



CANYON COUNTY PLANNING & ZONING COMMISSION  
MINUTES OF REGULAR MEETING HELD  
Thursday, August 3, 2023  
6:30 P.M.

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1<sup>ST</sup> FLOOR PUBLIC MEETING ROOM SUITE 130, CANYON COUNTY ADMINISTRATION BUILDING

Commissioners Present :        Robert Sturgill, Chairman  
   Brian Sheets, Vice Chairman  
   Patrick Williamson, Commissioner  
   Harold Nevill, Commissioner  
   Geoff Mathews, Commissioner  
   Matt Dorsey, Commissioner

Staff Members Present:        Dan Lister, Planning Official  
   Michelle Barron, Planner  
   Madelyn Vander Veen, Planner  
   Debbie Root, Planner  
   Bonnie Puleo, Hearing Specialist

**Chairman Robert Sturgill** called the meeting to order at 6:32 p.m.

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

- **Case No. CU2022-0031/Tyler Toups:** Anna Canning with Centurion Engineers, representing Tyler Toups, is requesting a conditional use permit for RV storage located on parcel R34738010. The requested use includes up to 48 RV, trailer, and boat spots and does not include any structures. The northern half of the parcel, which is the proposed site of the RV storage, is zoned “C-1” (Neighborhood Commercial). The subject property is located at 22906 Channel Rd, Caldwell; also referenced as a portion of the NW¼ of Section 11, Township 4N, Range 3W; BM; Canyon County, Idaho.

**Planner Madelyn Vander Veen** reviewed the addendum to the staff report for the record.

**Chairman Robert Sturgill** affirmed the witness to testify.

**Testimony:**

**David Crawford – Applicant (Representative) – IN FAVOR – 2323 S. Vista Ave. #206 Boise, ID 83705**

Mr. Crawford said he was there to answer any questions the Commissioners had and summarized what the conditional use permit was for. He said they are proposing a 48-spot outdoor RV storage facility. It will have automatic gates and he stated they agreed with all the conditions of approval. They believe it will be a great project for the area.

**MOTION:** Commissioner Nevill moved to close public testimony on Case CU2022-0031, seconded by Commissioner Williamson. Voice vote, motion carried.

**DELIBERATION:**

Commissioner Nevill said he didn't understand why they didn't receive exhibit 4D before. It was exactly what they were saying and he read from Idaho Transportation Department's letter. He said if they had had the letter before, they could have finished this (at the prior hearing). He said there is nothing wrong with the 48-spot RV storage facility in a C-1 zone. He was just trying to figure out if the turning was going to be a problem with slow moving vehicles. If the Idaho Transportation Department had done this before, they could have finished it. He is happy with it.

Commissioner Dorsey said he understands why (condition of approval) #12 was put in there but if they not going to have a drain tank and not be doing that kind of stuff, he doesn't understand the need for number #12. Maybe it is based on some fears that effluent might be discharged but they have already stated they aren't going to discharge or have a facility for it.

Commissioner Sheets said condition #12 was added to ensure it doesn't happen. If the condition isn't in there, they could probably do it.

Chairman Sturgill said it was probably to move from intent to something that is actually enforceable.

**MOTION:** Commissioner Williamson moved to approve Case CU2022-0031, including the Findings of Facts, Conclusions of Law and Conditions of Approval. Motion seconded by Commissioner Sheets. Roll call vote: 6 in favor, 0 opposed, motion passed.

- **Case No. ZV2023-0001/Ted Bustos – Tricia Soper:** Tricia Soper, representing Ted Bustos, is requesting a Variance to reduce the access easement from 60' to 24' for Memory Ln. The property is zoned "A" (Agricultural). The subject property is located at 12732 Memory Ln, Nampa (R33116), also referenced as a portion of the NE ¼ of Section 36, Township 3N, Range 3W; BM; Canyon County, Idaho.

