

GUNNISON COUNTY PLANNING COMMISSION
PRELIMINARY AGENDA: Friday, OCTOBER 18, 2013

- 12:45 p.m.**
- **Call to order; determine quorum**
 - **Approval of Minutes**
 - **Election of Vice-Chair**
 - **Unscheduled citizens:** A brief period in which the public is invited to make general comments or ask questions of the Commission or Planning Staff about items which are not scheduled on the day's agenda.
- 1:00 p.m. Board of County Commissioners/Planning Commission Joint Meeting:**
Items to be discussed by the Board and Planning Commission:
- Amendment 64 – Russ Forrest
 - Gunnison Sage-grouse – Status update from Jim Cochran
 - Scheduling - April/October Meetings
- 2:00 p.m. Dana and Larry Darien,** Lot 3 Darien River Subdivision, work session/possible action, request for approval for development of a single family residence and individual sewage disposal system on Lot 3, Darien River Subdivision. The lot was created in 2000, but no specific use was approved for the lot. The lot is located approximately two miles west of the Town of Marble on County Road 3; adjacent to the Crystal River. The public hearing will be held at the Marble Community Church, 121 West State Street, Marble, CO
- End of Meeting**
- Report of actions taken by BOCC.
 - A brief period in which Commission debriefs on the day's processes, etc. No discussion or action on any specific Land Use Change Permit applications will take place at this time.

Adjourn

**GUNNISON COUNTY PLANNING COMMISSION
REGULAR MEETING
October 18, 2013**

The Gunnison County Planning Commission conducted a regular meeting, in the Commissioners' Meeting Room in the Blackstocks Government Center, Planning Commission meeting room. **Present were:**

Chairman- Kent Fulton	
Commissioner- A.J. Cattles	Assistant Director of Community Development- Neal Starkebaum
Commissioner- Warren Wilcox	Planner-Cathie Pagano
Commissioner-Susan Eskew	Community Development Department Services Manager-Beth Baker
Alternate Commissioner- Tom Venard	BOCC- Jonathon Houck
Alternate Commissioner- Jeremy Rubingh	BOCC-Phil Chamberland
	County Attorney- David Baumgarten

Others present as listed in text

With a quorum present Chairman Kent Fulton opened the regular meeting of the Planning Commission.

The Planning Commissioners unanimously voted in favor of Jeremy Rubingh for Vice Chairman of the Planning Commission.

Board of County Commissioners/Planning Commission Joint Meeting: Items to be discussed by the Board and Planning Commission:

- Amendment 64 – Russ Forrest
- Gunnison Sage-grouse – Status update from Jim Cochran
- Scheduling - April/October Meetings

With a quorum present Chairman Kent Fulton opened the work session.

BOCC Jonathan Houck and Phil Chamberland attended the meeting.

Amendment 64:

Director of Community Development Russ Forrest discussed Amendment 64. He noted the Board of County Commissioners had decided to address the cultivation of marijuana first. They have directed staff to research both indoor and outdoor cultivation. They have debated whether or not marijuana cultivation could be done as an agricultural operation. They had discussed where it would be appropriate and what sort of notice of requirements would be mandatory.

Forrest said testing could be done in a laboratory or done less formally as well. There are additional elements including manufacturing, labeling, and edible items. The BOCC has directed staff to prepare temporary regulations on marijuana cultivation early in 2014, for BOCC review.

Staff will be looking at other Colorado counties and how they are handling Amendment 64. Forrest said it could be reviewed using the Land Use regulations or possibly through licensing. Licensing would eliminate the vesting of rights, allowing the County more flexibility. The needs of the neighborhood have to be established during a licensing process.

Forrest pointed out the need for security can be a major component of a marijuana cultivation operation. He reiterated the needs of the neighborhood have to be established during a licensing process.

BOCC Chamberland noted Gunnison County will discourage the sale of marijuana in unincorporated Gunnison County. BOCC Houck said the Board wants to honor what the citizens have voted for; but also balance the health, welfare and

safety of its citizens. Chamberland said most jurisdictions have banned it; those jurisdictions have taken a wait and see attitude.

