

**SAN MIGUEL COUNTY PLANNING COMMISSION
MINUTES – REGULAR MEETING**

May 11, 2016

Miramonte Building, 333 West Colorado Ave., Second Floor Meeting Room, Telluride

- Present: Lee Taylor, Chair
 Pamela Hall, Vice-chair
 Marty Schmalz, Secretary
 Kevin Kell, Regular Member
 M.J. Schillaci, Sr. Alternate
 Josselin Lifton-Zoline, Jr. Alternate
- Absent: Ian Bald, Regular Member
- Planning Staff Present: Michael Rozycki, Planning Director
 Karen Henderson, Associate Planner
 John Huebner, Planning Technician

1:16 p.m. Called to Order.

Approval of Minutes

Pam Hall made a **MOTION** to approve the minutes from January 13, 2016 meeting as presented. **SECONDED** by MJ Schillaci. **VOTE PASSED 6-0.**

Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Marty Schmalz	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Kevin Kell	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent

Planning Commission and Staff Comments

Michael Rozycki, County Planning Director, updated the Planning Commission (PC) that the Aldasoro PUD Amendment removing the prohibition on dogs with restrictions, providing a public recreation trail easement across their property was approved by the BOCC. The Aldasoro lot owners have approved the changes. The recreational trail construction has been permitted by the County, staked out, and the necessary funds approved by Aldasoro for construction this summer. The County has been granted an easement for the portion of trail across SMVC property but no commitment for construction has been received. Local volunteers will probably be needed to construct the portion of trail near the Airport road.

Mike stated that the BOCC on May 4th approved three amendments to County LUC Section 5-29 regarding medical and retail marijuana facilities as recommended by the CPC. He said that he had appeared on KOTO radio with Sheriff Masters to discuss marijuana within the county. They had both agreed that the biggest challenge to law enforcement has been the unregulated caregiver grows, and that the licensed operations have not been an issue. He said that he anticipated the

problems with the unregulated patient and care grows would diminish over time after new state regulations go into effect on January 1, 2017.

Mike stated that Big Dog Holdings submitted preliminary plans to planning staff with planned uses consistent with the existing matrix, and installed story poles on the site for appearance of the building height relative to the Lawson Hill HUB lot buildings and the surrounding earth berm and trees. County staff is meeting with CDOT this month regarding their funding for proposed plans to develop the intercept lot in Lawson Hill, near the Conoco.

He provided an update on the status of the ongoing discussions with USFWS and BLM concerning the environmental assessment of Tri-State's powerline alignment. He noted that the State Supreme Court recently ruled that home rule municipalities cannot pre-empt the COGCC regarding oil and gas regulations. Mike also updated the status of the oil, gas and mining activities located in the county.

Land Use Code Amendment Recommendation: Amend Section 5-307 Forestry, Agriculture & Open (F) Zone District and Section 5-319 Wright's Mesa (WM) Zone District to allow Caretaker Units and Secondary Dwelling Units up to 2,000 square feet and strike the requirement that they be "one-half the size of the main residence up to 2,000 sq. ft."

Mike Rozycki, County Planning Director, updated the Planning Commission regarding the Planning staff Memorandum dated May 11, 2016 concerning a Land Use Code Amendment recommendation to allow Caretaker Units and Secondary Dwelling Units up to 2,000 sq. ft. and strike the requirement that they be "one-half the size of the main residence up to 2,000 sq. ft." in Section 5-307 Forestry, Agriculture & Open (F) Zone District and Section 5-319 Wright's Mesa (WM) Zone District. Mike shared the example he used with the County Commissioners of a mother who is living in a home near Telluride Pines that is 1,600 sq. ft., and whose family wishes to build a new house sized at 2,000 – 2,500 sq. ft., but that would be limited to under 800 or larger than 3,200 sq. ft. under current regulations. He did not see a benefit to requiring a property owner to build a home larger than they needed or wanted or that could be unaffordable to build. Mike recommended approval to strike the requirement that they be "~~one-half the size of the main residence up to 2,000 sq. ft.~~" and to allow Caretaker Units and Secondary Dwelling Units nor more than 2,000 square feet assuming the property owner can meet the applicable standards for sewer, water and parking. Marty Schmalz, Planning Commission, asked if the home the mother lives in would then become classified as a "caretaker unit". Mike answered essentially yes. Lee Taylor, Planning Commission, said it had been assumed when the regulations were written that the caretaker unit would be built after the main home.

MJ Schillaci asked if the only change being proposed was the deleting of "~~one-half the size of the main residence up to 2,000 sq. ft.~~" and the other language in the Land Use Code sections and the ownership would remain the same. MR explained that the other provisions continue unchanged. Karen Henderson, Associate Planner, clarified that the dwelling units couldn't be sold separately. Kevin Kell asked if the BOCC was agreeable with proceeding to change the amendment. Mike answered yes.

Those present: Dan Dockray, County resident

MJ Schillaci made a **MOTION** to [recommend] approve the proposed LUC amendments as presented [to remove the language requiring that the Caretaker Unit or Secondary Dwelling Unit contain no more than one-half the size of the primary residence and just state that the Caretaker Unit or Secondary Dwelling Unit “shall contain no more than 2,000 sq. ft. of Floor Area”] finding the proposed amendments are consistent with Land Use Code Section 5-1802 Land Use Code Amendments and Section 5-307 Forestry, Agriculture and Open (F) Zone District and Section 5-319 Wright’s Mesa (WM) Zone District [as follows (~~strike through~~ indicates deletion):

5-307 C. Uses Allowed Subject to Administrative Review

- I. Caretaker unit - a second residential unit may be allowed on all parcels, except no caretaker units shall be allowed in the San Miguel Canyon Area. Such unit shall be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). Such unit shall contain no more than ~~one-half the square footage of the primary residence up to~~ 2,000 sq. ft. of floor area, and shall contain full kitchen and bathroom facilities. The Floor Area of the caretaker unit shall be included in the calculation for employee housing Impact Fee mitigation as defined in Section 5-13 of this Code. No lease or rental of a caretaker unit shall be less than 30 days or more than five years. Caretaker units shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence;

5-319 D. Uses Allowed Subject to Administrative Review

- I. Secondary Dwelling Unit - a second dwelling unit shall be allowed on parcels 5 acres or larger, provided that:
 - a. no uses other than a single-family dwelling, home occupation and/or normal and customary agriculture and ranching activities exist on the property, and
 - b. no Subdivision Exemption for Wright's Mesa has been granted for the parcel, and
 - c. the parcel was not created through a Subdivision Exemption for Wright's Mesa.

Such unit may be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). Such unit shall contain no more than ~~one-half the square footage of the primary residence up to~~ 2,000 sq. ft. of floor area, and shall contain full kitchen and bathroom facilities. Second Dwelling Units shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence.] **SECONDED** by Pam Hall.

VOTE PASSED 5-0.

Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Marty Schmalz	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Kevin Kell	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent

Substantial Plat and PUD Amendment Recommendation: Lot Q15, Q23, Q24 and Q25, Lawson Hill PUD to remove the lot line between the lots to create one lot, amend the PUD Matrix from 4 single-family residences to one 4 unit multifamily structure, and change the allowed use from single-family to multifamily

Josselin Lifton-Zoline, Planning Commission, disclosed that her husband works for the Telluride School District and could work on the District's affordable housing project in the future. She asked if she should recuse herself from this item. Mike Rozycki responded that she was not a voting member, and Pam Hall, Planning Commission Vice-Chair, didn't think it made sense for her not to participate. Lee Taylor, Planning Commission Chair, agreed.

