

**MINUTES**  
Regular Meeting  
July 1, 2014

**CALL TO ORDER**

Mayor Morris called the meeting to order at 7:30 p.m.

**PLEDGE**

**ROLL CALL**

Present: Mayor Morris, Mayor Pro-Tem Schaffer, Council Members Brown, Clark, Finn, Homann, and Rudy.

**AUDIENCE PARTICIPATION**

There was no audience participation.

**APPROVAL OF AGENDA**

Council Member Schaffer made the motion, seconded by Council Member Rudy, to adopt the agenda. The motion passed with all voting in favor thereof.

**CONSENT AGENDA**

- A. Approval of Minutes of the Regular Meeting of June 16, 2014**
- B. Ordinance No. 594-14 Amending Chapter 13.06 to Extend the Obligation to Provide a Non-Potable Water System to all New Developments (2<sup>nd</sup> Reading)**

Council Member Schaffer recused himself from voting on the Consent Agenda due to his absence from the June 16<sup>th</sup> meeting.

Council Member Clark made the motion, seconded by Council Member Brown, to adopt the consent agenda. The motion passed with all voting in favor thereof.

**NEW BUSINESS**

**A. Public Hearing - PUD Amendment-Cave Creek**

Mayor Morris opened the public hearing at 7:33 p.m.

Sean Wheeler, Evans City Planner, addressed City Council to present a Planned Unit Development (PUD) for Cave Creek and provided the following project description:

“The applicant seeks approval to amend the existing zoning for the Cave Creek Planned Unit Development (PUD) by lifting a restriction on the age of replacement homes in the subdivision. The original approval documents for Cave Creek (from 1998) state that replacement homes are allowed only if they are four years old or newer. However, in 2011

and 2012 the City Council granted temporary waivers from this requirement. The current request seeks to make this waiver permanent. The applicant has had two successful years of complying with the requirements for the waivers, and they anticipate maintaining the quality of homes brought into Cave Creek by meeting all other standards for the PUD. The only request made for this application is to remove only the age restriction, and the applicant has not proposed any other changes to the Cave Creek PUD. For historic reference, the City approved the original Cave Creek PUD in 1998 to develop a total of 449 lots on 128 acres. Since that time, two of the three phases are now in place and development of the third and final phase is anticipated to start soon.”

Mr. Wheeler clarified that the motion on Cave Creek from the Evans Planning Commission was to approve the PUD amendment with the "newness" restriction for replacement homes remain in place.

Mayor Morris clarified the vote by the Planning Commission with Mr. Wheeler and Scott Krob, City Attorney.

Mr. Krob indicated that he had attempted to reach the Planning Commission Members, but that he had not confirmed the motion from all of the members. Mr. provided a description of the amendment, which required that all replacement homes in Cave Creek be four years old or newer for the best interest of the citizens of the City of Evans.

Mr. Wheeler discussed the timeline of the Cave Creek development and explained the recommendations by staff made to the Planning Commission. He discussed the requirements under Chapter 19.60 of the Municipal Code for zoning amendments, and provided the findings of fact for the Cave Creed PUD.

Council Member Finn asked about past requests from Cave Creek for a PUD Amendment, and asked about older homes being placed in Cave Creek.

Mr. Wheeler discussed the types of homes being installed at the site, explained the definitions of both modular and mobile homes, and explained that he would allow the applicant to respond to the question concerning the age of the homes that will be placed in Cave Creek.

Tom Carpenter, President of Sun Communities, and representing Cave Creek located at 3400 Sagebrush Boulevard, Evans, CO, 80620.

Mr. Carpenter explained that similar requests had been granted by City Council in 2011 and 2012 the City Council granted temporary waivers from this requirement. He also talked about the new aesthetic requirements under the PUD that would improve Cave Creek. Lastly, he talked about the requirements for residents to live in Cave Creek, and explained that Cave Creek does own or not control the type or age of homes installed in Cave Creek.

Mayor Morris asked how many units were planned to be developed in Phase-III of Cave Creek.

Mr. Carpenter stated that there are 158 sites in Phase-III and 289 sites in Phase I and II.

Mayor Morris asked if Phase-III would be filled within the five years allowed by the PUD.

