

**THE PLANNING & ZONING ADVISORY COMMISSION
FOR THE TOWN OF DEWEY-HUMBOLDT
REGULAR MEETING NOTICE
Thursday, March 7, 2013 6:00 P.M.**

**P&Z MEETING
2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL
DEWEY-HUMBOLDT, ARIZONA**

AGENDA

The issues that come before the Planning & Zoning Advisory Commission are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Commission believes that the meeting be a safe place for people to speak. With this in mind, the Commission asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Agenda items may be taken out of order. Please turn off all cell phones. The Commission meeting may be broadcast via live streaming video on the internet in both audio and visual formats. A quorum of Council may be present. One or more members of the Commission may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

1. Call To Order.

2. Opening Ceremonies.

2.1. Pledge of Allegiance.

3. Roll Call. Commissioners Chris Berry, Bob Bowman, Dee Parker, Jeff Siereveld and Chair Claire Clark.

4. Disclosure of Ex Parte Contacts.

5. Informational Reports. Individual members of the Commission and public may provide brief summaries of current events and activities. These summaries are strictly for the purpose of informing the Commission and public of such events, actions or activities. The Commission will take no discussion, consideration, or action on any such item except that an individual member of the Commission may request an item be placed on a future agenda.

6. Consent Agenda. All matters listed under the Consent Agenda are considered to be routine by the Commission and will be enacted by one motion. Any item may be removed from the Consent Agenda for separate consideration at a Commissioner's request. If a citizen desires separate consideration of an item, he or she should approach a Commissioner prior to the meeting and ask that the Commissioner request that the item be removed.

6.1. Minutes. Minutes from the February 7, 2013 Planning & Zoning Commission Regular Meeting.

7. Discussion Agenda – New Business. Discussion and Possible Action.

7.1. Presentation on Land Protection Tools and Open Space Planning in Yavapai County. Discussion only. Presentation by Colleen Sorensen of Central AZ Land Trust on Land Protection Tools and Open Space Planning in Yavapai County.

7.2. Accessory Dwelling Units. Discussion and Possible Action on accessory dwelling units, secondary medical dwelling units and guest homes.

7.3. Illegal Lot Divisions. Discussion and Possible Action for establishing rules on how to handle illegal lot divisions.

8. Discussion Agenda – Unfinished Business. Discussion and Possible Action on any issue which

was not concluded, was postponed, or was tabled during a prior meeting.

9. **Public Hearing Agenda.** Discussion and Possible Action on matters not previously presented to the Commission.

THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.

10. Comments from the Public. The Commission wishes to hear from Citizens at each meeting. Those wishing to address the Commission need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Commission. Individuals may address the Commission on any issue within its jurisdiction. At the conclusion of Comments from the Public, Commissioners may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Commissioners are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Comments from the Public is **20** minutes. No time limit is imposed on individuals within this total. The audience is asked to please be courteous and silent while others are speaking.

11. Adjourn.

For Your Information:

Next Town Council Work Session: Tuesday, March 12, 2013 at 2:00 p.m.

Next Town Council Meeting: Tuesday, March 19, 2013 at 6:30 p.m.

Next Planning & Zoning Commission Meeting: Thursday, April 4, 2013 at 6:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the ____ day of _____, 2013, at ____ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: _____, Town Clerk's Office.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.

**TOWN OF DEWEY-HUMBOLDT
PLANNING & ZONING ADVISORY COMMISSION
REGULAR MEETING MINUTES
FEBRUARY 7, 2013, 6:00PM**

A REGULAR MEETING OF THE DEWEY-HUMBOLDT PLANNING AND ZONING COMMISSION WAS HELD ON THURSDAY, FEBRUARY 7, 2013, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. CHAIR CLAIRE CLARK PRESIDED.

1. **Call To Order.** The meeting was called to order at 6:00PM.
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.** Made.
3. **Roll Call.** Commissioners Chris Berry, Dee Parker, Jeff Siereveld and Chair Claire Clark were present; Commissioner Bob Bowman was absent.
4. **Disclosure of Ex Parte Contacts.** None.
5. **Informational Reports.** Warren Colvin, Community Development Coordinator, reminded the Commission about the Open Meeting Law training on March 15, 2013 at 1PM in the Council Chambers and asked all to attend. Chair Clark encouraged the Commissioners to attend this important training. Mr. Colvin will send an email reminder to the Commissioners.
6. **Consent Agenda.**
 - 6.1. **Minutes.** Minutes from the January 3, 2013 Planning & Zoning Commission Regular Meeting.

