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TOWN OF WESTCLIFFE
WEDNESDAY, JUNE 12, 2024
REGULAR MEETING

CALL TO ORDER

Chairman Patterson called the meeting to order at 3:00 P.M.

PLEDGE OF ALLEGIANCE

Chairman Patterson led the Pledge of Allegiance

ROLL CALL

The following members were present: Chairman Patterson, Paul Wenke, Bob Fulton, Chuck Jagow, Chris Lund.

OTHERS PRESENT: Ronald Frobels, Rose Frobels, Elizabeth Frobels, Pamela Wolf, Robert Wolf, Travis Oshman, Nancy Pike, Joan Broadston, Clay Myhre, Barbara Gillespie, Maria Duran-Shy, Kit Shy, Robert Veltrie, Lauren Dwyer, Connie Thompson, Jack Thompson, Michael Poisson, Becky Poisson, Betty and John Bohling, Jolie Epp, John Price, Mark and Eva Middendorf, Lloyd Smith, Jon Cesar, Hal and Agatha Shepherd, Alice Henderson, Lisa Walling, Jeff Weyand, Charlene Potts, Kevin Ferreira, Karen Byrge, Barton Byrge, Ray Holley, Charley Ellison, Dan Johnson, Kat Johnson, Janine Hall, George Dwyer, Mason Francis, Kris Kahn, Leslie Parkes. Town Clerk Kathy Reis, Deputy Clerk Melane Rella, Town Manager Caleb Patterson.

APPROVAL OF MINUTES

ACTION: Mr. Wenke moved, and Mr. Jagow seconded to approve MAY 1, 2024 minutes. Motion carried.

OLD BUSINESS

None

NEW BUSINESS:

a. PUBLIC HEARING: Possible rezoning of BLK 12 & 13 of Shadow Ridge.

Let the record reflect that Chairman Patterson stepped down and left the room due to owning property in the discussed subdivision. Chris Lund acts as Chairman. John Van Doren acts as citizen.

PUBLIC HEARING VERBATIM TRANSCRIPT

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****Comments spoken by Travis Oshman are interpreted****

LUND: So I think due to the number of people that we have here today, I would like to hear representatives from each side, one from the company who is the applicant, and then one from each of the opposed and yes, ma'am.

REIS: Would you like me to set the podium so they can stand at it?

LUND: Yeah, nice. Thank you. So I have first in line would be the applicant. Is the applicant here you?

OSHMAN: Want me to stand up?

PATTERSON: Yes, he he's, he's deaf, by the way. And you will have interpreters. Oh, OK.

LUND: Oh, OK.

INTERPRETER: You all hear me? OK, OK, let me know if you need me to adjust. OK, we're going in.

OSHMAN (interpreted): OK. So, I'm glad that this public discourse is happening just to show that America is still alive. I'm happy to know that some people have concerns with my proposal and preparations. I kind of want to step back for a second and just talk about the origins.

I had the opportunity to buy this property, and it was there as a multi-family property through the broker, through the title company, through the developers. I was told and advised as an investment company that I could have that land or purchase that land, and eight months later I made plans to purchase it. And then I found out later that there was some conflicting information that wasn't included in the county-level clerk's records about the multi-level or multi-family housing. So when I came in there was a change for it to be single-family unit; that was unexpected. I believe we would benefit, the town would benefit in several ways through this type of housing, multi-family housing and the procession or the proceeding of this type of construction.

And I know there are people who are concerned and they can speak for themselves, but I want to hear from you all if you have any concerns, and I'm happy to respond to those at this time. What?

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WENKE: What was his name and where he's from.

OSHMAN: I'm Travis Oshman and I'm from Pueblo, Colorado.

PATTERSON: I'm ready for the proposition.

INTERPRETER: Say again.

PATTERSON: Ready for the proposition?

INTERPRETER: Ready for the proposition?

PATTERSON: Yes. So, well, if it makes it easier, I can. I know there's a language barrier, but if it makes it easier, I can use what he has on his packet and then read it all out to everybody here. If that helps.

OSHMAN: Yeah, that should be the proposal.

So, I think it would be easier just due to the language barrier if you read it.

PATTERSON: Yes. OK, I'm going to go ahead and read off first from the municipal code declaration and standard of policy for the rezoning. It states here rezoning shall be allowed if the applicant demonstrates by clear and convincing evidence that rezoning is necessary for one of the more following reasons. I sent that out in an e-mail to Mr. Oshman. And the second reason was States and Municipal Code 2, the area for which the rezoning request has changed or is changing to a degree that it is in the public interest to encourage redevelopment of the area or a new approach to a development. He says two I would believe ... he says I believe number 2 would be appropriate for our given circumstance.

If I'm talking too quick, let me know guys, let me know. But if you think I need to provide an explanation proposed to be using, let me know if I need to provide additional information. And for the building plan, it is hard to tell OK, but he chose number 2 So he believes that therefore, which is that is rezoned as requested has changed or is changed to a degree that it is in the public's best interest to encourage redevelopment of the new area. And one of the papers he has to development, to facilitate development in alignment with the existing bylaws of the Shadow Ridge subdivision which permits multi-family residences on lots 12 and 13. That this endeavor aims to enhance the housing stock within the Town of Westcliffe, hereby accommodating the anticipated expansion of local employment opportunities.

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LUND: So to be clear, the existing bylaws of the PUD allow for multi-family, no?

PATTERSON: No sir, so, here on June 6th, 2006. So it was multifamily before 2006. Mr. Gerald A Seifert (?) of Shadow Ridge Holdings LLC changed lots 7 through 9, and 12 and 13 from multifamily to single-family residences to amend the setbacks for these lots and to amend the setbacks So it was multifamily afford to change it to the single-family and amended setbacks.

LUND: In the bylaws themselves, do they restrict multifamily or just no consideration whatsoever?

PATTERSON: It had in the bylaws there. There again there was multifamily and an amendment came up on 2006 to disclose those from multi-family to single-family. So they have the sense been changed and approved by the town.

LUND: And no other lots are...

PATTERSON: No other lots in Shadow Ridge.

WENKE: You said in your testimony that when you purchased the property you were led to believe by the realtor and title company that it could be ...

OSHMANN: Title company and the city clerk.