Mike Rozycki, County Planning Director, updated the Planning Commission on the Planning Staff Memorandum dated May 11, 2016 regarding a Substantial Plat and PUD Amendment Recommendation: Lots Q15, Q23, Q24, & Q25, Lawson Hill PUD. He said the "Q" lots were subdivided in 2000 after the use was changed from transient worker housing / neighborhood commercial uses.

Rozycki noted the location of the four lots is near CR 63L on Two Rivers Drive, and the four vacant lots, zoned Affordable Housing PUD (AHPUD), are located in the Ilium Valley portion of the Lawson Hill PUD, adjacent to the Two Rivers single family residential development and the multi-family Sunshine Valley lots. Mike said that the Telluride R-1 School District Deed Restriction Agreement and Covenants, which was authorized by the County Housing Authority, has been used by the School District when selling one of the School District lots, and will be used on these lots in lieu of the county's deed restriction.

Mike explained that each of the four subject lots is zoned for one single-family residence with 1,200 sq. ft. of Floor Area allowable. He said the applicant's plan is to vacate the lot lines and propose constructing one four unit structure with an access from Two Rivers Drive. He stated the applicant is not proposing an increase in the assigned square footage of the units.

Rozycki passed along comments received from Jim Boeckel, Telluride Fire Protection District, regarding the applicant's proposed access road and requested that the applicant revise the access driveway to better accommodate fire vehicles. Mike said the Ilium Park Owner's Association commented that it had no objection to the proposed lot line adjustment or reducing the setback to five feet. He also said the County Surveyor commented that there were three minor survey corrections to be addressed.

Mike presented that the San Miguel Regional Housing Authority (SMRHA) has provided the Planning Department with a New Deed-Restriction Covenant that pertains to Multi-family units zoned AHPUD. The School District as the owner of the units would be required to sign the Covenant. All residents of the School District units will be required to either qualify as a Telluride R-1 School District employee, or be qualified as an Employee under the County Land Use Code provisions, by the SMRHA.

Josselin Lifton-Zoline, Planning Commission, noted that in Mike's summary the unit size requested by applicant would remain at 1,200 sq. ft. but in the information received, the applicant requested a 25% increase in internal square footage. Marty Schmalz, Planning

Commission, stated where in the materials the request had been made by applicant to increase the unit's allowable area to 1,500. Mike and Karen replied that it was their understanding that the Telluride School District had stepped away from that request. Kurt Shughars, TSD and Shane Jordan, Architect representing TSD, explained that they were requesting an increase of 300 sq. ft. up to a maximum of 1,500 sq. ft. per unit, but while still retaining the same population density (3 persons) per unit.

Pam Hall, Planning Commission, asked what the Lawson Hill PUD Land Use Matrix call out for each unit. Karen Henderson, Associate Planner, replied 1,200 sq. ft. and Mike Rozycki pointed out that on page three of the application states the maximum floor area of units is 1,200 sq. ft. Mike asked where in the application the requested change in square footage was located. Lee Taylor, Planning Commission Chair, pointed out that request for 1,500 sq. ft. per unit occurred later in application. Mike acknowledged that planning staff had missed the request and asked if 1,200 sq. ft. in the Land Use Code is three persons of density. Karen answered yes, and that applicant could go up to 1,500 sq. ft. without increasing population density calculation to four persons. Mike then stated that the new proposed multiunit structure will contain four units with a maximum of 1,500 sq. ft. each, and the applicant is not asking for an increase in population density.

Josselin inquired if the applicant was keeping the units as single-family residences would they need to go through a process to increase the density. Rozycki answered that they could request an insubstantial amendment rather than a substantial amendment if they could demonstrate by making the change they could still comply with the parking requirements, setbacks, and fire code separations. Mike said that one of the reasons the original lots were approved by BOCC with 1,200 sq. ft. was the applicant at that time hadn't demonstrated they could fit larger units on the lots. Lee Taylor added that it was also in order to maintain the necessary setbacks on each lot, and reiterated that it is a square footage change not a density change.

Pam Hall asked what the footprint would be for each unit on the Matrix. Kurt Shughars answered it would remain 600 sq. ft. Shane Jordan added they were not increasing the footprint. Pam asked if the garage was within that footprint. Shane replied yes that it was and that the owner could utilize space on lower level for additional square footage for storage, laundry and the like. Pam asked if the square footage would actually be 1,800. Shane and Karen Henderson said that garage space does not count toward square footage.

Lee Taylor asked that with the joining of the lot lines if there would be four separate units. Kurt Shughars replied no that the units would share a common wall. Karen Henderson added that the use would be multifamily and the owner could rent or sell the units. Lee asked if the units would be sold or rented to School District employees. Kurt Shughars said the School Board was still evaluating rental and/or ownership options of the proposed units. He postulated it would be a mixture and that the District would probably rent two units and sell two. Pam Hall asked if the units would be sold back to the District when an employee leaves. Kurt said the District has the right of first refusal. Rozycki said that the units would remain deed restricted even if right of first refusal is not acted upon. Taylor asked if a new teacher would qualify under the deed restriction requirements. Rozycki answered that is one of the reasons the District developed its own restriction that would allow immediate rental to new teachers to the area.

Lee Taylor asked what the Planning Commission was considering in this application. Mike answered the removal of lot lines between the four lots to create one new lot and amending the Matrix from four single family residences to a four unit multi-family structure. He said it was appropriate for the change to be a substantial amendment which gave opportunity to neighbors in Two Rivers and Illium Park to comment on the proposal. Mike added that he thinks there is a need to facilitate construction of additional affordable housing and that the proposed changes would not have significant impacts greater than those from four single family residences.

Kevin Kell, Planning Commission, asked for clarification concerning owner occupied terminology. Rozycki responded that he used owner occupied language in terms of the current matrix as it applies to single family residences lots, and that the applicant proposes to change those to multi-family units which are not required to be owner occupied. The occupants of those multi-family units would have to be qualified rather than the owner. Kevin wondered if they could be rented out solely like apartment units. Kurt Shughars answered yes, hypothetically, but that the School Board would probably need to sell two units for cash flow reasons.

Pam Hall asked what the timeline is for building the units. Kurt Shughars answered the School board would need to consider its options for financing, architects after an approval is granted, but there is urgency to bid out design and construction. Mike explained that the county tried to accommodate the School District's schedule and that the BOCC will consider this on June 1, 2018. The public hearing was originally scheduled for May 18th but the county did not notice it.

Josselin asked if the applicant's request for an additional 300 sq. ft. per unit would change the Planning Staff's recommendation. Rozycki answered no, although he was surprised by it, it does not change the setbacks, footprint, or parking. Joselin asked for clarification of the request for reduction of setback from road to five feet. Mike explained that instead of a building that setback was from designated parking and that the multifamily plan was a better utilization of driveway space and land utilization. Karen added that the shade and ice issue on Lot 25 was eliminated by changing the use to the parking. Pam asked if there is still a twenty foot separation between units to meet fire code like in upper Lawson. Mike answered that the structure must meet building and fire code. Karen explained that Illium Valley does not have the fire issues that upper Lawson has since it does not have trees on site.

Scott Stewart, Two Rivers HOA and resident, commented that 20 residents of Two Rivers attended a site walk last week of the proposed project. He thought the project was generally a good proposal and that he did not have an issue with vacating the lot lines or setbacks. He commented that with how the building would be located on site it would not add to parking or snow storage and removal issues. He said he preferred an owner occupied project rather than one with rental units since owners tend to be better neighbors. Scott also commented that he did not begrudge increasing the square footage of each unit by 300 sq. ft. to 1,500 sq. ft., and explained that the homes in Two Rivers have square footage restrictions on its existing lots, and that they would like to also have an option to increase allowable area. He further commented that he did not want a precedent set with the project or to encourage rental project developments in the area. Scot read a letter written by Heidi Connor, Two Rivers owner, and stated she supports the project with several conditions. She did not want the removal of lot lines to set a precedence for other lots to develop multifamily projects that could ruin character of community. She was

not in favor of allowing the additional square footage to units, unless granted to existing residents in Two Rivers.

