

El Paso Board of County Commissioners, Aug. 2, 9, 16, and 23

Planning Commission changes and additional Tri-Lakes Cares funding approved

By Helen Walklett

During August, the El Paso Board of County Commissioners (BOCC) made decisions relating to the El Paso County Planning Commission, additional funding for Tri-Lakes Cares (TLC), and school district resource officers

County Planning Commission reappointment and bylaw changes approved

At the Aug. 9 BOCC meeting, the commissioners approved the reappointment to the Planning Commission of associate member Commissioner Brandy Merriam. Her term runs until Aug. 2, 2023.

The commissioners voted to approve and adopt amendments to the Planning Commission's bylaws at

their Aug. 23 meeting. The Planning Commission had approved the amendments at its July 21 meeting. The changes mean that a regular member may now apply for reappointment after expiration of their term whether it be their first or second term. Previously, a member had to wait a year after expiration of their second term before being able to reapply.

Tri-Lakes Cares additional funding

During August, the commissioners approved two separate amounts of additional funding totaling \$68,000 for the TLC Community Services Block Grant. This follows a funding allocation of \$30,000 that was approved in June. This latest funding increase enables TLC to extend services through Dec. 31. The funds are to be used only for

housing assistance, including utilities.

School resource officers

At the Aug. 9 BOCC meeting, the commissioners approved an agreement between the county and Academy School District 20 and the county and Lewis-Palmer School District 38 to provide school resource officers for the year to June 30, 2023.

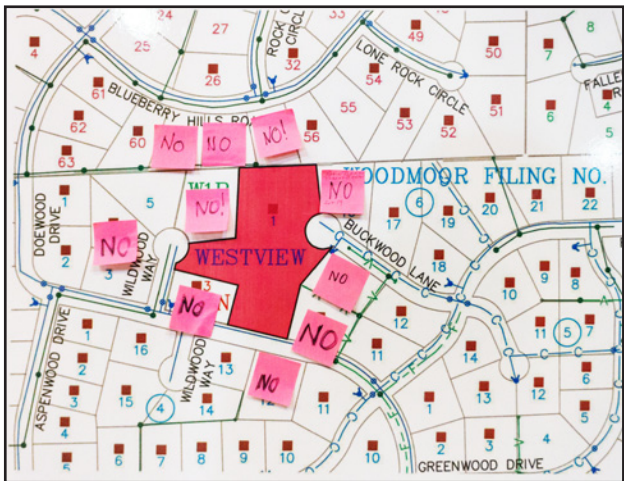
Ambulance permit issued

At the Aug. 23 BOCC meeting, the commissioners approved a permit for one ambulance for the Monument Fire District after the vehicle passed county inspection. The one-year permit runs until July 31, 2023.

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Woodmoor Improvement Association, Aug. 24

Residents bring lawyer to subdivision appeal, hear about D38 MLO



Above: Residents attended the Woodmoor Improvement Association board meeting to appeal an Architectural Control Committee decision to allow the owner of 1 Westview to re-subdivide his lot back to its original four-lot configuration. Ten lot owners marked the location of their property on a plat map in relation to the lot in question and indicated their objection to the decision to allow the re-subdivision. One owner hired a lawyer to argue why this should not be permitted. *Photo by Jackie Burhans.*

By Jackie Burhans

The Woodmoor Improvement Association (WIA) board met on Aug. 24 to hear an appeal of a subdivision decision, listen to a presentation on the upcoming Lewis-Palmer D38 mill levy override (MLO), and consider an offer by WOSC LLC to support signage in the new South Woodmoor Preserve (SWP). A larger than usual crowd of nearly 30 residents attended the board meeting; board Vice President Peter Bille was absent.

Residents' lawyer raises concerns about subdivision

A group of residents attended the meeting to appeal a decision by the WIA Architectural Control Committee (ACC) to allow a replat of one lot into four. ACC Administrator Bob Pearsall reported that the property at 1384 Buckwood Lane is currently platted at one big lot and showed the property with the new setback lines to demonstrate that the ACC's approval did not create illegal lots. The ACC approved restoring the lot lines to what they were in 2010.

Residents representing 10 properties surrounding this lot, designated as 1 Westview, introduced themselves, giving their addresses, expressing their opposition to the ACC's decision, and indicating their property on a map. Paul Danborn, an attorney representing one property owner, spoke on the matter. Two main acts govern homeowners association (HOA) conduct, he said. One is the Colorado Common Interest Ownership Act (CCIOA) which is part of the Colorado Revised Statutes (CRS), and the other is the Colorado Non-Profit Corporation Act (CRS 7-121-101 to 7-137-301).

