

## MINUTES

### HEARING OF THE NAVAJO COUNTY PLANNING AND ZONING COMMISSION

August 20, 2015

#### ATTENDANCE P & Z Commissioners

##### Attended:

1. Chuck Teetsel
2. Chuck Howe
3. Don Berry
4. Fred Shupla
5. Randy Murph
6. Rick Slone
7. Ruth Ann Smith

##### Absent:

Bob Hall  
Carol Davis  
Evelyn Meadows  
Jason Hatch  
Wendell DeCross

##### Staff Attendance:

Bill Bess  
Peggy Saunders

David Whittaker  
Jeanine Carruthers

Meeting held at the Navajo County Board of Supervisors Chambers, Holbrook, Arizona – Time: 5:59 p.m. to 8:10 p.m.

##### **CALL TO ORDER**

Chairman Teetsel called the meeting of the Navajo County Planning & Zoning Commission to order at 5:59 p.m., and led the Pledge of Allegiance. Chairman Teetsel explained the housekeeping rules for the benefit of the public in attendance.

Chairman Teetsel introduced two new members of the Commission: Chuck Howe, District I and Don Berry, District IV.

Chairman Teetsel and Mr. Bill Bess introduced Mr. David Whittaker, the new Deputy Director of Planning & Zoning.

**ITEM #1 – CASE # 15-08: SPECIAL USE PERMIT – DISTRICT III:** Discussion and possible action on a request by Raymond & Nancy Fitzgerald / Verizon Wireless for a Special Use Permit for a 199' Wireless Self Support Lattice Cellular Tower and 12X26 Equipment Shelter on APN: 110-17-001, a.k.a. a portion of Section 21 Township 17 North, Range 22 East of the G&SRM in the Holbrook area. **ITEM PULLED BY STAFF RE-ADVERTISE FOR 9-17-15. This item will be placed on the September 17, 2015 Agenda.**

**Peggy Saunders** explained that the item was pulled because of an incorrect Range number for the advertised parcel. The Assessor's Parcel Number is the same for several parcels in the area, and the Range was the only way to identify the correct parcel. Unfortunately Case # 15-08 would have to be re-advertised in order to show the correct range.

**ITEM #2 – CASE # 15-11: SPECIAL USE PERMIT – DISTRICT IV:** Discussion and possible action on a request by Queen Creek Estates LLC/ Sun State Towers-Cyclone for a Special Use Permit for a 199' Wireless Self Support Lattice Cellular Tower and 50X50 Equipment Shelter on APN: 208-03-016B, a.k.a. a portion of Section 11, Township 11 North, Range 18 East of the G&SRM in the Clay Springs area.

**David Whittaker** presented the Staff Report for the Cell Tower proposed for the Clay Springs Area.

**Reg Destree (Sunstate Towers at 1426 North Market Street in Gilbert)** spoke on behalf of the applicant Queen Creek Estates LLC/Sun State Towers-Cyclone. The tower was originally proposed by Verizon Wireless. Sunstate was approached by Verizon on several sites throughout Apache and Navajo County to take over and build these sites. Sunstate is in the business of building multi-carrier sites; they build sites and market to various carriers. They are proposing a 199' tower in this location to fill in a coverage gap primarily for Verizon. The location is approximately half way between a tower Cell One has in Clay Springs and the towers in Heber/Overgaard. Space will be available to other cell carriers in the future. They are proposing a 199' lattice tower on the southeast portion of the property, about 155' from the southern property line which is the ADOT right-of-way. Access will be from the 260 right-of-way. They need to bring power (from the north) and telephone to the site. Fiber (if available) will come from the highway. This site is part of a 40 acre parcel that the landowner owns and there are not very many neighbors in the area. There's an RV park to the west, approximately 900' from the site. The landlord has the property to the north approximately 700' away and there's national forest to the east. There's one house about 2,000' to the northwest that is built and not owned by the landlord of the property. Mr. Destree spoke with the gentlemen at the RV Park and he likes the idea of having better cell phone coverage. He did notify him of the hearing today and he did not have any specific comments.

**Commissioner Shupla** questioned whether there would be a lite on top of the tower. Mr. Destree stated the tower is at 199' which is under the 200' FAA requirement. The landlord has also questioned a lite and it has not been determined yet, but since the height is under FAA requirements it is unlikely.

**Commissioner Howe** questioned if the facility operates under a single phase power and if it is accessible to residents. Mr. Destree stated its single phase and they will probably pull in a 600 amp section, maybe an 800, but yes, it's all single phase.

**Commissioner Shupla** questioned the building and whether the site would accommodate other carriers that would build similar size buildings? Mr. Destree stated there is a 50x50 chain link compound being proposed, Verizon's standard structure is a 12' x 26' shelter, but even with the larger shelter, there is still room for additional carriers. Verizon is now using a smaller outdoor equipment cabinet, so their footprint within the 50x50 compound will be smaller.

