



CANYON COUNTY PLANNING & ZONING COMMISSION
MINUTES OF REGULAR MEETING HELD
Thursday, November 17, 2022
6:30 P.M.

1ST FLOOR PUBLIC MEETING ROOM SUITE 130, CANYON COUNTY ADMINISTRATION BUILDING

Commissioners Present : Patrick Williamson, Acting Chairman
Brian Sheets, Commissioner
Ron Amarel, Commissioner
Harold Nevill, Commissioner
Miguel Villafana, Commissioner

Staff Members Present: Dan Lister, Planning Official
Samantha Hammond, Planner
Bonnie Puleo, Recording Secretary

Acting Chairman Patrick Williamson called the meeting to order at 6:30 p.m.

Commissioner Sheets read the testimony guidelines and proceeded to the first business item on the agenda.

- **Case No. DA2022-0003/Tony Elordi:** The applicant, Tony Eldori, is requesting a development agreement modification to agreement number 16-226 associated with Case No. PH2016-30. The modification is to allow Lot 5 of Andorra Estates Subdivision to be divided to create a total of two buildable parcels. The subject parcels, approximately 42.4 acres, are located adjacent to 18121 Andorra Lane, Caldwell, ID 83607; also referenced as a portion of the NE¼ of Section 1, T2N, R4W and NW¼ of Section 6, T2N, R3W, BM, Canyon County, Idaho.

Planner Samantha Hammond reviewed the Staff report for the record including late exhibits 17A – 17E.

Acting Chairman Patrick Williamson entered the late exhibits into the record and affirmed the witnesses to testify.

Testimony:

Tony Elordi – Applicant (Representative) – IN FAVOR – 18128 Andorra Lane Caldwell ID 83607

Mr. Elordi said he wanted to clarify a couple of things for the Commission. The three lots on the outside were created using administrative splits to begin with. There was a total of four splits: one of the administrative splits went into the subdivision. There were four lots total that went into the subdivision and two lots are agricultural. There are two road lots. He provided a photo as a late exhibit which is an aerial view of what it looked like when the farming started and what it is now. He said they started in 2014; they leased it with an option to purchase it. It was there a couple of years before the development agreement. The property sits in a bowl with a ridge running through it. 44% of the land has 3 – 12% slopes and 55% has 12 – 30% slopes. It is classified as 3 to 4 type soils when irrigated. He said the only way he could farm it was to put a pivot on it which meant they had to take the ridge down and use the dirt to fill the valleys and swales. They have tried different options to farm it. Currently, he farms part of it and he