Mr. Carpenter explained that Phase-III is expected to be filled within five years and talked about the turnover of modular homes in Cave Creek.

Mayor Morris asked for any testimony in support of the issue—there was none.

Mayor Morris asked for any testimony in opposition to this issue.

Nick Francis, 6600 20<sup>th</sup> Street #12, Greeley, CO 80634, explained that he is the owner of the adjacent property east of Cave Creek. Mr. Francis explained why he opposed any PUD amendment by a governing body, and warned against having modular homes in Cave Creek that are more than 5-years old. He talked about the benefits of stick homes and talked about the amount of development fees for real homes versus modular homes.

Mayor Morris asked for any other testimony in opposition of the issue—there was none.

Mr. Carpenter requested the City Council's support on his PUD request.

Mayor Morris asked Mr. Krob about clarifying the recommendation of the Planning Commission.

Mr. Krob discussed the general charge of the Planning Commission and their role of referring issues to City Council.

Discussion ensued between staff and the City Council Members concerning the recommendation from the Planning Commission.

Laura Speer, Evans Planning Commissioner, addressed City Council to clarify the action that the Planning Commission approved on the Cave Creek PUD. She explained that the Planning Commission recommended approval of a continued waiver from the restriction that homes brought to the site be four years old or newer for additional five years as the homes satisfy City Code.

Mayor Morris thanked Ms. Speer for her comments, but still had concerns about the motion made by the Planning Commission.

Mr. Zach Ratkai, Evans Building and Development Manager addressed council to discuss the motion made by the Planning Commission and the July and August schedule for the Commission.

Mayor Morris still had concerns and wanted Mr. Krob to verify the motion made by the Planning Commission before deciding on the Cave Creek PUD.

Council Member Clark made the motion, seconded by Council Member Schaffer, to continue Public Hearing on the Cave Creek PUD Amendment to the July 15, 2014 City Council meeting. The motion passed with all voting in favor thereof.

### **B. Public Hearing - Use by Special Review-Bonanza Creek Communications Tower**

Mayor Morris opened the public hearing at 8:03 p.m. and asked to hear from staff.

Mr. Wheeler discussed the request for a Use by Special Review (USR) at Bonanza Creek for a Communications Tower and provided the following project description:

“The applicant seeks USR approval to construct a 68-foot communications tower on their property at 4301 Industrial Parkway in the Evans Industrial Park. Bonanza Creek Energy will use the tower to improve communications with their field operations as a replacement for ground line connections lost in the 2013 flood. Bonanza Creek will be the sole user, and this tower will not provide commercial mobile radio services (cellular service) to the public. Please note, at the applicant’s request Staff approved a site plan to construct a 40-foot tower at the site, which is allowed administratively under the Municipal Code. If the USR is approved, the applicant will add the height extension at that time.”

Mr. Wheeler discussed the criteria provision of the Municipal Code to approve a USR and explained that the applicant has satisfied all of the criteria.

Council Member Schaffer asked why some Planning Commission members did not support the USR.

Mr. Wheeler stated he was uncertain about why some Commissioners did not support the USR.

Mayor Morris asked how tall the tower would be.

Mr. Wheeler explained that the height had initially allowed up to 100 feet, then the recommendation was scaled back to 60 feet, with the USR ultimately allowing a tower up to 168 feet.

Mayor Morris asked about other towers in this area of the City.

Mr. Wheeler discussed other areas of the City with communications towers, but stated he was not sure about the proximity of other towers in the City to the USR location.

The Mayor expressed concerns about a high concentration of communication towers in this area of the City.

Mr. Ratkai addressed the Mayors questions and discussed other communication towers in the City.

Mayor Morris asked if the Motorola tower in the City required a USR.

Mr. Ratkai stated that he would check if the Motorola tower required a USR.

Mayor Morris discussed placing a condition for approval to limit the height of the USR to the requested 68 feet.

Mr. Wheeler stated that a height restriction could be added as a condition for approval.

Mayor Morris asked to hear from the applicant.

