

**FREMONT COUNTY PLANNING COMMISSION  
MEETING MINUTES  
7:00 PM, SEPTEMBER 24, 2015  
450 N. 2<sup>ND</sup> ST., ROOM 205  
LANDER, WY 82520**

**Open of Meeting:** Chairman Kristin Paulsen called the meeting to order at 9:04 p.m. The following were present: Vice Chairman Oakley; Planning Commissioners: Harold Albright, Tom Jones, Chris Von Holtum; County Commissioner Travis Becker; Planning Department Staff: Director Steve Baumann, Small Wastewater Specialist Marcel Lopez and Department Secretary Cheryl Crowson.

**Unfinished Business:**

**Wagon Box Highlands Subdivision Filing No. 2, Re-Subdivision of Lot 8B**

Chris Hamilton, Hamilton Land Surveying, came forward to represent the subdivision. This subdivision was previously reviewed, the preliminary plat, at the Planning Commission meeting on August 27, 2015, and recommendations were sent back to James R. & Julie B. Roberts. Director Baumann stated the proposed final plat is before the Planning Commission tonight. The Planning Commission approved the preliminary plat with some conditions applied to it, some of the conditions have been met and some have not been met. Some of the conditions requested by the Planning Commission have not been placed on the final plat. The proponent took exception to the removal of the easement on the west side of Lot 10, for legal reasons. Apparently, they have a concern that it existed as an easement on the original Wagon Box Highlands Subdivision Filing No. 2 plat, and there is concern of removing that would inflame the owner of Lot 8C, who believes they have a valid easement across that portion of the property to get to the 50' x 50' public spring area. Mr. Hamilton commented, all of the lots in the area, C, D & E, were led to believe that they were given access to that water. The proponents are concerned that if it is removed, they might be liable for them getting a water line. They do not want to go down that road because the other option is to come down Trudy Road and back up which increases the length of construction. He doesn't want to open up himself to litigation. Director Baumann commented when he spoke to the proponents today, they continued to request the three variances that were requested and approved on the preliminary plat; those being no need for topographic contour map, no need to do percolation testing on each lot, no need for a professional geologist to review it from the standpoint of access to water. The additional variance they are requesting tonight is the twenty foot (20') easement and are not necessary on the east and north sides of the 50' x 50' public spring area and along the south side of Lots 9 & 10 along the already 70' wide road utility & drainage easement that represents

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Warm Springs Creek Road. They have originally sent an e-mail to me when we had originally requested the variance for the elimination of the utility and drainage easement on the west side of Lot 10 and for the remainder of it on the south side of Lots 9 & 10. Following their e-mail, I wrote them a letter addressing our concerns with the differences we saw there and try to express to them the interpretation of the planning department on the regulations and what was necessary on the plat and not necessary on the plat and following that they then followed up with Mr. Hamilton and expressed they would like to continue with the proposed final plat that you have with those additional conditions, that being the easement be left on the west side of Lot 10 and that the labeling of the buffer zone be changed from a no disturbance buffer zone to a no building construction allowed zone. Mr. Hamilton stated they commented to him that whoever buys that would want to plant trees and do various types of things to beautify that property and if there is a no disturbance it means you would not be able to put a tree there and so they felt somewhere there needs to be something put in there that allows a person to do whatever they want to as far as landscape. Chairman Paulsen asked if there have been significant changes that now changes the plat to where it goes back to a preliminary plat stage, because it is a full blown subdivision, or are the changes minor of what they're asking for so it can be considered a final plat. Director Baumann read the regulations, Chapter III, Section 3. Chairman Paulsen stated the need for discussion to determine if there were significant changes to go back to it being a preliminary plat or move forward with it being a final plat. In addition to the request for the variance, what the plat looks like and the changes that have been made. Commissioner Albright asked for explanation regarding the request of the additional variances, other than the three variances previously agreed to. Mr. Hamilton answered the same variances; just one of them was removed. Chairman Paulsen stated a variance was added. From the original meeting there were three variances, the topography, the percolation test and then the geologist. The 20' utility & drainage easement on the bottom, because there is a 70' road, the 20' is a little bit overkill. That is an addition to last month's request on the variances. Director Baumann commented the letter that was sent to them following your last meeting when you approved the preliminary plat conditionally, was the addition of, almost identical wording to the description I provided you earlier where they agreed to, the condition that we had said 20' easements are not necessary on the west side of Lot 10 and along south of Lots 9 & 10. Commissioner Albright asked is this currently a recorded easement, on the south side of the property? Director Baumann answered yes. Commissioner Albright asked why are we addressing it as a variance instead of a request to vacate that easement and handling it as a vacation of that easement? Director Baumann answered the process of the final plat essentially rewrites everything that is underneath there, it eliminates it. The original plat had that on it, and this plat, if they request a variance, it's