WENKE: The city clerk here?

PATTERSON: County clerk,

WENKE: County clerk or the city clerk?

OSHMANN: County Clerk. Sorry, county clerk. That was an interpreter error, the County Clerk of Custer.

WENKE: Well, this is the town of Westcliffe, and the county doesn't have anything to do with this. And so they've obviously been zoned single-family since 2006, correct?

PATTERSON: Yes, Sir.

WENKE: So if you were misled, Sir, it was by the county.

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PATTERSON: Or by the title company.

WENKE: Or by the title company either one.

OSHMAN: Don't want to jump to conclusions and say misled. Everyone said that this appeared to be the current CCR and that was the available information at the time. I believe even in the town obligations to go to official business order for Custer County. You're obligated to go for Custer County to file all of the business agreements and statements for the public in Custer County as well. Is that correct? Including Westcliffe and their businesses.

LUND: Kathy.

REIS: So that should have been recorded at the county when that was done.

OSHMAN: Agreed.

LUND: But in 2006 it should have been recorded OK, correct?

(INAUDIBLE)

(CROSSTALK)

OSHMAN: Yes, Sir. Anything with CCR should be recorded in the county. If there was an agreement that this town was going to change that it should have been recorded at the county level, and the county did give me the updated CCR. And that is what the paperwork clearly said: multi-family.

MARK MIDDENDORF: I got a question from the. I have three questions now. First question is when did when did you purchase these properties, Travis?

REIS: Can you ask him to state his name for the record?

MIDDENDORF: Yes, my name is Mark Middendorf. Middendorf. OK, the.

INTERPRETER: First question is when did you purchase?

OSHMAN: I think the first three properties I bought around August and the second -- the other properties were somewhere around November of 2023.

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MIDDENDORF: Two other questions, in 2006 when there was and these properties were rezoned from multi-family to single-family was a public hearing held?

SPEAKER: Yes.

MIDDENDORF: And what was the reasoning to rezone those at the time? Caleb gave us some reasoning for this rezoning. I'm curious what were, what were the, what was the reasoning at that time?

LUND: It would have been, if I, if I understood what Caleb was saying earlier, the developer of the PUD made those changes or requested those changes. I don't know if there was a reasoning given behind that other than maybe just speculation here, but it might have just been a bit more financially solvent for him.

PATTERSON: Yes, if you could just give me two seconds. I have the minutes up here from that board meeting on March 8th, 2006 and August. Let me let me look in April and March, let me look for those if I can find a reason. Well, but you guys can ...

WENKE: Clay, Can you hear us? Clay?.

BUCHNER: Yes, Mr. Mayor, I can hear you.

WENKE: The gentleman is saying that we should have to abide by the county's ruling, and I explained that this is Westcliffe and not the county. Did you hear that part of the discussion?

BUCHNER: I did, sir. I have to admit, under a little confusion on my part. Is the property located within the town or is it located outside of town?

WENKE: It's in town

BUCHNER: And what I mean, what did the county have to do with zoning town property? They should -- they can't zone town property. So, I don't know what happened exactly.

LUND: I think what the claim is, is they didn't have record of the zoning change. Regardless, I don't think the claim is that they're making the change.

It's just that that was what the record was offered to the gentleman.

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BUCHNER: Oh, what? I mean, OK, so it doesn't really matter, I suppose, regarding who's responsible for the record. We're not, we're not responsible for county records. That said, you know, I think the issue isn't to consider whose fault it is that it's not properly recorded. I think the issue is to determine whether or not you want to adopt and/or deny the application. So I think, you know, this is kind of a red herring.

Regardless of what initially was assumed or understood by the applicant regarding the county records is immaterial to the current status, which is: it's zoned inappropriately for the use that the applicant wants to use it for. And so I would just skip ahead of all this and go toward the application and see if the application and the rezoning makes sense, regardless of whether or not we're bound by, county records or not, which we are not.

WENKE: Thank you.

BUCHNER: Yes, Sir.

WENKE: By the way, that was our town attorney. Sorry,

LUND: No worries. So what I'd like to be clear exactly, what is the request or what is the proposal? I mean, multi-family we're looking at how many units etcetera, etcetera.

OSHMAN: Six units per lot.

LUND: OK, that's fairly high density.

OSHMAN: Excuse me, I don't think it's high density.

PIKE: My name is Nancy Pike. I wanted to know how many lots that he had purchased -- his company or the company. It's also with the company or whatever, how many lots were purchased in Shadow.

OSHMAN: Answer a total of 9.

(CROSSTALK)

PATTERSON: OK, I have the minutes to the board of trustees here, June 6th 2006. It is titled Consideration of Request to amend Shadow Ridge DUD to eliminate the requirements for sidewalks and to change the uses of lots 7 through 9, 12 and 13 from multi-family to single-family residence. Mr. Feldmann said that he supports Yes ma'am. So for you guys, this is the original minutes that describe Mr. Feldmann and Mr. Seifert changing -- this was reported

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to the town through a board of trustees meeting. Changing from multi-family to single-family.

OK. And it says Mr. Feldmann said that he supports Jerry Seifert in his request to remove it off the plat. I think that this could create a nightmare. This is Mr. Feldmann talking. I think that this could create a nightmare in the future of all the homeowners. All the homeowners could decide that they want sidewalks to come to town. If I think if you decide that language should be the homeowner's responsibility. Ms. Geroux went on to ask something else. Paul Snyder, sidewalks. Jerry Seifert said that there's more convening, and I'm going to go skip ahead. Jerry Seifert said that there have been lots sold which he has letters signed from the owner stating that it is OK to change. So this he's talking specifically on the multi -- changing from single-family to multi-family. So Mr. Seifert went to the owners, got letters that says it's all right to change from multi-family to single-family.

Paul Snyder said that just in case, I think it would be OK to do. Ms. Geroux said if we needed to modify the code, we need to have it in there. But modify it to what it truly is. Mr. Purnell asks. Sorry, I'm just kind of, there's a lot of here, so I'm just kind of skipping through. Mr. Purnell asked, does this fall under the same category of those that have already been purchased? Speaking of 12 and 13, Jerry Seifert said this one has already been sold and he would rather it be single-family. Manager Feldmann said that if Jerry could get the letters from the owner stating that it is OK, that it would be good. Paul Snyder said there will have to be an ordinance to amend the ordinance. I talked to Ralph Hayde, and I told him you might want to change the setbacks.