Pam Hora, Project Manager representing Bonaza Creek Energy Operating Company, LLC, introduced herself and her partner, Sean Ettien. Ms. Hora discussed the project, the functions of the communications tower, and the communication needs for Bonaza Creek Energy. Ms. Hora explained that the request meets the USR criteria provided under City Code and is compatible with the current zoning. She also clarified that she was not aware why there were dissenting votes by the Planning Commission members. Lastly, she explained that Bonaza Creek Energy could not co-locate with other towers in the City due to radio frequency incompatibility.

Mayor Morris asked for testimony in support of this issue—there was none.

Mayor Morris asked for testimony in opposition to this issue—there was none.

Council Member Homann clarified that the USR could be limited to 68 feet and any additional height would require the USR to be amended.

Mayor Morris closed the public hearing at 8:21 p.m.

Mayor Morris discussed his support for the USR to be amended to limit the communication tower to 68 feet.

Council Member Clark made the motion, seconded by Council Member Rudy, to

approve the URS with the 68 feet limitation. The motion passed with all voting in favor thereof.

### **C. Public Hearing - Use by Special Review- Sorin Wells**

Mayor Morris opened the public hearing at 8:23 p.m.

Mr. Wheeler presented the USR to City Council with the following project description:

“The applicant is seeking USR approval to install oil and gas drilling equipment on undeveloped agricultural land northwest of County Road 394 and east of County Road 33¼. Completion of the project will include the installation of seven wellheads, two associated tank batteries for temporary storage and other site improvements related to extraction uses. The applicant will also install fencing and signage in compliance with State permit requirements for safety and site identification purposes. Access to the site will be via a semi-improved road connecting to County Road 395, and will be designed to accommodate both production company truck traffic and emergency vehicles. The well depths are anticipated to be approximately 6,967 feet to 7,172 feet, with no seismic operations planned for this site. Given the nature of the use, it is not possible to determine how long the wells will be in production. For that reason the applicant has requested an open-ended length of the USR approval. Once production ceases, the applicant will cap the wells and reclaim the site in compliance with Colorado Oil and Gas Conservation Commission (COGCC) requirements.”

Mr. Wheeler explained that the Planning Commission voted 4-1 in favor of the USR and discussed the conditions of the approval, including bonding, insurance, setbacks, landscaping, and traffic/noise abatement. He provided the specific findings of facts and entered the conditions for the USR from the staff report into the record. Mr. Wheeler explained that upon the findings of facts and conditions placed on the USR, staff was recommending approval of the requested USR.

Mayor Morris asked about the bonding and insurance requirements by the applicant and asked if there is an annual review to ensure insurance requirements are satisfied.

Mr. Wheeler believed that the bonding was a \$100,000 bond and talked about requiring the applicant to provide proof of bonding during the application process.

Mayor asked if there was an internal procedure to monitor the annual insurance requirements.

Mr. Wheeler talked about the mechanisms in place to ensure the bonding and insurance requirements are satisfied.

Mayor Morris asked about an updated plan referenced in the packet provided to City Council.

Mr. Wheeler deferred to the applicant concerning any updates to the site plan.

Mayor Morris asked if there are other USRs in the City for oil/gas.

Sean discussed the regulation of oil/gas wells by the state, and stated that he was not aware of any other USRs in the City for oil/gas wells.

Mayor Morris asked to hear from the applicant.

Josh Wagner, Regional Land Manager for PDC, 1775 Sherman Street, Denver, CO 80203, presented the USR request to City Council. Mr. Wagner presented a slideshow to City Council, which clarified the USR for the installation of seven horizontal gas wells near the access road located off of County Road 394.

Mayor Morris asked about the location of the well pads.

Mr. Wagner showed the location of the well pads and explained the primary reasons for the location of the well pads due to the mineral lease holder and the up-slope geology. He discussed concerns from the Planning Commission about potential flooding in the area, which would be mitigated by anchoring the gas tanks. He talked about methods that PDC would address issues raised concerning: the access road, sound mitigation, lighting, and neighboring properties. He also discussed the average life of an oil/gas well and explained the time frame of setting up a well, well activity, and reclamation.

Mayor Morris asked Mr. Wagner to clarify how dust and sound will be mitigated on the site.

Mr. Wagner discussed the methods PCD would use to limit dust and sound on the site.

