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A G E N D A

**Planning Commission
Regular Meeting**

**July 7, 2014
6:30 p.m.**

A. Changes to the Agenda

B. Minutes of Planning Commission June 2, 2014.

C. Citizen Comments

Citizens who have comments on items that do not appear on the agenda are asked to make their comments at this time. Comments on an agenda item will be taken at the time that item is under discussion.

D. Public Hearing (continued from the June 2, 2014 Planning Commission meeting) – Planning Commission will hold a public hearing regarding a proposed conditional use at 1221 Hwy 50 – Hawkins Subdivision One, Lot 1 – to allow mineral extraction.

- **Motion to Take Off of the Table the Request for a Conditional Use at 1221 Hwy 50 – Hawkins Subdivision One, Lot 1 and to Reopen the Public Hearing**
- **Open the Public Hearing**
- **Staff Report and Recommendations**
- **Applicant Presentation**
- **Public Comment**
- **Close Public Hearing**
- **Planning Commission Recommendation**

E. Commissioner Comments

F. Staff Comments



A regular meeting of the City of Delta Planning Commission was held on Monday, June 2, 2014 at 6:30 p.m. in the City Council Chambers of City Hall at 360 Main Street, Delta, Colorado. Said meeting was posted in accordance with the Sunshine Law.

PRESENT: Richard Simmons, Chairman; Terry Osborne, Vice-Chairman; Ginni Selby, Commissioner; Tish Oelke, Commissioner; Gerald Roberts, Commissioner; Glen Black, Director of Community Development; Sharleen Walker, Planning Technician.

ABSENT: Lynn Williams, Commissioner; Carl Jahn, Commissioner.

GUESTS: Zane Wright, Jack and Carolyn Hawkins,

CHANGES TO THE AGENDA

There were no changes to the agenda.

MINUTES

A motion was made by Gerald Roberts, seconded by Ginni Selby to approve the minutes of the Planning Commission held on Monday, April 7, 2014 as written. All voted yes. Motion passed.

CITIZEN COMMENTS

None.

DISCUSSION REGARDING HAWKINS SUBDIVISION ONE, LOT 1

Glen Black, Community Development Director, discussed the following two agenda items with the Planning Commission. Mr. Black stated that it may be beneficial to the Planning Commission to review the entire project first and then hold the public hearings. Therefore, staff reviewed pictures of the property and the desired use of the property with the Planning Commission. Staff stated that the intent of the applicant is to pursue a lot split of the property, making one lot approximately 37 acres and the remaining lot approximately 124 acres; sell the 37 acre lot to a company that will apply for a Bureau of Reclamation permit for mineral extraction from the Mancos shale. Therefore the applicant is requesting a rezone, a conditional use for the mineral extraction and will then submit a lot split for staff consideration.

PUBLIC HEARING – REZONING HAWKINS SUBDIVISION ONE, LOT 1

Chairman Simmons opened the public hearing. The Planning Commission held a public hearing regarding an amendment to the official zoning map of the City of Delta, Colorado changing the zoning from “A-1” Agriculture to “I-R” Industrial Residential for 1221 Hwy 50, Hawkins Subdivision One, Lot 1.

Glen Black, Community Development Director, reviewed the requirements for rezoning with the Planning Commission. Mr. Black stated that only two zones in the City of Delta, allow for mineral extraction, I (Industrial) and I-R (Industrial Residential). Additionally, staff informed the Planning Commission that the Planning Commission makes a recommendation regarding the zoning to the City Council and the City Council will then consider approval, denial or set a de novo hearing.

Request:

The applicant is requesting that the above property's zoning designation be amended (rezoned) from A-1 to IR. The IR zone is intended to create a transition area between industrial districts and residential districts which will allow and encourage use and expansion of residential, uses, particularly those providing low cost housing stock, as a use by right, but also allow and encourage the expansion of industrial uses from the adjacent industrial districts. See Delta Municipal Code 17.04.210.A.

Criteria for Rezoning:

According to section 17.04.270 of the City Municipal Code, amendments to the Zoning Map involving any change in the boundaries of an existing district or changing the district designation of an area shall be allowed **only** upon findings as follows:

1. The amendment is not adverse to the public health, safety, and welfare; **and**
2. a. The amendment is in substantial conformity with the Master Plan; **or**
b. The existing zoning is erroneous; **or**
c. Conditions in the area affected or adjacent areas have changed materially since the area was last zoned.