Also, Paul Snyder said the town needs to see the letters that the property owners have been signed off.

LUND: So if I may clarify, Caleb, it sounds like at least a couple or a few of the lots, it was requested by the owners that it be changed, and then they decided to change the rest of them and got the OK from the other owners. Did I get that?

PATTERSON: Yeah, that's, that's roughly the idea.

LUND: OK.

PATTERSON: So if that is the reasoning for your questions.

LUND: The best reasoning I got out of that anyway.

PATTERSON: Sorry, it was paragraphs and paragraphs. I was trying to, yeah.

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LUND: Sure, sure, sure.

OSHMAN: This is Travis. So, one to six the agreement was for the change? Or were they not changed for land use?

PATTERSON: This has nothing to do with 1 through 6. This is 7 through 9 and then 12 and 13.

OSHMAN: Just out of curiosity, is that standard practice for this to come like a change to come to the property code and does that have to be filed with the county?

PATTERSON: So this was recorded through the town board of trustees meeting as a rezoning. So what they did, just to clarify, was got permission from the property owners asked the board, got a vote and it got passed and then it was amended. Kathy?

REIS: And I believe they recorded the change on the map.

PATTERSON: Yes, the change is on the map. You asked about lots 2 through 6. Lots 2 through 6 are still commercial.

OSHMAN: Did they validate with the owners that that was an agreed change?

PATTERSON: Yes, they got letters from the owners for the change. I just read that in the minutes.

OSHMAN: More than 66%.

PATTERSON: More so, at the time, Jerry Seifert was a 67% owner.

It was only owned by a two individuals that he needed the letters from.

WENKE: Paul Snyder mentioned an ordinance. Do we have, do we give a number in the ordinance? In 2006 ...

REIS: It would have had to be done by ordinance because it was on our map.

(INAUDIBLE)

(CROSSTALK)

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OSHMANN: So CCR was not updated or it was?

REIS: We record things at the county, we take them over – the vote was recorded and the map was recorded.

PATTERSON: Yes, this is the official file.

Shadow Ridge PUD 2006 amendment says Mr. Purnell felt he felt -- said he felt comfortable with doing that and getting the letters and that we can pass an ordinance to that effect. The board agreed. I am seeing if I can find the exact ordinance here. This is the end of the page. You might have it in the files somewhere.

WENKE: So you mentioned that in your opening statement, something about rezoning was needed as -- because of a change in the environment or a change in the community. Am I mistaken about that?

OSHMANN: From a legal standpoint, I think there isn't a need to rezone because staying here, I was led to believe that -- hold on, I'm sorry -- that this was a necessary stage for various reasons. It appears that there is information conflicting regarding this phase. And again, I'm not an attorney myself, and so I may be interpreting it incorrectly, but in plain language, that's what it appears: is that there's a discrepancy there. Does that make sense? I don't believe there's a need for rezoning because I believe that we are following the CCR.

LUND: Clay? Any input on this?

INTERPRETER: Could you repeat that please?

LUND: Yes, I asked Clay for input.

BUCHNER: Yeah, so here's the deal with CCRs and 3rd party agreements. The town and county has no obligation and/or is to act as any sort of third party enforcement official between CCRs, HOA bylaws, POA bylaws, community agreements. You know, in fact, if there's a --for as an example, if somebody wants to apply to build a house in the middle of a POA, 40 feet tall and the POA says you can't build houses over 20 feet tall. And it's in plain -- as plain as day, that they would be violating the CCRs if that person applied for a permit building permit from the town, and it otherwise complied, meaning we would allow a 40 foot building, then we could approve the building regardless of what the CCRs say.

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We don't intervene or interject ourselves into private contracts and private issues such as such as an applicant and CCRs. The only, the only way the town would be involved in something like this is if we were a party to like a PUD agreement or development in which we were, we had set boundaries and rules to, you know, that would overlay our regular zoning. So unless there's a PUD that overrides these CCRs, or these are CCRs from a PUD in which we're a party to, then you know, if that's between the applicant and the, you know, the private, you know, whoever is controlling those CCRs.

LUND: Thank you. Any other questions from ...

PATTERSON: Clay, I need to hear you on that.

Could you kind of just said, I apologize, I didn't quite hear you. Well, this is Caleb, by the way.

BUCHNER: Yeah. Caleb, do you need me to repeat the whole thing?

PATTERSON: Just the part after you said like POA and before.

BUCHNER: Well, I mean, the bottom line is unless the town is a party to the CCRs or the or some sort of PUD agreement that encapsulates the CCRs, we don't intervene or interject ourselves into private contracts. And so we're not, we don't enforce nor do we abide by private contracts. If there's an applicant and they apply for, you know, building permit, we don't look at private CCRs to determine whether or not it meets those requirements. We only look at our own zoning wall and building walls, OK.

LUND: And I assume then that we are not a party to the -- this particular CCR or any for that matter?

BUCHNER: Well, I haven't seen, I haven't seen the agreement. So I, I'm, I'm not sure, I would assume that's in the packet, which I'm, you know, pulling up right now and trying to look at.

LUND: OK, one moment, Clay. That's debatable. How?

BUCHNER: Excuse me, say that again. I'm sorry.

LUND: Requesting a clarification from the applicant, he said it was debatable.

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OSHMANN: Regardless of whether the town is a party or not, I believe it's debatable because that is how this town facilitates information between the PUD, the original plans, and the modifications. So I -- that's why I say it is debatable.

LUND: Well you didn't seek information from the town. He sought information from the county in my -- is that incorrect?

OSHMANN: I collected the information from various places.

LUND: Including the town.

PATTERSON: If I may add.

OSHMANN: The broker, the clerk, the title company, and I'm sure that this is -- that you guys are -- have ability to deliver accurate information.

REIS: So we do have the recorded plat correct with those changes.

PATTERSON: Yes.

REIS: That was recorded at the county, correct?

PATTERSON: Correct.