leased out the top of the property to a local farmer. He farmed it for two years and said it wasn't productive to farm beans and corn because of the slope. They farmed alfalfa which worked a lot better. He said when they bought the property they tried to farm as much of the land as they could and they had a 59-acre water right. After they got the pivot put on the land, they sharecropped it one year and that didn't work out so he farmed it himself for two years. The MacIntyres farmed it for three years using a no-till farming operation and raised seed crops on it. Mr. Elordi said what works best on it is a stable crop. Because of the slope, it was hard to seed it. He said they keep progressing with the farm and keep developing it. They want to live there and farm it. He said they made mistakes along the way and they should have made a better development agreement to begin with. His children weren't involved in it at the beginning and now they want to retire from the military and have an orchard and a vineyard. The bottom part is the steepest and they would have a drip irrigation system on it which would take any of the erosion that might happen out of it. It's the only ground they own so they want to share it with their family, live there and farm it. They would put the pivot on half of it and have the top half in alfalfa. He said it's the most level part of the farm. The land slopes from north to south and east to west. He can run the pivot as it is all gravity fed. Mr. Elordi said he doesn't want to change anything with the existing irrigation that goes to the other six residential lots. Commissioner Sheets said that part of the analysis for a modification of a development agreement is to understand the necessity of the request. He asked what's the necessity of having two buildings there? Mr. Elordi said it's a progression of the development of the agriculture part of it; it is the only ground they own and they would like to be able to live there and raise crops. He would like to stay there and develop the farm ground more. He has leased it out in the past and his kids will be retiring in a couple of years. Commissioner Nevill asked Mr. Elordi when he was raising alfalfa, how many tons per acre did the land produce? Mr. Elordi answered 4 tons per acre. Commissioner Nevill asked Mr. Elordi where he lived now and he said he currently lives in the Andorra subdivision. Commissioner Nevill asked how he was going to irrigate the new proposed residential lots. Mr. Elordi indicated they would be irrigated using the surface water rights and showed where the weir and irrigation lines are. He said the irrigation lines have been there for 6 years. He said there are only 9 residential lots there right now. Commissioner Villafana asked why 3.5 acres (lot size) and why he is not building on the corners to keep the pivot circle intact? Mr. Elordi responded that one corner is very steep and the other is far away from power and a road. They wouldn't build for a couple of years and they would continue to use the pivot before building started. Commissioner Villafana asked if he was going to sell his house in the Andorra subdivision (if his application was approved) and he replied, 'yes'. He said there is no level place to put equipment or stack hay so something has to be built or modified because of the slope. He feels living there would justify developing the agriculture part of it further. He doesn't subscribe to the idea of a building envelope. He doesn't think they will need any more than 3.5 acres to farm, even with outbuildings and corrals. That's also why he wants to live there; he would like to maintain pasture and alfalfa. Commissioner Villafana said once you take acreage out of production agriculture and build on it, the pivot will never go fully around again. Commissioner Villafana asked if you plant an orchard or vineyard, how would you use the pivot anyway? Mr. Elordi explained the challenges they had with the pivot and the land and how the drip irrigation would mitigate a lot of that. Commissioner Amarel said Mr. Elordi describes farming but you are taking the farmland you have and putting homes on it. Is this your final plan? Mr. Elordi said it is the plan that works best for them and asked why is everyone against a house in a farm area; that is how everything started in this county. He said that is why they want to be there. They made a considerable investment in resources. He has put in over a mile of underground mainlines and a pivot system. He said he has developed the farm more than what it was and now want to get something back out of it. He didn't know why he is confined to 3.5 acres: it could be 1, they could need 5. When he proposed the concept, he proposed 1 to 5 acres. He didn't know why they landed on 3.5 acres. Mr. Elordi said the current housing sits on a ridge, then it drops off into the 40-acre field. When he came in 2016 and got permission (for the subdivision), they had a preliminary plat. They could have developed it more residential according to past Development Services staff. They put in considerable time and effort

into developing the Development Agreement. 8 years of life changes everybody. Commissioner Nevill said he was asking them to change the development agreement that was agreed upon by the Board of County Commissioners in 2016. The Planning and Zoning Commissioners have to know what his parameters are to work with him. Mr. Elordi said he has personal reasons (documented in the staff report) and his daughter and son-in-law own 50% of the 40 acres. Chairman Williamson said there is a condition that says that he will have significant compliance with the map presented to the Planning and Zoning Commission and if he going to change the lot size, the map shown will not be correct and it should be as correct as possible. Mr. Elordi said he could do a survey and if that is what the holdup is, he could make it 3.5 acres. Commissioner Williamson said he could set the lot size at the hearing that night. Mr. Elordi said there was not going to be any lot size for the two lots; they were just going to split the property down the middle. He didn't understand why he needed to specify what size the building envelope was for each part. Commissioner Williamson asked staff why there had to be a building envelope. Planning Official Dan Lister said there was a building envelope so it wouldn't disrupt all the agriculture on the property. He thought the applicant landed on building envelopes at 3.5 acres. Commissioner Williamson said this would be the time to make the change to those building envelopes. Mr. Elordi said based on the slopes of the land, the location of the homes was where he had already indicated they would be. Commissioner Sheets asked about condition number 4; not having residential building permits available, what was the intent of that condition? Mr. Elordi said at the time, the plan was to have a farm. Mr. Elordi said he didn't know what he was getting into. They tried to make it a farm and it is a farm. If he could live there, they wanted to. He needed income to subsidize the farm. He said the plan they made might have been a mistake, but it was what they wanted to do at the time. He still wants to farm it; just in a different way. It was an agreement that he made with Planning Staff at the time. They have put considerable resources into the farm ground and tried to do everything they could to make it a viable farm. He has leased it out for nothing to maintain the ground.