**David Whittaker** questioned the color of the cabinets, they are generally grey? Mr. Destree stated they are prefabricated shelters and if they do go in, they can specify the color. If you wanted to place a stipulation stating that in the building permit process the final colors need to be approved, it should cover, not only Verizon, but future carriers as well. **Chairman Teetsel** questioned Bill Bess if we had a preference in color in the past for similar installations. Mr. Bess stated no.

**Commissioner Shupla** questioned if this was a tourist or scenic area? Mr. Bess stated he did not think 260 in this area had a scenic corridor.

**Chairman Teetsel** called for anyone in the audience who wished to speak in favor or in opposition of the application.

None

**Commissioner Shupla** made the motion to approve with all the conditions stated by staff. The motion was seconded by **Commissioner Murph**. The vote was (6 – 0) to recommend approval to the Board of Supervisors.

**ITEM #3 – CASE # 15-20: SPECIAL USE PERMIT – DISTRICT III:** Discussion and possible action on a request by Pen-Rob, Inc. / Painted Desert Landfill to allow a modifications to the Special Use Permits approved by Resolution 09-01 (Stipulation 3, would extend the time to coincide with ADEQ approvals.), and Resolution 64-01 (Stipulation 26, would open the landfill to the public.) on APN's: 104-01-002A, 002B, and 002C, a.k.a. a portion of Section 33, Township 19 North, Range 19 East of the G&SRM in the Joseph City area.

**Bill Bess** presented the Staff Report for the Special Use Permit Amendment for Pen-Rob / Painted Desert Landfill to change the wording in the Special Use Permit application to read as follows:

Resolution 09-01, Stipulation 3, to be amended to read:

- “This Special Use Permit shall expire at the time when all conditions listed in the existing or amended solid waste facility plan as approved by ADEQ have been complied with and ADEQ has issued an approval to close the landfill.”

Resolution 64-91, Stipulation 26, to be amended to read:

- “The Pen-Rob landfill is open to the public.”

**Bill Bess** has spoken with the Sanitation District in Joseph City and they are in agreement with these conditions.

**Gary Hunt** spoke on behalf of the Pen-Rob LLC / Painted Desert Landfill. They wanted to open the landfill to the public. This would give the public different places to get rid of their roofing material and big bulk trash. They've been working with the Joseph City

Sanitation board and they would like to close down that transfer station. They are going to go with curb side for their bag trash, but would like a place for people to go with their bulk trash. This will also help with their capital budgeting. As long as the landfill stays in compliance with the state, the state lets them stay open until the site is full.

**Commissioner Berry** asked Bill if he has any issues with the changes. Bill stated no, ADEQ has far more requirements for maintaining this landfill. They are opening it to the public and there were no objections from the public.

**Commissioner Howe** questioned if there was a fee schedule. Per Mr. Hunt, they'll have to look at it every year when they do their budgeting. Currently they'll have a gate rate that everybody will have to pay.

**Chairman Teetsel** called for anyone in the audience who wished to speak in favor or in opposition of the application.

None

**Commissioner Berry** made the motion to approve with all the conditions stated by staff. The motion was seconded by **Commissioner Howe**. The vote was (6 – 0) to recommend approval to the Board of Supervisors.

**ITEM #4 – CASE # 15-21: TENTATIVE PLAT – DISTRICT II:** Discussion and possible action on a request by Alisa Templeton for a Tentative Plat for Battle Canyon Ranches, a partial re-subdivision of Clear Creek Ranches Unit II, recorded in Bk 12 Page 56 on lots 8, 9, 10, 15, & 16 of Clear Creek Ranches Unit II, a.k.a. a portion of Section 17, Township 18 North, Range 16 East of the G&SRM, southeast of the Winslow area.

**Bill Bess** presented the Staff Report for the Tentative Plat on Battle Canyon Ranches. Bill Bess added one other recommendation, number 5 horizontal and vertical road alignment shall be designed in accordance with the Navajo County subdivision standards, Section 6.3 Street Design.

**Commissioner Berry** questioned if there was anything in the zoning requirements for fire hydrants. David Whittaker stated there is no water company located in that area that can be overseen by the Corporation Commission; therefore, in our requirements for subdivisions we don't always require water in a subdivision. It mentions local water utility and since there is none, there is no fire protection via fire hydrants. Staff feels it should be noted on the variance that there is no fire hydrant.

**Alisa Templeton** (10800 Nighthawk Lane, Flagstaff, AZ) was present to answer any questions from the Commission.

**Alisa Templeton** stated the property is zoned RU-1 so you can have one acre parcels, but she feels due to rock it does not support the density. She wants to develop an area and have people live out there as a community. One parcel will be a community parcel. There is one person who wants to purchase land. It's beautiful land by Clear Creek.