I wanted to speak to that -- the declaration covenants conditions and restrictions of Shadow Ridge subdivision reported 25th of January, 2005 records of Custer County, Colorado Clerk and Recorder with respect to real property situate in Custer County Colorado so that the top of what this document I have here does state it was recorded with Custer County.

LUND: Ma'am, interpreter, sorry if you can speak up to.

INTERPRETER: Are you having a hard time hearing me? Yeah. OK. Thank you.

SPEAKER: You said that was recorded in 2005.

PATTERSON: January 25th, 2005.

LUND: But the meeting was in 2006.

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PATTERSON: Yeah, I do understand that. And that's kind of yeah, that's confusing. And even here it says lots 7 through 9 which were hard to be of the following uses single-family dwellings and then you and then 2006 they moved from multi-family to single-family.

So I don't know why that's inconsistent. I do see here.

SPEAKER: That's a county record, right?

PATTERSON: Yeah, that's a county record. It's not.

VAN DOREN: It's not the town.

PATTERSON: Well, it's ...

VAN DOREN: Is it the town's record that they recorded?

LUND: Does the applicant have copies of the title work showing the claim?

OSHMAN: Not with me right now, but I do yes.

LUND: What title company was used?

OSHMAN: I don't remember the name offhand.

LUND: Local?

OSHMAN: I'm not sure, it was a long time ago or a while ago.

Are you asking ...

LUND: You need to state your name.

MIDDENDORF: Mark Middendorf. Are you asking whether his title reflects that these properties are still multi family?

LUND: I want to see that the title reflect reflects the claims. Yes if if the title indicates that they are multi family. What is the point of this effort he were put in to have him? Where do you sow? I understand we're trying to learn that, Sir.

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OSHMANN: Agreed, I feel like this meeting shouldn't have never happened. I'm just playing the part. I'm just going through the steps. I feel like I collected the information in advance.

LUND: Well, the -- this meeting is happening because there is the other residents of the development are under the impression that nothing is zoned for multi-family in the area. So, there's just a conflict of interests here. So, the idea is to iron everything out.

OSHMANN: Can I disagree with that, because there are conflicting information between the town and the county and it brings us to a place where I think that rezoning happened at -- in the aftermath.

JAGOW: Well, it was originally zoned as multi-family and then in 2006 it was rezoned to single-family housing.

LUND: Yes, and there's no -- it's black and white.

PATTERSON: And if I may, if he's going to make the claim that there's inconsistency and that the proof of the inconsistency should be shown.

JAGOW: I agree and it's not with the town. It would be an inconsistency with the county records, correct? The town records and we don't manage the county records, they don't manage ours.

WENKE: And it would be either the county records or the title. The title company has access to our records, do they not?

PATTERSON: The title company -- yes, yes, to our records.

WENKE: So it's clear in our records at the town that this was rezoned single-family in 2006. We've got that documentation. It was registered. We took our map over to the county and changed it when that happened in 2006, correct?

PATTERSON: Yes, sir, I have the map right here.

WENKE: So if the county didn't adopt it, didn't bother to change it, we can't be held accountable for that? I wouldn't think -- I'm not the chairman, John.

VAN DOREN: I'm looking at it. Chris.

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One thing I haven't heard that we closed the loop and actually passed the ordinance relative to the change in zoning that was requested by Mr. Seifert.

PATTERSON: I do have here an agreement to amend development agreement for Shadow Ridge subdivision, terms of the date on the top here July 12th, 2013 with the date on the top. But that was just whenever they hit it with the stamp. Let me give me a second to answer that sir, that would be appreciated.

LUND: Yes, Sir,.

SHY: Kit Shy. Kit Shy. I read the ordinance and the ordinance essentially directed the developer to prepare a plat that amended the zoning and the setbacks, and that's what was reported at the county, was the plat in 2006. It was supposed to be in compliance with the ordinance, and there's other things in the ordinance as well. It had to do with the sidewalks and those are also on that plat. The sidewalks are mentioned as being removed from the responsibility of the developer. The ordinance as I read it was to direct the developer to create a plat to accomplish the items that they had approved at the meeting. OK, That's my understanding then.

WENKE: Kit, where did you read this ordinance?

SHY: It was in some of the paperwork that I got. We've been doing this for a couple of weeks now, in fact. But the ordinance was recorded.

LUND: Where?

SHY: At the county. Yeah, all the documents are usually recorded at the county because that's how the title company picks them up to make sure that, I mean, you don't record deeds here.

You know, the deeds to the property are recorded at the county. So, there's a little confusion in that.

FULTON: Your deed stays down the zoning and a deed, oh, the deed is really based on the land, correct. It doesn't say whether it's commercial or residential.

SHY: I've never seen a title commitment to guaranteed zoning.

(INAUDIBLE)

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WENKE: We're trying to find that motion.

PATTERSON: I have it here.

OSHMANN: Is that more of like covenants or CCR? The general feeling of the community, otherwise known as the values of that community. Reading through that, it looks like that's what the community wants. And I felt like I could fit in or that could fit.

And do you all have any -- the current CCRs right now with you -- the current CCR?

LUND: I don't know that we're discussing the CCR itself because it's not really the town. We don't have a claim over the CCR. We can choose to, I guess respect, respect it, but it's not...

WENKE: Right. But it's not something we enforce.

OSHMANN: But it seems like the CCRs of are the wishes of -- for the multi-family units. And hold on one second for the interpreter. I would like to ask the Commission that they both consider the CCRs desires for multi-family units. You may have different information.

It seems that you do believe that it has been rezoned to single-family units and if that's the case, I would like to ask officially that you respect or regard the unit -- the wishes of CCRs values.

LUND: I will say that -- me personally I have the opposite information. I got a great majority of letters to me opposing, not in favor of multi-family, but we are going to hear from the residents of the area as well.

So, I would agree that if, if the development internally would choose to want it, then I don't think any of us would oppose it. The main thing about the information we have is the greater majority opposes. Chuck?

JAGOW: At the beginning. I'm not sure if it was Caleb who stated it or if the applicant, but it was stated or stated that there's an intent in the area, and I took that to meet Shadow Ridge to change to multi-family. I see that is I haven't seen that.

LUND: Is that correct or do you have any?

PATTERSON: Can you repeat the question, I apologize.

