



LYON COUNTY PLANNING DEPARTMENT

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ITEM # _____

ROBERT G. LOVEBERG
PLANNING DIRECTOR

PLANNING COMMISSION REPORT ON BOARD OF COMMISSIONERS ACTION

PLZ-13-0050 Master Plan Amendment from Resource to Rural Residential and Suburban Residential to Rural Residential

Meeting Date: March 6, 2014

Owners: Comstock Mining, Inc.

Applicant: Same

Area Location: Silver City

Parcel Number(s): (APNs) 08-091-02 & 08-091-05

Current Master Plan Designation: Resource and Suburban Residential

Proposed Master Plan Designation: Rural Residential

Existing Zoning: NR-1, Single-Family Nonrural Residential (6,000 square foot minimum)

Proposed Zoning: RR-3, Third Rural Residential (5 acre minimum), and RR-5, Fifth Rural Residential (20 acre minimum)

Case Planner: Rob Loveberg

Planning Director Approval: RGL

Summary:

At their regular meeting of February 11, 2014, the Planning Commission voted to recommend that the Board of Commissioners take action to begin the preparation of a community plan for Silver City as soon as possible. The Commission's action also expressed their support for hiring a consultant to help develop the plan.

In reviewing and considering the Board of Commissioners decision, the Planning Commission expressed their feeling that they would have preferred that the Board refer the revised master plan amendment back to the Planning Commission for its consideration and action. The Commission's discussion reflected the members' predominant opinions disagreeing with the Board of Commissioners' decision.

However, the Commission concluded that it was in the best interest of the Silver City community and applicant that the Planning Commission promote the timely preparation of a community plan. The Commission expressed their opinion that a community plan would provide the County with a solid foundation on which to base future planning decisions regarding the applicant and Silver City as a whole.

Please refer to the enclosed excerpt from the February 11, 2014, Planning Commission meeting draft minutes for expanded information on the Planning Commission's discussion and recommendations.

The Board of Commissioners is not required to take any action regarding the Planning Commission's report on this matter. It is appropriate, at a minimum, that the Board pass a motion acknowledging the receipt of the report. If a County Commissioner desires to have the Board take some other or additional action, a Board member must request that the matter be placed on the Board's agenda for consideration.

Planning Commission Action on Board of Commissioner's Referral:

The Planning Commission took action to pass a motion "that a recommendation be forwarded to the Board of Commissioners, in response to the decision made by them regarding the Master Plan Amendment for Comstock Mining, Inc., that the community plan for Silver City be commenced as expeditiously as possible and if that requires the county to hire a consultant to develop the plan then so be it." Additionally, the motion expressed the Commission's view "that development of a community plan will provide the County with a solid foundation on which to base all future planning applications from this property owner and Silver City as a whole."

The Planning Commission's motion passed on a unanimous vote of those members present: (5 ayes, 0 nay, and 2 absent).

Alternative Actions for Consideration by the Board of Commissioners:

No Action:

Neither the Nevada Revised Statutes nor Lyon County Code require that the Board of Commissioners take action on a report submitted by the Planning Commission regarding the Board's action to modify the Planning Commission's denial of a master plan amendment. The Board of Commissioners previous action to approve the master plan amendment is final and the Master Plan is amended.

Acknowledgement of Receipt:

If a County Commissioner desires to have the Board acknowledge receipt of the Planning Commission's report, a Board member must propose a motion to that effect.

Other:

If a County Commissioner desires to have the Board consider some other action such as direction to move forward with a community plan effort, a Board member must request that the matter be placed on a future Board agenda.

Original Request:

The applicant requested a master plan amendment from Resource to Rural Residential on approximately 12.29 acres outside of the Silver City town site and an amendment from Suburban Residential to Rural Residential on approximately 42.57 acres within the Silver City town site.

A zone change from NR-1, Single-Family Nonrural Residential (6,000 square foot minimum) to RR-3, Third Rural Residential District (5 acre minimum), and to RR-5, Fifth Rural Residential (20 acres minimum), was submitted concurrently with the request. A request for a reversion to acreage involving property included in the requested master plan amendment and zone change was also submitted concurrently and was heard and approved by the Planning Commission.