Petitions: There were 19 petitions mailed out and currently there have been 5 petitions turned in, all in favor of the rezone.

Staff Recommendations:

The Planning Commission should consider the following regarding this rezone request.

The future land use map shows the area to low density Residential-Rural (A-1 and RR).

The City of Delta Comprehensive Master Plan states on page 3-8, "The County total population rather than the City of "Delta population is used in this calculation because the commercial/industrial land uses serve much of the county population." Additionally, 3-9 states, "Based on the above assumptions and calculations, it appears that there is a sufficient supply of land now zoned commercial/industrial land within the City of Delta to accommodate 2030 demand for commercial/industrial square footage for the low growth scenario." (Currently our growth rate is between low to moderate.) Page 3-9 continues, "However, the potential supply falls short of the demand for commercial/industrial square feet for the moderate growth and high growth scenarios. It is likely that the shortfall could be accommodated within the plan outside the present City limits. Or the City could rezone some of the A-1 parcels within the City limits as commercial or industrial zones."

Additionally, if Planning Commission approves the rezone request, staff recommends that before any mineral extraction activities are commenced, that the applicant provides a copy of the State of Colorado Department of Reclamation, Mining and Safety permit to city staff.

Zane Wright, applicant representative, informed the Planning Commission that he would try to answer any questions the Planning Commission may have regarding the rezoning of the property. Mr. Wright stated that the proposal is to access the mineral extraction operation by Falcon Road, which is a private road, owned by the property owners of West Winds Airpark. The intent of the new owners would be to construct a brand new concrete road to the new facility. Additionally, Mr. Wright stated that two new 72 x 120 foot buildings would be constructed. The operation would include moving the overburden, moving dirt to one of the buildings, with two pits, with water filtration, extracting the food grade minerals and that one truck load a week would take out the extracted minerals in liquid form. Mr. Wright stated that the new operation would employ 8-10 people, plus the construction of the buildings. When the operation would be completed, in 15-20 years, the land would be left suitable for a residential area.

The Planning Commission questioned what the hours of operation would be and how the dust would be controlled. The issue of obtaining a CDOT access permit was discussed.

Chuck Clemons, resident of 1148 Mustang Lane, questioned the increased traffic on Falcon Road, given that the airplanes in West Winds use Falcon Road as a taxi-way to get to the air strip. Mr. Clemons stated that he also had concerns regarding maintenance of Falcon Road, because currently maintenance of Falcon Road is the responsibility of the subdivision.

Ron Rousen, interested citizen, stated he was in favor of the rezone because of new jobs for the area.

Staff informed the Planning Commission that two more petitions were received in favor of the request.

Chairman Simmons closed the public hearing.

The Planning Commission discussed the rezone request. Some members of the Planning Commission supported the rezone request because it was a good use of the land. Concerns were that the criteria for rezoning were not met and that if the property were rezoned, any use that is allowed as a use by right would be allowed in the new I-R zone. Other industrial uses were discussed that are already operating along the North Highway 50 corridor.

A motion was made by Terry Osborne, seconded by Tish Oelke to recommend approval of the zoning amendment request for Hawkins Subdivision One, Lot 1 also known as 1221 Hwy 50 from A-1, Agricultural to I-R, Industrial Residential to the City Council.

A motion was made by Tish Oelke, seconded by Ginni Selby to amend the previous motion to include that the request meets substantial conformity with the master plan, as other businesses are currently operating in this area that are industrial, therefore the area has changed since the property was previously zoned. All voted yes. The motion as amended passed.



Staff informed the applicant that this item is on the City Council agenda tomorrow night for approval, denial or to set a de novo hearing.

PUBLIC HEARING – CONDITIONAL USE HAWKINS SUBDIVISION ONE, LOT 1

Chairman Simmons opened the public hearing. The Planning Commission held a public hearing regarding a proposed conditional use at 1221 Hwy 50, Hawkins Subdivision One, Lot 1 to allow mineral extraction.

Glen Black, Community Development Director, reviewed the staff report and presentation with the Planning Commission.