Rozycki explained that the School District is responsible for whether units are owner occupied vs. rental. He added that applications are reviewed based on their merit but that the county can't prejudge application(s) that have not been submitted. He also explained that additional square footage on this property can't be tied to a blanket approval for increased square footage for other lots not connected to this application. If owners of Two Rivers as an association or individually wish to request an increase in assigned sq. ft. it should submit a request to the county.

Pam Hall asked what the assigned density and square footage are for Two River's single family residences. Mike answered that the range of assigned areas is 900 to 1,400, and that a blanket increase of 100 sq. ft. had been granted to each owner for constructing a mudroom or deck. Joselin asked for clarification of whether an owner occupied unit can be rented. Mike said that they may be rented only by an exception granted by SMRHA and by a qualified renter. Debbie Adams said that the Sunshine Valley tri-plex structure has renters. Karen said that structure is classified as multifamily and may be rented. Kevin Kell asked what if a unit in the proposed project cannot be sold or rented to a School District employee. Mike replied that it could be rented or sold under the county deed restriction and would not sit vacant in this current climate.

Josselin Lifton-Zoline asked if the School District's intention was to rent or sell the units. Kurt Shughars said there is a vast need for rental properties for school employees, but that units would probably be sold for cash flow reasons, but he could not make a commitment on behalf of the Board. Mike added that only 2 out of 34 "Q" lots had been built on since 2003, and that there is a need for the housing and this plan works at this location. Scott Stewart reiterated that he thought this was a good project, and hoped that the Planning Commission would look favorably at requests from Two Rivers' residents for additional square footage. Pam Hall clarified that individuals would need to come back as individuals and make a request for additional allowed area. Mike reiterated that this is a 2 step process and the BOCC would hold a public hearing that is duly noticed. Pam Hall asked if there are issues with water. Mike said yes and the applicant is not asking for an increase in density since water constraints limit population density increases.

Those present: Kurt Shughars, Telluride R-1 School District Finance Director; Shane Jordan, Architect representing TSD, Scott Stewart, Two Rivers resident and HOA Board representative; Debbie Adams, Two Rivers resident.

Kevin Kell made a **MOTION** to recommend approval of the proposed Substantial Plat and PUD amendment to allow lots Q15, Q23, Q24, and Q25, Lawson Hill PUD in Illium Valley to be merged into one parcel with a four-unit multifamily structure, this approval shall be conditioned upon:

1. All residents of the units qualifying as a Telluride R-1 School District employee or qualifying as an Employee under the County Land Use Code provisions by the San Miguel Regional Housing Authority.
2. Complying with all County Surveyor comments.
3. All written representations submitted and all supplements and correspondence shall be considered conditions of approval unless modified by this review process.

~~4. The maximum sq. ft. of each unit living space shall be 1500 sq. ft.~~

and findings [the use to be] consistent with Land Use Code standards in Section 5-1503 Substantial PUD Amendment and Section 5-1803 Rezoning. **SECONDED** by Pam Hall.

AMENDMENT TO MOTION by Kevin Kell and Pam Hall to modify condition number four to read and to add additional condition [as follows:]

- 4. To allow a maximum of up to 1500 sq. ft. of living space per unit.
- 5. The applicant shall provide access and parking in a manner acceptable to the Telluride Fire Protection District and the County Planning Director.

ACCEPTED by Kevin Kell and Pam Hall. **VOTE PASSED 5-0.**

Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Marty Schmalz	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Kevin Kell	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	<u>Aye</u>	Nay	Abstain	Absent

- 2:30 p.m. Recessed. Planning Commission members traveled to Norwood.
- 3:30 p.m. Site Visits: 1100 CR W35 (SMC transfer station site for solar array)
557 Woodstock Rd. (Rhonda Johnson parcel for greenhouse)
- 4:28 p.m. Reconvened. Planning Commission meeting re-opened in Norwood.

Norwood Fire Station Meeting Room, 1605 Summit Street, Norwood

Special Use Permit Recommendation: San Miguel Power Association (SMPA)
Recommendation: Solar Farm, Wright’s Mesa

Lee Taylor, Planning Commission Chair, stated the Planning Commission had just visited the proposed site of solar array at County Transfer Station with Wiley Freeman from SMPA.

Mike Rozycki, County Planning Director, updated the Planning Commission on the Planning Staff Memorandum dated May 11, 2016 regarding the Special Use Permit Recommendation: Solar Array Facility, Wright’s Mesa Zone District. Because of the potential visual impact that the new solar panels may have on the surrounding property owners the applicant sent formal notice to property owners within 500 feet and met with the Town of Norwood. The county received comments from the Town of Norwood, the County Road and Bridge Department, and Miquette Gerber, P.G., Solid Waste Permitting Unit, Colorado Department Public Health and Environment (CDPHE) (because the site was formerly a landfill with landfill trenches that closed in the early 1990’s).

Rozycki stated that Planning Department staff recommends approval of the proposed solar array project finding the proposed use consistent with County Land Use Code Standards. The county has not received comment from any adjacent property owners. Rozycki said the county has communicated via email with Miquette Gerber, CDPHE and that Wiley Freeman from SMPA had provided her a copy of the geohazard report which identifies certain measures regarding construction of foundation, re-vegetation, re-burial of electrical line, and drainage. He said the project goal is that energy generated by the solar array facility will be dedicated to help income

qualified SMPA members and the use and development of alternative energy facilities such as this seems consistent with county energy conservation Policy 2-30. Mike said that he recommends approval of application with the four conditions of approval from the memorandum:

1. SMPA assisting and cooperating with the County in developing a Post-Closure Plan as proposed by the CDPHE that addresses the solar facility as a new use on the parcel.
2. SMPA will enter into a lease agreement for the site with the County.
3. A one year review after construction is completed to review for any unforeseen impacts to the surrounding area.
4. All written representations presented in the application and all supplements shall be considered conditions of approval unless amended by this review process.
5. SMPA will assure that the solar facility does not interfere with the existing Howard Hughes irrigation ditch on the property.

Mike added that he prefers the darker frames to the silver frames around the limited reflective solar panels because they are less reflective and would like them to be considered for the project.

Kevin Kell, Planning Commission, asked Wiley Freeman if the darker frame panels are available and if they are as efficient and cost affordable as the silver frames. Wiley Freeman, SMPA, said they are equally efficient but he is unsure if the darker frame would be available from the manufacturer. Rozycki suggested to not state it as an absolute requirement but rather as a preference in the Planning Commission's recommendation. He reasoned that the efficiency between frames is equal but cost could be an issue, but that not all the solar panels are earmarked for income qualified members so SMPA could report back on any challenges to meet the preference during the BOCC review of the project. Kevin also inquired if a bedding material is being used in the powerline trenches. Wiley answered there would be shading material around the conduit, but they plan to use the native soil to re-fill the trench.

Karen Henderson, Associate Planner, asked if the structure supporting the panels would also be non-reflective. Wiley answered that the ballast would be made of concrete cinder blocks, and the metal solar racking would be clear aluminum, and it is not manufactured in a dark color. Lee Taylor commented that the framework at facility would be very similar to those at the facility in Telluride at the waste water treatment plant.