**Commissioner Howe** asked Ms. Templeton to define the Community parcel. **Alisa Templeton** would like an area, for example, if they get a backhoe that they can all share, or a ramada for gatherings, or some sort of park. For now, Alisa has a well and is hoping to put a water tank that could be utilized to provide water to residents in the beginning. Alisa has spoken with the Fire Captain and the City of Winslow and they do provide fire protection in this area.

**Chairman Teetsel** asked if the HOA/Home Owners are taking care of the road maintenance, to what standard will they be maintained? **Chairman Teetsel** is questioning this because of the fire protection and other emergency services are coming from Winslow, or other places. Who decides if the road is being maintained to a standard acceptable for emergency services? How does this get reviewed, monitored, etc. to make sure the HOA is holding up to their end of the bargain and taking care of the roads? **Bill Bess** stated that they are going to require the roads to be built to public street standards, so there'll be 22 or 24' wide with a gravel surface, as well as proper drainage, etc.; however, we as "the County", do not inspect. Bill questioned David as part of the conditions on the plat, if they can include that annual inspections be completed by the HOA and supplied to the County's Engineering Department? **David Whittaker** stated that they can put in the CC&R's that inspections will be done annually with consensus from Navajo County.

**Chairman Teetsel** stated that normally the roads are developed to the County standard, then the County takes over the maintenance responsibility, but in this case, it'll be the HOA's responsibility and there is going to be public service that will need to be able to get through. What's the plan to make sure the roads are always, at least usable? He understands they are built to certain specifications, but without maintenance they will not remain to those specifications. **Alisa Templeton** stated that it is a really rural area and you are talking about a lot of people that need to come in and it's a situation for everyone out there, not just her. She doesn't think they should be required to maintain all roads leading up to property. **Chairman Teetsel** clarified that he is talking about everyone in the development. **Alisa Templeton** does not believe she should be required to maintain all roads leading up to the subdivision.

**Chairman Teetsel** assumes that Alisa will need to go through a public report process (State and Arizona Department of Real Estate) if the final plat is approved and they'll ask the same question on roads and other things. He is wondering if she is prepared for this, or if there was some type of road maintenance agreement that she plans on? The roads can't be built to specifications and walk away from the responsibility after that. **Alisa Templeton** plans on keeping up on the roads. It's about 2 ½ miles on dirt roads just to get to the site. There's someone who has been doing a lot of improvements on those roads.

**Chairman Teetsel** questioned if those roads are currently being used by Emergency Services to service anybody. **Alisa Templeton** stated that there must be, if somebody else out there had a fire, they would be in the same vote. **Chairman Teetsel** asked staff if we have concerns, or should we have concerns?

**Bill Bess** identified the road that will be used to access the subdivision and reiterated that Alisa Templeton will maintain the roads within her development. **Alisa Templeton** stated that this is the situation in rural subdivisions; it's just the way it is out there, as far as fire protection and so forth. The two access points for the subdivision are in pretty rough shape. They are going to be graded and they will put culverts in.

**Chairman Teetsel** questioned if law enforcement comes from the County and whether or not they have any concerns about accessing this subdivision. **Bill Bess** stated that they have not contacted the Sheriff's office. **Chairman Teetsel** questioned if they should be contacted.

**Commissioner Smith** reflected on similar situations that exist right now in Chevelon Canyon Ranch and Chevelon Retreat. The Forest Service does courtesy grading on one of the roads, but only when they have the funds and availability. She is unaware of any regular maintenance on Chevelon Canyon Ranch Road. Heber/Overgaard Fire & EMT refuses to respond out there, because they are not in the fire district and because of the roads. This bothers her, but as long as people are informed when they buy out in these primitive areas which are off the grid; that the ambulance may not get there in 20 minutes, and the fire truck may not be able to come out at all, if road conditions don't permit it. From a real estate perspective and a moral obligation perspective, she is concerned that disclosure must be made when people buy out there, so they are aware of the possibility that no emergency services can reach them. This was the conflict when Chevelon Canyon Ranches developed. They weren't telling anyone of these conditions, and when people had chest pains, or allergic reactions, or a diabetic emergency, they had no idea that no one would respond. She sympathizes with her situation, but to bring roads up to a level of compliance that would allow full time access by emergency vehicles may not be realistic. There is a lot of roadway to get to the subdivision, that the property owner has nothing to do with, which poses a problem. When you have other situations that exist out there now, it is not fair to put a different standard in place for this subdivision to move forward.