Gunnison Sage-grouse:

BOCC Houck noted Gunnison County has reached out to 11 other counties involved in the Sage-grouse issues. Gunnison County has said we are not asking, but rather we are offering to locally administer Gunnison Sage-grouse regulations. The local land owners and government agencies have been very proactive and successful in their dealing with land development and the protection of the Gunnison Sage-grouse. Chamberland pointed out it is much more economically prudent to have the local jurisdictions monitor the species, rather than the Federal government.

County Attorney Baumgarten noted Gunnison County has gotten the support of two United States Senators. The senators along with the county have delivered comments to the Fish and Wildlife agency. This was done in the summer of 2013. He said to date the Fish and Wildlife agency has not responded. Houck and Chamberland acknowledged the Fish and Wildlife agency is in a very difficult situation; any decision will likely result in a law suit, by the opposing side.

BOCC Chamberland and Houck said county GIS Director Mike Pelletier and Wildlife Coordinator Jim Cochran have both been instrumental in the creation and utilization of the digital habitat prioritization tool. Staff has used the tool with land owners to create a “win-win,” outcome for the landowners and the Gunnison Sage-grouse.

Other Items:

Baumgarten, Chamberland and Houck each thanked the Planning Commission for their ongoing efforts with the Gunnison Sage-grouse and the Gunnison County Oil and Gas regulations.

Houck and Chamberland encouraged the Planning Commission to adopt the general philosophy of looking for ways to say “yes,” to applicants, while protecting the neighbors’ rights.

Forrest said the Planning Commission will be looking at the *Gunnison County Land Use Resolution* (LUR) to improve efficiency and push out ambiguity. The commission will also be looking at Three-Mile Plans etc. to ensure they allow for clear expectations for the public and the applicants.

Scheduling:

The BOCC and Planning Commission have agreed to continue meeting three times per year; on the second Planning Commission meeting in April, August and October. If it is decided there is no need for one of the meetings, one could be canceled.

Dana and Larry Darien, Lot 3 Darien River Subdivision: The Gunnison County Planning Commission conducted a work session. They discussed the request for approval for development of a single family residence and individual sewage disposal system on Lot 3, Darien River Subdivision. The lot was created in 2000, but no specific use was approved for the lot. The lot is located approximately two miles west of the Town of Marble on County Road 3; adjacent to the Crystal River. The public hearing will be held at the Marble Community Church, 121 West State Street, Marble, CO.

With a quorum present Chairman Kent Fulton opened the work session.

Fulton noted the commissioners had received copies of the Environmental Health Board’s variance and the planning draft decision.

Following a brief discussion of the Environmental Health Board variance, the Planning Commission reviewed the draft decision of approval.

Moved; by Rubingh seconded by Cattles, to approve LUC-13-00013 for the development of a single family residence and ISDS on Lot 3, Darien River Subdivision. The motion passed unanimously.

PROJECT DESCRIPTION:

Applicants own Lot 3, Darien River Subdivision. The applicants are proposing a single-family residence, attached garage and installation of an associated individual sewage disposal system (ISDS). There are existing wetlands on the parcel and the parcel is adjacent to the Crystal River. The applicants have demonstrated that they can meet the setback requirements of Section 11-107: *Protection of Water Quality* but cannot meet the Gunnison County *ISDS Regulations* setbacks from wetlands to ISDS components.

The parcel was approved as part of the Darien River Subdivision in 2000, however Lot 3 was specifically conditioned: “no use is approved for this lot by Gunnison County. Any use is subject to the County review and may require the owner to obtain a land use change permit.” During the review of the Darien River Subdivision in 1999 and 2000, the applicants stated their intention to exchange Lot 3 with the White River National Forest (U.S. Forest Service). The three parcels that are part of Darien River Subdivision were originally part of a larger (185 acres) tract owned by the Dariens.