Mayor Morris asked about the amount of truck traffic at the site during the peak of the activity.

Mr. Wagner deferred to Jason Miller, District Operations Manager for PDC Energy, 3801 Carson Avenue, Evans, CO 80620.

Mr. Miller addressed the question about truck traffic, stating that the site would initially increase by 14 truck-loads per day, then would reduce to about 7 per day for the next three months during full production.

Mayor Morris asked about the truck traffic during the construction phase.

Mr. Miller explained that there would be heavy truck traffic during the construction phase totaling approximately 15 trucks per day.

Mayor Morris asked about the well on the site reducing water truck traffic.

Mr. Miller explained that there may be a well on the site, but the majority of the water needs would come from water trucks.

Mayor Morris asked about why the operations needed to be a 24-hour operation.

Mr. Miller discussed the safety concerns with oil/gas wells and why truck traffic was necessary to carry oil/gas production offsite 24-hours per day.

Council Member Homann clarified that these wells would produce oil and gas.

Mr. Miller explained that the primary objective of these wells was to produce oil, but gas will also be produced as a byproduct.

Council Member Homann asked about truck traffic created by the wells and traffic onto Highway 85.

Mr. Wagner discussed truck traffic and the request for a court-approved alternate access route into the site.

Mayor Morris asked for testimony in support of this issue—there was none.

Mark Goldstein, Operating Managers, 2450 McClellan Drive, Fort Collins, explained that he was representing Sorin Natural Resource Partners L.P. and clarified that Sorin is not the applicant, but that the applicant and owner of the mineral rights is PDC. Mr. Goldstein clarified that the water well onsite would be regulated by the State Engineers Office following the approval of a water supply plan.

Mayor Morris asked for testimony in opposition to this issue.

Gloria Maestes, 16950 WCR 394, LaSalle, CO, 80645, addressed City Council and explained that she sent a letter to the Council Members to address all of her concerns with this project. The letter was included in the City Council meeting packet.

Ms. Maestes discussed her concerns with the close proximity of the wells to her property which would create several safety issues.

Mayor Morris asked about making the existing road safer due to the increase in traffic.

Mr. Wagner discussed access issues with the site and explained that the road will be widened with a 60 foot access. He also responded that they are conforming to what the

landowner's and explained that the north and south orientation is safer for traffic flow to and from the site.

Mayor Morris asked if County Road 394 would be widened.

Mr. Wagner clarified that only the access road onto County Road 394 would be widened.

Mr. Miller talked about the activity on the site, the amount of truck traffic on the site, and the need to have the majority of the operations during the day.

Glen Werning, 23822 WCR 33.25, LaSalle CO, 80645, explained that he had some concerns with flooding in the area as well as traffic concerns on County Road 394.

Mr. Wagner explained that the well locations were necessary according to the geology of the property.

Mr. Goldstein explained that the Sorin property owners were requesting the water well on the site, which will require a water-supply plan approved by the state.

Mayor closed the public hearing at 9:31 p.m.

The City Council Members discussed the issues with the well locations and mitigation efforts by the applicant.

Mayor Morris talked about the mitigation efforts, the need to provide access to the mineral rights owned by PDC, and discussed the provided setbacks for noise/dust barriers.

Mr. Wheeler clarified the recommendation for additional access, which would be contingent on the Evans Public Works Director approve an alternate access.

Discussion ensued concerning alternate access onto the property, which would allow City staff to facilitate an alternative access point.

Council Member Clark, made the motion, seconded by Council Member Rudy, to approve the Sorin Wells USR with the condition the applicant applies for an alternative access approved by the City Public Works Director.

The motion passed with all voting in favor thereof.

**D. Public Hearing - Zoning Amendment-Driftwood Plaza**

Mayor Morris opened the public hearing at 9:37 p.m.

Mr. Wheeler, presented the zoning amendment to City Council and began by provide a description of the property and the following project description:

“The applicant seeks approval to rezone Lots 1 and 2 of the Driftwood Plaza Commercial Planned Unit Development (PUD) from C1-Commercial to R2-Residential. Both lots are currently undeveloped. The site is located on the north side of 37<sup>th</sup> Street, immediately east of the intersection of 37<sup>th</sup> Street and Harbor Lane. Surrounding uses include a mix of commercial and residential projects on both developed and undeveloped lots. If approved the applicant intends to purchase the site, combine the lots and submit a plan to place residential duplex units on the property.”