**Commissioner Berry** agreed, if these roads are not up to county standard, he can't see a fire district wanting to service the area. There is no water, they'd have to bring out a tanker with 2,500 – 5,000 gallons of water, that's a lot of weight. If they go out there one time, they'll probably not want to come back. If the project builds out to as many lots as possible, there could be an issue. **Alisa Templeton** stated that she could sell each 40 acre lot now and each person can split it 5 times, which would equal to approximately the same amount of lots, but there would be no control of anything out there. Alisa is trying to design a well thought out subdivision and make it right. Not just have some willy-nilly type thing. If somebody split a 40 acre lot into 5 pieces and they got 8 acres, they could split it into 8 pieces. There could be 200 lots out there.

From **Chairman Teetsel's** perspective, which may be a question for the county attorney, if we approve a subdivision that says there will be emergency services, fire, etc. not knowing if the road will be maintained to allow emergency services to get in

there, would be the County liability when someone comes back saying that we approved it without the proper controls to make sure that they would be protected with emergency services. He applauds the developer for everything she is doing, he is just looking out for what is in the best interest for Navajo County and its residents, and it's liability down the road. It's a worst case scenario, but it's the reason for his questions.

**Commissioner Slone** agrees with what everyone is saying, but he does not believe subdivisions have any requirements on maintaining the roads leading to it, just the roads within the subdivision itself. **Bill Bess** stated that he is not aware of any requirements. Right now with these being private roads, they are not maintained by HURF, nor maintained by Navajo County so we have no jurisdiction over them.

**Commissioner Slone** asked whether or not we can put in a stipulation. If we have existing subdivisions with no control over the access to the subdivision, we can't put a stipulation on this project unless we already have a rule saying that you can't build a subdivision without "x" requirements on the access to the subdivision. He doesn't see how we can impose that liability. This is a question for the County Attorney, but would we be protected from a disclosure? The Real Estate Commission is very specific about fire protection, access and all those issues. He thinks we have to look at the subdivision itself and the requirements we are able to put on the subdivision. He doesn't believe we can tell the developer that she can't build a subdivision unless she maintains the roads leading to it. **Chairman Teetsel** wasn't referring to the roads to get to the subdivision, but was referring to the roads within the subdivision. The application states the roads will be built, although not maintained by the county, to county standards and he is assuming that pertains to only the roads within the subdivision, is this accurate? **Bill Bess** stated yes, that is correct. **Commissioner Slone** believes we can put a stipulation on maintaining the roads within the subdivision with some type of road improvement district.

**Chairman Teetsel** clarified, once roads are built to county standard, who is going to keep them to that standard so access will continue in perpetuity. **Alisa Templeton** stated she could do a road maintenance group within the CC&R's and have people pay into that.

**Chairman Teetsel** questioned if Alisa has been through the public report process before, but part of that process she'll need to submit a budget for the HOA and what the uses of that money are, etc. The ADR will ask tougher questions than what we are. We are not asking for your budget, but they are going to want to see it. They'll want to see how things are financed to get to this point. Some of this is a fair warning on what's to come. **Alisa Templeton** stated that she needs to get through the tentative plat process before she can put a lot more effort into it.

**Commissioner Smith** understood these funds will only be available as the property sells and she has the money to form an HOA, and people start paying into that. This is a dilemma because who knows how long it will take to sell, would the developer be expected to pay out of her own pocket year after year to maintain a certain level,

whether its road access, it seems to be counterproductive. This isn't an easy situation for the Commission to come to a determination on, other than, as the chairman said, what is our liability on this if we move forward. What is the liability, not only for P&Z, but for the County in approving this type of subdivision situation and moving forward? Do we promote more of the same, or do we make someone who has come before us now meet a different standard than what already exist?

**Commissioner Howe** applauds Ms. Templeton on her conservative approach on this subdivision. Since roads leading into the subdivision are private roads, has Ms. Templeton approached the owners of the easements, if one of the property sells and they decide they don't want to provide public access across that property anymore, have you secured or will you secure your own easements for the subdivision? **Alisa Templeton** stated there are existing easements for all the roads out there through Clear Creek Ranches when it was subdivided into 40 acres parcels. The state land section also has a dedicated easement.

**Chairman Teetsel** referred to the Letter from the City of Winslow, which states: "please bear in mind, the access roads into and around the subdivision need to be maintained as to allow for safe access to the area with our required apparatus and without causing damage to said equipment". How does this affect the Commission? Winslow is saying that what we brought up has to happen, but the Commission is the one to approve the subdivision. How does the Cities' requirement affect this? **Bill Bess** stated that they'll need to check into it. **Chairman Teetsel** questioned if this has been run by the County Attorney. **Peggy Saunders** stated that the County Attorney received the report but we did not receive any negative comments back. **Chairman Teetsel** believes that all the City is saying is that if the roads are not accessible they won't bring in their fire trucks. **Alisa Templeton** stated that they've basically said that by the time they get out there, it would probably be a total loss because of the time/distance.