Pam Hall, Planning Commission, asked if there was any plan to screen the facility with plants, trees, bushes or shrubs. Wiley replied that the biggest impact is from the road from where the back of the mounting frames is visible, but would be shielded by the 7 foot fence. Any plantings would require investigation of the ground since according to the geotechnical report the trenches go all the way to the road and roots could disturb and penetrate the landfill cap. Wiley offered that trees could be planted in the areas identified without landfill trenches. Lee Taylor, Planning Commission asked if it was similar to an elk fence not a screening fence. Mike commented that there should be plantings to soften the views rather than a fence to block the view. Pam Hall asked if the facility in Paradox was screened with fabric woven into the fence. Wiley answered that it was like a shade cloth and that the fence is unpopular with residents, but that it was a condition of approval for the Special Use Permit from Montrose County. Marty Schmalz asked

what the problem was with the fence. Wiley said it was tacky looking since the residents were used to seeing fences constructed of natural materials.

Josselin Lifton-Zoline asked what the economic life of the facility is. Wiley said the program agreement contemplates a 20 year duration, but that the components are warranted for longer. Josselin asked if the lease with the county was for 20 years. Rozycki answered the agreement is for a 20 year lease with provisions included to extend the lease if necessary.

Karen Henderson asked if there is water available on site. Wiley answered no. Dave Schneck indicated that SMPA could contract with the adjacent neighbor, Howard Hughes, for ditch water or SMPA would have to haul water from the Norwood water station.

Lee Taylor asked how many SMPA customers could be served by the facility. Wiley Freeman answered that 50 to 150 customers could be supported by the solar array. He explained that a qualifying SMPA member must first go through the Income Qualified (IQ) weatherization portion of the Program and once their homes are made more energy efficient the member will be eligible for the solar program and can receive up to a 2 kW capacity from this solar array. Wiley indicated that the amount of power generated by the solar capacity assigned to the members will be credited as cash to their SMPA billing account. Lee Taylor stated that is different from the Paradox solar farm in which entities or individuals actually purchase solar panels. Wiley agreed. Lee Taylor asked if the array would only supply power through the IQ program. He answered that SMPA has enough funding to build an array with 125 kW capacity through the IQ program, and added the SMPA Board has authorized constructing up to 200 kW capacity which is allowed under its contract with Tri-State. He said that 75 kW capacity is still available to be constructed, and could be used in the IQ program, or by SMPA to offset the electrical use at its Telluride facility. Kevin asked if 125 kW equated to 500 solar panels. Wiley said it does approximately. Mike Rozycki said he was in favor of SMPA building to full capacity at one time to take advantage of efficiency whether the additional 75 kW is used for IQ program or offsetting SMPA's Telluride facilities. Lee Taylor asked how many IQ member could take advantage of solar program. Wiley answered that 50 applicants had been accepted to the weatherization program, and that 13 applications have been received already this year. Lee Taylor asked if the program is geographically designed to benefit members on Wrights Mesa benefit. Wiley said the program is not limited to any region.

Kris Holstrom, County resident, applauded SMPA and the other funders for moving ahead with the solar array facility and for using what had been unusable land at the transfer station. Kevin Kell asked if any negative feedback had been received from a neighbor with a visual line of sight of the array. Wiley Freeman confirmed that no negative comments had been received. Kell asked if the vegetation plan was to be implemented after the array had been installed, or after the array is dismantled at end of approximately 20 years. Mike Rozycki explained that a vegetation plan concerning returning the site to original condition after the equipment is removed and would likely be a condition of lease agreement with county. Lee Taylor asked if there is ground preparation required prior to construction since the soil will be under shade. Dave Schneck, County Environmental Health Director, explained that he had been concerned that there would not be sufficient sunlight for grass to grow under the array, but after research that does not appear to be a problem.

Josselin, Lifton-Zoline asked how the boundary fence would keep people out of the installation and protected from the high voltage equipment. Wiley Freeman answered that there are six inch wired box panels contained in design and possibly barbed wire along the top, and the design meets the national electric code requirement to keep out animals and people. Kris Holstrom suggested that vines might be considered as part of a visual screening plan. Marty Schmalz asked if the fence could keep out elk. Mike Rozycki posited that the fence design is likely similar to the elk fencing seen at greenhouse site. Kevin Kell asked what the post depths are. Wiley answered that the fence post holes would be two-three feet and but would not be located on landfill trenches. Rozycki made suggestion that fence post holes be a minimum of 24 inches.

Rozycki requested that consideration be given to some screening on the north boundary side fence and suggested that vines be used or intermittent trees that do not interfere with the landfill trenches. Dave Schneck, Environmental Health Director, suggested that evergreen trees be used, but no deciduous types. Marty Schmalz asked if the trees would use a high volume of water. Dave said the trees could make it in that area without watering once they get established. Mike said rather than debating the screening while a motion is on the floor he proposed they recommend that SMPA propose a screening proposal prior to the BOCC public meeting.

Mike asked if the project's north boundary is south of the Hughes irrigation ditch. Wiley answered affirmatively. Mike then asked that the ditch location be added to the site plan.

Those present: Patti Grafmyer, Town of Norwood Manager; Wiley Freeman, SMPA; Dave Schneck, County Environmental Health Director; Mike Horner, County Road and Bridge Superintendent; Kris Holstrom, County resident

Marty Schmalz made a **MOTION** to [recommend] approval of the proposed solar array project finding the proposed use consistent with the Land Use Code Section 5-319 purpose statement, encouraging economic opportunities that fit in with the rural landscape, and Land Use Code Sections 5-319 G. IX. Public Utility Structures, 5-319 H. Area and Bulk Requirements, and 5-319 K. WM Zone District Special Uses, and is consistent with the existing waste transfer station public use on the property. Any approval should be conditioned upon:

1. [SMPA shall] follow the recommendations proposed in the geotechnical report [in terms of preventing surface disturbance from site construction and equipment access.]
2. SMPA assisting and cooperating with the County in developing a Post-Closure Plan as proposed by the CDPHE that addresses the solar facility as a new use on the parcel.
3. SMPA will enter into a lease agreement for the site with the County.
4. A one year review after construction is completed to review for any unforeseen impacts to the surrounding area.
5. All written representations presented in the application and all supplements shall be considered conditions of approval unless amended by this review process; and

[The county has] a preference for darker [colored] frames [to be used for mounting the solar panel frames] if possible. **SECONDED** by MJ Schillaci.

AMENDMENT TO MOTION by Marty Schmalz and MJ Schillaci that before the project comes before the Board of County Commissioners that [SMPA would prepare]some sort of

proposal on screening from the road that there would be a recommendation for some sort of screening.

ACCEPTED by Marty Schmalz and MJ Schillaci. **VOTE PASSED 5-0.**

Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Lee Taylor	<u>Aye</u>	Nay	Abstain	Absent
Marty Schmalz	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	<u>Aye</u>	Nay	Abstain	<u>Absent</u>
Kevin Kell	<u>Aye</u>	Nay	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

4:55 p.m. Recessed.
 6:05 p.m. Reconvened.

Special Use Permit Recommendation: Alpine Wellness, LLC to construct a 3,000 sq. ft. Greenhouse for a Marijuana Grow Facility in the Wright’s Mesa (WM) Zone District

Mike Rozycki, County Planning Director, updated the Planning Commission on Planning Memorandum dated May 11, 2016 regarding Special Use Permit Recommendation: Alpine Wellness, Retail Marijuana Cultivation Facility Greenhouse. Rozycki stated that Planning Staff had referred the application to the County Attorney, the County Environmental Health Director, the County Sheriff, the County Road Superintendent, the County Building Official, the Town of Norwood, the Norwood Fire Protection District, the Norwood Water Commission, Lone Cone Ditch Company, and the Colorado Division of Water Resources. Rozycki indicated that the 79-acre subject parcel is located approximately one mile west of the Town of Norwood and one-half mile off County Road Z42 at the terminus of the private Woodstock Road.