Commissioner Parker made a motion to approve the minutes as presented, seconded by Commissioner Siereveld. The motion passed unanimously.
7. **Discussion Agenda – New Business.** Discussion and Possible Action.
 - 7.1. **Presentation on Land Protection Tools and Open Space Planning in Yavapai County.** Tabled until March meeting.
 - 7.2. **Length of Individual Public Comment.** Mr. Colvin noted that a similar item was presented to Council and they imposed a time limit of 3 minutes per person per topic at Council Meetings. There was discussion on this item. Commissioners Berry and Siereveld both spoke on imposing some length of time limit but noted that there may be instances when the Commission needs to hear more than three minutes, the time limit should be flexible if necessary.

Public comment was taken on this item.

David Nystrom spoke on the Commission setting a time limit but having the option to allow public comment to continue if the information is pertinent and useful.

Chair Clark brought this item up because she wanted to be able to utilize the time limit as a tool, keeping people on topic, if information is useful Commission to allow the speaker more time. Commissioner Berry spoke on the importance of allowing the public to speak if they have something to say, concerned about cutting a topic off at 20 minutes if others want to speak, Commission should vote/agree on extending a person's time limit.

Barry Clark spoke in favor of a five minute time limit per person per subject for a total of

20 minutes; Chair can limit the person to five minutes; if information is related to topic being discussed the Commission can suspend the rules to extend time.

Commissioner Parker suggested when the time limit expires ask the person if they have more to say and if so, Commission votes on extending their time. Commissioner Siereveld spoke on the importance of the public knowing how much time they have to speak and making the time limit reasonable, if a person needs more time notify the Commission.

Commissioner Parker made a motion to limit public comment to three minutes per person, 20 minutes per agenda item, seconded by Commissioner Berry. The motion passed with a 3-1 vote, Siereveld voting against and Bowman absent.

7.3. Robert's Rules of Order. Chair Clark asked for this item to be placed on the agenda and Mr. Colvin distributed the Parliamentary Procedure via email to Commissioners (also in packet). Commissioner Berry stated Robert's Rules of Order are a way of doing business, not law. Chair Clark stated Robert's Rules of Order was created to make meetings flow better, to make sure everyone's voice is heard, including the public, and is a guide to bring awareness to procedures the Commission could use. There was discussion about the various elements of Robert's Rules. Chair Clark stated she would use elements of it as a guide during meetings.

Public comment was taken on this item.

David Nystrom commended Chair Clark for setting expectations for future Planning & Zoning meetings. He reminded the Commission that Robert's Rules of Order is to be used in conjunction with Town Ordinance on conducting meetings.

Chair Clark noted that Mr. Colvin sent out a Council Agenda Action Request Form to use in the future. Mr. Colvin stated the form is a way for Staff to keep record of what needs to go on the agenda. Mr. Colvin also noted there is a website available to download the entire Robert's Rules of Order for free.

8. Discussion Agenda – Unfinished Business. None.

9. Public Hearing Agenda.

9.1. Final Draft of Sign Code. Mr. Colvin stated that he and the Town Manager made the clerical changes necessary from the last meeting, all issues have been addressed. Chair Clark opened the public hearing. There was no public comment.

Commissioner Parker made a motion to send the sign code as written to Town Council for adoption, seconded by Commissioner Siereveld. The motion passed unanimously.

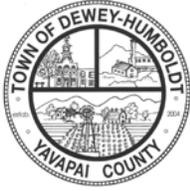
10. Comments from the Public. None.

11. Adjourn. The meeting was adjourned at 6:40PM.

Claire Clark, Chairperson

ATTEST:

Mandi Garfield, Administrative Assistant



TOWN OF DEWEY-HUMBOLDT
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MEETING OF THE TOWN PLANNING & ZONING ADVISORY COMMISSION
March 7, 2013 6:00 p.m. Town Council Meeting Chambers

Agenda Item #7.1

To: Planning & Zoning Advisory Commission

From: Warren Colvin, Community Development Coordinator

Date Submitted: 1/15/2013

Agenda Item: Presentation on Land Protection Tools and Open Space Planning in Yavapai County.

Recommendation: Discussion only. Presentation by Colleen Sorensen of Central AZ Land Trust on Land Protection Tools and Open Space Planning in Yavapai County.

Summary: Mrs. Sorensen has a short presentation that is relevant to P&Z.