**Commissioner Shupla** agreed we are telling you to build your roads to county specifications, and you may have the nicest roads in the subdivision, but if you can't get into the subdivision, the roads won't do you any good. At the same time, you're just selling the 5 acre lots and whatever they do there; is their issue. Your only responsibility would be the roads. Maybe this needs a little more thought, looking at more of the "what if's". **Chairman Teetsel** agreed with **Commissioner Shupla** that maybe there needs to be a little more research and more answers provided.

**Chairman Teetsel** would like to ask the County Attorney for comments regarding the potential liability of the county, primarily for the road issues.

**David Whittaker** believes there are fire response time requirements related to incorporated areas and un-incorporated areas. They should check the un-incorporated area response time to see if this subdivision complies with it. Also, a lot of construction sites are permitted to use primitive type roads to bring in construction equipment to aid in the construction. They have to meet a certain standard and they have to be a weather resistant type of road. Mr. Whittaker has been involved in instances where the

fire apparatus vehicles have been damaged and the people undergoing construction have been responsible for payment for repair of that apparatus.

**Commissioner Sloan** stated, under their current rules and regulations, we can have a subdivision without fire protection. We don't have any requirements stating that you have to be within a certain distance of a fire department, or anything else that he knows of, and we've mentioned several that are exactly that. It's not right or wrong, but if we currently allow it, then we are probably asking for more liability to try to put unfair restrictions than what our guidelines allow. If we allow those subdivisions now, then we have to keep allowing them, or change our guidelines. They'll probably want to do something there self, like having their own fire protection, etc., but you could have houses and subdivisions currently in Navajo County where it is up to you to put your fire out. Insurance will be higher and they might have a hard time to get there, but if that's our current policy and if what's requested fits the land use, I don't think we can stop this.

**Chairman Teetsel** would be fine if the application was only accessible by horseback, but because the application refers to emergency services and part of what has been presented includes keeping the roads maintained, but how that happens is not addressed. This goes back to the basis of his concern. If we, or the county, approved something without having a mechanism to ensure what is offered is being done, what is our liability? If all those things weren't in the application and the application said there will be no emergency services and the roads may or may not exist to it, it would be different, but because the application refers to emergency services that's where his concern is. **Alisa Templeton** stated that the only reason she put it in the application is because in the tentative plat requirements there is part that says "who provides fire protection in that area". **Chairman Teetsel** doesn't have a problem with what the application says, he just don't have the legal ground to express an opinion regarding the exposure in the event there is a problem.

**Peggy Saunders** suggested we call Brandt Clark, County Attorney's office and all agreed.

**Chairman Teetsel** questioned Brandt regarding the roads within the subdivision. The roads in the subdivision, per the application, are to be built to county standards, dirt and gravel. There are references to emergency services and a letter from the City of Winslow that fire and other emergency services would be provided as long as the roads are passable, maintained, etc. Even though the roads have to be built to county standard, the county will not maintain them. If the application is approved, and then the roads deteriorate from lack of maintenance by the HOA and then there is an emergency that ends up with the loss of property or life, does the county have any liability because we did not put in a mechanism to ensure that there was going to be road maintenance going forward? **Brandt Clark (phone)** replied "no", when a subdivision comes in, they have to be brought up to our standard, but it would be unfeasible for the county to actually have to assume liability for any and all roads that come in. It would be the HOA who would be responsible for maintaining those and if an incident occurred, we don't really have an enforcement mechanism within our code that would require us to go out

there and do some sort of routine check on the property and it would fall with the HOA. If we did create some type of mechanism where we had to go out and inspect the road and make sure they were being properly maintained, that's when we can actually incur liability on ourselves, if we didn't do the inspections or follow through with the enforcement actions. Having them brought up to county standard, and them being private roads, the county wouldn't incur liability.

**Chairman Teetsel** asked Brandt if the application should have some reference to the roads being maintained. **Brandt Clark (phone)** replied that it would fall within the purview of the HOA. It's in their best interest as far as developing the property and for the homeowners to mess with them, than for the county to have that as far as maintenance. We really don't have an enforcement unit within the county and have the authority to go out and require that they be continually maintained on an annual basis.

**Chairman Teetsel** questioned Brandt if he has any concern if they recommended approval for a subdivision and there was no mention of future maintenance of the roads by anybody. **Brandt Clark (phone)** believes that there is a condition that he had read on the application that the roads would be the responsibility of the HOA, and helped with the language placing the responsibility on the HOA and the developer.

**Bill Bess and Chairman Teetsel** wanted to clarify that we are talking about the internal road system within the proposed subdivision and not the roads to the subdivision. Does Brandt's response stay the same with this clarification? **Brandt Clark (phone)** was assuming that it was within because to get out of the subdivision they would probably be traversing roads of various types of uses, so yes he agrees with the statement Mr. Bess made.