The Planning Commission minutes from September 9, 2000 state: “A wetlands study conducted on the whole parcel showed the third parcel (3.5 acres, Lot 3) is not usable for building, and the applicants are contemplating donating it to the U.S. Forest Service; they want to sever it as a separate parcel so they can sell it or otherwise separately dispose of it. The Commission asked staff if approving a new lot with no specific use (which the third lot would be) would be of concern to the Board; the staff responded that past experience would indicate that is true. The applicants do not want to designate a specific use on this lot, as it may affect how or whether it could be offered as a donated parcel....She (Commissioner Zanetell) suggested that the County Attorney be requested to recommend language which could indicate no use was approved, and not jeopardize the applicants’ ability to donate it and gain credit for it...Staff indicated that what has been done previously was to include language within a Planning Commission recommendation that specifically notes that the permit includes no specific use on the unique lot, and that a separate and additional land use change permit would be required for any use on it. If the property is traded to the Forest Service, or another entity, the County would have to make a determination at that time whether or not a permit would be required.” The 2000 subdivision file notes that Lot 3 could not be developed because of the wetlands that encumbered the lot.

In 2002 the Dariens were cited by the Army Corps of Engineers for bank reclamation work without a permit. The Corps began an investigation to determine the impact of the work on the public interest and the course of action that should be taken. The applicant had filled the river channel and stabilized the river bank. The applicants received a permit from the Army Corps in 2004 and are currently in compliance with the Corps’ regulations.

The parcel on which the land use change is proposed is legally described as Lot 3, Darien River Subdivision and is on the south side of County Road 3, approximately 4.1 miles east of Highway 133. The parcel is bordered by County Road 3 to the north and the Crystal River to the south.

PLANS/REPORTS/SUBMITTALS:

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

- “Darien River Subdivision Lot 3, Gunnison County, Colorado, Site & Existing Conditions Plan,” dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377.
- “Darien River Subdivision Lot 3, Gunnison County, Colorado, Site Utility Plan,” dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377.
- “Darien River Subdivision Lot 3, Gunnison County, Colorado, Grading, Drainage, and Erosion Control Plan,” dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377.
- “Darien River Subdivision Lot 3, Gunnison County, Colorado, Driveway Access Improvement Plan & Profile,” dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377.
- “Darien River Subdivision Lot 3, Gunnison County, Colorado, Onsite Water System Detail Sheet,” dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377.
- Letter from Paul Rutledge and Yancy Nichol, P.E. # 28377, Sopris Engineering, LLC dated August 22, 2013 regarding “Response to request for additional information in regard to the Onsite Wastewater Treatment

System (OWTS) proposed for Lot 3, Darien River Subdivision, LUC-13-00003, Gunnison County, Colorado, SE Job No. 29190.02.

IMPACT CLASSIFICATION:

The project, by definition, is a Minor Impact pursuant to *Section 6-102: Projects Classified as Minor Impact Projects.*

MEETING DATES:

The Planning Commission held work sessions and public hearings to discuss the application on the following dates:

- August 23, 2013 Work session
- September 20, 2013 Site Visit and Public Hearing
- October 18, 2013 Work session

SITE VISIT:

The Planning Commission conducted a site visit on September 20, 2013. The Commission members noted concerns about the close proximity of development to the Crystal River. They also expressed concern about the proximity of the individual sewage disposal system to the water bodies but stated that since the Environmental Health Board had previously approved the variance application it was appropriate. Commissioners also expressed concern about the driveway access from County Road 3.

PUBLIC HEARING:

The Planning Commission conducted a public hearing on September 20, 2013. No comments were submitted for the public hearing and the public present gave no testimony.

REVIEW AGENCY REFERRAL COMMENTS:

A copy of the complete application was sent via electronic mail to review agencies for comments. A referral was sent to Colorado Parks and Wildlife, Gunnison County Fire Protection District, and Gunnison County Public Works.

No comments were received.