Board of Commissioners Action of January 2, 2014:

The Board of Commissioners took action to **approve** a revised version of the requested Master Plan Amendments from Resource to Rural Residential and from Suburban Residential to Rural Residential. The motion and findings are as follows:

A motion to approve the Master Plan Amendments from Resource to Rural Residential on approximately 12.29 acres and from Suburban Residential to Rural Residential on approximately 42.57 acres for Comstock Mining, Incorporated as set forth in the written and graphic information contained in the revised Master Plan Amendment application and supporting documents received by Lyon County planning department on October 18, 2013 (APNs 08-091-02 and 08-091-05)(PLZ-13-0050). Excluding, without prejudice, eight of the nine previously approved on October 18, 2013 reversion to acreage application for Silver City town sites APN 08-091-05 and 08-091-02. Town sites to be excluded are 101, 102, 103, 104, 133, 277, 278 and 279, a total of approximately 13.72 acres and an additional 1.77 acres from the north end of parcel 08-091-05 known as the "Marble Lode". As depicted on the revised map presented this day January 2, 2014. To hereby be made part of the record and to include findings A through I as follows:

- A. The applicant has demonstrated that the amendment is in substantial compliance with and promotes the Master Plan goals, objectives and actions in that it is in keeping with applicable guiding principle, goals, policies and strategies.*
- B. The proposed amendment is compatible with the actual and planned adjacent land uses, and reflects a logical change in land uses in that the amendment would decrease the intensity of residential development.*
- C. The proposed amendment has demonstrated in response to changed conditions or further studies that have occurred since the Master Plan was adopted by the Board, and the requested amendment represents a more desirable utilization of land.*
- D. The proposed amendment will not adversely affect the implementation of the Master Plan goals, objectives and actions and will not adversely impact the public health, safety or welfare.*

- E. The proposed amendment will promote the desired pattern for the orderly physical growth of the County, maintains relatively compact development patterns, and guides development of the County based on the least amount of natural resource impairment and the efficient expenditure of funds for public services.*
- F. The proposed amendment is compatible with the surrounding area, and the goals and policies of the Comprehensive Master Plan.*
- G. The proposed amendment will have no major negative impacts on transportation services, and facilities.*
- H. The proposed amendment will have minimal effect on service provision, including adequacy or availability of facilities and services, and is compatible with existing and planned service provision.*
- I. Strict adherence to the Comprehensive Master Plan would result in a situation neither intended nor in keeping with key elements and policies of the plan.*

The Board of Commissioners' motion to approve the requested master plan amendment, based on the above findings, passed by a majority vote of 4 ayes, and 1 nay.

Planning Commission Action of December 10, 2014:

The Planning Commission passed a motion to deny the requests for master plan amendments on a vote of five (5) ayes, one (1) nay and one (1) absent. The motion was based on the findings listed below.

- A. The proposed amendment is not in substantial compliance with, nor promotes the Master Plan goals, objectives and actions in that it is not in keeping with the majority of applicable guiding principles, goals, policies, strategies and community description contained in the 2010 Lyon County Comprehensive Master Plan, County-wide Component.*
- B. The proposed amendment would result in land uses which are incompatible with the actual and planned adjacent land uses, and does not reflect a logical change in land use in that the amendment would change the planned character and intensity of residential development and enables the potential development of a land use incompatible with the actual and planned adjacent and predominant residential land uses.*
- C. The proposed amendment fails to identify or respond to changed conditions or further studies that have occurred since the Master Plan was adopted by the Board, and the requested amendment does not represent a more desirable utilization of land.*
- D. The proposed amendment will adversely affect the implementation of the Master Plan goals, objectives and actions, and will adversely impact the public health, safety or welfare.*
- E. The proposed amendment does not promote the desired pattern for the orderly physical growth of the County as set forth for the Silver City community in the 2010 Lyon County Comprehensive Master Plan, County-wide Component.*