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JAGOW: I think it was when you were talking about the applicant or maybe it was when, when the applicant was talking about it made a statement that the change to multi-family was in accordance -- in line with the direction of which the housing development is going to go or the direction of the community and...

PATTERSON: Well, during the Shadow Ridge meetings, maybe.

JAGOW: I don't think that's been established.

PATTERSON: Yeah, during the Shadow Ridge meetings, maybe, I have here the declaration of 2005 showing you that, that it was single-family and then the amendment at 2006 showing multi-family. I'm still -- we're still looking for the ordinance at this time right now. Yeah, I'm still looking for the actual ordinance, and I might not have it in this document. I could just be looking over it though.

LUND: Well, I think at this point if we could hear from the opposed, anybody?

PIKE: I would like to just...

LUND: OK, I am asking for a representative for the whole group.

SPEAKER: Right here.

REIS: Please ask them to state their name.

LUND: And yes, can I have you state your name and address, please, sir?

FROBEL: My name is Ron Frobelt. 30 Galena Court. Lots 8, 9, 10 and 11. We're directly across from 12 and 13. We were, we were told about this because we were within 200 feet of a proposed zoning change. In fact, everyone here is within 200 feet. In other words, the whole subdivision is affected by this, not just us.

Because if there's a rezoning that sets precedent for other lots or single, you know, multiple lots to be rezoned multi-family or commercial.

LUND: And there are lots in the area that are already commercial, are there not?

FROBEL: Lots 1 through 6. So 1 through 6 are commercial. The rest are single-family developments. Well, it really affects all the properties within the Shadow Ridge subdivision. The application by PACCT Investments -- we find it's not acceptable.

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When we went out to everybody in the subdivision, we actually had a homeowners meeting on the 24th of May, and I think we probably had 95% of the residents that are here, not including people that are out of state, attend that meeting. And no one wants a rezoning to multi-family. This is not just multi-family, it's commercial. It's 12 apartment buildings, all apartment units, 6 in each building, if I'm not mistaken. This is commercial. It's not just a duplex. OK. We don't want commercial properties within Shadow Ridge at all. None of us. The proposed zoning change itself is directly against the low-density single-family housing. This brings in high-density housing apartment complexes, and that can change to larger apartment complexes in the future if this zoning goes through.

Rezoned. 12 and 13 are the smallest lots within the subdivision, or at least two of the smallest spots, within the subdivision, and it contains a drainage structure, open space, very tight, no parking for 12 units. This, by the way, this summary went out to everyone, I think on the board as well. But there's sufficient land available, you know, within Westcliffe, within the county to develop apartment complexes, commercial structure. We don't need it in a single-family residential zoned area.

There's no need for a zoning change at all within the Shadow Ridge development, there's no need. It wasn't shown by the applicant at all.

There's no need for apartments in there. The zoning change is not consistent with the surrounding properties. That's one of the biggest oppositions from all the residents. They're all single-family. It's a quiet development in residential or multi-family apartments, noise, traffic, you name it, it's going to be ...

(INAUDIBLE)

FROBEL: It'll -- any rezoning will affect the, the quality of life, all the residents within there, not just us across from that apartment complex, but everyone in there, traffic, you name it.

So, this request for zoning change comes from an outside commercial -- by PACCT. It's an investment contracting company. It's for profit. You build apartment units, you get rents. It's a commercial entity, doesn't belong in a subdivision. As far as I know, there's more than nine lots owned by either the LLC or by individuals associated with the LLC. So, as far as I know, that's at least 13, the character of the Shadow Ridge community would be changed forever if it's allowed to have apartment complexes of commercial buildings placed within the subdivision itself, and it should not be allowed.

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And I think I speak on behalf of everyone that's in Shadow Ridge and believe me, I think everyone is on board with this.

(INAUDIBLE)

FROBEL: That pretty much sums it up. I mean ...

WENKE: Do you have a signed petition or letters or anything?

FROBEL: Yes, we have a signed petition. How many signatures on there?

PATTERSON: There are 60 people who either signed the petition or sent an e-mail saying they're opposed.

FROBEL: We have at least 60 signed in the petition against this.

OSHMAN: Can you say what percentage that represents? The 60 people? What percentage?

FROBEL: Well that is not only -- this is just the property owners that were here within the subdivision and lot owners that are outside the subdivision that are out of state.

OSHMAN: I would like to make that distinction.

LUND: Yeah, there's what? How many lots, 107 is it?

PATTERSON: Yes.

FROBEL: 107, we will probably have at least 70 percent, 80 percent, at least.

LUND: Just to be clear, we did receive some letters from people that were in favor of change. It wasn't as many but they would do exist.

FROBEL: That would be (INAUDIBLE) who probably wants to put in an apartment complex or large units.

LUND: But I didn't do the research on that.

WENKE: Yes, just one other -- you mentioned it's commercial, and it is commercial, but it's also residential. But the 1 through 6 is zoned commercial.

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FROBEL: Right.

WENKE: Those we changed to multi-family, 1 through 6 zone commercials. It's zoned commercial.

FROBEL: So apartments can go in there. There's a whole string of allowed commercial.

OSHMANN: Would you be OK with that?

FROBEL: Yeah, I wouldn't have a problem with it.

OSHMANN: 30 feet away from where you are.

FROBEL: I have no problem. We have a barn that was built right next to us. Why would I be concerned about apartments?

OSHMANN: But that's a violation of the CCR.

FROBEL: Yeah. No, it's not a violation because 1 through 6 is commercial.

LUND: Well, that's a separate issue.

SPEAKER:

LUND: We're not here to argue the CCR -- to talk about that issue.

MIDDENDORF (?): I would not be in favor of apartments on those commercial properties, personally.

LUND: And I, I don't, as I understand it, the state doesn't regard apartment complexes or living complexes as commercial and they do have the authority on that.

FROBEL: I believe it's over four or five units -- over that is commercial.

PATTERSON: No, it goes under commercial code for building code, but the town can rezone it multi-family -- residential multi-family if they want.

LUND: And Clay, can I get your input on that statement?

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BUCHNER: Yeah, sure. Go ahead. I'm sorry. I'm trying to also communicate with staff while we're doing this. So it's a little difficult, but that's OK. What was the question?