**Planner Deb Root** reviewed the Staff report for the record.

**Chairman Robert Sturgill** affirmed the witnesses to testify.

**Testimony:**

**Tricia Soper – Applicant (Representative) – IN FAVOR – 314 S. 9<sup>th</sup> Street #300 Boise, ID 83702**

Ms. Soper, representing Mr. Bustos, showed Mr. Bustos' original survey on the display and said he originally started this process because he wanted a lot split, which he is allowed under the code. He got a survey and a road users' agreement with his neighbors and thought that was it, but then he discovered the Memory Lane issue. Memory Lane kind of 'jig-jogs' through parcels which is what creates his undue hardship. She said there are so many properties which would have to grant additional easements. Memory Lane is a private road which was built in the 1950's. There are four easements and a public dedication throughout the whole thing. Trying to discern who is the dominant or the grantor on the road is difficult and the entire road would have to be resurveyed. Ms. Soper said Mr. Bustos would have to get an additional easement from each property owner surrounding Memory Lane. She showed the turn onto Memory Lane and the power pole at the entrance which she said is not what is creating the undue hardship. She said Idaho Power confirmed they can move the pole to the 24-foot easement which would be at Mr. Bustos' cost but Idaho Power doesn't know if they can move it to the required 28 feet. The exiting pole location vastly shrinks that entrance onto Memory Lane. She said the exit from Memory Lane

is gravel and is at a 6% incline which can cause cars to spin their wheels when pulling onto Iowa Avenue. Ms. Soper showed the old and the new Memory Lane signs and said Mr. Bustos had paid for the new sign which was approved by Canyon County. She said the requirements for the variance are that it must be consistent with the Comprehensive Plan and is not in conflict with the public interest. Ms. Soper said the third requirement are the characteristics of the site and undue hardship. Neither of those terms are defined by the code so she said they have to apply them to each circumstance. The characteristics of the site that are applicable are both physical and legal. The physical characteristics are because Memory Lane jogs between multiple properties and the legal characteristics are because they have to have all the property owners grant an additional four feet of easement. She said most neighbors are in support of the variance but are not willing to grant the additional easement on their property. As a result, Mr. Bustos cannot administratively split his lot which he is entitled to do. Ms. Soper said Mr. Bustos is willing to do a bunch of things at his cost to get this variance approved. They are not requesting anything less than 20 feet of driving surface be varied; it is the width of the easement. The director's decision would have gotten them to 28 feet without any questions but they just don't have the additional four feet. However, they can get to the 20 feet. She said Mr. Bustos understands the 20 feet of driving surface has to be up to code and has gotten a bid for that. He will also move the power pole at his cost. He will also extend the culvert across Memory Lane and the asphalt to 100 feet at the entrance. She said he will give the Fire Department the 26 feet they have requested. She said it will make the road and the entrance safer. It will provide easier access for emergency services onto Memory Lane and there will be less dust for the neighbors. She said they have already talked to Mrs. Perdue about moving her curbs at Mr. Bustos' cost. She said they are not in conflict with the public interest or the neighbors but it will actually benefit them.

Commissioner Sheets asked about the legal issues: can she explain about the offers to the neighbors to try and secure the additional footage for the properties? She said one neighbor has just said no and if they don't have them all onboard, nothing works. That is the hardship; they aren't able to get all the neighbors to say yes, so they haven't even gotten to a dollar amount. She said they understand if they were to get them all to agree, they know there would be a cost involved because he would have to pay for the additional four feet of easement. Commissioner Sheets said if they have gotten all these letters of support, it is providing these benefits and it is potentially just a matter of paperwork, he is trying to figure out why the neighbors won't do it. He asked if they simply needed it on paper. Ms. Soper said yes, they need it on paper but the hardship is having the whole lane surveyed and getting the easements. She said there has just been an unwillingness by the neighbors. Commissioner Sheets asked if she would always consider any development having to ask for easements through multiple properties a hardship. Ms. Soper said she felt this case was somewhat unusual as it was formerly farm ground and the properties were parsed out over time with little easements granted here and there. The nature of how that came about, researched through title and mapped out in the 1950's, creates a hardship here.

Commissioner Nevill said there are a couple of places on the existing road that aren't at 20 feet now; what is their plan for that? Ms. Soper said that area is by Mrs. Perdue's property and she and her son have agreed to let Mr. Bustos pay to move the curbing and the fence. Mr. Bustos understands that the 20 feet width is non-negotiable. The other portion is where the power pole is and he will move that. Commissioner Nevill said is it her testimony that if they approve the variance, the Commission could add conditions that it was Mr. Bustos' responsibility to pay to get the road to 20 feet in all areas that it is not. Ms. Soper said she wouldn't use the term 'pay', but it would be his responsibility to ensure it happens. She said Mr. Bustos understands that it is his responsibility to make it happen. She said it is very likely that it's at his cost, but he understands that he has to make sure it happens. Commissioner Nevill asked staff if they could add conditions. Staff responded that they could. Commissioner Nevill asked Ms. Soper if she was saying by allowing the variance and doing all the other things, in the end, fire access would be better. Ms. Soper said yes, it would be significantly better because there is no turnaround right now for them. She said they worked with the Fire Department to find out what their code was and grant them that wider access. Commissioner Nevill said it sounded like in her hardship discussion that if the variance is not