Jerry Cereda – IN OPPOSITION – 11481 Eva Lane Caldwell ID 83607

Mr. Cereda said this all started when Mr. Elordi bought the land and moved all the houses up on the road so he would have all that farm ground. He doesn't know where it went wrong but now there are 6 or 8 other houses. He thought Mr. Elordi worked with the Planning and Zoning Commissioners before and they turned him down. He believes Mr. Elordi is going to put houses on the whole thing. Eventually it will all be houses. He said the Comprehensive Plan says good farm ground has to stay in farm ground; that has never worked for the meetings he has been to. Water is a big issue; wells are going dry. Two more houses aren't a big issue but more will come. He said that is what Mr. Elordi does for a living is real estate. He said that is good farm ground. When Bill Gibbons had that place, he grew four or five different crops on there. He did pretty good on it. When you knock down the knob to get the pivot to go by there but you take the topsoil off, you need to put it back on.

Ron Kirtley – IN OPPOSITION – 11551 Eva Lane Caldwell ID 83607

Mr. Kirtley said water is the main concern. When the last large subdivision came in southeast of him and their wells went in, his well went dry. He had no recourse but to deepen his well. If it goes (out) again, he has to start from the top of the dirt again. He asked, how many more of these modifications do they have to go through? They just had a property meeting earlier in the year when he was trying to sell it to Mr. Carpenter. He said evidently that one didn't go through. For him and everyone on the west side of Eagle Lane, the water is the main issue. In response to Commissioner Nevill's question, he said when he moved in, his well depth was at 200 feet with his pump at 60 feet. The well is now 400 feet and he had to lower the pump to 150 – 200 feet.

Jon Minkoff – IN OPPOSITION – 11648 Eva Lane Caldwell ID 83607

Mr. Minkoff said he might need more time (for testimony): this is very important to him. He is in strong

opposition to Mr. Elordi's third attempt to violate his agreement with the County and with his neighbors. Mr. Minkoff said Mr. Elordi only cancelled the last attempt because he was going to get a recommendation of denial and there was vehement community opposition. There are serious flaws in the process and substance of this proposal which should rule out an approval. He wasn't notified about the neighborhood meeting and feels he was left out. The legal notice of the hearing was the first he heard about it so he didn't have a chance to prepare anything. The staff report wasn't up until Monday of the hearing week. The most serious problem with the application is the grounds for the modification. It states Mr. Elordi needs to demonstrate the necessity for a modification. Conclusion of Law #2 said the applicant provided a statement demonstrating requested modification is a necessity. Mr. Minkoff said that wasn't a demonstration, it was just a statement. He said Mr. Elordi believes it is a necessity because he wants to do it. He discussed the language of in Item 2: Lot 5 will remain in 83.84% agricultural function. Mr. Minkoff said putting in 2 lots doesn't keep in agricultural function. He felt that statement was contradictory.

MOTION: Commissioner Nevill motioned to grant 2 more minutes of testimony to Jon Minkoff, seconded by Commissioner Amarel. Voice vote, motion carried.

Mr. Minkoff continued: Putting houses on Lot 5 is not a necessity; Mr. Elordi already has a house in Andorra Estates. He and his daughter and son-in-law don't have to live there. Mr. Minkoff reviewed the history of how the development agreement started. He said Mr. Elordi bought prime agricultural land outside the impact area and thought he could sneak in a development because it bordered the old Nightingale subdivision. His land has been productively farmed for decades. The agreement came about because the Commissioners gave him a break; they gave him some development with six houses. Mr. Minkoff said now he is coming back for the third time trying to force more houses here. It should be zoned properly and placed properly. It might seem harmless to add two houses but it impacts them with the view, the aquifer and the potential for more houses. Mr. Minkoff's well is at 300 feet and the pump has had to be lowered. He said Mr. Elordi doesn't deserve the benefit of the doubt about putting more houses; he deserves doubt and skepticism. He has repeatedly broken his promises and proven himself to be untrustworthy. He won't stop at two houses and two is too many.

