

Affidavit
Town Planning Commissioner Bill Hudson
Concerns about the Approval Process at the Town Planning Commission, regarding the proposed
River Rock Estates subdivision, Preliminary Plan

The Town of Pagosa Springs was incorporated in 1891 to serve the social and economic needs of the families living within its political limits. For at least the past couple of decades, the appointed volunteers serving on the Town Planning Commission have been asked to review proposed new subdivisions and make recommendations to the Town Council regarding, in each case, one primary concern:

Does the proposed subdivision plan align with the Town's adopted and approved Land Use and Development Code?

The LUDC has been amended, from time to time over the past couple of decades, to reflect the goals defined by the Town's Comprehensive Plan, and by other plans adopted by the Town Council.

The final decision, about whether a proposed subdivision aligns with the adopted LUDC, is made by the Town Council, and the Council is required to make its decisions with reference to Section 1.4.2 of that same adopted Land Use Code. (My emphasis added.)

1.4.2. COMPLIANCE REQUIRED

*A. No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with **all of the applicable regulations established by this Land Use Code.***

*B. No lot of record that did not exist on the effective date of this Land Use Code shall be created, by subdivision or otherwise, that **does not conform to the applicable requirements of this Land Use Code.***

*C. No permit or approval may be issued under this Land Use Code unless all structures and uses of land and structures to be authorized by the permit or approval conform to this Land Use Code, regulations promulgated under this Land Use Code, and the terms and conditions of other applicable permits and approvals issued under this Land Use Code. **A permit or approval issued in violation of this Land Use Code is void.***

A previous Town Council had allowed a previous subdivision, created by developer Jack Searle, to be built in violation of sections 6.6.3, 7.4.1, 7.3.3, and 7.3.4 of the Land Use Code, and the same developer is now coming to the Council requesting that River Rock Estates also be allowed to violate those same LUDC sections.

At two public hearings concerning the proposed River Rock Estates — a Sketch Plan hearing on March 31, and a Preliminary Plan hearing on May 26 — Town Planning Director James Dickhoff, via various comments and explanations, may have led the Planning Commissioners to believe that

a proposed subdivision that met “most” of the LUDC requirements, and that certain other requirements were either moot or hopelessly unclear.

Specifically, Planning Director Dickhoff told the Planning Commission that LUDC section 7.4.1 did not apply to the proposed subdivision, due to complications with the annexation process through which the proposed subdivision had passed, and due to a “lack of clarity” as to the meaning of section 7.4.1.

That section consists of a single sentence.

7.4.1. STREETS - All street rights-of-way shall be dedicated to the public.

Following the March 31 approval of the Sketch Plan by the Planning Commission, Commissioner Hudson met on April 1 with Town Manager Phillips and Planning Director Dickhoff at Town Hall, to discuss Commissioner Hudson’s desire that the proposed subdivision be required to meet ALL the applicable regulations in the LUDC, including 7.4.1, and other sections that appeared to be violated by the Sketch Plan.

Specifically, Commissioner Hudson asked Town Manager Phillips if the members of the Planning Commission had access to the Town Attorney, so that Commissioners could have questions of law clarified. Town Manager Phillips discouraged Commissioner Hudson from contacting the Town Attorney about this particular subdivision approval, and assured Commissioner Hudson that Planning Director Dickhoff would get legal clarification from the Town Attorney, concerning sections 6.6.3, 7.4.1, 7.3.3, and 7.3.4 and any related sections, and that the Attorney’s opinion would be shared with Commissioner Hudson.

That requested legal opinion, if it was ever sought, was never shared with Commissioner Hudson.

Roughly to months later, on May 26, Planning Director Dickhoff presented a proposed River Rock Estates subdivision Preliminary Plan for its required public hearing, and for possible recommendations by the Planning Commission.

Following the May 26 vote to recommend the RRE Preliminary Plan, Commissioner Hudson received emails from two fellow Planning Commissioners, explaining why they voted to approve a plan that, perhaps, did not fully meet the requirements of the LUDC.

Email to Commissioner Hudson from Planning Commission chair Peter Adams, May 28, 2020:

From: builder@frontier.net
Subject: Re: May 26 Planning Commission
Date: May 28, 2020 at 11:57:16 AM MDT
To: Bill Hudson <billhudsonproductions@gmail.com>

Bill, I did not get your previous emails regarding RRE until the morning after the meeting. There is no doubt that we need to review the LUDC and make changes. In the meantime I firmly believe that we as a Commission should have the authority to “waive” certain aspects of the LUDC when appropriate to specific applications and formalize that into the LUDC as soon as possible.