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gone. Mr. Hamilton stated the Roberts' actually don't care, they said they didn't care if the easements stayed there or not, that was the recommendation by the Planning Commission and they were acceptable with doing whatever the Planning Commission wanted. Commissioner Albright commented, if I understand what Mr. Hamilton just said, at the last meeting you recommended that they vacate that easement? Chairman Paulsen answered the discussion regarding the 70' easement that was already there and because of the other things they had going, things that they had agreed to, it was more than what they needed because the road is a road and utility easement that if not having that utility and drainage easement on the bottom was something they wanted it was something we would allow them to request a variance for. Commissioner Albright commented that the answer to his question was the Planning Commission recommended that it be removed. Chairman Paulsen answered it was. Commissioner Albright asked what about the easement that is on this plat on the west side of Lot 10? Chairman Paulsen answered the west side of Lot 10 was originally platted on 8B as well and that was one when we were all out at the subdivision we discussed it not being there because of the 100' buffer zone and the worry of contamination flowing down that side into the spring. That was one on the original site visit that we recommended. Commissioner Albright responded that he was on the original site visit and what was talked about was some sort of protection for that in the form of possible using that existing old ditch. I don't recall talking about vacating an easement. The ditch he is referring to is on the north half of Lot 10 on the west side. Chairman Paulsen commented the conversations at the site were the concern of animals or anything else. Commissioner Albright replied I agree. We talked about what if a future owner of that lot chose to put a corral there and then since it was our understanding at that point in time that it was a public spring, it could be contaminated by the use of that property. That was what the point of our discussion was as I recall it. Is that incorrect? Vice-Chairman Oakley replied to assist Harold, as I recall it from our last meeting was that the north half of the 20' utility was addressed at the same time we addressed the southern one that we would also remove that along with this, this is the way I have it marked on mine. The 100' buffer took care of the southern half, the northern half of that 20' easement would be deleted. Mr. Hamilton commented, that's true. That is what I just mentioned, the landowners are worried if they remove it. The owners have complied with everything you've said except they want to keep that easement on the north side. Chairman Baumann commented he wanted to answer Commissioner Albright, yes, that is what we talked about. It was a discussion about that 100' buffer and how we could protect the area within that and that was the reasoning for that cutoff ditch on the northern edge of this and there was significant discussion about animals in a corral and how that could impact it. That was a large part of discussion. Commissioner Albright asked for someone to enlighten me, do the owners of this parcel they are proposing to subdivide,