LUND: At what stage or if -- basically living quarters or apartments etcetera, where do we draw the line regarding it being considered a commercial enterprise or not?

BUCHNER: Well, I mean, taken to its logical extreme basically, you know, development of single-family residences can still be considered commercial, if you're, if you're the, if you're the developer, then it's commercial. You're trying to develop single-family residences to sell and make money. So I think what's happening here is we're kind of mixing and matching our own definitions without, you know, clear understanding of what's -- what we're talking about. Just because it's a commercial venture has nothing to do or if it's a possible commercial venture, has nothing to do with its underlying underlying, excuse me, zoning. The the request is for multi-family and you, you know, there's two options you guys have. If you don't think you have enough information, you can pause the application and ask the applicant to supplement with the information necessary.

I think discussion around the CCRs and enforcement of, you know, whatever might or might not be in county records is not only moot, but it's beyond the authority of the Planning Commission or even the town BOT to decide. We can't change county records. All we can do is file them appropriately when we make, when we do our plats etcetera. And we can't intervene or otherwise enforce, you know private party CCRs. So the only determination before the Board now or before the Commission, excuse me, is do you think it's appropriate to rezone it to multi-family? And Caleb has already aptly outlined those, the instances which you could consider a rezone. And so, you need to either decide on based on only the evidence that you have in front of you.

And if you think that the applicant needs to supplement something, you can send the applicant back for -- to supplement it. Or if you think you have enough information, you can make a decision now regarding the zoning and put your, you know, decision to the BOT for, you know, final determination. I'm, I'm unaware of anything else that you would need to do. Go ahead, Caleb.

PATTERSON: Thank you. I apologize. I do want to state for the record on the second day of July, 2013, this is through the town of Westcliffe, this letter says on, on H, on section H, according to the town's records, the board of trustees never subsequently took formal action to execute an amendment to the development agreement or to approve the filing and reporting of the amended plat by Shadow Ridge in October 2006. So never took any formal action on an ordinance for that.

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But I have here the recorded amendments for the plat on Shadow Ridge does clearly state lots 7 through 109 inclusive, single-family, single-family. Now what could have happened, is that the board of trustees never formally took any action to pass it into an ordinance to change it from single-family to multi-family. And the town of Westcliffe just got a plat map from the developer themselves from shy surveyors showing from lot 7 through 109. Yeah, go ahead and pass here 109 inclusive, single family. But here they never took any formal action to approve the filing and recording of the amended plat by Shadow Ridge in October 2006.

LUND: OK. And in 2013, when that statement was recorded, there was no action in and around that.

PATTERSON: Goodness gracious, so much paragraphs. OK, I do see and accepted and agreed to from the Town of Westcliffe here and Jerry Seifert of Shadow Ridge Holdings. But they did go back but -- the trust -- the town so they did in 2006 and they came back in 2003. The town agrees at its expense to take formal action, maybe required by the Board of Trustee. Slow down can.

OSHMAN: Can you slow down.

PATTERSON: Yeah.

OSHMAN: OK, they did what?

PATTERSON: So I see here that the Town did sign and accepted and agreed to -- with the current mayor of that time, Christy Veltrie, and the owner of Shadow Ridge Holdings, LLC. It says here at the last point, number six, the Town agrees at its expense to take whatever formal action may be required by the Board of Trustees to adopt this agreement and to approve the amended plat filed by Shadow Ridge in October 2006.

Shadow Ridge agrees at his expense to report this agreement and the county records once the agreement is formally approved and adopted by the Town, provide a stamped recorded agreement to the Town. So, I guess they went back all the way and at 2006 it was amended by Shadow Ridge to changes from single-family to multi-family but no formal board action was taken until 2013. Hold on, please don't interrupt -- until 2013. But there still is no ordinance.

LUND: I think you got that backwards?

PATTERSON: Backwards.

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LUND: You said in 2006, you said from single-family to multi-family.

PATTERSON: Oh yes, from multi -- in 2006 they change it from multi-family to single-family as in Shadow Ridge, but it was never, there was no formal action on the town.

So they went back in 2013 and basically said what I just said. And number six was, was to take formal action on that. But there's I, I can't find an ordinance in this document, but it does relate on the Shadow Ridge plat. So and and -- to Mr. Osman's defense, you know, there is some inconsistencies with that. And until I find, until we find the ordinance itself.

LUND: Right. So it sounds like there was an agreement to make an ordinance, then there was another agreement to make an ordinance and then...

PATTERSON: Did they follow through?

LUND: We don't know at this point.

PATTERSON: And that's why it's kind of a conundrum.

SPEAKER: It's just a little difficult for me to understand the mayor signing the plat.

PATTERSON: Yeah, I agree.

SPEAKER: Planning Commission Chairman signed the plat, but we don't that's, that's not a formal action to accomplish what's on the plat?

LUND: I think we still need the plat change. Am I incorrect, Clay?

BUCHNER: Yeah. I mean, you guys, it sounds to me like we have some pretty major issues that need to be ironed out here. You know, Caleb, for me and, and for the purposes of this Commission hearing, I think the bottom line, and correct me if I'm wrong, is that currently it's zoned as single-family residential, correct for the Town.

PATTERSON: That's what I would consider as zoning, correct.

BUCHNER: But there are agreements out there that took place arguably a decade ago that at least contemplate a multi-family use. Is that correct?

(CROSSTALK)

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PATTERSON: You know, so if I can clarify, it was switched from multi-family to single-family 2006, but never passed into a motion on 2006. Then in 2013, the town said they would take formal action to adopt this agreement stating that it would be moved from multi-family to single-family. But there is no ordinance on that. That that is that is what I'm saying.

BUCHNER: But but it was but it was actually, but it did actually happen.

PATTERSON: Yeah, it did actually happen on the plat on the 10th day of October, 2006 signed by I don't, I can't really read this. The chair Jess Price, Thank you.

BUCHNER: So, we're back. We're back to where we started. These are single-family residential. The Commission just needs to decide whether or not to accept the zoning application to change it back to multi-family.

PATTERSON: Yes, and I thank you. I apologize. I really want to just to clear the history behind this to get the back straight.

LUND: Right now, I don't understand this claim, but is there a possibility that Seifert wouldn't have needed an ordinance at the time since he had 67 percent, or is that even applicable? I mean, I don't know that that would land today, but a decade ago or two decades ago.