If we proceed according to the "letter of the law" of the LUDC we simply will be overburdened by it. We need this flexibility and the ability to interpret the LUDC.
I will forward your concerns to James.

Email to Bill Hudson from Planning Commissioner Mark Weiler, May 28, 2020:

From: Mark Weiler <weilermark72@gmail.com>
Subject: Re: Reservoir River Ranch
Date: May 28, 2020 at 12:10:43 PM MDT
To: Bill Hudson <billhudsonproductions@gmail.com>

Hi Bill

Thank you for your email.

It is my opinion that the LUDC is a guide for developers to use, but not hard and fast law. We as planning commissioners can review alternatives and agree to changes we feel would enhance the future of our community.

I am not averse to private roads within town, nor am I averse to gated communities in Pagosa Springs future.

Frankly, I would love to live in either development.

Very best regards,

Mark Weiler

It would appear from these emails that some Planning Commissioners are either unaware of section **1.4.2. COMPLIANCE REQUIRED** or else believe it is immaterial to their recommendations to Council.

Below is a transcript of part of the May 26 public hearing, transcribed by Commissioner Hudson from his personal audio recording of the meeting. A copy of that audio recording is available, if Council members wish to double-check the accuracy of the transcription.

At that public hearing, Planning Director James Dickhoff gave a lengthy report — 31 minutes — on various ways that the proposed River Rock Estates subdivision plat was meeting the requirements in the LUDC.

The following discussion took place at the conclusion of his report. Town Council is asked to determine, from the following transcript, whether Planning Director Dickhoff had led the Planning Commission to believe that ALL the applicable requirements of the LUDC had been met by the plan, or alternatively, if Planning Director Dickhoff had implied that certain LUDC requirements could be waived according to the desires of the developer.

In reviewing the following transcript, the Town Council might form the impression that the proposed subdivision fails to align with the Town's Comprehensive Plan, the Town's Downtown Master Plan, and the Town's Smart Growth America plan. What may be even more central to the at issue is whether the Planning Commission felt they could 'waive' certain LUDC requirements and recommend a development that did not meet all of the applicable LUDC requirements.

The Town Council might also wish to determine whether Planning Director Dickhoff appears to be presenting his responses based on legal advice he had obtained from the Town Attorney, or if Director Dickhoff is offering his own opinions.

...Planning Director Dickhoff had finished a 31-minute presentation on the ways the proposed River Rock Estates meets certain LUDC requirements. He continues:

Planning Director Dickhoff: I'm available for comments or questions. I can certainly address... Bill had sent Commissioner Adams a list of things he wanted to ensure that I address, and I can certainly do so, if the Commission is ready for me to do so.

Commissioner Hudson: I'm ready.

Planning Director Dickhoff: Okay. If the Commission will... So... Alright. So, Bill had sent a list of code sections that he was concerned about. So I will review these. So 7.2.1 regards the subdivision regulations which are

“designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the Town by:

“A. Encouraging new subdivision developments to relate to the Town's historic development pattern.

“B. Promoting compact, well-defined, sustainable neighborhoods that enhance the Town's character and are compatible with adjoining lands.

“D. Creating livable neighborhoods that foster a sense of community and reduce dependency on private vehicles.

“E. Encouraging the proper arrangement of streets in relation to the Access Control Plan and to existing or planned streets and ensuring streets facilitate safe, efficient, and pleasant walking, biking and driving.”

Um... let me see, I think there's another section that may... The following sections probably also...

Commissioner Hudson: Can we address those, James? What you just read? Can we address those?

Planning Director Dickhoff: Yes, we can. Sure.

So I think, in general, the easiest way for me to address this is really the process through which this development came to the Town, first through an application for an inclusion into the Sanitation District. Then that consideration prompted the Sanitation District Board to require the application to actually annex their development into the Town, instead of them just being included in the Sanitation District, and developing within the County's jurisdiction.

So that direction was premised on the knowledge that the Town Council had, that this was going to be a ten-lot subdivision on a 15-acre lot.

So I think some of this may be getting... may have got the cart before the horse, but this is the process that it went through, right? So Town Council considered the inclusion into the Sanitation District based on a ten-residential-lot development, and knowing what that development was proposed to be, then directed the applicant to annex into the Town.