Rozycki stated that the Board of County Commissioners recently approved an amendment to County Land Use Code Section 5-29 Medical and Retail Marijuana Facilities that updated requirements, standards, and review process for determining whether a retail marijuana facility or establishment is allowed or not allowed on a specific property. He said the review by the Planning Commission is the first meeting of a two-step review process, and the recommendation would be scheduled for a public hearing by the County Commissioners at a subsequent date. He also noted that the Planning Commission had accommodated the requests of Norwood citizens to hold an evening meeting in Norwood for marijuana applications on Wright’s Mesa.

Rozycki said the applicant is requesting a 3,000 sq. ft. Substantial Greenhouse on the property to grow retail marijuana. He added that if the applicants are approved and apply for additional facility(s) on the site a wholly separate review process would be required to amend the Special Use Permit. Rozycki noted that Alpine Wellness has operated in the county for six years, has a Retail and Medical Marijuana licensed store in the Town of Telluride and a licensed grow facility in Ilium Valley industrial park. He said the applicant has provided information concerning the proposed source(s) of water and the estimated water usage associated with the greenhouse grow operation and it was referred to the Office of the State Engineer for review. Rozycki relayed that Megan Sullivan, P.E., Colorado Division of Water Resources, provided referral comments regarding the applicant’s estimate of water use and proposed sources of water. He said the property has two shares of irrigation water from the Lone Cone Ditch Company and they have been proposed as part of the water supply for the grow facility, the applicant is also

intending to haul water from the Town of Norwood water dock to the greenhouse, and to install a dehumidifier to take excess water gained by evapotranspiration in the facility and recycle it.

Rozycki explained that the proposed Substantial Greenhouse is not similar to the temporary hoop house types that dot Wrights Mesa and must meet and address wind and snow loads and other requirements. Rozycki said a clear twin wall double polycarbonate substantial greenhouse was recommended by the manufacturer, based on the crop and locality, and is what the applicant has proposed. Rozycki added the applicant has plans for waste disposal, odor abatement and lighting. He said the Town of Norwood had concerns over water usage, but deferred to the Norwood Water Commission for comments, and night lighting that could invade the dark skies around the Town. Rozycki iterated that the lighting plan involves using blackout curtains if interior grow lights are used during winter hours, and the exterior lights would be limited to motion sensor lights. He said the applicant does not plan to post signage on the property other than directional signs on the site as required by the MED as part of its state license requirements. The property currently has elk fencing and if approved the Colorado Department of Revenue may impose additional security fencing requirements.

County Road Superintendent, Mike Horner, did not have an objection to the proposed grow facility/green house. Horner mentioned that the applicant may obtain alternative access to the facility from the south, via CR Y43, and construct a driveway across an adjoining parcel.

Rozycki stated that the Norwood Water Commission (NWC) opposed the applicant's request to convert the property's two water taps from residential use to commercial use. He said the NWC had received a legal opinion that if the NWC knowingly accepted funds from marijuana operations it would put federal funding at risk for future capital improvement projects. He said the NWC also commented that the water dispenser station located on Summit Street is operated as a courtesy and should not be considered a stable source of water.

Rozycki said the Town of Norwood had requested that a video surveillance system be required. He stated that marijuana growers currently on Wright's Mesa are not licensed or regulated, but the applicant, in addition to applying for a Special Use Permit, if such permit is approved, will also need to meet and comply with stringent state and local licensing requirements before they can initiate the cultivation of marijuana; including a background check, fingerprint for criminal record, detailed security plans, security systems, lock standards, video surveillance recording, inventory tracking systems, filtration systems, material safety data sheets, and annual license reviews. Rozycki said the county's local licensing standards also regulate the distance from certain facilities, provides for review by the Sheriff's Office, Fire District, County Environmental Health, County Building, State Electrical Inspections, and those previously mentioned.

Rozycki stated that the applicant sent Public Notice of this meeting to property owners within ½ mile of proposed site and to owners along Woodstock Road. Planning staff received one letter of support from a property owner on Woodstock Road and no negative comments prior to this meeting.

Rozycki concluded that the application complies with the requirements of Land Use Code Section 5-29 Medical and Retail Marijuana Facilities. He stated the Planning Commission had been asked to observe the potential visibility of the proposed greenhouse from neighboring properties and surrounding areas. Rozycki said that in his opinion it did not appear highly visible or that its use would be apparent, but that he would defer to the Planning Commission if they think it is necessary to add screening to limit visibility. He relayed that during a KOTO radio interview with he and Sheriff Masters both asserted that the county has had no issues with licensed marijuana establishments but it had concerns with the patient and caregiver marijuana grow operations that operate free of county and state licensing. Rozycki iterated from the county regulations purpose statement adopted by the Board of County Commissioners "that the most effective way to control marijuana use in the community and to address public safety issues is to regulate the cultivation of marijuana. In addition to applying for the Special Use Permit the applicants need to comply with stringent state and local licensing standards before they can initiate cultivation of marijuana."

He recommended approval of the application limited to a 3,000 sq. ft. cultivation facility and the specific improvements identified on the site plan subject to the following conditions:

1. The Special Use Permit is issued to the applicant and does not run with the land.
2. The Special Use Permit shall only be valid as long as the applicant holds a current State and County License for the approved use and complies with all state and county regulations at all times.
3. If the greenhouse is to be used after dark the facility will be constructed in such a way as to prevent light leakage from the building.
4. Additional privacy screening may be required after construction of the greenhouse.
5. No signs will be posted on the property advertising the business with the exception of a sign that identifies the state and county license numbers and which buildings are not being used for cultivation.
6. No outdoor lighting shall be allowed except motion sensor lighting around the perimeter of the greenhouse that is fully shielded and facing downward away from Norwood.
7. If offensive odors are reported offsite by the neighbors, after consultation with the Planning Department, the applicant may be required to provide an odor removal system.
8. Waste disposal shall comply with Colorado Department of Health & Environment standards.
9. Equipment related to the cultivation operation will be stored inside the structure or within an enclosed fenced area.
10. Any and all water use associated with the marijuana Facility shall be in accordance with guidance provided by the Colorado Division of Water Resources and not in conflict with the water decree for the source of water being used.

Rozycki added that seasonal limitations on water may limit the crops grown and grow times. He addressed a concern raised previously in a letter by Ken Lawrence regarding why the Woodstock Subdivision was not classified as a residential area as defined in LUC Section 5-29. He said the BOCC had incorporated into the LUC that marijuana establishments must be one-half mile from densely developed residential areas, and adopted a map that identified those subdivisions with smaller lots with higher density. Rozycki responded several years ago in a letter (March 21, 2014) explaining the rational for how the residential areas and the corresponding buffer zones

were adopted and why the Woodstock parcels had not been included. At the time Mr. Lawrence was offered an opportunity to propose an amendment to the LUC approval that designated the Residential Areas.

Marty Schmalz, Planning Commission, asked if the estimated water usage of 150-200 gallons per week during the first two months was accurate. Nolan Murphy, Alpine Wellness, Applicant explained that the marijuana seedlings when planted have small roots and use less water. He said plants would use roughly 300-400 gallons of water per week of water during maximum growth. Lee Taylor, Planning Commission Chair, asked the applicant to confirm that the greenhouse would require a maximum of 300-400 gallons of water per week, and Marty added with 72 plants? Nolan confirmed. Marty Schmalz asked what other possible sources of water was available. Nolan said he could recycle water via reverse osmosis from their grow operations in Ilium Industrial Park and could also catch water from air dehumidifiers. Marty asked if applicant had researched the regulations to utilize both of those sources. Nolan said he had obtained permission in Ilium Valley to use a dehumidifier and if necessary he would use one in Norwood to obtain water since it is legal. Marty asked the status of the application for commercial water well for the greenhouse. Nolan replied he had not yet applied and thought it was unnecessary since he is now considering using a dehumidifier. Marty asked about the process to obtain a commercial well permit. Nolan answered it is an approximately two year process and involves researching the senior rights downstream and then going to water court. She asked if the applicant would cover the inside or outside of the greenhouse to maintain dark skies. Nolan said the option currently planned is to use an inside curtain if they do a winter grow, or privacy screen, but that the lights would never be on past 9:00 p.m.