Rene Bine III – IN OPPOSITION – 12251 Riverside Road Caldwell ID 83607

Mr. Bine is there representing himself and is president of the Canyon County Alliance for Responsible Growth. He lives a quarter mile from the property and has lived there for 20 years. He said Mr. Elordi originally wanted 14 lots and to develop the entire property and he couldn't get it. Mr. Bine said he has a history of coming back time and time again and picking one or two more lots. The last time he applied, it was December 2021 but he pulled his application when he was going to get a recommendation of denial from the planners. He was involved with the agricultural agreement when it was drafted by the Development Services Department Director and County Prosecutor. That agreement said the land would be agriculture in perpetuity. The idea for the agreement was that there would be no houses on it. Mr. Bine had wanted to rezone it as a separate parcel as agricultural, but the Director of the Development Services Department said if it was rezoned agriculture, it would be allowed a main residence and a secondary residence. The purpose of the agreement was to keep it entirely in agriculture in perpetuity. Mr. Bine said once again, the developer is coming back trying to circumvent that agreement. He believes the objective has always been to put houses on all the land. He believes it is all going to be houses. The fact that it may not produce in certain crops doesn't mean it isn't farmable. He knows of plenty of guys in the area who would gladly take it on with a pivot on it. By cutting it up, it makes it less desirable to farm or lease. Putting it in two ownerships then creates all kinds of problems.

MOTION: Commissioner Nevill motioned to grant 2 more minutes of testimony to Rene Bine, seconded by Commissioner Sheets. Voice vote, motion carried.

Mr. Bine continued: The presumption is that it is going to be farmed by the people who live there but there is no guarantee that they aren't going to sell it. Once it is divided and has houses on it, there will be all kinds of legal hassles over the two separate parcels and the pivot. He said the idea was to have it in farm ground and it should stay that way. There is no a necessity; the necessity is for the developer to make money. It is no good for the community, for the county and the neighborhood which is who the agreement was designed for. It doesn't comply with the current Comprehensive Plan. He strongly recommends they deny this and send a message. Commissioner Williamson said Mr. Bine is the second person who has mentioned that he has come before the Development Services staff to modify the development agreement. In the case proposed in December of 2021, how many lots did he ask for? Answer was one lot.

Claudia Haynes – IN OPPOSITION – 8830 Deer Sky Ranch Trail Nampa ID 83686

Ms. Haynes said she is one of the directors of Canyon County Alliance for Responsible Growth. She said she is going to be repetitive. The agreement put in place in 2016 said it would be divided the way it was divided and the farmland would stay in farmland in perpetuity. Forever, no matter who owned it. This contract was set up by the Prosecuting Attorney's office and he should be held to what the agreement says. The applicant turned in a map which have notes that shows the envelopes where 5A and 5B are, has a '3 slash 5', not a 3.5, it says 3 or 5. It is hand drawn and has a 25 foot road along the top. Why do you need 25' for? You only need 16 to 18 feet for a swather or a baler. Ms. Haynes said it doesn't comply with the Comprehensive Plan and doesn't comply with the development agreement. She thinks the applicant should be held to what he signed on the original agreement.

Shelley-Jeane Soule – IN OPPOSITION – 11617 Eva Lane Caldwell ID 83607

Ms. Soule said this is the first time she is presenting to this body. She is a teacher who is now teaching at a juvenile detention center. She lives on the house that is the third one up from Jerry's sheep farm. She showed where her house was on the map. She moved into her house in 2003. They waited to find a home in this area. The people who live there, have stayed there for years. Her neighbor told them not to plow the property as she would lose her topsoil. She removed all the weeds and lost her top soil. She misses the draw that Mr. Elordi filled in, as now coyotes come up to her fence and her dog keeps her awake all night. She bought her property so she could live where she wanted to live and it has constantly changed. She understands needing to take care of her kids but she is doing that on the property she already owns.

Terry Soule – IN OPPOSITION – 11617 Eva Lane Caldwell ID 83607

Mr. Soule said that this has come back and come back and come back. He asked, is Mr. Elordi meaning to progressively develop the farmland or progressively develop the housing portion? The pattern so far is to progressively develop the housing portion. The way he is developing it does not lend itself to a community well which would have to be permitted differently and have to go to a different depth so as to not interfere with the existing domestic wells. He has already put in six wells; now they want two more. Once those are in, there is no restriction on how much acreage they can water. There is a legal restriction on it but there is no enforcement. Even though there is possibility of gravity fed water rights, the probability is that people put in irrigation systems that they manage themselves. Just because it says one thing doesn't mean that is the way it's going to be and that's already the pattern Mr. Elordi has established. Mr. Soule thinks Mr. Elordi is intending to expand the development in a way that will result in additional water impacts which he is intentionally ignoring.