Staff processed the application, brought that to the Planning Commission for their recommendation on both the annexation and the zoning of the property, and based on that same knowledge, the Planning Commission did recommend that the Town annex the property. Which the Town Council considered and eventually annexed into the Town.

But all that was under the knowledge that this was a ten-lot development on a 15-acre parcel. Certainly going astray from our current, dense development patterns and the historical development patterns we see in downtown Pagosa Springs.

So I didn't address some of this [LUDC requirements] because... you know, given the route at which we got to this was a little, uh, different than just coming to the Planning Commission and addressing this straight off the bat. So I think, based on that, I'm going to bounce to, um, these next items, which is going to be...

Bill Hudson: I have a quick question, James. When the Planning Commission and the Town approved the annexation, did the Planning Commission and the Town understand that there might be requirements that the subdivision would have to meet, that they had not yet shown the ability to meet?

In other words, did the Town annex the property with an already-approved Preliminary Plan, or did they understand that we were going to have to work out some of these problems, so that it aligned with the Land Use Code?

Planning Director Dickhoff: Their consideration was based on a concept plan. So, yes, it was a concept plan based on ten residential lots.

Bill Hudson: And maybe the Town actually wanted [the developers] to actually align with the Land Use Code — when they got to the final stages? I would assume the Town wanted that.

James Dickhoff: (Long pause.) Well, I think that, as we go through this... I'm not sure. I mean, I think that might be a question for Town Council. So, your consideration this evening is a recommendation for Town Council to consider this preliminary subdivision for approval or denial, at an upcoming meeting.

You know, there's a few things going on, on this lot, that I think... you know, as much as I really wanted to encourage — and I did encourage the applicant to provide more density on this lot, for obvious reasons; it's close to town, it's a walkable distance; we want more density downtown; we don't necessarily want these big luxury lots downtown — we want dense development. We want population downtown.

But on the other side of this, this development is totally in the floodplain. 100% in the floodplain. This property will be flooded, maybe in our lifetime. So, I mean, how much density do you want to

put in the floodplain? I mean, as planners we constantly struggle with this; the pressures from developers wanting to get closer to the water, and the realities of natural disasters eventually happening, and us displacing people out of those homes, causing a lot of insurance claims, FEMA support, et cetera, et cetera.

So as much as I really wanted the density, I kind of backed off on it a little bit, knowing that all of this was in the floodplain, and would eventually be flooded.

So I had to get comfortable with that, because Town Council and the Planning Commission already kind of made a determination that they are supporting this ten-lot subdivision, through their Sanitation inclusion and annexation and zoning approvals.

I'd like to go through the next items if I can. And these kind of apply to what I just said.

(At this point, Planning Director Dickhoff skips over Item 2 of the list — section 6.6.3 — and quotes from section 7.4.1.)

“7.4.1. STREETS - All street rights-of-way shall be dedicated to the public.”

That's kind of a little off topic. But in this instance... one of the pieces of language in the code that isn't quite consistent, because there are also definitions that define 'Private drives' for example. We have historically approved private drives in subdivisions, particularly in townhome situations where there are common property elements. But it's not unusual to have a private drive, not a public right-of-way.

“7.3.3 - B. Lots. - 1. Each lot shall have frontage on a public street right-of-way. No lots shall be created that are narrow or irregularly shaped...”

So, as far as each lot having frontage on a public street right-of-way, I think that is misleading in a sense. I think the private driveway serves the same function in this development, which abuts a public right-of-way, which is Light Plant Road. And it is not reasonable to have ten driveways connect to Light Plant Road. It's reasonable to have two access points and a private drive that then accesses ten residential lots from that private drive.

“7.3.5. SIDEWALKS, WALKWAYS, AND MULTI-USE TRAILS - The developers shall dedicate walkways, sidewalks, and multi-use paths to the Town, or to a duly formed owners' association to the extent they are not within the right-of-way, as recommended by the Planning Commission.”

I've recommended the Planning Commission consider the Town receive the dedication [of a river trail] since, I would say, a majority of the traffic on the River Walk will be non-subdivision residents; it's going to be town residents. Open to the public.

“7.3.4. STREETS - All streets shall comply with the Town of Pagosa Springs Standard Engineering Specifications and Section 6.6, Access and Circulation, and in addition shall comply with the following standards...”

And Bill has highlighted 'B'.

“B. Street design shall be coordinated with the Town's overall transportation system design and transportation systems on adjacent land.”