allowed, Mr. Bustos' can't do the land split. He said Mr. Bustos' financial future is not a concern of the Commissioners'; that is not a hardship. He said the Commission has to look at land use issues and decide if there is a hardship because of the lay of the land. In the past, when they have done variances and looked at hardships, it is because they can't move a hill or that type of thing. Ms. Soper said she doesn't believe they are constrained by that without definitional terms in the code sections and she believes they can interpret characteristics of the site physically or legally. The characteristics of the site physically, jogging across multiple properties and legally, being unable to gain the additional four feet of easement because the neighbors are unwilling (to grant them) is what prevents Mr. Bustos from splitting his lot, which he is otherwise entitled to do but can't because of the road issue.

Commissioner Williamson said she mentioned letters of support. Ms. Soper asked to be allowed to read them into the record and then give them the packet. She said all the letters are the same.

Commissioner Sheets asked if any of the letters were from anyone in the room. Ms. Soper said no. Commissioner Sheets said he won't object to it but pointed out that they can't question the people who wrote the letters. He will be taking that into consideration during his deliberation.

Commissioner Nevill asked if those who were signed up to speak in neutral have had a chance to see the letters. Ms. Soper said they did have a chance to read them before the meeting.

Ms. Soper, the applicant's representative, explained how they got the letters and read the letters into the record.

Chairman Sturgill asked Ms. Soper if she or Mr. Bustos had authored the letter and Ms. Soper said she had.

#### **Loran Schmitt – IN FAVOR – 2997 E. 3500 North, Twin Falls, ID 83301**

Mr. Schmidt was there representing Wilma Huston. He said he wanted to clarify information about the entrance. He said the entrance to Memory Lane is difficult but not so difficult that a fire truck can't get in. He said he has pulled a 30 foot 5<sup>th</sup> wheel trailer in and out of Memory Lane with no problem so it's not as difficult as some people might make it sound. He said moving the power pole is a wonderful idea. They showed Wilma Huston's property and the three egress points to her property. He also showed a drainage ditch on the edge of the road which is a buried drain pipe. There was discussion about other roads along the west of the Huston property and above Mr. Bustos' property.

Commissioner Dorsey asked if all the easements were 24 feet or if they varied. Mr. Schmitt said they vary but also said he didn't know the answer to the question.

Commissioner Sheets asked if Mrs. Huston had been approached to grant additional easements on the property. Mr. Schmitt said Mrs. Huston would have the answer to that.

Chairman Sturgill asked what role he had in the (Huston) property. Mr. Schmitt said he was part of the Huston Trust and is her son-in-law.

#### **Wilma Huston – IN NEUTRAL – 12649 Memory Lane Nampa, ID 83686**

Mrs. Huston was born on her property in 1931 and also owns the parcel at 12657 Memory Lane where her daughter lives. She said there is a covered ditch after the curve and her husband took the fence out along that line so that the trucks could get in there. They have had the firemen in there three times and there hasn't been any contention that she knows about of getting in and out of there. She said it is a lane, not a road and has been there since about 1912. Her grandparents owned all the property over to Lake Lowell Avenue except for the piece along the canal below the dam. There was no Iowa Avenue then, it was the Upper Dam Road but people didn't want to be known as living on the Dam Road so they changed it to Iowa. When she was a kid, they put the road in and the Refuge got the property from the doctors (who owned it) in Nampa. They sold it to the bird refuge and that's when the Fish and Game moved in there. There was no road around the lake: her grandparents used to take the cattle down to the lake to feed them. The trail (they used) came from their house to the corner of Midway and Lake Lowell Avenue. She has been there a long time and there has been a lot of changes. She doesn't feel there is really any

need to improve the lane. She reiterated that it's not a road, it's a lane. Commissioner Sheets thanks Mrs. Huston for coming in and giving the Commission some background on the area. He asked in relation to this case, had she been approached for any easement widening. She said no. He asked if she was approached, would she be willing to discuss it with the applicant. She said it depended on where the widening was. After Iowa on the lane in, it would cause a lot of problems to change it because it would take off her property and her adjoining neighbor's property. She sees no need for it.