do they wish to have the easement on the north half, west side removed or do they wish to have it stay in place. Mr. Hamilton responded they are fine with the recommendation of removing the utility easements that are in place on the plat currently, with the exception of not removing the one on the west side of Lot 10, which is shown on this plat. If they need to sign a variance to that fact or vacation they don't care, if that is answering your question. Vice-Chairman Oakley responded to answer your question, Harold, that north half on the west side, 20' utility drainage easement, their request is to leave it in place. Chairman Paulsen replied, the whole thing not just the north half. Mr. Hamilton commented the whole thing on the west side of Lot 10. Commissioner Albright, commented all the way down to the spring. The reason for that is they believe the owner of Lot 8C, feels they would be damaged because right now they believe they have an easement to that spring. Mr. Hamilton answered, all people that bought all these lots up there have been somehow led to believe that is their spring, it is part of the Wagon Box spring. Therefore, those utilities come down along the west side and turn, that would be their avenue of getting a pipeline to the home if they desire to do that. Commissioner Albright asked if there is an easement across Lot 8C to Lot 8D and across Lot 8D to Lot 8E. Mr. Hamilton answered yes, there is a 20' utility easement all the way up and down. Commissioner Albright replied there lies the danger of removing easements without addressing them seriously as what was the original purpose and intent of that being there. We want to protect the spring, because we believe the spring is dedicated to the public and so we want the use of Lot 10 to not contaminate that. I'm sure that I don't believe I would vote to eliminate that easement on the west side of Lot 10 to the spring. I believe the landowners are correct in their assumption that they could find themselves challenged on whether they took away someone's right to the public spring. Chairman Paulsen asked what about if we were to consider making it something like a utility easement and not a utility and drainage because part of the question was drainage; if there was irrigation water or mis-managed water going down there. The point is the protection of that, if we continue to allow it to be a utility easement so that the pipeline could go down that way, but there would not be any drainage that would go down that way to protect the integrity of what we're attempting to do. Mr. Hamilton answered he could certainly do that, as you will notice the ditch goes clear to the property line. That was done for the simple reason to make sure there was absolutely no drainage from Lot 10. Chairman Paulsen commented you don't want to interrupt the ability for the utility, but part of our concern is the drainage part of it. If we leave the easement in place to be both it can be both, but if we make it one and then the drainage is to go in another ditch around the buffer area, then in some way we attempted to protect what our original intent of that was. Mr. Hamilton answered I think we can definitely do that and they wouldn't care. Removing the drainage in there isn't going to hurt any of those adjoining lot owners, and is going to be constructed so that will take

care of any issues. If you want, I can make some type of hatch or note or something that it is a utility. Commissioner Albright asked did the State Engineers Office issue a water right for that spring? Mr. Hamilton answered the one of record he sent Director Baumann is for the US Forest Service which I still don't understand, but it is of record. There had to be an agreement with either Wagon Box or the predecessor to have it. Commissioner Albright commented the reason for his question is if there is a State Engineers water right for that spring, you have answered my questions about the easement, now my question is about changing the terminology of the protection zone. I don't have a problem with changing that as long as there is State Engineers Water Right because then that protects that spring. If they go in and plant a lot of trees, and dried the spring up then the protection for that is the water right. The water right then would necessitate the removal of whatever caused the spring to go dry. If there is a water right to that spring then I don't have a problem with changing the terminology. Chairman Paulsen answered there is. Vice-Chairman Oakley asked Commissioner Albright to change the terminology to read no construction like they asked? Commissioner Albright responded they are requesting that instead of the non disturbance that it be no construction, so if they are worried about someone wanting to plant trees or something, that water right would protect that spring from whatever improvements were made to the land if those improvements to the land cause that spring to be affected. For example, if I have a water right for my well, that is one day older than your water right to your well on your property but pumping of your well causes my well to go dry, what my protection is, I go to the State Engineers Office and you have to shut your well down because my water right is older. That is the thought process behind what I am saying. Mr. Hamilton responded it's put in there too, you'll see it. So you want to make a hatch and designate the area below the drainage as being utility only? Chairman Paulsen commented starting in the corner, the whole 20' would just be utility. Mr. Hamilton said below the new constructed drainage everything down below that. Chairman Paulsen replied the whole easement, the whole west side would just be utility. The no disturbance was not only for trees, but for animals as well. So, if we change this and make it a no construction zone then the animals and everything are good back in that, they just can't build anything. Just want to make sure from our discussion that everybody is good that we can have animals in that area and it doesn't cause an issue. Commissioner Albright responded the water right protects the spring. Chairman Paulsen commented they can't construct a corral or anything like that so they can't house the animals in that area, but they would still have free reign in that area. Commissioner Jones responded no problems with the change. Vice Chairman Oakley responded no questions or comments. Commissioner Albright responded no comments. Commissioner VonHoltum responded no comments. Chairman Paulsen asked the board if with all the things discussed, have there been significant changes to start the