Request:

The applicant requests a conditional use for Hawkins Subdivision One, Lot 1 for mineral extraction and processing. This request is based upon the Planning Commission approval on this same date and City Council approval of the rezoning ordinance at the City Council meeting to be held on June 3, 2014.

Section 17.04.210.C.5 for the I-R states:

CONDITIONAL USES:

1. Any industrial or commercial use, other than the uses by right listed above, which comply with the performance standards.
2. Automobile wrecking and salvage yards.
3. Junk yards.
4. Animal sales yards.
5. Mineral extraction and processing.
6. Trash disposal and recycling facilities.
7. Quarries and gravel operations.

D. PERFORMANCE STANDARDS:

1. No use shall be established in the I-R District which results in an unreasonable hazard to the community or creates a public or private nuisance.
2. No industrial structure shall be constructed within 100' of any existing Residential District unless effectively buffered by landscaping, berms, fencing, or other screening.
3. Automobile wrecking and salvage yards and junk yards shall have screening.
4. Both site built and factory built housing shall be constructed in compliance with applicable provisions of Chapters 15.04 or 15.05 of the Delta Municipal Code, shall be permanently attached to a permanent foundation, shall have brick, wood, masonry, stucco or cosmetically equivalent exterior surfaces, shall have a minimum width and length of not less than 20' each, and a minimum eave overhang of 12 inches. (Ord. 4, §1, 1999; Ord. 7, §2, 2009, Ord. 4, §7, 2011)

Criteria for Approval of a Conditional Use

According to section 17.04.260 of the City Municipal Code, no conditional use or change in a non-conforming use will be allowed unless the Planning Commission determines the following criteria are substantially met with respect to the type of use and its dimensional features:

1. The use will not be adverse to the public health, safety or welfare.
2. The use is not inconsistent with the City's Master Plan.
3. Streets, pedestrian facilities, water, sewer and other public improvements in the area are adequate.
4. The use is compatible with existing uses in the area and other allowed uses in the district and the type, bulk, height and location of any buildings or structures is compatible with other buildings, structures and the character of the area.
5. The use will not have an adverse effect upon other property values.
6. Adequate off-street parking will be provided for the use.
7. The location of curb-cuts and access to the premises will not create traffic hazards.
8. The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of other property.
9. Landscaping of the grounds and architecture of any buildings will be reasonably compatible with that existing in the neighborhood.
10. Any other criteria specified by other City ordinances or regulations are met.

The Planning Commission may impose conditions as necessary to ensure that the above criteria are met.

Discussion

Mineral extraction and processing is regulated by the State of Colorado Division of Reclamation, Mining, and Safety.

The City of Delta Municipal Code allows mineral extraction and processing with specific performance standards.

There were 19 petitions mailed to surrounding property owners and there have been 5 petitions returned approving of the application.

The property was properly noticed in the newspaper and with a poster on the property.

Staff Recommendation

Staff recommends that Planning Commission review the criteria for a conditional use and the performance criteria for mineral extraction and processing within the I-R district and make a determination if all requirements and criteria are met. If all requirements and criteria are met staff recommends approval of the conditional use request. Additionally, staff recommends that before mineral extraction and processing commences, that the applicant provide a copy of the State of Colorado Department of Reclamation, Mining and Safety permit.

Staff suggested that a copy of the Bureau of Reclamation permit could be requested and that a plan of operation would be included with the permit.



The applicant representative did not have any additional comments, from those that were entered in the record for the rezone request.

Chairman Simmons closed public hearing.

Members of the Planning Commission stated that they need more information, specifically on the hours of operation, dust control, mineral rights, total acreage of disturbed area, volume of materials to be disturbed, reclamation plan, road maintenance, road use agreement (including possible conflicts with airplanes), CDOT access permit, signage, and health, safety and welfare concerns.

A motion was made by Terry Osborne, seconded by Gerald Roberts to table the conditional use request due to lack of information to make a final decision. All voted yes. Motion passed.

This item will be scheduled for the July 7, 2014 Planning Commission meeting and more information will be requested from the applicant to be presented at that time.

COMMISSIONER COMMENTS

None.

STAFF COMMENTS

Staff stated that they will work with the applicant to get more information for the Planning Commission regarding the conditional use request for Hawkins Subdivision, Lot 1 for mineral extraction.