Because WIA was founded in 1971 and CCIOA was passed in 1992, most of its provisions do not apply. However, the definitions in CCIOA (CRS 38-33.3-103) do apply, and they define the declaration as all documents, however titled or enumerated, including plats and maps. Danborn said he did not believe the ACC or the board had the authority to approve a re-subdivision of a lot that will create three new lots because that would be an amendment to WIA's declaration. An amendment, he noted, requires the approval of 75% of the owners according to WIA's covenants. However, CCIOA section 217 amended that to 67%, he said. Danborn strongly suggested the board consult with its attorney Lenard



Above: At the Aug. 24 meeting of WIA, D38 superintendent KC Somers explained the mill levy override (MLO) ballot issue. *Photo by Jackie Burhans.*

Rioth and table the decision until the board discusses it with him in executive session.

Danborn also said there are fiduciary duties that all board members have to owners that include the duty of loyalty, impartiality, and diligence, according to CRS 7-1-401. Another section of CCIOA, CRS 38-33.3-302(3) (b), applies and specifies that a decision on an "owners' application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth" and "shall not be made arbitrarily or capriciously." Danborn asserted that there are no standards and that the covenants in Article V, Section 4 say lots cannot be subdivided without ACC approval. This change is not a minor lot boundary adjustment but creates three new lots, which will change the membership roster of WIA and its voting structure. The new owner has the right to make the request, but WIA has the right to tell him to get 67% of the owners to approve it. Nothing in the minutes, Danborn said, tell him what arguments or counter-arguments were made. He said the board has difficulty reviewing the ACC's thought process because it's not in the minutes. That is the definition of proceeding without guidelines, standards, and procedures; it is borderline arbitrary and capricious, Danborn concluded.

Board member Ed Miller noted that residents had combined lots for a long time to lower their taxes and dues. They later re-subdivide the lots and sell them; however, they must pay all back dues with interest. Board member Brad Gleason asked if the lawyer was saying the board should never have allowed the dissolution of plot lines; Danborn agreed that it should not have without amending the declaration with the members' approval. WIA Board President Brian Bush asked if Danborn agreed that the El Paso Board of County Commissioners had the ultimate authority. Danborn replied that their approval is necessary, but the land use development code says they must comply with the HOA covenants, conditions, and restrictions. Gleason asked if Danborn agreed the board's job is to look after the best interest of the entire community and wondered how this appeal helped all Woodmoor rather than just the owners of adjacent lots. Danborn reiterated that it was necessary to use standards, procedures, and guidelines and urged the board again to seek legal counsel. Finally, Bush said the board would take this under advisement, consult with Rioth, and table any decision on the appeal.

D38 mill levy presentation

School District 38 Superintendent KC Somers presented the upcoming MLO ballot issue that the D38 school board unanimously voted for at its last board meeting. He noted that D38 is proud to partner with WIA and had started school the previous Tuesday, serving 6,500 students. It was a great start, he said, noting that the district

has done well despite the challenges of COVID, and it was looking forward to excellent learning on behalf of all our kids.

Somers said the MLO would "solely and expressly" be used for compensation for teachers and non-administrative staff, who are significantly behind their El Paso and Douglas County peers. D38 is at least 10% behind in compensation across the board. This gap has led to significant turnover and instability in attracting and retaining the best. The district has hired 87 new teachers and 50 support staff but still has unfilled positions, which leads to larger class sizes. D38, he said, is among the lowest-funded districts when you add per pupil revenue (PPR) plus local revenue (MLOs and bonds).

The MLO is a fixed 7.450 mills, which equals \$4.31 per month for each \$100,000 in home value. A \$500,000 home, as assessed by the county, would pay \$260 per year. This would raise about \$4.5 million and raise teacher pay to about the average level. D38 is not looking to be at the top level, Somers noted. D38 starting teacher pay is currently at \$38,000 compared to an average of \$45,000 in nearby districts. The average pay for all teachers in D38 is \$53,000 but is 10% below surrounding districts. Increases in state revenue allowed D38 to approve raises of 6%, but D20, one of its main competitors, was able to offer 10%, so D38 still could not keep pace.

Bush asked how the MLO related to statewide initiative 63, which did not receive enough signatures to get on the ballot. Somers replied that the MLO is completely different since it is a local issue, and the district would be accountable for every dollar generated via a citizen advisory committee. Of the \$5.5 million estimated revenue in the first year, \$4.5 million would go to D38-operated schools, and about \$1 million would go to Monument Academy (MA), based on a per pupil count of about 19% of total students. MA would be accountable for its share of the money.

Other board members questioned where D38 would end up compared to other districts if this passed, why this issue was coming up now, and how to position this request in this economically challenging time. Somers answered that this would put D38 right in the middle, raising our total mills to 46, while Cheyenne Mountain has a mill rate of 55 and D20 has a cap at 60 mills. He also said this is not a new phenomenon but has been years in the making, noting that the last MLO passed in 1999 for a fixed-dollar amount of \$4 million. Somers said a lot of research had to go into expressing this need, and the board has been working since last fall and wanted to be very specific and do this with intentionality and integrity.

Somers also said the data tells us we have consistently been fundamentally behind our competitors and are seeing the highest turnover since the 2008-09 recession.