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MEETING OF THE TOWN PLANNING & ZONING ADVISORY COMMISSION

March 7, 2013 6:00 p.m. Town Council Meeting Chambers

Agenda Item #7.2

To: Planning & Zoning Advisory Commission
From: Warren Colvin, Community Development Coordinator
For: Chair Claire Clark

Date Submitted: February 26, 2013

Agenda Item: Accessory Dwelling Units

Recommendation: Discussion and possible action on Accessory Dwelling Units, Secondary Medical Dwelling Units and Guest Homes.

Summary: ADU's are allowed in R1L and R1 zoning districts as long as they meet the required setbacks and stay under the maximum lot coverage. The Town's General Plan goals specifically state to maintain low-density, rural small town characteristics. Is allowing an additional full-time occupied dwelling-unit on a parcel in compliance with the General Plan? Although staff believes there should be some provisions to allow an additional dwelling unit, I believe that setting certain criteria based on lot size would be the most effective way to deal with this issue. Staff is open to any recommendations.

Secondary Medical Dwelling Units: The current Town Code only has this term in the definition section of the code. Nowhere in the Code does it say where they can be located. Staff believes that during an earlier code rewrite this was to be taken out of the code entirely but was not removed from the definitions. Staff's recommendation is to remove this definition and not pursue allowing SMDU's as they are almost impossible to enforce.

Guest Homes: After researching with other jurisdictions this seems to be the way most incorporated areas in our county are dealing with any additional dwelling unit. Some allow kitchens and others do not. Guest homes are very difficult to enforce based on time allowed to stay and making sure they do not turn into rental units.

Staff is not ready to make any full recommendations at this time and would like to receive direction from the Planning and Zoning Commission.

Attachments: General Plan Goals; Town Code – Accessory Dwelling Units; Town Code – Guest Homes

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LAND USE ELEMENT

The Town Vision 2028 statement suggests that our community prefers to retain its spacious, uncongested land use pattern. The commitment is to "Preserving Smarter" rather than "Growing Smarter."

This is a place for living. Homes, many on larger lots, represent the predominant land use activity. Jobs, shopping, and other businesses are provided on a small scale for the convenience of Town residents and visitors. Locations have been designated for these enterprises. Land Use Element goals and objectives support Dewey-Humboldt's desire to be different from neighboring communities.

GOAL: Preserve Dewey-Humboldt's low-density, rural small-town character.

Objective: Maintain the spacious residential setting.

Objective: Seek continued cooperation with land management agencies with holdings in and around the community.

Objective: Support privately- or grant-funded historic preservation efforts, such as in "downtown" Humboldt and elsewhere.

GOAL: Emphasize residential living quality.

Objective: Apply criteria to assure that future developments of varying intensity provide trade-offs that contribute to the community's excellence as a place to live.

Objective: Continue to be selective regarding the location, type, and scale of business zoning and use permitting.

Objective: Enhance neighborhoods by coordinating land use with other Elements' goals and objectives.

GOAL: Meet the needs and desires of the present without compromising the ability of future generations to meet their own needs.

Objective: Promote sustainable design for lasting quality in private and public land improvements.

Objective: Designate walkable, multiple activity areas where appropriate.

Objective: Stress the importance of compatibility among adjacent land uses.

Citizens in Dewey-Humboldt share community priorities that aim more at land stewardship than land use. Preferences for preserving open space, a clean environment, and historical resources are considered more important than development growth.

Many Town residents relocated from other places. Of those who have moved to the Town, some eighty percent came from places with populations of 50,000 or greater. For these people, moving to a smaller community was a deliberate choice for a specific way of life.

CUSTOM. Pertaining to work, service or assembly done to order for individual customers for their own use or convenience.

DEAD STORAGE. Goods not in use and not associated with any office, retail or other business use on premises in a self-storage facility or structure.

DECK. An exterior floor system supported on at least two opposing sides by an adjoining structure and/or posts, piers, or other independent supports without a roof.

DETACHED BUILDING. See **BUILDING**.

DIRECTIONAL SIGN. See **SIGN**.

DISTRICT. Refers to either a use district, a density district or a combination of both such districts.

DRIVE-IN RESTAURANT. Any establishment where food or beverages are dispensed through openings in the building or by service to customers in a vehicle.

DRIVE-IN THEATER. An open-air theater where the performance is viewed by all or part of the audience from motor vehicles.

DWELLING. A building containing one dwelling unit with an adequate approved sanitary sewage disposal system.

DWELLING (MULTIPLE). A building containing two or more dwelling units.