PATTERSON: Yeah, again, as the zoning official when I look at the minutes and again, I didn't want to confuse anybody, but I had to bring some clarity to the subject because as the zoning official if I'm looking at the Shadow Ridge PUD map and it's clearly does state lot 7 through 109 single-family. So again, sorry Clay, but you are right, we are back to the decision on whether to accept it.

WENKE: I've got two questions for the clerk. If we take this to the county, is the plat the only thing we take or do we think the documentation that backs that up in terms of the change?

REIS: They took that, Seifert did, to have that recorded, not the town. And no, we did not have that documentation because all we had was the plat.

WENKE: I want to ask whether or not we, as a town, when we take it to the county, the plat to have it recorded as changed, whether there was other documentation that the ordinances that went with it. The clerk just told me that Jerry Seifert, the owner 67 percent

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of the subdivision took the plat to the county himself to have it recorded. That's -- so I have another question of the applicant.

Did you purchase this property before or after you heard from the trustee? I'm sorry, yes. Did you purchase the property before or after you heard from the title company?

OSHMANN: Before.

WENKE: So you purchased it before you talked to the title company and then you found out ...

OSHMANN: I'm not sure I understand the question. Say it one more time.

WENKE: Did you purchase the property before you talked to the title company or after?

OSHMANN: So I collected information that affected my decision to buy, to decide which lot to purchase. So obviously I spoke to the title company already.

I made the purchase and I was under the understanding that it was a multi-family property.

WENKE: So interpreter, was it - did he say he purchased it after he heard from the title company?

INTERPRETER: Correct.

PATTERSON: Chris.

LUND: Yes.

PATTERSON: If I may, I think we should -- so again, I wanted to clear that up as a zoning official, I see here on the on the map lot 7 through 109 inclusive or single-family. I think it should, you know, we should go back around and just, you know, do we approve this or do we not? So that's what I would ...

LUND: I still would like to hear from the side that is in favor, the residents that are in favor.

But my guess is I think ultimately what I would like to see is more documentation from the applicant, and if we have any other documentation that the town might have that would clarify it any better too.

E. MIDDENDORF: So may I say something?

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LUND: Yes, ma'am.

E. MIDDENDORF: My name is Eva Middendorf, and I'm just wondering if it would be the Commission's recommendation to go against all of these property owners. We all bought with the understanding that these are single-family lots and if this comes down to basically a clerical error between the town and the county, I don't feel that the existing residents be responsible, I mean to take on the responsibility for that because we don't want a multi-family unit in our neighborhood.

It should not be our obligation to go along with this.

LUND: I understand, but I think the town has an obligation as well to what was legally established.

E. MIDDENDORF: Yeah. But all of our lots are -- we were legally told that we were. These were all single-family. When we bought the properties, we were told this is a single-family. This is well established.

LUND: Or were you told that legally, if it was never legally established, I'm not sure we know that answer at this point. That's what we're trying to clarify here. We're not taking sides at this point. We're trying to understand what is this bigger picture. Applicant please, but actually.

OSHMANN: I just wanted to add something just for clarity and I know that people are afraid of where I'm coming from. I prefer not to use the word developer. I'd like to move away from that.

I am a property owner and a home builder, and I am in support of the town's needs. I do own 9 lots. They are technically very small, and I have two personal lots within the community that are very close to 12 and 13 and I intend to build those as my primary residence. I love this town and I come here a lot. It's a beautiful place, and I think that it's been misconceived with the amount of traffic or the change to the neighbors that it would bring. The intent, the intent is not to rezone the other seven lots. That's not going to happen. From my understanding, before I bought the property, they were not multi-family. Only 12 and 13 were.

So those are the two that are in consideration, and the others I have different potentials. I might sell them to another owner. I might build a suite. I haven't decided yet. But to call me an outsider that's trying to disrupt the community is not true. I'm foundationally based

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and the information that I bring is foundationally based and it is for the well-being of Westcliffe community, not just -- I think it's important to hear everyone's perspective, and I don't want to disregard that. I think that Westcliff does need more housing, and I think it could be beneficial to the issues that we currently face. The numbers in growth that's already here, it's already happening and there are people that are trying to come up with creative wins or creative win-win situations.

So 1 through 6, I've seen what they can do with that. There's lots and lots of options. And my hope is that we can change those to multi-families, multi-family units, 1 through 6, and not other units, other lots. And I think that there's an auto shop. There's also different types of uses being used through 1 through 6 and -- hold on one second for the interpreter.

The nature of our location west of the entrance is interesting because as you drive through there you can see the storage center, this disposal business, and I think to myself this place would be better used if there was single housing, multi-family housing, but they're already there. At the same time our community has those businesses as you enter. So I understand the trade-off where you see the storage facility right there. I know you guys drive by it every day, and there is larger land in town and I think that with the discussion of the views like obstruction of views from the mountain, I don't think that's also an argument because I've done the elevation math and the elevation is differing in different areas. And my plans would not disrupt Mr. Wolf's complaint saying that it would obstruct his view because he is actually higher.

WOLF: Excuse me, I'm Mr. Wolf. I never said it would obstruct my view. I said it would obstruct the view by the residents of Shadow Ridge.

OSHMAN: Oh, I appreciate that. Thank you for the clarification. I agree with you. In my assessment mostly the homeowners nearest the edge are -- have obstructed views, so my recommendation or my application would sort of have very minimal impact on what's already there. Just that fear of obstruction -- obstructing the view doesn't seem like a potential for what I plan to build.

LUND: I have another comment from a member if I can you.

OSHMAN: Can you speak a little louder?

R. FROBE: I'm Rose Frobel. I live directly across the street from where 12 and 13 sits, where the proposed what -- three-story apartment building. So I'm heavily impacted by all of the traffic, the noise, the parking, everything, dark skies. I love sitting out in my yard and looking at the dark skies. I built a little platform. I won't be able to do that because light is going to

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come in. It's just not feasible. I would be really, really stressed. Not because I have something against him personally, just I would be stressed. I would have to move and several other residents are of the same opinion. They would have to move too. When we bought there it was single family. There was never an issue about apartments going right in across the street.

LUND: I understand.

