

April 20 in the district conference room at 15850 Holbein Drive. Information: 488-3603 or www.donalawater.org.

org. Meetings are normally held on the third Thursday of the month.

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El Paso Board of County Commissioners, March 2, 14, and 21

Sun Hills Homeowners Association “allowed use” appeal denied

By Helen Walklett

In March, the El Paso Board of County Commissioners (BOCC) denied the appeal by Sun Hills Homeowners Association (HOA) of an administrative determination made by the Planning and Community Development Department concerning the parcel of land at 15000 Sun Hills Drive, which is currently the site of the Donald Wescott Fire Protection District’s (DWFPD) Sun Hills Station 3.

Also during March, the BOCC received an update on wildfires, and the commissioners were asked to help spread the word about mitigation measures.

Sun Hills Station 3

At its March 14 meeting, the BOCC heard arguments for and against the HOA’s appeal of the decision made by the Planning Department in January about the legal status of the parcel of land where the DWFPD’s Sun Hills Station 3 is located. The vote was tied 2-2 (Commissioner Mark Waller was excused). Consequently, the matter was put on the March 21 agenda to allow Waller to cast a deciding vote.

Background: Station 3 was built on a 0.44-acre piece of land sold to the DWFPD in 1981 for \$1 by the then owner of the 5-acre Lot 14 at Sun Hills Estates. The DWFPD stopped using the fire station in late 2011/early 2012, and it has been maintained as a storage facility since then.

In November 2016, the DWFPD Board of Directors voted to put the Sun Hills Station 3 on the market. The DWFPD is in a financial crisis with its revenue being cut by 66 percent in 2019. See www.ocn.me/v17n2.htm#dwfpd.

The following month, George German, the current owner of Lot 14, protested this decision, saying the land for the station should revert to the donor instead of being sold as a residential property on 0.44 acres of land in the Sun Hills HOA where all lots are 5 acres (RR-5).

In response, DWFPD delayed putting the station on the market to allow time for more research. It subsequently went to the Planning and Community Development Department to request a decision on the legal status and allowed uses of the property. The Planning Department determined that there was no condition included in the original approvals from 1981 and 1982 that stated that the property was only to be used as a fire station.

It was this determination, which would allow the parcel of land to go for residential use, that the HOA appealed. It believed that approval would adversely affect the residents of Sun Hills by setting a precedent for residents to seek approval to subdivide their properties into lots smaller than the 5 acres required by the RR-5 zone. Speaking at the March 14 BOCC meeting, David Woody, chairman of the Sun Hills Architectural Control Committee, said “the infrastructure can’t handle it [subdivision of lots] and it would undermine the integrity of the neighborhood.”

Bill Eckert, a Sun Hills resident and a past president of the HOA, also spoke in support of the appeal. He said, “This is not about not wanting to support my heroes in the Wescott Fire Department. This is about community and covenants.” He explained that the lots at Sun Hills are protected by covenants made by the original purchasers that run with the land and that include undivided 5-acre lots and allow only one residence per lot.

Eckert said that as part of Sun Hills’ many decades of support for the Fire Department, in 1981 the owner of Lot 14 agreed to let Wescott have a 0.44-acre piece of the lot to build a fire station. He quoted from the agreement between the Fire Department and the Sun Hills Architectural Control Committee (SHACC), which has covenant authority over all land in Sun Hills. The agreement, which was recorded with the county clerk, stated that Wescott is “hereby granted the right to use the premises so as it is described for the erection and maintenance of a fire station.”

Eckert further said that the then Wescott board chairman signed the agreement that clearly stated, “This modification to the covenants of Sun Hills is intended to extend only to the Board of Directors of the Wescott Fire [Protection] District for the purposes of erecting a fire station on said property.” Eckert ended by saying, “As Wescott is bound by these covenants and we believe it would be both a breach of their contract and a breach of the covenants that apply to them if they put a second

residence on Lot 14, I ask you [the commissioners] not to abet that breach of covenants by allowing such a variance to current county subdivision regulations.”

German, who had protested the DWFPD board’s November decision to sell the property, said “putting a second residence on that property is just wrong. If I were to buy it, I couldn’t meet the covenants of Sun Hills.”

County Project Manager/Planner II Nina Ruiz of the Planning and Community Development Department explained that the Board of Adjustment had approved the dimensional variance relating to the parcel of land in 1981 with the condition that a special use and a subdivision exemption be requested and approved. These were approved by the BOCC in 1982. She said, “The only condition included in those approvals was that a site plan was filed with the department. There were no conditions included saying that the property is to be used only for this purpose or if it’s converted in the future you must do X, Y, and Z.”

Ruiz said that one area of contention is the standard resolution at the time that stated, “Whereas the Donald Wescott Fire Protection District intends to utilize this parcel solely for the location of an emergency facility (fire station).” Ruiz said the department had consulted with the county attorney to see if the standard resolution used at the time could be interpreted as saying that a condition of approval was that the property could only be used for a fire station. The county attorney had determined that that was not the case.

Lori Seago, assistant county attorney, explained to the BOCC the decisions it could review in making its determination this time. She said that, because the BOCC approved the 1982 special use and subdivision exemption, it could look again at those and determine whether the department had correctly interpreted them as saying that they contain nothing that specifically prohibits the parcel of land from being used for anything other than a fire station. Seago was clear that the BOCC does not have the authority to look at the dimensional variance because this was made by the Board of Adjustment.

Seago also advised that, “BOCC does not have the authority to enforce covenants and there is nothing in the Land Development Code that would allow you to consider covenants in your decision. BOCC does not have the authority to even consider whether covenants are being complied with or violated in making its decision.”

Seago added that if the BOCC chose to deny the appeal, that would in no way detract from the property

owners’ ability to initiate a private action in court to enforce those covenants and/or agreement that was signed between the fire district and the HOA at the time that they approved the use of the fire station.

Kelly Duke, attorney for DWFPD, said that she believed the county Planning Department had correctly interpreted the dimensional variance and the special use approval, stating that all the special use approval did was confirm that the parcel, which at the time and still is zoned for residential use, could lawfully be used as a fire station. She said, “They basically layered another use on top of the residential use that didn’t necessarily get rid of the underlying presumptive use, which is residential.”

Duke continued, “The (fire) district is obviously sympathetic to the concerns of the homeowners. Frankly, the district doesn’t know yet what it’s going to do with this property. The property is not going on the market as of now ... but they needed to know what their options are, because frankly a fire station is not being used on this property and hasn’t been for several years.”

Duke stated that she took issue with some of the statements made about the content of the private agreements and covenants. She said that, in fact, the covenants in effect to date do not have any lot restriction sizes. She also said, “The slippery slope argument is also I think misplaced. The district is certainly not arguing everyone should be able to come in and subdivide their lots. That’s certainly not what we’re looking for. We believe that the administrative determination is really confined to the interpretation of an existing variance which has been on



upward
APRIL 16

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