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

Section 9-100: *Uses Secondary to a Primary Residence.*

Not applicable. The Protective Covenants for Darien River Subdivision allow a secondary residence, however due to the site constraints the applicants have indicated that they are willing to restrict the use of Lot 3, Darien River to only one single-family residence.

Section 9-200: *Special Residential Uses.*

Not applicable. No special residential uses are proposed.

Section 9-300: *Commercial and Industrial Uses.*

Not applicable, no commercial or industrial uses are proposed as part of this application.

Section 9-400: *Exploration, Extraction and Processing of Minerals and Construction Materials.*

Not applicable. No exploration, extraction or processing of materials is proposed.

Section 9-500: *Miscellaneous Uses and Activities.*

Not applicable. No miscellaneous uses or activities are proposed.

Section 10-102: *Locational Standards for Residential Development.* Not applicable, this Section only applies to a new subdivision.

Section 10-103: *Residential Density.*

Not applicable, this Section only applies to a new subdivision.

Section 10-104: Locational Standards for Commercial, Industrial or Other NonResidential Development

Not applicable, no commercial or industrial development is proposed as part of this application.

Section 11-103: Development In Areas Subject to Flood Hazards.

Applicable, the subject parcel and proposed development is located within the 100-year floodplain of the Crystal River.

The applicants submitted a letter from Sopris Engineering, LLC dated July 25, 2013 regarding how the flood hazard will be avoided or mitigated pursuant to the general and specific standards of this Section. The letter notes, "The placement of the improvements and any fill associated with limited landscape improvements within the flood fringe will not affect base flood elevations or cause adverse changes in flood patterns downstream. No construction or alteration is proposed within the floodway and the designated wetlands on the site. All disturbed areas on the site within the flood fringe area will be stabilized and/or re-vegetated at grades shown on the grading plan. Best management erosion control practices shall be in place and maintained as needed."

Section 11-104: Development in Areas Subject to Geologic Hazards.

Not applicable, the portion of the parcel proposed for development is not within a geologic hazard area. There is a portion of the parcel, adjacent to County Road 3, that is identified as unstable slopes but no development is proposed in that area.

Section 11-105: Development In Areas Subject to Wildfire Hazards.

Applicable, a portion of the subject parcel is located in a high wildfire hazard area. The applicant will be required to sign an acknowledgement and disclaimer relative to the wildfire hazard prior to issuance of the building permit. The applicant is required to prepare a wildfire mitigation plan, at the time of building permit application that incorporates applicable methods of fire prevention as recommended within publications by the Colorado State Forest Service.

Section 11-106: Protection of Wildlife Habitat Areas.

The application was referred to the Colorado Parks and Wildlife. No comments were received.

Section 11-107: Protection of Water Quality.

Applicable, the applicant proposes development within 125 feet of a water body (Crystal River and jurisdictional wetlands). A certified wetlands delineation was prepared by Rocky Mountain Ecological Services in November 2009 and certified by the Army Corps of Engineers on June 11, 2010.

The applicant has submitted a Plan for Water Quality Protection as part of the design plans prepared by Sopris Engineering, LLC dated June 21, 2013 on sheet C-3, "Darien River Subdivision, Lot 3, Gunnison County, Colorado." The plan includes identification of erosion control measures, grading plans, and drainage facilities. Sopris Engineering also submitted a separate letter dated July 25, 2013 stating that, "...the development and construction of the site improvements does not include the storage of equipment or waste materials. Only temporary construction debris containers may be on site during construction however the construction management of this site proposes that all debris be removed from the site daily."

The proposed building complies with the 25-foot inner restrictive buffer setback.

Section 11-108: Standards For Development On Ridgelines. Not applicable. The site is not located on a ridgeline.

Section 11-109: Development That Affects Agricultural Lands. Not applicable, the subject parcel will not affect agricultural lands.

Section 11-110: Development Of Land Beyond Snowplowed Access. Not applicable, the site is not located beyond snowplowed access.