DWELLING UNIT. A room (or group of rooms) designed for one or more persons living and cooking as one homogeneous body (see **FAMILY**) and containing one accommodation for preparation of meals. A **DWELLING UNIT** does not include lodging as defined in this chapter.

DWELLING UNIT, ACCESSORY (ADU). A second separate unit that is attached or detached to the primary dwelling that may be used for a separate additional living unit, and may include separate

kitchen, sleeping, and bathroom facilities, on a single family lot. **ADUs** are subordinate in size, location, and appearance to the primary unit.

EDUCATIONAL INSTITUTION. Any institution (including charter schools) established for the purposes of offering instruction acceptable to the educational authorities within the school district of jurisdiction in several branches of learning and study to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through 12 but not including stand-alone business colleges, riding academies or trade, art, music, dancing, nursery or vocational schools. Can include an elementary school, high school, college, university or similar facility.

FAMILY.

(1) An individual, or two or more persons related by blood, marriage or adoption, or other legal relationship including any live-in domestic help, living together as a single housekeeping unit in a dwelling unit; or

(2) A group of not more than eight persons who need not be related but function as a family customarily living together as a single housekeeping unit in a dwelling unit; this includes a residential facility duly licensed by the state for the developmentally disabled, family foster home, adult foster care or similar residential facility.

FARM ANIMALS. Animals other than household pets that shall, where permitted, be permitted to be kept and maintained for commercial production and sale and/or family food production, education or recreation. **FARM ANIMALS** are identified as being, e.g., horses, cattle, sheep, goats, rabbits, chinchillas, chickens, turkeys, pheasants, geese, ducks, pigeons, llamas and alpacas. See also § 153.066(E) and (F).

FENCE. A barrier constructed of materials such as solid wood slats and chain link. Pipe rail and barbed wire are permitted in residential zones, only. If a multi-strand barbed wire fence is used, the bottom

RESIDENTIAL USE. See *USE*.

RESTAURANT. An establishment (other than a boarding house) where meals that may be procured by the public are prepared.

REST HOME. Same as *HOSPITAL*.

ROOMING HOUSE. A dwelling, otherwise permitted in the district in which it is situated, containing five or fewer guestrooms and in which food may or may not be served to the occupants thereof. Any dwelling in which more than five rooms are occupied as guestrooms shall be deemed to be a hotel.

SALES OFFICE, TEMPORARY. Real estate sales facility for on-site sales only within an approved subdivision.

SCHOOL (NURSERY). An institution intended primarily for the daytime care of children of pre-school age. Even though some instruction may be offered in connection with such care, the institution shall not be considered a *SCHOOL* within the meaning of this chapter.

SECONDARY MEDICAL DWELLING. A mobile home (HUD compliant), park trailer or manufactured home with kitchen facilities, used exclusively by an ill, handicapped or elderly person in need of special care or supervision, or a care provider for such a person, if the ill, handicapped or elderly person is the owner or resident of the main dwelling or a relative of the owner or resident of the main dwelling.

SELF-HELP LAUNDRY. See *LAUNDRY*.

SELF-SERVICE STORAGE FACILITIES. Any multi-unit facility designated or used for the purpose of providing individual, compartmentalized and controlled access stalls or lockers for the dead storage of customers' goods and wares as specified in § 153.089.

SIGN. Any identification, description, illustration, symbol or device which is affixed directly

or indirectly upon a building, vehicle, structure or land and which conveys information identifying or directing attention to or advertising a product, place, activity, person, institution or business.

SLEEPING ROOM. A room, other than a guestroom, in which no cooking facilities are provided.

SOLID WASTE. Any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material.

SOLID WASTE LANDFILL. A facility, area of land or excavation in which solid wastes are placed for permanent disposal.

STEEL STORAGE CONTAINER. A steel structure sometimes referred to as a cargo container, which is independent of any trailer or axles, and is commercially produced and designed for the purposes of storage of personal or commercial belongings/products. Does not include tractor-trailers, boxcars, freight containers or commercial trailers.

STORY. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. A basement, the ceiling of which is less than four feet six inches above the natural grade level, shall not be considered a floor. A mezzanine floor shall be considered a *STORY* if it exceeds an area of 40% of the area of the floor next below it.

STREET. A public passageway that affords a principal means of access to abutting property.

STRUCTURE. The result of arranging materials and parts together and attached to a lot (such as buildings, tanks and fences), but not including tents or vehicles.

strand must be of smooth wire, only. Barriers constructed with materials not designed for fencing are not included in this definition of a *FENCE*.