Kevin Kell, Planning Commission, stated the trial greenhouse had 72 plants, and asked how many plants would be planted in a 3,000 sq. ft. greenhouse. Nolan answered that it depends on the season in which the greenhouse becomes operational (100 if planting starts in June, or 100-150 smaller plants if started in July). Kell asked what would be a normal amount of plants after the greenhouse is established. Nolan said it could be assumed that 150 plants would be the norm. Kell asked if the amount of water required would double if the number of plants had doubled. Nolan said it could be assumed the amount of water necessary would be doubled. Mike Grady, Alpine Wellness, Applicant, added that the number of plants could only double if smaller plants, which use less water, were planted. He also noted that the greenhouse needs good air circulation and air flow to enhance growth, and added the amount of water used would not double if twice the number of plants were planted. Kevin commented that the water consumption would be more than the 150-200 gallons initially estimated for 72 plants. Nolan Murphy replied factors such time of year and plants root mass would affect water usage. Grady said a similar amount of water per growing season would generally be used in the greenhouse.

Josselin Lifton-Zoline, Planning Commission, asked if the intent was to still use water from the Lone Cone Ditch and the Norwood Water Shack while applying for a commercial well. Nolan Murphy replied that would be ideal but said he is tired of fighting for water and said he could legally use a dehumidifier in the greenhouse and catch up to 100 gallons a day. Josselin inquired what the applicant would do to obtain water for processing what is grown since the water in the ditch is only allowable for cultivation. Mike Grady answered they did not require additional water for processing. Mike Rozycki asked if they were planning to do infused manufacturing in connection with the grow facility that requires any water. Nolan and Mike Grady answered not

at this time. Rozycki stated that the applicant's proposals have been modified following conversations over time with Megan Sullivan at the State office, and explained that their initial proposal was to use recycled water from the Ilium operation but they would need to provide information concerning those water decrees to see if it was legal to do so. Rozycki said the applicant's then explored evapotranspiration with a humidifier, and Megan Sullivan responded that would be okay. Nolan Murphy then said he could haul water from the Norwood water shack but had gotten the impression that the Norwood Water Commission was not happy with that use of the water shack, and would not help the situation on Woodstock Road. Rozycki stated that if the applicant did not have a legal source of water or if Norwood shuts the water dock they would have to reduce the number of plants they grow depending on their water supply.

Kevin Kell asked if the private property owners jointly and equally own Woodstock Road. Mike Horner, County Road Superintendent said he was not sure about that and it may depend on their individual deeds. He said some may own to the center of the road for example or others the entire portion of the road, but he didn't know for sure since he had not researched it. Kell surmised that in general the property owners jointly or in some shape or form or proportionality own the road. Rozycki answered that he guessed so, and asked if there was a road association.

Davis Watson, Real Estate Appraiser and Norwood resident, noted that the documents he held were recorded and had been notarized by him. Davis said it was a question of legal right and everyone in Colorado has a right to raise a certain number of marijuana plants. He stated that everyone knows Woodstock Road is a private road, and that the property owners do not own the road, but they have an easement for access to their property. He said the installment land contract through which the applicants are purchasing property includes a private road easement, which states, "together with an easement for ingress and egress to and from said property" and is for residential use only. Nolan Murphy suggested Davis was mistaken on the easement he was referring to. Davis said he was talking about the easement to Woodstock Road which is a private road. Davis noted that the Planning Commission was only authorized to use the road today because permission was granted by the property owner. He went on to say the county does not maintain the road, and reiterated that the property owners have a legal right to get to their property for residential purposes. He stated that the applicants do not have a legal right to grow marijuana at this time, and to get to their property they would need to have the right for a commercial use of the road. Davis added that the applicants do not have commercial use of the road, and instructed that they should have obtained permission from each of the property owners to use the road commercially. Lee Taylor asked if there were stipulations [in the road easements]. Mike Rozycki interjected that the county will review the easement language in the individual warranty deeds that granted legal access and title to properties. Davis responded that this should have been prior to the meeting. Rozycki replied that the applicants have legal access to their property. Davis countered that the legal access is only for residential purposes. Rozycki stated that all owners along road were notified about meeting and he has not seen documents or information presented that show the access to Johnson property is limited to residential use. Rozycki cited that the property had been used previously as an elk ranch prior to the applicant's purchase. He requested that Davis submit the material that supports his statement that the use is limited to residential use. Davis agreed and added that the Planning Commission should not be voting on this until that question is resolved. Rozycki answered that the Planning Commission is giving a recommendation and they can decide that.

Ken Lawrence, 6 Woodstock Road property owner, said his understanding was that the landowners own a piece of the road through his property. He said he has granted an easement to property owners downstream so they may cross his property to gain access to their properties, and the previous owners had granted an easement so Woodstock Road would pass through the property. Kevin Kell asked if there is a neighborhood road association. Ken said the easement is recorded on each deed and title transfer. Lee Taylor suggested that the Planning Commission include in its recommendation that the county attorney validate that there are no prohibitions on the commercial use of the applicant's easement. He thought not since the elk ranch had used Woodstock Road for years.

Mike Grady, Alpine Wellness, asked if the Planning Commission would consider that the proposed site is accessed from an interior driveway located on the site and in the future the greenhouse is planned to be leased to Alpine Wellness. Mike Rozycki said that Davis Watson had raised a legitimate issue regarding commercial access to site to and it would need to be researched and determined whether there was a legitimate reason that access might be limited. He said the county did not receive any information prior to meeting regarding this issue. He suggested adding a condition if the application is recommended for approval that the Board of County Commissioners determine if there is a limitation on using Woodstock Road for commercial access to the site.

Lee Taylor asked how the marijuana would be transported to market. Nolan Murphy said the transportation of the product would not be noticed by the neighbors on the road. He added there is already a cell tower located by the road. Mike Rozycki clarified that a Special Use Permit was issued to Nucla/Naturita Telephone Company (NNTC) by the county for its operation several years ago. Rozycki asked Nolan to please submit copies of access easements to their property to the county for review by the County Attorney. The planning staff will present that information regarding legal access to the proposed grow facility to the Board of County Commissioners.

Josselin Lifton-Zoline asked if the applicants in the future could build their own private access road from the adjacent 80-acre-parcel it owns. Nolan said they could build a driveway across their property with access to CR Y43, and not have to use Woodstock Road to access the greenhouse. He said that other neighbors on Y43 might be concerned with that.

Mont Snyder, County resident, asked what the 72 hour limit is referred to in the memorandum prepared by Megan Sullivan, State Water Department. Nolan Murphy replied that he understood it to mean he is not allowed to use water 72 hours after it is delivered unless decreed otherwise. Mike Rozycki said the State is not acknowledging that the storage pond located on the property is authorized to store water and is relying on strict interpretation by Megan Sullivan who may not be familiar with local practices.

Thomas Clark, County resident asked if the water sources the applicant would use had received federal funds. Mike Rozycki said the Lone Cone Ditch Company had not submitted comments, and the state said generally irrigation may be used subject to limitations. Lee Taylor said that Norwood raised the issue of federal funding regarding water hauled from its water station.