Section 11-111: Development On Inholdings In The National Wilderness. Not applicable, the site is not located on a National Wilderness inholding.

Section 11-112: *Development On Property Above Timberline.* Not applicable, the site is not located above timberline.

Section 12-103: *Road System.*

Applicable, a copy of the application was sent to Gunnison County Public Works. There is an existing temporary access to the parcel; the permanent driveway will be installed in the same location and shall be subject to Gunnison County Road and Bridge Standards.

Section 12-104: *Public Trails.*

Not applicable, there is no public trail existing or proposed on this site.

Section 12-105: *Water Supply.*

Applicable, there is an existing permitted well on the parcel. Well permit No. 77224-F was issued on May 14, 2013 and expires May 14, 2014. The well permit is valid for ordinary household purposes inside one single family dwelling; the ground water shall not be used for irrigation or other purposes. The applicants received a decree of water rights from the State of Colorado in Case No. 98CW245 in April 2002.

Section 12-106: *Sewage Disposal/Wastewater Treatment.*

Applicable, the applicants propose to install an individual sewage disposal system on the subject parcel. The applicants have applied for the ISDS permit but it has not yet been issued.

The Dariens applied for an ISDS permit on July 17, 2009. The application was denied because it did not meet the setback requirements of Section 5-110: B. *Limited Installation Within 100 Feet of Wetland* of the Gunnison County ISDS Regulations.

Section 5-110 states that, "No ISDS, except an approved composting or incinerator toilet without an associated gray water system, will be allowed within a horizontal distance of 100 feet of a wetland." The applicants requested a special review, as allowed by the ISDS Regulations, and were granted a variance on October 8, 2009 from the Regulations by the Environmental Health Board. The variance allowed the installation of an Advantex System no less than 50 feet from the wetlands boundary.

Section 12-107: *Fire Protection.*

Applicable, a copy of the application was referred to Gunnison Fire Protection District for review; no comments were received.

Section 13-103: *General Site Plan Standards And Lot Measurements.*

The site plan for this proposed development must meet the site plan criteria of this section, including proposed and existing roads, driveways, lot lines, building sites, and natural features of the site. The site plan titled, "Darien River Subdivision Lot 3, Gunnison County, Colorado, Site & Existing Conditions Plan," dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377 complies with this Section.

Section 13-104: *Setbacks from Property Lines and Road Rights-of-Way.*

This section applies; the proposed improvements meet the setback requirements.

Section 13-105: *Residential Building Sizes and Lot Coverages.*

Applicable, the proposed residence shall comply with the requirements of this Section.

Section 13-106: *Energy and Resource Conservation.*

Applicable, the proposed development is a residence and this Section does apply and will be reviewed at the time of building permit application.

Section 13-107: *Installation of Solid Fuel-Burning Devices*

Applicable, the proposed development is a residence and this Section does apply and will be reviewed at the time of building permit application.

Section 13-108: *Open Space And Recreation Areas*

Not applicable, no requirement of open space is required for this application.

Section 13-109: *Signs.*

Not applicable, no sign is proposed as part of this application.

Section 13-110: *Off-Road Parking And Loading.*

Applicable, the applicant has proposed adequate parking in compliance with this Section.

Section 13-111: *Landscaping And Buffering.*

Applicable, the applicant has submitted a landscaping plan, in compliance with this Section. The applicant intends to maintain existing vegetation with the exception of 5-8 trees that will need to be removed for sight distance from the driveway to County Road 3 and for installation of the ISDS. The applicant will also consult with the Colorado State Forest Service regarding defensible space protection for wildfire hazards which may require the removal of additional vegetation.

Section 13-112: *Snow storage.*

Applicable, adequate room for snow storage is available and a copy of this application was referred to Gunnison County Public Works for review.

Section 13-113: *Fencing*

Not applicable, no new fencing is proposed.

Section 13-114: *Exterior Lighting.*

Applicable, this section applies and any exterior lighting proposed shall comply with this section and be reviewed at the time of building permit application.