And I think though that we still have to figure out -- somebody was misled is what it sounds like, whether it was the applicant or the rest of the residents, we don't know that at this point. I think that's where we're going to really need to go, is we're going to want more documentation from the applicant showing the title information that seems to be multi-family. Any other documentations you might have that would show that's the case.

OSHMANN: I'm willing to modify as well to fit in with like -- the where it says the 12 parking spaces because that's apparently what the lot dimensions seem to allow, but I would be -- there's a higher potential for -- from what I understand from the city is that that could be reduced to 6 cars per lot, 6 cars per. If it were up to me, there would be no parking required because we live in town limitations and there's a lot of people who want that healthy lifestyle who want to bike to where they want to get to -- the everything's in walking distance. I'm also working on ...

(CROSSTALK)

VAN DOREN: Right now it sounds like the issue is I think that perhaps the applicant was misled because of potential clerical errors. You also have to weigh into the concept that sixty other applicants or sixty other people who own homes over there would have been misled the opposite way.

So there's a really big scale difference.

LUND: Yes. One way or another, we've got -- I see you, ma'am. Hold on. OK. So hold on, ma'am. OK. One way or another, we've got some mopping up to take care of. So. OK.

PIKE: OK. So I'm Nancy Pike. And misled is the word. The covenants were there. We bought - -we wanted single-family. We did not want the apartments coming in. And if you have a breach of a covenant, the parties involved in that contract and if they fail to comply with the promises made in that in that agreement. In simple words, a covenant is a written promise that cannot be violated. And in our particular covenant is perpetuity. That's a law that says that covenant was going to stay into --

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(INAUDIBLE)

PIKE: -- time that I lived there, my survivors live there, People that are coming in and inheriting my house. And if it's going down in value, I'm losing value for my family. The faulting parties have breached the covenant and they're liable to you know, it's not right that they can breach a covenant that we have in my ...

LUND: We have no authority over your covenants. So, yeah, the gentleman on the end there.

REIS: Your name please.

CESAR: Jon Cesar. I'm the first commercial property in that lot. So I right, I just want to provide a few comments first, I'm a little sympathetic to the discrepancy because that happened to us as well.

The CCRs and all that were given to us there was and we had material delivered. And so what did we do, right? We rolled the sleeves and went to every community member-- those that weren't right, we mailed letters to request permission to do what we wanted to do that was not in agreeance with the newly discovered covenants. We got 67% to say we're good with that. Now, but in the spirit of the, because we were tracking, it was a one, it was a, it was a single-family community, right. The other were six commercial lots, but those are bound in terms of what they can be built in there. We ensured we were in compliance with that. But knowing that we were commercial, we wanted to ensure we met the spirit and the intent of the community.

So as we're building, we're building it as you know, marching towards that single-family, you know, multi-use, right? So by residents on top are commercial space down below. So, so like I said, I just wanted to provide, I, I just said mistakes happen. Things don't really recorded. Realtors don't provide all the material. You know, companies don't right there. There's mistakes that do happen. However, I think just as was mentioned right I I think it's imperative to look at the core intent and the vision of what that community was pushing for, and I think we have that record dating back to 2006.

PATTERSON: Yeah, I think we kind of save this for next month. Give time for Mr. Oshman to -- getting paperwork from the title company that states where there's multi-family line and give the town some time to find the ordinance...

LUND: And any other documentation that supports that.

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PATTERSON: Time for town staff to find the ordinance.

MIDDENDORF: So my name is Mark Middendorf. I would like to briefly mention two or three concerns that haven't been brought up yet. I think -- I don't want to say I'm speaking for the whole community, but these are my concerns. And one is that the chances are they will -- this effort will lower our property values. The city of Westcliffe just went through an exercise last year to raise our property taxes. And we had to, we had to push back on that and -- but yet they were still raised. The subdivision has been on a moratorium for sewer and water taps because of issues with the water. The water. Let me finish please, with the water system.

Twelve additional units and we really don't know how many more are going to just put a further load on that system. And third, it has -- no one has spoken to whether or not this is low income intended for low income. We have no assurance that it's not going to be low income. And I hate to be that kind of person, not in my backyard, but we have zoned single-family zoning in place. And there's no good reason to change that.

LUND: Well, we're trying to determine right now, if you really even have it in place. I'm not saying what was the was -- the BOT ever changed?

MIDDENDORF: Caleb, do you consider this a legal document?

PATTERSON: I'm not look, look, I, I, I answered right facts from, from that's all I've been doing is in like stating facts.

OK, so before I answer anything else like I would request and recommend to the Planning Commission that we give time for the correct documentation to be put forward to look for any inconsistencies in that we push this motion or push this agenda to next month, that would be my recommendation.

WENKE: I motion that we table this till next month's meeting. I make a motion that we table this to next month's meeting. We will ask the applicant yes, we'll write do this in writing what you need to provide us and internally we will look for documentation that what was supposed to happen. So we will do that. We will do that research internally.

That's the motion.

VAN DOREN: I second the motion.

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LUND: Any discussion?

OSHMANN: So motion has been made and seconded as stated?

LUND: Motion has been made and seconded as stated. All in favor say aye.

MEMBERS: Aye, aye, aye.

WENKE: let me just add one further thing, please, as this board, we try to hear the residents and your concerns and back to a number of people with (INAUDIBLE). And we are trying to just do our duty of due diligence on this whole matter.

So we understand your concerns. We understand your concerns. Obviously there's a hiccup someplace in the process that happened 20 years ago. We're going to try to figure that out.

LUND: Meeting adjourned.

REIS: Well, we need a motion ...

JAGOW: I make a motion.

VAN DOREN: Second.

LUND: All those in favor?

MEMBERS: Aye, aye, aye.

END

- b. Consideration of recommending rezoning BLK 12 & 13 of Shadow Ridge. Moved to August Planning Commission meeting – August 7, 2024 at 3:00PM.**

ACTION: Mr. **Wenke** moved and Mr. **Van Doren** seconded to approve to table discussion to August's Planning Commission Meeting. Motion carried.

Mr. Jagow moved and Mr. Van Doren seconded to adjourn. Motion carried.

ADJOURN

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Recorded by:

_Melane Rella_____

Deputy Clerk