to visibility from the highway and compatibility with the existing development in the area.

4. IMPACT OF INCREASED DENSITY IS MITIGATED*. The decision-making body finds that impacts of the increased density have been reasonably mitigated; methods of mitigation may include, but are not limited to:*

a. ***ADDITIONAL OPEN SPACE.*** *The amount of open space included in the proposed development exceeds the amount required by Section 13-108: Open Space and Recreation Areas by at least ten percent of the total land designated for residential uses within the development.*

b. ***PROVISION OF ESSENTIAL RESIDENCES.*** *Provision of Essential Residences that equal at least ten percent of the total number of residences, in addition to any other applicable requirements of this Resolution.*

c. ***CLUSTERING OF RESIDENCES****. Residences are clustered to minimize visual impact and impacts on wildlife habitats as depicted on Wildlife Habitat Maps.*

d. ***PARTICIPATION IN PUBLIC TRANSPORTATION SYSTEM****. As applicable, provision of a bus stop or similar facility for use with an existing public transportation system.*

The impact of increased density cannot be mitigated as the methods of mitigation are not reasonably applicable to one lot.

FINDINGS:
The Commission finds that:

1. The 25-acre subject parcel was created through an illegal subdivision of land, in violation of Colorado CRS 30-28-101(10)(b) and the *Gunnison County Land Use Resolution*. The previous owner, Tad Puckett, was advised of the subdivision regulations in Gunnison County, through previous conversations with Planning Staff.

2. The Planning Commission classifies the request as a Minor Impact Project review.

3. *Article 10: Location Standards of the Land Use Resolution* establishes improvement standards that are intended to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights, to encourage development in areas closest to existing population centers, to foster growth that is orderly and reasonable in its rate and location, and is compatible with existing uses, and to promote the use of existing infrastructure.

4. The Planning Commission finds that the request is contrary to *Section 10-101:* Purpose and that the illegal subdivision of land and request for an after-the-fact legitimization does not further the planned and orderly use of land, is not close to an existing population center, and does not foster growth that is orderly and reasonable in its location.

5. The Planning Commission determined that the “neighborhood” for this request is defined as the lands adjacent to Highway 135, demarcated by a corridor extending north of County Road 813 (Jack’s Cabin cut-off) and south of the Red Mountain Ranch 35-acre development. The neighborhood consists primarily of existing large ranching parcels (35+acre parcels) and existing 35-acre parcels, within 35-acre developments, (not subject to County subdivision review).

6. The neighborhood is predominately 35-acre and larger parcels. The subject 25-acre is not substantially similar to the size of neighborhood parcels, and the project does not meet the standards to be considered for smaller lots when all four of the requirements of *Section 10-103 C. 3. a. Conditions are Appropriate for Smaller Lots or Greater Density* are applied.

7. The Planning Commission finds that the creation of a 25-acre parcel is inconsistent with the character of and the existing land uses within the neighborhood. The request would double the impacts to wildlife, visual quality, additional water withdraw from a well and onsite wastewater treatment system, as compared to one residence on the original 60-acres.

8. The Commission finds that the application does not comply with *Section 10-102: Locational Standards for Residential Development*.

9. The Commission finds that the application does not comply with *Section 10-103: Residential Density*.

10. This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application; including all exhibits, references and documents as included therein.

RECOMMENDATION:
The Gunnison County Planning Commission, having considered the submitted plans, exhibits, and public testimony, has reached the above Findings and recommends to the Board of County Commissioners that LUC No. 2016-00038 Sciortino Subdivision be denied.