Tony Elordi – Applicant (Representative) – REBUTTAL – 18128 Andorra Lane Caldwell ID 83607

Mr. Elordi said he heard quite a few things that were not true. He said this is the first time he has come back to try to modify the development agreement. He did start a modification 3 or 4 years ago, after the

neighborhood meeting when no one showed up but he took it off the table. The Planning Department thought he could do it: it was for just one building lot. He didn't remember coming back 3 times. He had an option on the land with Brad Carpenter to put in 22 lots but they felt it was too big of a project. There were too many homes and he didn't want to be involved in it. He has been hearing a lot about how the water level has dropped but he didn't know if that was happening. When Carpenter wanted to do 22 lots, they had a local water hydrologist do a report and his final comments were that there was no current data suggesting declining of water in existing wells and he had no concerns about effects to existing wells. Mr. Elordi said these people come to the meeting and think they are prepared but they don't have to put forth any effort or money to prove differently. He said there is a clause in the agreement that says he can ask for a modification. He is not lying to anybody. This project was preliminary platted before he came to the hearing. There was no recommendation from the Commission to do anything different. He wants to keep it in agriculture and farm it. They think he wants to progressively go ahead with the residential part of it. He doesn't know what is going to happen in 10 years. He didn't know where they came up with all those things but most of it is not true. Commissioner Sheets asked if he wanted to keep it in farming, what about the 22 lot housing project? Mr. Elordi said he didn't want it; somebody else wanted it. They (the buyer) had optioned the property and wanted to subdivide it and Mr. Elordi had already agreed to the option. He had some health issues and one of the options was to sell the property. Mr. Elordi was there because they wanted to keep in agriculture, live on it and develop it. It seems like they are telling him how to farm it. He wants to take that ground and make it a better farm. Commissioner Williamson asked about the original intent of the agreement and keeping it in agriculture "in perpetuity". Was that the intent of the agreement? Mr. Elordi said the agreement does not say "in perpetuity" but there is a clause that says something about "the presidency" and when it expires. He said even the County can modify the agreement at some point. Commissioner Williamson asked about the possibility of water spreading and using domestic wells past the ½ acre allowed. Would he be agreeable to having a condition with the development agreement that says irrigation beyond a half acre lawn would have to come from existing farmland irrigation system? Mr. Elordi said that was addressed in the plat itself. Mr. Elordi had no problem with that condition and said the language could be added. He is not sure why they would irrigate off their wells when they have water they are paying for already.

Planning Official Dan Lister explained the options for approval/denial of the development agreement modification and what the process is for each. There was additional discussion with staff about the pressurized irrigation system and the missing neighborhood meeting notification. Dan Lister said the development agreement has to be signed, and signatures notarized, by all affected homeowners, which is everyone who lives in Andorra Estates. Commissioner Nevill asked about how to rectify the fact that not all neighbors were notified about the neighborhood meeting and Planning Official Dan Lister provided options.

MOTION: Commissioner Sheets moved to close public testimony on Case DA2022-0003 seconded by Commissioner Nevill. Voice vote, motion carried.

DELIBERATION:

Commissioner Nevill said he didn't think it made sense to repair the error of the neighborhood meeting because everyone was notified for this hearing. He did not believe the Commission needs to hold up the decision for that reason. That said, he said they have Exhibit 16A from the Soil Conservation District says they don't recommend a land use change and that is part of what they have to consider in this case. The Board of County Commissioners who approved this application in 2016 was one of the most development-friendly Commissions they have had and even they put restrictions on it. The conditions of approval don't say "in perpetuity" but it does say they should not have residential building lots available and it should remain in irrigated agricultural production. That has to weigh pretty heavily. Commissioner Nevill has sympathy for the military couple who wants to come back and live on a farm; that was