ADJOURNMENT

A motion was made by Gerald Roberts, seconded by Ginni Selby to adjourn the regular Planning Commission meeting. All voted yes. Motion passed. The meeting was adjourned at 7:52 p.m. with no further action taken.

Sharleen R. Walker, Planning Technician



Staff Report Conditional Use

Staff: Glen L. Black **Date:** 07-07-2014
Owner: Jack L. & Carolyn Hawkins **Applicant:** Jack L & Carolyn Hawkins
Location: 1221 Hwy 50 **Parcel #** 3457-092-02-001
Zone District: Conditional I-R **Parcel Size:** 162 acres approximately

Subject: Mineral Extraction and Processing

Background:

This item was tabled from the June 2, 2014 Planning Commission meeting. The Planning Commission requested more information from the applicant regarding: hours of operation, dust control, mineral rights, total acreage disturbed, volume of material to be disturbed, reclamation plan, health, safety and welfare issues, road maintenance, road use agreement, CDOT access permit, road signage, and conflicts with airplanes (use of roads as taxi ways). The applicant has responded to the Planning Commission's concerns, please see attached statement.

Request:

The applicant requests a conditional use for Hawkins Subdivision One, Lot 1 for mineral extraction and processing. This request is based upon the Planning Commission approval on this same date and City Council approval of the rezoning ordinance at the City Council meeting to be held on June 3, 2014.

Section 17.04.210.C.5 for the I-R states:

CONDITIONAL USES:

1. Any industrial or commercial use, other than the uses by right listed above, which comply with the performance standards.
2. Automobile wrecking and salvage yards.
3. Junk yards.
4. Animal sales yards.
5. Mineral extraction and processing.
6. Trash disposal and recycling facilities.
7. Quarries and gravel operations.

D. PERFORMANCE STANDARDS:

1. No use shall be established in the I-R District which results in an unreasonable hazard to the community or creates a public or private nuisance.
 2. No industrial structure shall be constructed within 100' of any existing Residential District unless effectively buffered by landscaping, berms, fencing, or other screening.
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3. Automobile wrecking and salvage yards and junk yards shall have screening.
4. Both site built and factory built housing shall be constructed in compliance with applicable provisions of Chapters 15.04 or 15.05 of the Delta Municipal Code, shall be permanently attached to a permanent foundation, shall have brick, wood, masonry, stucco or cosmetically equivalent exterior surfaces, shall have a minimum width and length of not less than (than) 20' each, and a minimum eave overhang of 12 inches. (Ord. 4, §1, 1999; Ord. 7, §2, 2009, Ord. 4, §7, 2011)

Criteria for Approval of a Conditional Use:

According to section 17.04.260 of the City Municipal Code, no conditional use or change in a non-conforming use will be allowed unless the Planning Commission determines the following criteria are substantially met with respect to the type of use and its dimensional features:

1. The use will not be adverse to the public health, safety or welfare.
2. The use is not inconsistent with the City's Master Plan.
3. Streets, pedestrian facilities, water, sewer and other public improvements in the area are adequate.
4. The use is compatible with existing uses in the area and other allowed uses in the district and the type, bulk, height and location of any buildings or structures is compatible with other buildings, structures and the character of the area.
5. The use will not have an adverse effect upon other property values.
6. Adequate off-street parking will be provided for the use.
7. The location of curb-cuts and access to the premises will not create traffic hazards.
8. The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of other property.
9. Landscaping of the grounds and architecture of any buildings will be reasonably compatible with that existing in the neighborhood.
10. Any other criteria specified by other City ordinances or regulations are met.

The Planning Commission may impose conditions as necessary to ensure that the above criteria are met.

Discussion

Mineral extraction and processing is regulated by the State of Colorado Division of Reclamation, Mining, and Safety.

The City of Delta Municipal Code allows mineral extraction and processing with specific performance standards.



The public hearing notice requirements were met for the June Planning Commission meeting. There were 19 petitions mailed to surrounding property owners and there have been 7 petitions returned approving of the application. The property was properly noticed in the newspaper and with a poster on the property.

Staff Recommendation

Staff recommends that Planning Commission review the criteria for a conditional use and the performance criteria for mineral extraction and processing within the I-R district and make a determination if all requirements and criteria are met. If all requirements and criteria are met staff recommends approval of the conditional use request. Additionally, staff recommends that before mineral extraction and processing commences, that the applicant provide a copy of the State of Colorado Department of Reclamation, Mining and Safety permit.

