



## BOARD SUMMARY REPORT

**Date:** November 5, 2020  
**To:** Board of County Commissioners  
**Through:** Jan Yeckes, Planning Division Manager  
**From:** Kelsea Dombrowski, Planner II  
**Subject:** Hearing Options for 21755 East Smoky Hill Road

### **Direction/Information**

Planning Division staff are requesting direction from the Board of County Commissioners on an appropriate hearing option for two cases at 21755 East Smoky Hill Road (PF20-001 and SDP20-002).

### **Request and Recommendation**

The purpose of this Study Session is to educate the Board of County Commissioners as to hearing options for two related cases at 21755 East Smoky Hill Road and to seek direction and the Board's advice on an option that is the most logical, respectful of the applicant's time, and considerate of citizen comment opportunities.

The hearing options and the general recommendations are included in the Discussion section.

### **Background**

Two cases, a plat to divide the property (PF20-001) and a Specific Development Plan to set a general site plan (SDP20-002), are proposed at 21755 East Smoky Hill Road and are being processed by Public Works and Development. These cases have completed multiple rounds of review and are close to being ready for public hearing. There has been a fair amount of citizen and Home Owners' Association interest in the cases thus far, and there is potential for contentious hearings in regards to the access to, use of, and impact of the developed property.

### **Links to Align Arapahoe**

Service First: The hearing options relate to citizens' ability to provide comment and the applicant's ability to have a reasonable hearing timeline. It is important for the selected hearing procedure to meet both of these needs.

### **Discussion**

Under standard procedure, the plat would be heard only by the Board of County Commissioners, and the Specific Development Plan would be heard only by the Planning Commission; the Specific Development Plan is acting as the second step in a three-step planned unit development,

and under the LDC, the Planning Commission has authority to decide (as opposed to make a recommendation on) the application. However, under the LDC, the Board of County Commissioners has the option to call up the Specific Development Plan for a public hearing and decision by the Board of County Commissioners. The Board hearing, if called up, would still follow the Planning Commission's public hearing on the application. The decision on whether to call up an application can be made up to ten days after the Planning Commission hearing and decision, and can be made whether or not the Planning Commission's decision is appealed to the Board. In the event the BOCC decides to call up the SDP for hearing or, in the event of an appeal, decides to hear the case at the applicant's or neighbors' request, the Planning Commission *and* the Board of County Commissioners would issue an approve/deny decision, but the Board of County Commissioners' decision would be final.

Following the Planning Commission decision, either the applicant or a neighboring property owner who owns property within 200 feet of the proposed development's boundary can appeal the Planning Commission decision to the Board of County Commissioners for a *de novo* hearing and decision on the application.

The Planning Division recommends that the plat be heard first, by the Board of County Commissioners, followed by the Specific Development Plan being heard by the Planning Commission. There was a recent Planning case for which that order was reversed, and neighborhood concerns about the Planning Commission's prior approval of the SDP were raised by the public at the plat hearing before the Board. This resulted in the SDP concerns being conflated with the approval criteria for the plat and caused confusion as to the purpose of the hearing and the decision on the plat application for that development proposal.

Scheduling the plat hearing before the Specific Development Plan hearing would help to demarcate the subdivision process from the site plan, and would give the Board and the applicant a clear discussion on the topic of the subdivision. The Planning Division does not have a specific recommendation as to whether or not the Board of County Commissioners should call up the Specific Development Plan for a hearing at the Board of County Commissioners.

The possible hearing options are listed below. The Planning Division is requesting the Board of County Commissioners direct staff to the most appropriate option.

**“Business as Usual” with No Appeal or Call-Up Resulting:**

1. Plat heard at Board of County Commissioners
2. Specific Development Plan heard at Planning Commission and no appeal or call-up of the application

Pros: Two public hearings and a shorter timeline for the applicant; less use of staff time

Cons: Possible concerns raised at the Planning Commission hearing would not be decided by the Board of County Commissioners; two public hearings at which citizens could share comments rather than three

Note: The Planning Division recommends the plat be heard first, but these hearings may happen in either order.

**Board Waits to See if Planning Commission Decision is Appealed:**

1. Plat heard at Board of County Commissioners
2. Specific Development Plan heard at Planning Commission
3. If a neighboring land owner (within 200 feet) or the applicant appeals the Planning Commission's decision (which must occur within ten days of the hearing), the Board decides if it will hear the case or if the Planning Commission's decision will stand

Pros: The Specific Development Plan can be heard by the Board if a neighbor or the applicant appeals the Planning Commission's decision; citizens may have three public hearings at which to share comments

Cons: Possible concerns raised at the Planning Commission hearing would not be decided by the Board of Commissioners if an eligible appellant does not contest the decision in time; the applicant will be delayed by noticing requirements if the additional hearing date is unknown until after the Planning Commission hearing; the applicant may have three public hearings to prepare for rather than two

**Board Waits to See Whether to Call-up SDP following Planning Commission Hearing:**

1. Plat heard at Board of County Commissioners
2. Specific Development Plan heard at Planning Commission
3. Board makes a decision, within ten days of the Planning Commission hearing, if they will call the Specific Development Plan up for a Board hearing given the level of concern at the Planning Commission hearing

Pros: The Board can decide whether to call up the Specific Development Plan with consideration of the proceedings that occurred at the Planning Commission Hearing; citizens may have three public hearings at which to share comments

Cons: The applicant will be delayed by noticing requirements if the additional hearing date is unknown until after the Planning Commission hearing; the applicant may have three public hearings to prepare for rather than two

**Board Decides in Advance to Call Specific Development Plan up for Hearing and Board Final Decision:**

1. Plat heard at Board of County Commissioners
2. Specific Development Plan heard at Planning Commission
3. Specific Development Plan heard at Board of County Commissioners public hearing; both bodies make a decision on the case with the Board's decision being final
4. **OR** the Board hears the plat and the Specific Development Plan after the Specific Development Plan is at the Planning Commission, putting the plat hearing and the Specific Development Plan hearing on the same day

Pros: The applicant will know the additional hearing date ahead of time, whether or not it is heard the same date as the plat, streamlining the noticing timeline; citizens would have three public hearings at which to share comments

Cons: The applicant will have three public hearings to prepare for rather than two; if the plat and Specific Development Plan hearings are held on the same day, with the Planning Commission hearing on the Specific Development Plan already being held, there may be confusion and unrelated comments that delay and disrupt the subdivision hearing. In the past, the Board of County Commissioners has opted to combine site plan and subdivision public hearings in order to allow comments on both cases at the same time.

There is the potential for disagreement and confusion at the hearings for the cases at 21755 East Smoky Hill Road. Selecting a hearing approach now will provide guidance to staff, the Board, the applicant, and citizens.

**Alternatives**

1. Direct the Planning Division to work with the applicant on one of the four hearing alternatives detailed above.
2. Do not provide direction to the Planning Division on a specific hearing alternative, effectively recommending the ‘Business as Usual’ hearing alternative.

**Fiscal Impact**

The fiscal cost will be greater if there are three hearings instead of two: staff will prepare reports, field citizen comments, and attend an additional hearing; Commissioners and staff from the Attorney’s Office may need to attend an additional hearing as well.

**Concurrence**

Robert Hill from the Attorney’s Office has been involved in the hearing option discussions.

The applicant would be affected by the recommendation: they may have three public hearings, rather than the traditional two, prior to a final decision on their project. Two of these hearings may be able to be noticed simultaneously, saving time and money on noticing requirements. Citizens with public comment would be affected by the recommendation: they would have either two or three public hearings at which to share comments.

**Reviewed By:**

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