FLOOR AREA. See *BUILDING FLOOR AREA*.

FREIGHT STATION. A facility for loading, unloading and warehousing of freight.

FREIGHT TERMINAL. A facility for loading and unloading of freight for current distribution but not warehousing.

GARAGE (PRIVATE). An accessory building occupied primarily by the passenger motor vehicles of the families residing on the same lot.

GARAGE (PUBLIC). Any building, other than that defined as a private garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

GRADE (ADJACENT NATURAL GROUND ELEVATION). The lowest point of elevation of the natural surface of the ground, within the area between the building and a line five feet from the building.

GROSS VEHICLE WEIGHT (GVW). The sum total of the weight of a vehicle plus the vehicle's maximum load capacity.

GUEST HOME. A secondary structure meeting the applicable zoning district requirements as to construction type not exceeding 750 square feet or 25% of the total square footage of building area under roof whichever is larger of the primary residential structure and meeting primary structure setbacks of the pertinent zoning district. Used to house a nonpaying or nonreimbursing relative or guest on an intermittent basis, with stay not to exceed a total of 120 days over a continuous 12-month period by the same guest or person(s).

GUESTROOM. One or more rooms intended for occupancy overnight (or longer) by other than

members of the family. If it contains cooking facilities it is deemed a dwelling unit.

HOME OCCUPATION. A use within a primary dwelling or in an attached or detached structure carried on by residents thereof for gain, which use is merely incidental to the residential use and does not change the character thereof by display or otherwise.

HOSPITAL. A place for the treatment or care of human ailments, and, unless otherwise specified, the term shall include sanitarium, clinic, maternity home, rest home, convalescent home and similar.

HOTEL. A building other than a boarding house, which building contains more than five guestrooms and where entrance to the sleeping rooms or apartments is from a common entrance or lobby used primarily for lodging on a daily or weekly basis. For density formula purposes, two such guestrooms may be counted as one dwelling unit.

HOTEL (APARTMENT). A building or group of buildings containing a number of independent suites of rooms for dwelling purposes and in which at least one common dining room is provided. For density formula purposes, each two guestrooms may be counted as one dwelling unit.

INSPECTOR. See *CODE ENFORCEMENT OFFICER*.

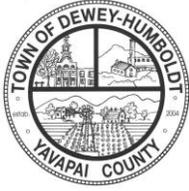
INTERIOR LOT. See *LOT*.

JUNK YARD. See *YARD*.

KENNEL. Any place where seven or more dogs are owned, kept, boarded, bred and/or offered for sale.

KEY LOT. See *LOT*.

KINDERGARTEN. Same as *NURSERY SCHOOL*, except when operated in conjunction with a school of general instruction and having accredited instruction.



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MEETING OF THE TOWN PLANNING & ZONING ADVISORY COMMISSION

March 7, 2013 6:00 p.m. Town Council Meeting Chambers

Agenda Item #7.3

To: Planning & Zoning Advisory Commission
From: Warren Colvin, Community Development Coordinator
For: Chairperson Claire Clark

Date Submitted: February 25, 2013

Agenda Item: Illegal Lot Divisions

Recommendation: Discussion and possible action for establishing rules on how to handle illegal lot divisions.

Summary: After researching this topic, it is not an isolated problem that we in Arizona deal with - it is an issue all over the country. Most jurisdictions find themselves in a policing problem and do not discover an illegal lot division until an application for a building permit is filed. Then the jurisdiction faces the issue of not issuing a permit until the owner of the property has filed the necessary paperwork with the jurisdiction to make the lot comply with the zoning code. This creates a problem for the owners of the property because they did not do proper background on the property prior to purchase and then find themselves in this situation; they did not create the problem and now are forced to rectify it. Staff recommends that the P&Z Commission and staff work to come up with a procedure for handling illegal lot divisions.

Attachment: Illegal Lot Division case

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JANUARY 2003

Illegal lot sale spurs lawsuit

**By JoAn Bjarko
North Forty News**

A Colorado native with dreams of living simply on a piece of rural land is instead living in a nightmare of financial complications because Larimer County says he purchased an illegal lot.

By definition, an illegal lot is less than 35 acres that was split off after 1972 without approval of the county commissioners. Such lots can still be recorded by the clerk and recorder's office. They can be placed on the assessor's tax roles as separate parcels. They cannot, however, get a building permit from the planning department.