Being that there were no further questions for Brandt Clark the conference call was ended.

**Commissioner Murph** questioned the suggestion of putting in a 5,000 gallon water holding tank to share water with neighbors. If you are providing water to other homes, are you not required to have a water district? **Bill Bess** is not aware of the rules and regulations for this type of district and it would be a question for Brandt Clark. Bill Bess questioned Ms. Templeton on what the use of the tank would be utilized for in supplying or having the water available for the users or lot owners? **Alisa Templeton** stated the water would be available for individuals to haul water to their home until they had their own water system in place. Ms. Templeton believes ADEQ has requirements to how many people use a system before you get into a water company type of thing.

**Chairman Teetsel** questioned Ms. Templeton if she was going to drill a well or if one already exist. **Alisa Templeton** has a well on one of the lots now. **Chairman Teetsel** suggested that Ms. Templeton contact ADWR and review the application to determine the specific purpose in which the application was made. It probably wasn't to provide water for the subdivision when the application presented, or to sell the water. **Alisa Templeton** stated that she is not selling water and that she would deal with ADWR.

**Commissioner Shupla** questioned the well and whether there were requirements on the number of wells. There are 200 acres and when you start building wells on them, you'll be drawing away the water. **Alisa Templeton** stated that it'll be ADWR that'll restrict that. There are subdivisions that share a well and then you are not getting into a water company type of situation. They don't want to put any more wells out there than what they have to, but she don't want to get into that until the lots start selling and actually have people living out there. **Chairman Teetsel** believes it is the other way around. She won't be able to sell the lots until she has the public report and all these things will have to be addressed in the public report process. **Commission Shupla's** biggest concern is that Ms. Templeton doesn't get caught up in something that she is not going to be able to make happen. **Alisa Templeton** knows there are subdivisions that you are "dry" subdivisions. She has seen these in Coconino County, where they don't have a water system.

**Commissioner Shupla** questioned what the well currently pumps (casing size & capacity)? **Alisa Templeton** is not sure, the well has not been running for a while. It'll probably need some work; however, she believes it may be 35 gpm. **Commissioner Shupla** is from the reservation and he knows a little about what she is trying to do. They tried creating a little community, they dug a well and all it would produce is 25 gpm and they couldn't do it with that. **Alisa Templeton** stated that it could be that people will have to haul water. Where she lived, that is what she had done. She is not on a water system and believes there are a lot of people that live that way.

**Chairman Teetsel** called for anyone in the audience who wished to speak in favor or in opposition of the application.

**Jay Wright** (910 Ichiban Drive) lives within 300' of this proposal. He hasn't lived there too long, but moved out there about one year ago with the understanding that it was a 40 acre parcel area. **Chairman Teetsel** addressed this and the zoning in the area is RU-1. He's not sure what Mr. Wrights zoning is, but this property is zoned for as much as one acre lots. **Jay Wright** had a different understanding. Mr. Wright has a grazing lease with the surrounding state land. If this were approved, he'd like to see that the subdivision be required to be completely fenced. The livestock need to be fenced out. He thinks you will find this true with the state in all legal aspects of livestock against private property. Usually when you bring in something like this against a livestock operation it brings in problems with dogs, etc. Another concern is the road, if you have that many people proposed to live there on a dirt road, you're going to have a dust bowl with that type of soil. In order to have a good road into a subdivision, it should be paved. They do a little road maintenance themselves to get into their place off of highway 99 because the County don't maintain anything out there. Another concern is the domestic well; it will draw from the water table provided by Clear Creek. He has stock wells for the cattle in that area, but has a concern about it, but that's up to ADWR. Another concern they have is the road access to the proposed subdivision, there will be cattle on the roads and with that many people living out there, they'll have some cattle hit.

**Commissioner Ruth Ann Smith** requested Mr. Wright to identify where he lives on the map. **Jay Wright** identified his property as being approximately ½ mile off highway 99 (off the main road) on the map.

**Jay Wright** provided a list of names of other residents in area that are also opposed (list given to David Whittaker) to this proposal.

**Marjorie Wright** elaborated on the dogs. They kill the calves in the spring and even take their tails off. You can't sell a tailless calf to a buyer; you can take them to auction. They sell their livestock with Superior Livestock and they cannot put tailless calves on the truck. They have at least three tailless calves per year from the dogs and it is a financial loss to them.

**Jay Wright** mentioned that there have been a lot of residents that have attempted to live out there and then they move off. Usually they leave their junk and it isn't really what they like to see.

**Chairman Teetsel** questioned staff, he never heard of a requirement where a private property owner needs to erect a fence if it's adjacent to public lands that are used for graving. If it is required, whose responsibility is it? **Bill Bess** suggested that we call Brandt Clark regarding the no fencing policy. He is very familiar with this and believes we need to get him back on the phone.