- F. The existing Comprehensive Master Plan and/or any related element thereof is not in need of the proposed amendment.*
- G. The proposed amendment is not compatible with the surrounding area, and the goals and policies of the Comprehensive Master Plan, particularly those related to Silver City.*
- H. The proposed amendment will have effects on service provision, including adequacy or availability of facilities and services, and is not compatible with existing and planned service provision.*
- I. Deviation from the strict adherence to the Comprehensive Master Plan would result in a situation neither intended nor in keeping with other key elements and policies of the Plan.*
- J. The proposed Plan amendment will not promote the public welfare and will be inconsistent with the goals and policies of the Comprehensive Master Plan and the elements thereof.*
- K. The burden of proof has not been met by the applicant in their application to warrant a change in the Master Plan at this time.*

Background:

Requirements for Planning Commission Report on a Master Plan Amendment:

Chapter 10.12.09 (G)(4) of the Lyon County Code requires that:

- 4. If the board approval proposes to modify the amendment, as recommended by the commission, it shall refer the proposed modifications to the commission for its consideration.*
 - a. The commission shall be required to hold one public hearing on the modification and notice this hearing pursuant to this subsection.*
 - b. The commission shall submit a report on the proposed modification back to the board within ninety (90) days from the date of referral by the board.*

Attachments:

Draft Minutes for Agenda Item # 2 of the February 11, 2014, Lyon County Planning Commission meeting

**Excerpt from Draft Lyon County Planning Commission Minutes
For
Planning Commission Meeting of February 11, 2014**

2. BOARD OF COMMISSIONERS' REFERRAL OF COMSTOCK MINING, INC. MASTER PLAN AMENDMENT ACTION FOR REPORT (FOR POSSIBLE ACTION)

– Consideration of the Board of Commissioners' action to approve a Master Plan Amendment previously denied by the Planning Commission and report back to the Board of Commissioners in accordance with NRS 278.220 and LCC 10.12.09(G)(4) in the matter of a request to amend the Master Plan from Resource land use designation and Suburban Residential land use designation to Resource land use designation on approximately 32.34 acres and Rural Residential land use designation on approximately 54.86 acres of a 94.27 total acre parcel; located off of Highway 341, Silver City (a portion of APN 08-091-05 & 08-091-02) PLZ-13-0050

Rob Loveberg, Planning Director, explained that with this referral the Planning Commission has the opportunity to make a report back to the Board of Commissioners regarding their action being different from the Planning Commission action on the Master Plan Amendment. He said they have a few options such as choosing to do nothing; a report that states their agreement with the Board of Commissioners action; a report in disagreement with the Board of Commissioners action; or make a recommendation for some other type of action. Mr. Loveberg said that a motion one way or another, stating their decision, must be made at the end of this discussion.

Chuck Davies provided the commission a copy of some decision notes he had made for consideration. He proceeded to read the notes and offered an explanation.

Larry Wahrenbrock stated that, in his opinion, the application was substantially modified at the time of the Board of Commissioners hearing and their action was taken based on new information presented to them at the last minute and prior to the information being made available to the Planning Commission or the public. Mr. Wahrenbrock said he would like the new information clarified and the approved changes made available.

Commissioner Bob Hastings said the decision to approve the application was made based on a reduction in area being proposed for revision with no changes being made to the application and secondly they had consulted with the District Attorney to ensure their actions were appropriate.

Rob Loveberg reminded the Planning Commission that the Board of Commissioners is in no way obligated to refer the matter back to the Planning Commission. The report function is an opportunity for the Planning Commission to comment on the Board of Commissioner's decision when it differs from the Planning Commission decision. He clarified that it was the decision of the District Attorney that the amount of land being considered in the revised materials was less than that being agendized therefore was within the statute of the open meeting law notification requirements.

Rob Loveberg, Planning Director, gave a visual presentation of the application revisions. A lengthy discussion accompanied the presentation. Larry Wahrenbrock stated that his understanding was that the portion of land removed from the submittal was in part to reduce the impact on the viewshed and he doesn't see where that was actually accomplished. Discussion continued.