platting process over and this is a preliminary plat or have the changes been minimal and this can be a final plat? Director Baumann commented to clarify, if you decide that they haven't been significant enough changes from what was on the preliminary plat that was reviewed at the last meeting, and with your recommendation for the conditional approval of that, if there haven't been significant enough changes made to what is the final plat being proposed tonight, then it can be approved as a final plat. Mr. Hamilton can make the minor adjustments that have been recommended and it moves on to the County Commissioners. The variance would be the one read earlier in the meeting stating there are requesting variance on the south side of Lots 9 and 10 and along the east and north side of the 50' x 50' public spring. Commissioner Albright commented he has a problem with going past the three variances that we agreed with at the beginning of this and to make the plat workable, make the project of dividing this lot workable, I'm willing to work with getting that accomplished addressing the issues that we have just talked about in the last few minutes without calling it a variance. If calling it a variance, then what we're saying is we are deviating from the regulations. The regulations have in place a tool to vacate or modify an easement and I believe that is what should be done here and not a variance. I don't believe it's necessary, I believe there is a tool in place to do it. We can vote to vacate or not vacate the easement on the south; we could vote to change the easement so it no longer is a drainage easement, just a utility easement. As far as the terminology with the protection zone, I don't believe we are varying anything there. Vice Chairman Oakley commented Mr. Hamilton expressed the landowners didn't care about the south easement, whether it was there or not, is that correct? Mr. Hamilton replied they don't care whether they keep them or not, they were going to comply with your request.

Commissioner Albright asked to be excused temporarily from the meeting.

Vice Chairman Oakley continued, so to address Commissioner Albright's concern of having to go back through the evacuation process for the easements or the change in the easements, if the landowner is willing to accept the easements that are there, then that becomes irrelevant other than changing the no disturbance to a no construction and then dealing with re-wording what this easement is then they become insignificant changes to the plat and can go forward. I agree with Commissioner Albright that if we want to go through and vacate all this, maybe we need to do it per our regulations. I think we have both ways to go because the landowner is willing to say forget this, we keep it as is, change this word and move forward. Mr. Hamilton expressed the landowners were worried about the utilities being taken out but they felt that what Director Baumann told them is that there is access along the road and they can get into it. They didn't want to get involved in taking something out that they didn't have

ownership to. Discussion continued regarding the easement and the difference between a variance and vacation.

Vice Chairman Oakley proposed a variance to remove the easement on the north and east portions of the spring and the southerly portion of the property Lot 10 and 9. Keep the easement on the west side as a utility only easement...

Chairman Paulsen commented with all that being said, does everybody believe that those are minor changes to the plat that was brought to us before so we are going to a final plat process or do you believe it is a major change and we have to go back and consider this to be a preliminary plat. Commissioner Albright commented he believes it is a minor change for the following reasons, I don't believe just removing the drainage from the easement on the west down to the spring is major and I believe it goes along with our intent which is to protect the spring and I believe the variance to remove the easement on the south side of the property was actually suggested by the Planning Commission so I don't believe I would require to change the process to where it has to go back through. Chairman Paulson commented to only other change was the designation of the spring was original a no disturbance area to being now a no construction. The road is defined as book and page and was highlighted and designated public on the original.

Everyone agrees that all the changes are minor changes to this plat so we are going to look at this as being a final plat coming before us in terms of you will not need to come back before us again, you will go on to the County Commissioners.

Director Baumann commented that it is the proponents understanding that it is their requirement to construct Trico Lane and the diversion ditch prior to being able to submit the final plat. It will be field verified prior to recording the final plat.

Vice Chairman Oakley moved and seconded by Commissioner Jones to approve the variance application for the Wagon Box Highlands Subdivision, Filing No. 2, Re-subdivision of Lot 8B, the variances will be Chapter 3, Section 2, Topography by Contours of Plat; Chapter 3, Section 5, necessity to provide Percolation testing of each lot; Chapter 3, Section 8, need for a professional geologist to provide opinion on the sufficiency and quality of potential ground water supply; Chapter 4, Section 13, twenty foot (20') easements are not necessary on the east and north sides of the 50' x 50' public spring and along south of Lots 9 and 10. No further discussion, variance is requested and approved unanimously.