Example Motion

I move that Planning Commission **approve/deny** the conditional use request to allow mineral extraction and processing at Hawkins Subdivision One, Lot 1 with the following conditions: according to State regulations and that staff receive a copy of the State mining permit before mineral extraction and processing commences, access agreements from CDOT and West Winds Subdivision and/or Delta County and any other conditions



Delta City Planning Commission

Zero Draft

Thank you for your list of concerns relative the MagZuma Minerals operation. We will address each according to what we are aware of at this time.

Hours of Operation. Our normal working hours will be from 8 AM to 5 PM Monday through Friday. However, during the initial set-up and construction of the buildings etc. we intend to work Monday through Saturday until completed.

Dust Control. The adobe soil in the area appears to be very dusty when dry. We intend to lay a concrete slab 220 ft. X 245 ft. around the buildings so traversing on the adobe soil will be minimal. The Mancos shale is not nearly as dusty as Adobe soil and our operating equipment will mostly be in and on the Mancos shale area. After we are fully operational we will be utilizing a 36" backhoe about one day per week on average. The backhoe is used to excavate the shale from the hillside. One or two front-end loaders will be hauling the dry shale into the buildings and wet shale out of the buildings two to three days per week. Dust will be minimal and we will take extra precaution to avoid excavating on extremely windy days should the wind direction cause, what little dust there is, to affect anyone nearby.

Total Disturbed Area. It is our intention to never have more than one acre disturbed at any time. The overburden will be removed from the disturbed area and that area will be reclaimed when the excavation is completed. We will be removing the overburden from an additional one acre site as the previous acre is being reclaimed. At this time it appears we will be excavating Mancos Shale from a total of 10 acres during the next 6 to 10 years.

Volume Of Material To Be disturbed. From our testing it appears we will be able to excavate approximately 65,340 tons of Mancos shale per acre. From that tonnage we retain 8,973 lbs. of the organic matter (powder) that we leach from the Mancos. 64,467 tons of the leached Mancos will stay on the property and will be utilized to level the area as much as possible. Basically we will retain and remove from the property no more than 13.73 pounds (0.006865%) of material per ton of raw Mancos Shale.

Reclamation Plan.

We have not formerly applied for a reclamation permit and had not intended to until we were approved by the City of Delta. Mike Ripp, of Delta, has been retained to seek the permit when city approval is obtained. Mike has been in touch with state officials regarding the permit. Mike is on vacation with his family at this time but sent me the following in an email. He said "Discussions with Dustin Czapl of the Colorado Div. of Reclamation, Mining and Safety indicate that the State, after preliminary review of the project outline, did not see any issues that might preclude issuance of a permit".

Health, Safety and Welfare.

The health and safety of our employees will be of great concern to us. A great deal of training will be involved with new employees, especially in the operation of any motorized equipment used. The work atmosphere will always be conducive to good working relations with everyone. We will install a septic system on site for sanitation purposes and eye wash stations, hand wash and disinfection stations and showers will be at an employees' disposal.

**Falcon Road Maintenance and Use Agreement.**

We intend to lay a 5” to 6” re-bar reinforced road 22 ft. wide from Highway 50 to the buildings surrounding concrete pad. We will make sure we have a solid 12” to 15” road base of chat and river rock prior to the concrete being laid. This will be the last project after all other construction has been completed. There will be very little traffic on this road other than employee traffic and occasional UPS or Fed-Ex traffic. We will have very few small shipments of less than 100 Lbs. and few pallet shipments that weigh 1,500 Lbs. each. There could possibly be an occasional truck load of pallets leaving but no tankers.

We have not yet negotiated a road use and maintenance agreement as to the portion of Falcon Road that will be used by our operation. However we intend to take full responsibility for the maintenance of this portion of the road during our operation and will execute an agreement to this effect upon approval of this project. It is our intent that the rest of the Westwind PUD lot owners will have no financial impact as a result of our use of this portion of Falcon Road. At the end of the project it is our belief that all users of this portion on the road will contribute to the Falcon Road maintenance which is the case today. Our reason for suggesting concrete is that maintenance will be nominal and the life of this portion of the road will be far greater than the life of our project.

CDOT Access Permit.

