



FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER

Plat Vacation VAC2023-0001

In the matter of the application of:

Horton – Case VAC2023-0001

The Canyon County Board of County Commissioners consider the following:

- 1) Plat vacation to remove the 12-foot utility and irrigation easement along the northeast and south lot lines located on Lot 4, Block 1, Kodiak Subdivision. The 20 ft Easement for Kennedy Lateral will not be affected by this application. [4832 Meadowlark Ln (Parcel Number: R30430103), portion of the NW¼ of Section 08, T3N, R1W, BM, Canyon County, Idaho]

Summary of the Record

1. The record is comprised of the following:

1. The record includes all testimony, the staff report, exhibits, and documents in Case File VAC2023-0001.

Applicable Law

1. The following laws and ordinances apply to this decision: Canyon County Code §07-17-35 Subdivision/Easement Vacation, Idaho Code §50-1306A, Idaho Code §50-1324, and Canyon County Code §07-02-03 (Definitions).
2. Notice of the public hearing was provided per CCZO §07-05-01 and Idaho Code §50-1324.
3. Any property owner desiring to have an existing subdivision vacated, in whole or part, including easements, shall complete and file an application along with any fees with DSD and also file such other applications as are otherwise required by law.
4. The Board has the authority to exercise powers granted to it by the Idaho Local Land Use and Planning Act (“LLUPA”) and can establish its own ordinances regarding land use. See I.C. §67-6504, §67-6511.
5. The Board has the authority to hear this case and make its own independent determination. See I.C. §67-6519, §67-6504, 67-6509 & 67-6511.
6. The Board can sustain, modify or reject the Commission’s recommendations. See CCZO §07-05-03.
7. The burden of persuasion is upon the applicant to prove that all criteria, including whether the proposed use is essential or desirable to the public welfare, are satisfied. CCZO §07-05-03.
8. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. The County’s hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

The application (VAC2023-0001) was presented at a public hearing before the Board of County Commission on August 9, 2023. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Board of County Commission decide as follows:

CCZO §07-17-35: Subdivision/Easement Vacation

1. Any property owner desiring to have an existing subdivision vacated, in whole or part, including easements, shall complete and file an application along with any fees with DSD and also file such other applications as are otherwise required by law.

Conclusion: Property owners, Philip & Glenda Horton, submitted a plat vacation application on February 10, 2023.

Findings: Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

2. Upon receipt of the completed application and other information as may be required, DSD shall affix the date of application acceptance thereon. The application shall be considered by the commission at a public hearing noticed as provided for in Article 5 of this chapter. Vacations shall be processed in accordance with the regulations set forth in Idaho Code §50-1306A and recorded in accordance with the regulations set forth in Idaho Code §50-1324.

Conclusion: The application was processed and noticed in accordance with Chapter 7, Article 5 of the Canyon County Zoning Ordinance (CCZO)

Findings: Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

Idaho Code §50-1306A

- A. Any person, persons, firm, association, corporation, or other legally recognized form of business desiring to vacate a plat or any part thereof must petition the city council if it is located within the boundaries of a city, or the county commissioners if it is located within the unincorporated area of the county. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

Conclusion: Property owners, Philip & Glenda Horton, submitted a plat vacation application on February 10, 2023.

Findings: Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

- B. Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

Conclusion: The above noticing requirement is required for the public hearing before the Board of County Commissioners. The Planning and Zoning hearing was processed and noticed in accordance with Chapter 7, Article 5 of the Canyon County Zoning Ordinance (CCZO).

Findings: (1) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

(2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on June 29, 2023. Newspaper notice was published on June 28, 2023. Property owners within 600' were notified by mail on June 29, 2023. Full political notice was provided on June 29, 2023. The property was posted on July 6, 2023. Property owners within 300' were notified by mail on June 29, 2023 in accordance with Idaho Code section 50-1306A.

C. When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

Conclusion: Not applicable.

Findings: Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

D. If a petition to vacate is brought before county commissioners, and the plat or part thereof which is the subject of the petition is located within one (1) mile of the boundaries of any city, the county commissioners shall cause written notice of the public hearing on the petition to be given to the mayor or chief administrative officer of the city by regular mail at least thirty (30) days prior to the date of the public hearing.

Conclusion: The request is located in the City of Nampa's impact area. The City of Nampa was notified on June 29, 2023.

Findings: (1) The City of Nampa responded with the following comment: Nampa Engineering Division has no concern with the request (Exhibit 4 Attachment F iii).

(2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

E. In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

Conclusion: All utility agencies were notified on June 29, 2023. Neighbors were notified on June 29, 2023.

Findings: (1) The applicant provided signatures from all residents within Kodiak Subdivision residents, Sparklight (Cable One), Southwest District Health, Intermountain Gas, Lumen, and Idaho Power (Exhibit 4 Attachment D), The City of Nampa that they do not oppose this easement vacation. (Exhibit 4 Attachment Fiv).

(2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on June 29, 2023. Newspaper notice was published on June 28, 2023. Property owners within 600' were notified by mail on June 29, 2023. Full political notice was provided on June 29, 2023. The property was posted on July 6, 2023.

(3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. VAC2023-0001.

(4) Evidence includes associated findings and evidence supported within this document.

F. When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in §40-203, Idaho Code.

Conclusion: The request does not include vacation of any public streets or public right-of-ways. Therefore, this is not applicable to this application.

G. All publication costs shall be at the expense of the petitioner

Conclusion: Publication costs are covered by the County as part of the application fee. The publication was completed on June 28, 2023.

H. Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section

Conclusion: Not applicable to this application.

I. Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be re-platted.

Conclusion: Not applicable to this application.

3. The commission shall review the request and any agency response and make a recommendation to the Board for approval, conditional approval or denial.

Conclusion: The Planning and Zoning commission recommended approval to the board on June 15, 2023. (Exhibit 2 and Exhibit 3, P&Z FCOs and minutes)

Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **approve** of Case #VAC2023-0001, a Plat Vacation to remove the 12 ft Utility Easement along the northeast, and south boundaries on lot 4 block 1 of Kodiak Subdivision Final Plat.

Conditions of Approval

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the property.
2. This vacation does not include the 20 ft Kennedy Lateral easement that shall remain on the plat for Kodiak Subdivision and shall not be encroached upon by any structures or overhangs.
3. Standard County setbacks must be met for all proposed structures.
4. A resolution shall be recorded in accordance with Idaho Code §50-1324.