**Chairman Teetsel** questioned Brandt, if you have public lands adjacent to a private subdivision, and on the public lands there is livestock being run under a land lease agreement, and if there is fencing desired by either party to keep the livestock out of the subdivision, whose responsibility is it for putting up the fence? **Brandt Clark (phone)** stated that it depends on how it is classified. If it's open range, the property owner has the responsibility of fencing out cattle or any other type of animal. If it's not considered open range (i.e., municipality or heavily populated area), the person who owns the cattle has the responsibility to fence them in. From what he has heard of this subdivision, his initial assessment would be that it's considered open range and the property owner would have the responsibility to fence them out up until the point where it would no longer be classified as open range.

**Brandt Clark (phone)** warned the land owner. If you buy a piece of property and you start building something and if it's considered open range, if cows come in and do some damage, then it would be the detriment of the property owner. When they are purchasing the property they would be given sufficient notice that its open range and they'd be responsible to know that, therefore; if some damage were to occur, it would be the responsibility of the land owner to know to fence out the cattle. There would not be a liability on the cattle owners' part; unless factors change, etc. The general rule, if it's open range, the responsibility to fence livestock out of your property. If it's not considered open range (municipality or non-open range section), it would fall on the animal owner to fence the animals in.

**Chairman Teetsel** questioned if there should be a stipulation in the development that is adjacent to open range that they also have to fence it, or only if it becomes a problem that they want solved and then they have the responsibility. **Brandt Clark (phone)** identified this as a civil matter between the two property owners and he would be hesitant to put that as a condition for this subdivision. This really behooves the property owner to understand what responsibility they have as a land owner in open range. If they build something and the cows came in and got stuck, or fell in a trench and ultimately died, the property owner could legally be liable to the owner of that animal. It would be a civil dispute between the landowner, the subdivider and the individual who holds the grazing lease; whether it is from the BLM, Federal Government or State Land Department.

**Marjorie Wright** stated that when they bought their place, and she believes it's on the records deeded in the Recorders office, there has to be so many feet between the fences on the road so that cattle do not get stuck in a situation, and there has to be fences away from the water so that they are able to water. Marjorie can get a copy of it, but it was made out when the original parcels where created. **Chairman Teetsel** asked if it's the parcels in question for the Developer or the parcels that are nearby. **Marjorie Wright** stated it's for all of them out there that when they originally went in and bought those 40 acres, they had these stipulations for the cattle so that they are protected and you'll see it in the records. **Chairman Teetsel** asked Brandt , is it possible there are deed restrictions, to say if this is ever developed or becomes residence that they had to be fenced? **Marjorie Wright** corrected the statement. If they want to be fenced, they have restrictions on how to fence.

**Chairman Teetsel** asked if there were any more questions for Mr. Clark, being that there were none, the call was ended.

**Alisa Templeton** addressed the concern about the dogs. In her CC&R's, if anybody has dogs out there they have to keep them controlled. They won't be running all over the place. She is trying to develop a nice subdivision. We are trying to go towards more sustainable living and some alternative building. She is hoping not to have people who will move away and just leave junk. She wants a good neighborhood out there and she wants to be a good neighbor to the Wright's. She wants to address their concerns. As far as paving the whole road, it would make it so expensive that she couldn't do it.

**Jay Wright** commented about the roads, if you have that many people out there, that dirt road is going to be a mess. They would like to have the road fenced because if they don't, they are going to get a lot of livestock hit because they are grazing there all the time.

**Commissioner Murph** sees subdivisions that have been built and they don't take care of the roads. It's mentioned in the application that the roads will be graded, but you also have to build it up, build a base. If you just continually grade the road, before you know it, you have a 4' ditch, then the issue of water running off to the neighbors and it could

do a whole lot of damage if you don't build a good road and maintain it. I would like to see some conditions on not just road maintenance, but road construction. Culverts are mentioned in the application and that's part of the road construction. I'm afraid if we just maintain what we've done in the past, if we approve these applications as we have in the past, we're going to get more of what we've had in the past and that's flooded roads and damage to the neighbors. **Commissioner Slone** agrees 100%, but what he thinks Brandt is saying, any stipulations we put on to maintain them is just going to open the door to liability to the County. We did put in a stipulation that they'd be built to county standard, so that they'd be built properly in the first place. If he understood him correctly, he recommended that we not put any stipulations on enforcing that they be maintained. **Commissioner Murph** understands that, he just hates to see more subdivisions being built, especially in that area, with this type of situation. There's a lot of rock, you get that water running off of the sand stone and before you know it the in and out roads may have a 6' deep ditch on the side of it. He hates to see somebody taking on more responsibility and spend more money to go fix ditches that were created by a developer.