Linda Soucie, County resident, interpreted that the Cone ditch water could only be used up to 72 hours after delivery, and furthermore it is a direct flow right, and cannot be stored in a holding pond or tank during and after irrigation season. Marty Schmalz asked if that was true for all Cone ditch water users, and also wondered about all the ponds on Wrights Mesa. Linda answered affirmatively and said there was a difference between use of agricultural water for seasonal application and stocking. Mike Rozycki said this had not been addressed in Megan Sullivan's letter and shouldn't be speculated on. He added that Linda's reading of the letter is accurate, and that the applicant would use the irrigation water within some requirements, guidelines and limitations, the water dock while it is open and a dehumidifier, but may have to adjust the number of plants in the greenhouse.

Linda Soucie stated that the application as presented did not include a dehumidifier, and that it did not list a legal water supply. Mike Rozycki said it was contained in a supplement to the application. Linda maintained the applicant could not name the Norwood water shack as a legal source because the Norwood Water Commission (NWC) would be instituting a card swipe system and the applicant won't be able to obtain water for a marijuana grow. Rozycki asked if Linda Soucie had information from the Water Commission not made available to the Planning Commission. He added they said the applicant could not rely upon water station as a stable water source. Linda asked how could it be considered physically adequate source if it is not stable. Rozycki answered there is more than one source of water available to applicant.

Tammie Tabor, Lone Cone Ditch Company, Secretary-Treasurer, stated it had not received any federal funds for capital projects or operations, and that ditch water is weather dependent; some years water flow is for only two weeks or less. Lonnie Clark, County resident, asked how many shares of ditch water the applicant owned, and if they knew how much water that was and if they understood ditch operations. Nolan Murphy replied they owned four shares, the amount of water varied by year and that he understands the ditch operation and how to clean it too. Mike Rozycki added that if the applicants don't have water they don't grow. Marty Schmalz asked if they irrigate their fields. Nolan said they used the ditch water to irrigate their fields.

Ken Lawrence asked why approve an application that does not have an adequate water supply. Mike Rozycki replied they have an adequate source [of water] for some amount of plants. Lonnie Clark said that was not what the application was for. Rozycki clarified that the application was for a 3,000 square foot greenhouse. Thomas Clark asked how many plants could and would be grown. Mike Rozycki reiterated they will plant as many plants as water for which they have the right to use. Lonnie Clark said she would like to know the maximum amount of water that would be used. Marty Schmalz said that only 150-200 gallons per week might be used. Lonnie commented that the water source is not consistent. Marty added that was true for all water users and farmers. Lonnie claimed this use is different and it is not farming. Linda Souci added marijuana is not an agricultural plant. Lee Taylor agreed that is true per the State's definition, but it is still a plant and would need water to grow. Nolan Murphy said he could pull 100 gallons out of the air by dehumidifier and it is a year round source. Lee said it was still questionable if the applicant could use the recycled water from the Ilium grow facility in the Norwood facility. Ken asked if the addendum to the application included scientific evidence regarding the water producing capacity of dehumidifier. Nolan said he is planning on using a dehumidifier with a 100 gallon /day capacity, but could use a larger model with an 800 gallon capacity, but the

electrical demand is too high. Thomas Clark asked why they needed to grow in Norwood if they already had too much supply for the Telluride market. Nolan clarified they are attempting to reduce the electrical load on the Ilium facility because it is wholly dependent on electrical lights (80,000 watts daily) for growing. Kevin Kell asked if the dehumidifier would be used in the Norwood or the Ilium facility and could it produce 100 gallons per day. Nolan clarified the dehumidifier was intended for Norwood facility. Thomas asked if the applicant needed authorization from air quality regulators to use the dehumidifier. Nolan said the use is authorized as long as water is from plants transpiration or ditch water. Kevin asked if it would be legal to store the dehumidified water in their pond(s). Nolan said yes.

Linda Soucie stated that she thinks the application is not complete; that access is not determined and she would be hesitant for a governing body to recommend approval. She added that area is mainly residential and the location of greenhouse is clearly visible from the medical clinic and town, and suggested they screen, excavate and berm the Greenhouse.

Mark Crouch, 285 Woodstock Road, an adjacent property owner commented that Woodstock Road is heavily potholed, and there is no road association or maintenance agreement. Mark talked about the costs of maintaining the road, its substandard construction, and that the applicant travels by five property owners on Woodstock to reach the county road. He said the Lawrence property by proximity to and location at entrance to road is most impacted by traffic. Mark revealed that the seven property owners had agreed that they would like to re-align Woodstock Road, and then discussed the process to date, including talking with county staff (Bill Wilson, Mike Horner, and Mike Rozycki), preparing drawings of road re-alignment, and obtaining construction estimates, after which the progress halted. He wondered why the applicant(s) hadn't graded the road prior to the Planning Commission (PC) site visit, and how would the PC require the applicant to maintain the road, and how are we going to bring the road up to commercial standards to mitigate impacts since the applicant could potentially apply to build 9,000 square feet of greenhouses. He said the intent of the property transfer deeds was to grant road access to homesteads and agricultural operations, and the access to the commercial cell tower only went through private property. Mark requested the applicant gain southern access to the greenhouse from CR Y43 rather than northern access from Woodstock Road.

Lee Taylor asked if the property owner (Johnsons) participated in the road maintenance discussions. Mark Crouch said no and that Nolan Murphy represented the owner and said he was owner of the property. Lee asked again if they participated. Mark Crouch said yes and further discussed the goals of realignment of Woodstock Road and the next steps, including suggestion by Mike Rozycki that they form a road association. Mike Rozycki recalled his discussion of the road alternative with Mark and had thought it was a good idea, and discussed road standards, and how it could be modified and still be safe to the public. Crouch said once cost estimates were gathered the consensus of the property owner was not to continue. Rozycki said he never saw financial information. Mark answered he didn't think it was prudent to share financial information of the road estimate. Rozycki added that road standards are dependent upon how many persons are served rather than if a use is commercial or residential. He asked Crouch if his concerns would be relieved if applicant accessed the greenhouse from their other property directly off county road Y43. Crouch said that would relieve his road concerns. Lee Taylor posited what the reaction would have been if the application had been to grow vegetables

instead of marijuana. Tom Clark said there are legal issues with marijuana. Taylor surmised that both crops are legal.

Kevin Kell asked if the applicant had received the power of attorney to represent the Johnsons. Nolan Murphy said they had received authority from the Johnsons. Mike Rozycki said the county had received an official letter of authorization from the Johnsons granting permission for Nolan and Mike Grady to submit the application.

Josselin Lifton-Zoline asked if the existing agricultural uses on the property have continued for the last three years including the irrigation of fields and does it count as agricultural in terms of tax status. Nolan Murphy said yes, and that they have a leases with Bob Hardman and the Southers to graze cattle on the property for most of the summer. Josselin commented that use is similar to other agricultural properties in terms of storing water in the ponds on the property.

Ken Lawrence said the majority of his comments had been addressed. He expressed concern for the safety of the children at play at his Christian retreat center property off Woodstock Road. He noted an increase in vehicular traffic, a weekly coyote septic pumping truck, more UPS deliveries, and late evening traffic up to eleven o'clock in the last three years since Alpine Wellness had occupied the Johnson property. Ken says they posted "Children at Play" and speed limit signs but the speed seemed too fast. He is concerned that Woodstock Road is not built for commercial use and the financial impacts for increased maintenance fall on the property owners. He noted that \$4K was recently expended for road maintenance and the condition has worsened. Ken said increased noise disturbs the families staying at the retreat center as a result of the road conditions and increased traffic. He noted that their neighbors have had difficulty selling their home and the road condition does not make a nice welcome to the area. Ken requested that the application be denied due to safety of our children, noise generation and financial burden it has created for road maintenance. He requested that if approved a condition be added requiring the applicant to realign the entrance of Woodstock Road away from their property as Mark Crouch had suggested, and to be financially responsible for road maintenance.