So in this instance, Bill is probably referring to the South Third Street right-of-way [which abuts the property in question] and the alley. Um, we have considered that. Certainly we have worked with the applicant on this. And what they'd like to propose is what's in the packet, which is that private drive off of Light Plant Road.

It does reduce the amount of infrastructure because Light Plant Road is already existing. And for example, 150 feet to the west, building a 500 foot long road that's literally 150 feet away from Light Plant Road seemed a little bit duplicative. We're all struggling to maintain our public infrastructure, and it didn't seem like that was something we should really push on. We've already got Light Plant Road. Let's use Light Plant Road, with the access to the private drive.

Those are the items Bill wanted me to address with...

Bill Hudson: Actually, James, I think you missed one section.

“6.6.3 ROADWAYS - SECTION B.3

“d. Access. There shall be no less than two (2) street rights-of-way accessing any subdivision to minimize traffic congestion and/or blockage in times of emergency. Additional access points are required for larger developments ...”

It seems to me, if this Land Use Code means anything, it means that there must be “two (2) street rights-of-way”...

...which we've already defined with 7.4.1, as “dedicated to the public.”

And I have no problem with the design being the way it is, so long as there are two street rights-of-way, that are dedicated to the public, as it says in the Land Use Code.

I don't really see what the problem is, here, with following the Land Use Code. Except that the developer wants to NOT follow the Land Use Code.

I just don't get it.

Planning Director Dickhoff: (Long pause.) I think the staff's perception is, the wording is a little odd in this section. The applicants have provided two points of access, to Light Plant Road, so I don't see any challenges with, um, traffic congestion on this subdivision, with those two access points.

Bill Hudson: James, those [access points] are “two street rights-of-way” and we've defined “streets rights-of-way”... “ALL street rights-of-way shall be dedicated to the public.”

It seems really clear to me, and I don't see any problem with the developer dedicating those “street rights-of-way” — that he's required to have — dedicating those to the public.

I don't understand what the problem is?

Planning Director Dickhoff: So that's the summary of my response to the sections that Mr. Hudson wanted me to address. So I give it back to the Planning Commission for any comments or questions of staff, or the applicant.

1.4.2. COMPLIANCE REQUIRED

A. No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with **all of the applicable regulations established by this Land Use Code.**

B. No lot of record that did not exist on the effective date of this Land Use Code shall be created, by subdivision or otherwise, that **does not conform to the applicable requirements of this Land Use Code.**

C. No permit or approval may be issued under this Land Use Code unless all structures and uses of land and structures to be authorized by the permit or approval conform to this Land Use Code, regulations promulgated under this Land Use Code, and the terms and conditions of other applicable permits and approvals issued under this Land Use Code. **A permit or approval issued in violation of this Land Use Code is void.**

7.2.1. These Subdivision Regulations are designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the Town by:

A. Encouraging new subdivision developments to relate to the Town's historic development pattern.

B. Promoting compact, well-defined, sustainable neighborhoods that enhance the Town's character and are compatible with adjoining lands.

...

D. Creating livable neighborhoods that foster a sense of community and reduce dependency on private vehicles.

E. Encouraging the proper arrangement of streets in relation to the Access Control Plan and to existing or planned streets and ensuring streets facilitate safe, efficient, and pleasant walking, biking and driving.

6.6.3 ROADWAYS

SECTION B.3

d. Access. There shall be no less than two (2) street rights-of-way accessing any subdivision to minimize traffic congestion and/or blockage in times of emergency. Additional access points are required for larger developments pursuant to Section 6.6.2.B.

7.4.1. STREETS

All street rights-of-way shall be dedicated to the public.

7.3.3 B. Lots.

1. Each lot shall have frontage on a public street right-of-way. No lots shall be created that are narrow or irregularly shaped, making construction impractical due to the inability to meet the setback and yard requirements.

7.3.5. SIDEWALKS, WALKWAYS, AND MULTI-USE TRAILS

The developers shall dedicate walkways, sidewalks, and multi-use paths to the Town, or to a duly formed owners' association to the extent they are not within the right-of-way, as recommended by the Planning Commission.

7.3.4. STREETS

All streets shall comply with the Town of Pagosa Springs Standard Engineering Specifications and Section 6.6, Access and Circulation, and in addition shall comply with the following standards.

A. Streets shall be designed to avoid undue traffic congestions.

B. Street design shall be coordinated with the Town's overall transportation system design and transportation systems on adjacent land.