Section 13-115: *Reclamation And Noxious Weed Control.*

A reclamation permit is required for road cutting and/or construction, homesite clearing and berm construction, or installation of an individual sewage disposal system.

Section 13-116: *Grading And Erosion Control.*

Grading activities are required to secure a Reclamation Permit from the Public Works Department, pursuant to Section 13-115: *Reclamation and Noxious Weed Control.*

Section 13-117: *Drainage, Construction And Post-Construction Stormwater Runoff.* Applicable, grading and erosion control plans are identified on Sheet C-3 of the plans prepared by Sopris Engineering. The applicant may be required to obtain a Stormwater Discharge permit from the State of Colorado.

Section 13-118: *Water Impoundments.*

Not applicable, this project does not propose a water impoundment.

Section 13-119: *Standards to Ensure Compatible Uses.*

The proposed development has been designed in a manner that will not adversely affect the character and tranquility of nearby residential or public use areas.

Article 15: *Right-to-Ranch Policy.*

This section is not applicable; there are no agricultural lands that will be affected by the uses on the subject parcel.

FINDINGS:

The Gunnison County Planning Commission finds that:

1. The applicant has proposed development within 125 feet of a water body and has proposed a plan for water quality protection.
2. A portion of the subject parcel is in a high wildfire hazard area, according to Colorado State Forest Service mapping.
3. The parcel is in the 100-year floodplain of the Crystal River and the applicant has submitted a letter from Sopris Engineering, LLC dated July 25, 2013 regarding mitigation and avoidance of the flood hazard.
4. An onsite wastewater treatment system is proposed to serve the project. The Gunnison County Environmental Health Board approved a Special Review in 2009 approving the use of an AdvanTex system at the site with setbacks of no less 50 feet from the jurisdictional wetlands and Crystal River.
5. The applicants have stated that they do not intend to build a secondary residence on the subject parcel due to site constraints.
6. There is an existing well permit (Permit No. 77224-F) and court approved augmentation plan for the subject parcel.
7. This application complies with the standards and requirements of the *Gunnison County Land Use Resolution*.
8. 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.

DECISION:

The Gunnison County Planning Commission, having reviewed all the documentation submitted to the County and included within the Community Development file relative to this application, including all exhibits, references and documents as included therein, and having reached the above findings, classifies LUC-13-00013 Lot 3, Darien River Subdivision as a Minor Impact project, and approves it with the following conditions and notations:

1. The applicant shall comply with the plan for water quality protection as outlined in, "Darien River Subdivision Lot 3, Gunnison County, Colorado, Grading, Drainage, and Erosion Control Plan," dated June 21, 2013 and prepared by Sopris Engineering, LLC, stamped by Colorado-licensed engineer, Yancy Nichol, #28377.
2. All improvements to the subject parcel shall comply with letter from Sopris Engineering, LLC dated July 25, 2013 regarding mitigation and avoidance of the flood hazard.
3. Prior to issuance of a building permit the applicant shall submit a Flood Elevation Certificate and a Floodplain Development Permit in compliance with the Section 11103: *Development in Areas Subject to Flood Hazards*.
4. A portion of the subject parcel is in a high wildfire hazard area and the property owner shall be required to sign and have notarized an acknowledgement and disclaimer relative to the wildfire hazard, prior to the issuance of the building permit.
5. The applicant shall comply with all applicable standards in the Gunnison County *Road and Bridge Standards*.
6. The applicant shall comply with all conditions of the Environmental Health Board Special Review approval.
7. No secondary residence shall be allowed on the subject parcel.
8. The applicant shall obtain a Storm water Discharge permit, if required by the State of Colorado.

9. This permit is limited to activities described within the “Project Description” of this application, and as depicted on the Plan submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the Gunnison County *Land Use Resolution*.

10. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.

11. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.

12. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

13. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

Fulton adjourned the meeting at 3:10 P.M.

/S/ Beth Baker
Community Development Department Services Manager
Gunnison County Community Development Department