Vice Chairman Oakley moved and seconded by Commissioner Jones to send the Wagon Box Highlands Subdivision, Filing No. 2, Re-subdivision of Lot 8B to the County

Commissioners for approval with the pending changes: (a) previous voted on variances; (b) the following typographical error corrections; (i) within the notes of Lot 10, correct the spelling of the word “construction”; (ii) the “C” in Chairman being capitalized in the Planning Commission Certificate; (iii) No. 4, the words “maybe accepted” added in place of “is”; (iv) No. 8, the word “tracts” changed to “lots”. This plat has a review date of 9/22/15. No further discussion, motion carried unanimously.

## **New Business**

### **Upper Slate Creek Tract 8**

Chairman Paulsen stated that we do not have the NRCS documentation to review. It is our requirement that we have all the NRCS documents in order to review it. We did allow it to continue it to be on the Agenda for tonight’s meeting, but with that being said, we do have the ability to table it until that is received or proceed forward, but wanted to make everyone aware.

Chris Hamilton commented what he is hoping the board is able to do, whether it is granted conditionally or bring it back, he will be unable to attend next month. So he is hoping that if there are any issues, other than soil, that it can be taken of. Director Baumann commented that regarding Tract 8, the developer was in the Planning Department for pre-conference and was sent to the NRCS Office. The new NRCS person was being trained by the out-going NRCS person and Dave Moreau sat down with Mac Davenport and went through and made him a NRCS Report. Mr. Davenport thought he was all done. We do not have a letter of recommendation and was not placed on the Agenda. Mr. Davenport did go through the process, but it was dropped by the NRCS Office. The NRCS meets on October 7, 2015. In this case, on both of these, it’s severe soil areas for septic, so they have included on the plat a notification to that extent. Most of what NRCS does is a boilerplate, so I do not expect anything significant. Chairman Paulsen commented Marcel Lopez is present and will be able to answer any questions he may be able to answer as far as any information that he may have to add. But, it is up to the commission to review it tonight or not. What we have, is two tracts, one that is 19.60 acres and one that is 20.40 acres. Commissioner Albright commented he doesn’t have a problem with working without the NRCS report; Commissioner VonHoltum, Commissioner Jones and Vice Chairman Oakley, all agreed.

Discussion: (1) errors on plat, specifically its located in Lots 3 & 4, Section 27, T40N, R100W and the plat had it Section 34 and had 2 and 4; (2) change “Member” to “Chairman” under signature line in the Planning Commission Certificate; (3) the possibility of limited emergency services being able to get through locked gate.

Vice Chairman Oakley moved, seconded by Commissioner Albright to send the Upper Slate Creek Tract 8 to the County Commissioners for approval with the following corrections, Lots 3 and 4, Section 27, as presented with the plat review date of 9/11/15. No further discussion, motion carried unanimously.

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## **Upper Slate Creek Tract 14**

Chairman Paulsen commented Tract 14 is just down the road, exact the same, just a different location.

Vice Chairman Oakley moved, seconded by Commissioner Albright to send the Upper Slate Creek Tract 14 to the County Commissioners for approval with the following corrections, (a) change the tract, 20.64 acres to Tract 14B; (b) in the location map change the 14A (being the southernmost lot) and 14B (being the northernmost lot) ; (c) in the County Planning Commission certification signature line, add the word "Chairman"; (d) in the dedication remove the words " or lots". No further discussion, motion carried unanimously.

## **Subdivision Regulations**

The discussion on this item has been postponed until next month's meeting. The members set the next regular meeting for Thursday, October 29, 2015, at 7:00 p.m. There being no further business for the Planning Commission, Chairman Paulsen adjourned the meeting at 10:40 p.m.

Respectfully submitted:

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Cheryl Crowson  
Department Secretary

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Kristin Paulsen  
Chairman