Mr. Wheeler explained that the zoning amendment was not in compliance with the goals and objectives of the City of Evans 2010 Comprehensive Plan, and discussed the recommendation of staff to deny the request, to rezone the Driftwood Plaza Commercial PUD from C-3 Commercial to R-2 Residential. He stated that the Evans Planning Commission supported staff’s decision to deny the zoning amendment.

Council Member Finn asked about the intent of the applicant.

Mr. Wheeler explained that the applicant intends to purchase the site, combine the lots and submit a plan to build ten residential duplex units.

He talked about how Driftwood does not comply with the City’s Comprehensive Plan

Council Member Clark asked how long the property has been for sale.

Mr. Ratkai provided an estimate about how long the property has been vacant.

Mayor Morris discussed issues with restricting residential in an area zoned C1-Commercial, which could typically result in more USRs and zoning amendments.

Mr. Wheeler discussed the zoning on this property and zoning restrictions for commercial properties.

Council Member Homann clarified that there have been no commercial interests for the property.

Mr. Wheeler was not aware of any commercial uses for the property.

Mayor Morris asked the applicant to present.

Ron Randal, from Wheeler Management Group, Inc., 28 Alles Drive, Greeley, CO, summarized his request for a zoning amendment at the Driftwood Plaza location. Mr. Randal provided a history of the property and submitted his comments to the City Council Members (Attachment A).

Mayor Morris clarified that he was representing the applicant.

Mr. Randal clarified that he was representing the applicant, Bill Sheel, who asked him to present the opening remarks for this zoning amendment.

Bill Sheel, 27 Dos Rios, Greeley, CO 80634, explained that he is the potential buyer of the proposed area. He talked about the residential projects that he has built which are well maintained, including the Cottages at the Landings which are north of the proposed area. Mr. Sheel explained that he wants to build duplexes like the Cottages at the Landings on this property.

Council Member Finn asked about the vacancy rate at other properties owned by Mr. Shell and if his current commercial vacancies have quick turnover.

Mr. Sheel explained that his commercial properties do have a faster turnover.

Dale Boehner, 118 N 51<sup>st</sup> Avenue, Greeley, CO 80634 of Landing Development, explained that he was an original developer of this property, which was purchased in 1994. Mr. Boehner talked about his land developing experience, discussed problems developing the current property, and voiced his support for the zoning amendment.

Steve Grant, 2405 Dock Drive, Evans, CO 80620 discussed issues with the vacant location, talked about problems with having the property currently zoned commercial, and talked about his support for the zoning amendment.

Laura Speer, Recovery Task Force Member and Planning Commissioner, 420 Empire Street, addressed City Council to explain why she supports the zoning amendment and explained why the property would benefit from having residences build instead of remaining vacant. Ms. Speer talked about the City Master Plan, which predates current economic conditions and asked City Council to reconsider certain sections of the Master Plan.

Nonie Sheel, 27 Dos Rios, Greeley, CO 80634, explained her interest in the property, talked about reasons why the property needed to be zoned residential, and talked about improving the City of Evans.

Mayor Morris asked for testimony in opposition to the issue—there was none.

Council Member Rudy asked if this was a conflict of interest due to his business

dealings with the Wheeler Management Group.

Mr. Krob did not think there was a conflict of interest, but that it was good to disclose.

Mayor Morris asked about the Comprehensive Plan and the references for residential development under commercial zoning.

Mr. Wheeler, discussed the purpose of the City Comprehensive Plan to guide development in the City according to the zoning in the plan.

Council Member Clark discussed language in the Comprehensive Plan concerning encouragement for commercial but not precluding residential development.

Mr. Wheeler agreed with the language, but explained his role to make a recommendation based on the Comprehensive Plan.

Mayor Morris clarified that the property was currently zone as C1-Commercial.

Mayor Morris closed the public hearing at 10:23 p.m.

The City Council Members discussed their support for the zoning request.