That's what Richard Warner, a Buckeye area resident, learned when he went to get a permit to move a mobile home onto his seven-acre parcel purchased in 1999.

That's what Loveland residents Max and Stephanie Bernhardt found when they wanted to build a new home on 20 acres their family had purchased in 1975.

"I could graze a goat," Warner said about his predicament of owning a parcel too small for anything but a homesite.

Unwitting buyers of illegal lots are not that unusual in Larimer County. According to Russell Legg, chief of planning, three or four times a year people come in for building permits only to learn they own an illegal lot.

"The planning department regulates the process of land division, but not how to record and sell lots," Legg explained.

"Anybody can record anything, whether it's legal or not," added planning director Larry Timm.

While the county land use code says it is unlawful to transfer or sell lots not approved by the county commissioners, the county takes no action against those who do, other than sometimes forcing the reunification of illegally split parcels.

As a result, buyers like the Bernhardts and Warner have to work through the county's minor land division process to make their lots legal.

Max Bernhardt said he discovered the problem with his lot when he applied for a well permit. Faced with a "mass of confusion," he said he had no choice but to hire a professional surveyor to handle the land division process with the county.

Warner also needed a professional survey and a lot size variance for his land division. To recover his costs, he has sued the real estate agency and the property sellers. In the meantime, he and his fiancée have been living in a camper on the property for the past 16 months, and that has spurred a neighbor to file a zoning violation complaint.

Because of health problems, Warner said, he no longer has the earning potential he had when he purchased the land three years ago. He has run out of money, he said, and is hoping a favorable court ruling will pay costs of the minor land division in addition to compensating for lost time and opportunities. If he loses the court case, however, he will likely lose the land, he said.

Lawsuit undecided

At press time, Larimer County Court Judge Ronald Schultz had Warner's case under advisement. Shultz has already dismissed the seller, Cheyenne attorney Anthony Ross who represented the estate of his father, Vincent Ross, from the lawsuit. That leaves the real estate agency, Cabin Country, broker William McClelland and agent Scott Jennrich as defendants.

In making his ruling, Schultz said at a Dec. 19 hearing that the Rosses had relied on experts to sell their Colorado land. "The Rosses had no idea how the county would proceed," the judge said.

Attorney Ken Levinson of Denver, representing Cabin Country, contended at the same hearing that the county subdivision laws do not apply to this case because the property was split by a 1911 railroad deed. He said Warner should be angry with the county for not recognizing a railroad deed as legal.

The seller's attorney, Russell Sinnett, added that this railroad deed is more than an easement or a right of way - it transferred the land. The resulting lot should be grandfathered as legal, he said.

"This case starts and ends with the county," Levinson said, adding that the planning department told real estate agent Jennrich prior to the sale that the lot was buildable.

Warner's attorney, Stewart Olive, argued that Cabin Country had a duty to warn his client that the county could have concerns about the lot's legality. He said Warner checked on whether the acreage could be used for a mobile home with a septic system, but he never knew about issues with illegal lots.

"Even if the county is wrong, it does not relieve Cabin Country to disclose the problem," Olive said.

At the same hearing, Warner told the judge he had counted on professionals to handle the real estate transaction. He has since filed complaints with appropriate regulatory commissions, but no one is being held accountable, he said.

"For the defendants to not have to suffer consequences would send a bad message," Warner said. "There is no incentive for people not to sell illegal lots."

After the county denied Warner a building permit, the Ross estate offered to buy back the land and give Warner \$2,000. Warner made a counteroffer that he wanted to keep the land and get \$5,000 to pay for the minor land division. Ross and Cabin Country did not accept the counteroffer, and Warner contends his losses far exceed \$5,000.

Legal vs. usable

Legg said the county planning department is governed by state law that prohibits issuing building permits for lots that have not been legally subdivided. Situations such as bankruptcies and divorce settlements sometimes create the illegal lots, which owners don't discover until they are ready to build.

"A road, river or railroad does not make a lot until it gets county approval," Legg said.

For example, Timm added, if the county accepted roads as ways to create subdivisions someone could build a road to bypass the subdivision review process.

Timm suggested that would-be buyers and sellers need to ask two questions of the planning department: Is the lot legal? Is the lot usable for housing? The latter, he said, refers to issues such as floodplains and engineering constraints.

The problems caused by illegal lots have more to do with real estate law than planning law, Timm contended. The real estate community needs to lobby the state Legislature for solutions, he said.

"The planning department of Larimer County does not enjoy withholding a building permit from a guy who thought he had a legal lot," Legg added.

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