**Chairman Teetsel** questioned the applicant if they have raised any issues that haven't been given any consideration to (roads, fencing, water, etc.)? Do you feel there is anything more that you should do and more information that you'd like to provide to the Commission before they take action? **Alisa Templeton** can't think of anything, no.

**Commissioner Slone** wants everyone to understand, he agrees 100% with what was said, he thinks sometimes we need to be careful and rule or recommend based on the application, if it's of proper use, etc. We can't really implement what we'd like to see. We have to live with the facts, and decide if it meets our current criteria then we really don't have a choice.

**Commissioner Smith** stated the key to the whole concept here is the "off the grid concept". If you pave the road out there, you are taking away the off the grid idea; there are people out there who want the more primitive lifestyle. If you improve the roads then you get more traffic, you get faster traffic, you introduce a whole lot more issues that are problematic, not only to the people that may want to buy in your subdivision, but to the ranchers also. I think off the grid is an important concept to factor into our decision or how we vote tonight, you haven't been miss-represented on what you are trying to provide out there so for us to start to put any requirements that bring it up to a different expectation level might not be in the Commissions best interest, or necessarily in the best interest on what you are trying to promote.

**Commissioner Smith** made a motion that they recommend approval for this to move forward to the County Board of Supervisors level. **Peggy Saunders** stated that this does not go to the Board of Supervisors; the Commission makes the decision on the tentative plat. **Commissioner Smith** wanted to interject and questioned if any of the Commissioners would like to add directive or stipulation to the applicant that at the final plat stage there'd be additional information brought to us.

**Alisa Templeton** requested that this be tabled so she can answer more questions and come back with this at a later date.

**Chairman Teetsel** expressed his opinion, that he doesn't think it's a bad idea. He would love to have her come back with some answers from:

- Department of Water Resources
  - Send them a letter; this is my intent on what I'd like to do.
  - ADEQ – find out what concerns they have.
- Arizona Department of Real Estate website – download or view all the things that you are going to be required to provide to get a Public Report
- Consult an attorney on the fencing policy and adjacent public grazing lands (liability of damages, etc.). This will have to be disclosed in a public report.
- Tentative Plat approval, Final Plat approval, and the hard work comes with the Public Report.

Look at these things and then come back with the answers to all the questions that are answered through the process. It will be easier on everyone that is involved.

**Commissioner Sloan** would really be pushing it to try to approve this if she were to proceed, but only because he doesn't think he has a choice. If you take the time to research this stuff and make sure it is all due able, it could save you a fortune in the long run. You're going to spend a whole lot of money before you get to the final plat stage and I'd hate to see you get there and not be approved for one of those reasons.

**Chairman Teetsel** would suggest that she is putting together basically a business plan for something and know what all those different costs are, including your engineering study, traffic study, and drainage study. Having paid for those things in the past, they aren't cheap. It would be wise to do more research. If you are suggesting that you'd like to withdraw, we can withdraw the motion and make another motion to table it, if that is your request.

**Alisa Templeton** replied yes, this is her request.

**Commissioner Smith** withdraw her motion to give the applicant time to do a little more research and investigation; thereby, strengthening her application when she comes before us at a later date. The motion was seconded by **Commissioner Berry**. The vote was (6 –0) to withdraw Commissioner Smiths motion to approve.

**Commissioner Berry** made the motion to table the application. The motion was seconded by **Commissioner Murph**. The vote was (6 – 0) to table the application.

#### **ITEM #5 – POSSIBLE APPROVAL OF MINUTES FROM THE COMMISSION HEARING OF FEBRUARY 19, 2015, & MAY 21, 2015. – APPROVED/NEEDS REVISION**

**Commissioner Smith** made the motion to approve the February 19, 2015 minutes as written. The motion was seconded by **Commissioner Slone**. The vote was (6 - 0) to approve the minutes with the correction to indicate 2015 and not 2014.

**Commissioner Murph** made the motion to approve the May 21, 2015 minutes. The motion was seconded by **Commissioner Slone**. The vote was (6 - 0) to approve the minutes.

**ITEM #6 – COMMISSIONER’S COMMENTS AND/OR DIRECTIONS TO STAFF.**

Commissioners may use this time to offer additional comments regarding any item on this agenda, or any other topic; and the Commission may direct staff to study or provide additional information on topics of the Commissions’ choosing.

**Chairman Teetsel** did not receive any comments, directions to or from staff to the Commission, or visa versa.

**ITEM #7 – REPORT FROM STAFF TO THE COMMISSION.**

**Peggy Saunders** stated there will be a zone change for the September 17<sup>th</sup> meeting.

**Chairman Teetsel** adjourned the meeting at 7:52pm, without objection.

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Chairman, Chuck Teetsel

ATTEST:

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Secretary