Nolan Murphy and Mark Crouch actively discussed the materials used and seasonal issues on the maintenance and current condition of the road. Mike Rozycki said he appreciated Ken Lawrence's comments, but added that the pastoral retreat is also a mixed use property and has impacts not usually associated with a residence. He said the Johnson property is also classified as a mixed use property with residential and agricultural uses, so there can be agricultural vehicle traffic. He thinks legitimate issues involving the use of Woodstock Road will continue to be a source of irritation to the various parties. Rozycki asked Mike Grady and Nolan to consider using an alternative access to the proposed greenhouse off CR Y43 from the parcel they own to the south. Nolan acknowledged he knew this was an issue after moving in, and said he has the equipment to build and maintain an alternative access. Rozycki recommended that the application be approved with the standard conditions plus adding that access to the proposed greenhouse come off the county road to the south as the alternative access, and adding that Woodstock Road not be used for the marijuana cultivation business.

Linda Soucie commented that since the application now has two caveats, one for the water the other for the road the application process should be restarted at the beginning. Rozycki said the

Planning Commission could make recommendations with subsequent conditions is not unheard of. A poll of the Planning Commissioners was requested by Linda Soucie who asked the CPC members if they would want a marijuana cultivation facility located near their homes. Kevin Kell determined that it was not an appropriate question as they were discussing the application before them and were to judge this application on its merits. Ken Lawrence asked if it would be prudent to delay the application until the applicant can show legal access and a legally and physically adequate water supply. Lee Taylor said there are two ways to address this, one is requiring those two issues be met prior to making a recommendation, or to condition the recommendation on the applicant meeting those conditions, and that adding requirements after an application is submitted is frequently done. Mike Rozycki clarified that an easement through the other property need to be granted privately, but public emergency services vehicles have an express easement. He said the applicants would need an easement from the County Road Department and a Driveway Permit so the driveway could be accessed from the county road, and legal access across the Grady property that is not part of the application to serve the site that is included in this application, and if there is a recommendation and finally an action by the Board of County Commissioners that said access would be from the south and the applicant is not to use Woodstock Road to access the cultivation facility. Linda Soucie asked what the proposed setback of greenhouse from property line is. Rozycki answered 50 feet and it meets that requirement.

Kevin Kell stated several concerns he had regarding the application; it seems problematic that water rights and sources seem piecemeal, the area seems residential and the applicant should move access through their other property, and the applicant should obtain a commercial well permit.

Josselin Lifton-Zoline stated that she was convinced that the applicants have the requisite water supply. She suggested they would benefit by hiring a water attorney to prepare an application for a commercial water well and water operations. She expressed concerns that had been heard regarding the unprofessional preparation of application.

Rozycki summarized the options available to the Planning Commission (PC). He said they could go with the staff recommendation to approve with the conditions as set forth, and that he would add the condition that access be from the from CR Y43 through property owned by Mike Grady, and he also recommended that the applicant not use Woodstock Road for activities associated with the cultivation facility. Rozycki also said the PC could continue the application to their June meeting to allow the applicant additional time to address and respond to some of the issues and concerns, or finally that the PC could recommend denial of the application, however, he did not support that position. Lee Taylor asked what if the PC took no action would that have the same effect as a dismissal, but without prejudice. Rozycki said taking no action would be tantamount to a dismissal, and that he preferred a continuance of the application rather than a dismissal. Rozycki then suggested that they could table the item and identify the specific items they would like the applicant to address prior to bringing it back up at a future PC meeting.

Ken Lawrence asked if the residents along CR Y43 had received notice about the meeting because now it affects them and before it didn't. Mike Rozycki replied that notice was given to those within a one-half mile radius which satisfied the legal notice requirement, and then added

that residents along Woodstock Drive were also notified as a courtesy. He announced the application would be re-noticed before Board of County Commissioners consideration.

Those present: Mark Crouch, County resident; Don Welsh, County resident; Ken Lawrence, County resident; Thomas and Lonni Clark, County resident; Josh Caldon, Telluride resident; Patti Grafmyer, Town of Norwood Manager; Tanya Morlang, County resident; Judy Conder, County resident; Davis and Mary Watson, Norwood residents; Tammie Tabor, County resident; Mont Snyder, County resident; Josh Walton, County resident; Elizabeth Foley, County resident; Linda Soucie, County resident; Dave Schneck, County Environmental Health Director; Mike Horner, County Road and Bridge Superintendent

Marty Schmalz made a **MOTION** to recommend approval of the application, to construct a 3,000 sq. ft. greenhouse, to the Board of County Commissioners finding the applicants have fulfilled the requirements of Land Use Code Section 5-29 Medical and Retail Marijuana Facilities with the following [12] conditions stated in the staff memorandum, and with the additional condition [that the applicant is] to obtain access to their property from the CR Y43 access, and to not use Woodstock Road as access to the cultivation facility:

1. The Special Use Permit is issued to the applicant and does not run with the land.
2. The Special Use Permit shall only be valid as long as the applicant holds a current State and County License for the approved use and complies with all state and county regulations at all times.
3. If the greenhouse is to be used after dark the facility will be constructed in such a way as to prevent light leakage from the building.
4. Additional privacy screening may be required after construction of the greenhouse.
5. No signs will be posted on the property advertising the business with the exception of a sign that identifies the state and county license numbers and which buildings are not being used for cultivation.
6. No outdoor lighting shall be allowed except a motion sensor lighting around the perimeter of the greenhouse that is fully shielded and facing downward away from Norwood.
7. If offensive odors are reported offsite by the neighbors, after consultation with the Planning Department, the applicant may be required to provide an odor removal system.
8. Waste disposal shall comply with Colorado Department of Health & Environment standards.
9. Equipment related to the cultivation operation will be stored inside the structure or within an enclosed fenced area.
10. Any and all water use associated with the marijuana Facility shall be in accordance with guidance provided by the Colorado Division of Water Resources and not in conflict with the water decree for the source of water being used.
11. Any amendments or modifications to the Facility including to equipment, site layout, approved operating plan, etc. shall be submitted for review and approval.
12. All written representations submitted in the application and all supplements are considered conditions of approval unless modified by this review process.
13. Access to the cultivation facility is from CR Y43 through the property owned by Mike Grady, and Woodstock Road is not to be used for access to the cultivation facility.

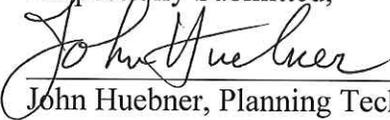
SECONDED by MJ Schillaci. **VOTE PASSED 3-2.**

Pamela Hall	<u>Aye</u>	Nay	Abstain	Absent
Lee Taylor	Aye	<u>Nay</u>	Abstain	Absent
Marty Schmalz	<u>Aye</u>	Nay	Abstain	Absent
Ian Bald	Aye	Nay	Abstain	<u>Absent</u>
Kevin Kell	Aye	<u>Nay</u>	Abstain	Absent
M.J. Schillaci	<u>Aye</u>	Nay	Abstain	Absent
Josselin Lifton-Zoline	Aye	Nay	Abstain	Absent

Mike Rozycki stated that the Planning Commission approval is a recommendation and would be presented to the Board of County Commissioners at a public hearing. Notice will be given to those interested landowners and members of the public after a time and date have been decided.

7:49 p.m. Adjourned.

Respectfully Submitted,



John Huebner, Planning Technician

Approved on December 14, 2016.

SAN MIGUEL COUNTY PLANNING COMMISSION



Marty Schmalz, Secretary

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