Mr. Krob reminded City Council of the requirement to have a super majority in order to over-turn a decision by the Planning Commission and suggested a roll-call vote.

Council Member Clark made the motion, seconded by Council Member Schaffer, to approve the rezoning of Driftwood Plaza.

The motion passed on a 7-0 roll call vote.

**E. Ordinance 596-14 an Ordinance Amending Section 16.040.170 Regarding the Variance Process for Floodplain Permit Applications to Make Such Process Consistent with Other Variance Processes (1<sup>st</sup> Reading)**

Mr. Krob, addressed City Council to discuss the need to codify the procedure for variances in the flood plain. He explained the need for the variance process for floodplain permits should be consistent with the variance process for other land use matters under the City Municipal Code. The Ordinance will allow City Council to make the final determination of all variances, based on a recommendation of the Zoning Board of Appeals.

Mayor Morris discussed his support for the Ordinance.

Council Member Rudy made the motion, seconded by Council Member Schaffer. The motion passed with all voting in favor thereof.

**F. Resolution 19-2014 Adjustment of Sewer Rates and System Development Charges for the Evans Wastewater Utility Enterprise**

Fred Starr, Public Works Director, talked about the need for the Resolution in order for the City of Evans to make needed improvements to the City wastewater treatment system as a result of flood damage to the Evans wastewater treatment plant, the need to increase treatment capacity, and meet upcoming regulatory requirements.

He explained that the Resolution proposes an increase to the Sanitary Sewer Rates for the Evans Wastewater Utility Enterprise. Mr. Starr explained that the resolution is proposing an increase in both the “Base Fees” and Sewer Usage Rates, to reflect the recommendation of City Council, and to begin the initial funding of needed improvements to the City of Evans wastewater treatment plant operations and to provide for adequate funding for ongoing operations and maintenance activities.

Aden Hogan, Evans City Manager, explained that the rate increase was in-step with the long-term plans for the City to consolidate the current treatment facilities into one location at the existing Hill and Park treatment plant site in order to allow the City to meet both capacity and water quality requirements while benefitting from the efficiency of operating only one treatment plant. Mr. Hogan talked about the need for the Wastewater Fund to be a self-sustaining enterprise fund.

Mayor Morris discussed his support for the Resolution.

Council Member Clark made the motion, seconded by Council Member Homann. The motion passed with all voting in favor thereof.

**G. Resolution 20-2014 Supporting a Grant Application from the State Board of The Great Outdoors Colorado**

Scott Sandridge, Evans Parks and Ground Superintendent, and Kristan Debo, Evans Recreation Coordinator, presented the Resolution and explained the need for funding for the Riverside Master plan.

Mr. Sandridge explained that, following the 2013 Flood Disaster that destroyed Riverside Park, the City has requested \$180,250 from Great Outdoors Colorado (GOCO) to conduct an update to our current Parks Master Plan for feasibility and planning study for Riverside Park and trail restoration.

He explained that the City has asked for assistance from GOCO to update the existing Park Master Plan. The grant does require a 25 percent cash match for the projects. The funding obligated by FEMA will count as the City match, and no funding will be required from the City. He explained that approximately, \$100,000 will be requested from the GOCO Parks Master Plan Grant and \$80,000 from the Trails Restoration Grant.

Mayor Morris discussed his support for the GOCO grants.

Mr. Hogan commented on the hard work by Scott and Kristan during the 2013 Flood Disaster.

Council Member Clark made the motion, seconded by Council Member Rudy. The motion passed with all voting thereof.

### **REPORTS**

There were no reports.

### **AUDIENCE PARTICIPATION**

Steve Bernardo, applauded the City Council Members for their efforts on the land use issues.

### **EXECUTIVE SESSION**

- A. For a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b).**
- B. For the purpose of discussing matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under Section C.R.S. 24-6-402(4)(e).**

Council Member Rudy made the motion, seconded by Council Member Schaffer. The motion passed with all voting thereof.

The City Council adjourned into Executive Session at 10:40 p.m.

The Executive Session concluded at 11:15 p.m.

**ADJOURNMENT**

The regular meeting adjourned at 11:17 p.m.



Raegan Robb, City Clerk