something Commissioner Nevill did. He is really concerned that this is a foot in the door for what could happen in the future and they have to be aware of the fact that, no matter what the intentions are, once everything is sold, the new owners have the ability to come back and modify the development agreement. They also have to take into consideration the water issue. He said they had testimony that someone has had to deepen their well and lower their pump. Commissioner Sheets read the Canyon County zoning ordinance on modification of development agreements. That portion of the ordinance is what he is using for his deliberations on the case because that is the standard. It is asking them to evaluate necessity. The base word of necessity is "need". What does he need? He needs residential building permits. There is nothing that has changed significantly between 2016 and now that demonstrates a necessity that didn't already exist in 2016. There is no need to modify this because there is no need. He will be recommending denial. Commissioner Amarel said they have the land use considerations and water considerations. A lot has been done here and there is a lot of emotion involved in this as well. He said when he looks at necessity, and whether is this really needed, it may be needed in the future but he was not convinced that this is the final plan yet. When he looks at the modification, he can't support it. Commissioner Villafana said if you put a vineyard and tree fruit on the property, that's fine. He is not held up on having row crops. What he is not a fan of, is putting houses on that corner because then it is a continuation of that existing development. If the vineyard doesn't work out, then he may want to develop the southern portion because it is not in the way of the pivot. He feels it opens it up to another continuation later on. He doesn't see the need: last he checked there were 800 Zillow listings and plenty of places to live including plenty of places to live in the country as well. It isn't like they need these two lots because there isn't anywhere else to live. Commission Williamson said if this were to be denied, the applicant could come back and ask for a comprehensive plan map change which would be the entire property and they could put up more homes. He is concerned about what other options are available for the 42 acres. It could be up to 20 homes. Commissioner Sheets pointed out that option will always be available to the applicant and they can only address what they have in front of them.

MOTION: Commissioner Nevill moved to recommend denial Case DA2022-0003 and request staff to change the Findings of Facts, Conclusions of Law and Conditions of Approval to include a lack of necessity for the change in the development agreement and the Soil Conservation District's recommendation that the zoning not be changed, forwarding the recommendation to the Board of Canyon County Commissioners. Motion seconded by Commissioner Sheets. Roll call vote: 5 in favor 0 opposed, motion passed.

APPROVAL OF MINUTES:

MOTION: Commissioner Nevill moved to approve the minutes from 10/20/2022, seconded by Commissioner Amarel. Voice vote, motion carried.

DIRECTOR, PLANNER, COMMISSION COMMENTS:

Planning Official Dan Lister said the Commissioners were provided a copy of the updated list of hearing results between Planning and Zoning Commission/Hearing Examiner and the Board of County Commissioners. It provides the final decision but not the reason why their decision was overturned (if it was). He also told the Commission that the Lewis Heights/Goldberg Subdivision case was remanded back to the Planning and Zoning Commission for a hearing because the change to the application was substantial. The applicant requested to remand it back to the Planning and Zoning Commission and the Board of County Commissioners agreed. That case has not yet been scheduled for a re-hearing yet. Dan Lister discussed changing the process for the Development Services Department; applications will be reviewed for any missing information. If there are any changes to the application between the Planning and Zoning Commission and the Board of County Commissioners, the Board is willing to say 'no that is

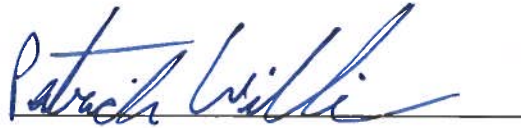
different', and the applicant will have to go back to the Planning and Zoning Commission for a re-hearing. This will mean the application in front of the Planning and Zoning Commission and the Board will contain the same information. The information should be vetted out at the Planning & Zoning Commission level. Commissioner Amarel requested the Hearing Results be sent electronically and Commissioner Williamson asked that a column be added to indicate whether it was Planning and Zoning decision or a Hearing Examiner decision.

ADJOURNMENT:

MOTION: Commissioner Nevill moved to adjourn, seconded by Commissioner Sheets. Voice vote motion carried. Hearing adjourned at 8:48 pm.

An audio recording is on file in the Development Services Departments' office.

Approved this 15th day of December, 2022

A handwritten signature in blue ink, reading "Patrick Williamson", written over a horizontal line.

Patrick Williamson, Acting Chairman

ATTEST

A handwritten signature in blue ink, reading "Bonnie Puleo", written over a horizontal line.

Bonnie Puleo, Recording Secretary