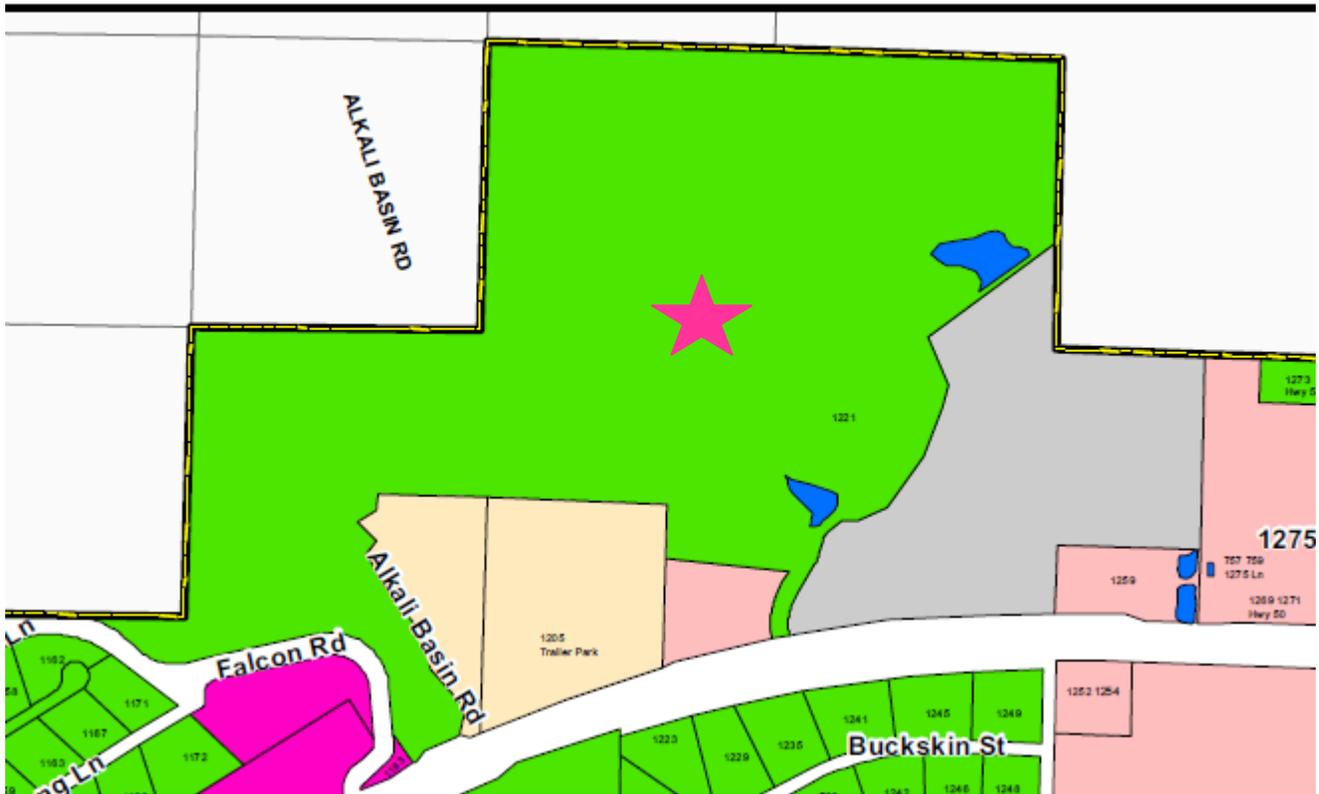
CDOT has already issued an access permit which was done when Westwinds PUD was initially approved. We are not aware of any additional permit that is necessary due to the low traffic that this project will create.

Signage. It’s our intention to erect a small “MagZuma Minerals” sign at the entrance to the Airport. Also within 100 ft. of each side of the landing strip we intend put small signs that say “Watch for Aircraft” where the road leaves the airport we intend to install a sign the says MagZuma Minerals with an arrow pointing straight ahead.

Conflicts with Airplanes. I don’t anticipate any conflict with airplanes. No more so than there may be at this time with the people who live on the airport. Once the signs are installed there should be no problem.

Elmer G. Heinrich
President
MagZuma Minerals LLC
Cell 561-319-5252

Zoning Map



Aerial Map