Betty Retzer said that she was initially confused as to how to vote on the application at the time and that she does understand both sides of the issue. She wishes they could go back and have the opportunity to review and discuss both sides of the issue and come to a reasonable solution that works for everyone.

Chuck Davies said he thought the best way for the applicant to accomplish what they wanted was to do a community plan first and it was his initial understanding that that was what they had planned to do. He said there is an obvious difference of opinion on the issues and feels that the applicant and the county should pursue the process of a community plan for Silver City, with mining being a part of that process, prior to any future applications being submitted. He added that, in his opinion, there are areas in Silver City that could possibly support mining but that the residential area selected is possibly not the best location.

Larry Wahrenbrock asked if it was an appropriate action for the Planning Commission to take to request the Board of Commissioners "hit the reset button" on their action. Mr. Loveberg said you can recommend, in your report, whatever you feel is their best course of action, but he feels it unlikely that what they request will occur although he has not discussed that possibility with anyone yet. Mr. Loveberg informed the Planning Commission that the county has recently been served and is now named in a suit regarding the action that was taken.

Discussion followed regarding how development of a community plan could benefit the community and the applicant. Larry Wahrenbrock asked if the County's official Master Plan is in jeopardy as a result of the decision made by the Board of Commissioners to modify that plan without specifically stating their grounds for that decision. Mr. Wahrenbrock was told that findings were made by the Board of Commissioners and that one decision does not jeopardize the entire Master Plan especially when this decision only affected specific parcels of land.

Chuck Davies offered his recommendations regarding their referral to the Board of Commissioners. Mike Hardcastle said he is not offended that the Board overturned their recommendation as that is just part of a process. He feels that asking everyone to participate in a community planning process makes sense but asking the board to rescind their decision is not a reasonable nor is it a useful request. Commissioner Hastings said that encouraging a community plan is a good idea and that that was something he was hoping for. He feels that with the action that was taken, both sides will be forced to the table for discussion.

Discussion followed regarding how their letter of referral should be worded. Each member offered their thoughts.

Chuck Davies stated there is an obvious difference of opinion here however we, the Planning Commission, encourage the county to ensure that a community plan is accomplished before any further action is taken in Silver City.

Betty Retzer said the fact that the two commissions could not come to an agreement speaks loudly to the whole process. The townspeople and Comstock Mining didn't have opportunity to come to an agreement just as the commissions couldn't. She said it was unfortunate that the Planning Commission did not have the same information presented to them on which to act, when the Board of Commissioners had the opportunity to review and act on different information. Ms. Retzer feels that what is done is done so

we should move forward from here to work towards a suitable goal for the Silver City community as a whole.

Elton Buckley, NCS Institute, asked for clarification of what has transpired in regards to this application and if there has been a timeline presented by the applicant for progress on their project. Discussion followed.

Larry Wahrenbrock said we need language that expresses their concern for the Commissioners' decision and it is the desire of the Planning Commission for them to expedite commencement of the community plan process for Silver City. He added that the development of the community plans has always been a priority of the Planning Commission.

Chuck Davies agreed but acknowledged that there is not enough staff to accomplish that. He said it is in the county's best interest to develop the community plan before any further decisions are made regarding the Silver City area.

Rob Loveberg said the Planning Commission can recommend that the board make this a priority, offering them a recommended way of doing that or a timeframe and stressing to them that this is extremely important to consider right now, given the current situation.

Betty Retzer made a motion that a recommendation be forwarded to the Board of Commissioners, in response to the decision made by them regarding the Master Plan Amendment for Comstock Mining, Inc., that the community plan for Silver City be commenced as expeditiously as possible and if that requires the county to hire a consultant to develop the plan then so be it. Harold Ritter added that development of a community plan will provide the county with a solid foundation on which to base all future planning applications from this property owner and Silver City as a whole.

It was determined that a letter containing the recommendation of the Planning Commission will be drafted and a copy of the letter be forwarded to the members for review prior to the item being forwarded to the Board of Commissioners.

Larry Wahrenbrock seconded and the motion passed by a unanimous vote of those members present: (5 ayes; 0 nays; 2 absent-Paul Lanning & George Mortensen)