**Patricia Dennis – IN NEUTRAL – 12657 Memory Lane Nampa, ID 83686**

Ms. Dennis is a member of the Wilma Huston Trust. She had two satellite maps that she said defines the road better. She handed her maps to Planning staff. She said it was her understanding that no property owner on Memory Lane can claim the road as part of their personal property. The farm road, used since 1912, and the road access to all property owners on Memory Lane was established in 1959 by all property owners and they had to agree to provide access to everyone. All property owners had to agree to maintain Memory Lane as a private lane and share in all the expenses to maintain it. It has never been a burden on Canyon County to maintain it, it has always been a private lane. She asked if they change Memory Lane, does it turn it into a Canyon County road? Since he is applying for a vision of his property, they are trying to understand how that affects the 24 foot easement that is already there. She said they assume that it is grandfathered in.

**MOTION:** Commissioner Nevill moved to grant 3 more minutes of testimony to Patricia Dennis, seconded by Commissioner Dorsey. Voice vote, motion carried.

Ms. Dennis continued: She asked if Ted Bustos is being burdened with these improvements for the Fire Department and other public services who have always been able to access Memory Lane with their emergency vehicles whenever they have needed them. Will this variance application carry over to anyone else who wants to split their property? She said they believe Ted Bustos should be able to split his property without the County expecting everyone on Memory Lane to agree to widen the road access or change the easement in place since 1959.

There was discussion on questions about how this application would affect future land splits and what the nature of the specific variance request was.

Commissioner Nevill asked if she had any issue with more houses being built in their area. Ms. Dennis said she didn't personally have an issue with that. She talked about other properties along the lane that have been or may be divided. She is okay if other houses go in along the lane. She didn't see it as a problem, even with traffic, unless it was a business. Commissioner Nevill said he didn't understand why the Gamel property extended to the other side of Memory Lane. Ms. Dennis said when the original property owners gave permission for that road to be used as access to the homes down the lane, it crossed over properties. She has approached the Gamels in the past to purchase that little piece of property on their side of Memory Lane.

**Christina Dennis – IN NEUTRAL – 12657 Memory Lane Nampa, ID 83686**

Ms. Dennis asked about where they are thinking of putting in a roundabout above the property because it is right above their parcel and their driveway is connected right below it which provides access to their property.

Planning Official Dan Lister reminded everyone that this case is for the variance on the easement that is going up the property and does not have anything to do with the land division case that has includes the turnaround and access. He advised Ms. Dennis that if she wanted to talk about the access, she could talk to the planner who is handling the land division case.

**Tricia Soper – Applicant (Representative) – REBUTTAL – 314 S. 9<sup>th</sup> Street #300 Boise, ID 83702**

Ms. Soper clarified that they intend on having the 26-foot turnaround on Ted Bustos' property and Mr. Bustos will have to amend the survey to reflect that.

Planning Staff and Planning Official Dan Lister reviewed the conditions of approval if the Planning and Zoning Commission decided to approve the variance application.

**MOTION:** Commissioner Sheets moved to close public testimony on Case ZV2023-0001, seconded by Commissioner Williamson. Voice vote, motion carried.

**DELIBERATION:**

Chairman Sturgill stated because this is a variance, the decision is made by the Planning and Zoning Commission and does not go to the Board of County Commissioners.

Commissioner Sheets said based on the testimony the Commission has heard from the applicant, staff and other witnesses, this decision comes down to a hardship and a neighbors' veto. He said they are looking at paper rights and for some physical requirements to get things to 20 feet. What Commissioner Sheets has reduced things down to, is the hardship and the neighbors' veto because they are looking for the additional four feet.

Chairman Sturgill asked Commissioner Sheets to confirm there is no 'takings' because they are reducing easements not asking the neighbors to grant additional easements. Commissioner Sheets said there is no 'takings' because it is private, not a public entity taking private property.

Chairman Sturgill asked Commissioner Sheets if he had a particular direction he was leaning towards in the outcome of the case.

Commissioner Sheets said when it comes to easements, it comes down to the dominant property and the servient property. He said, after all, they are moving from 60 feet down to 24 feet which is less than half. It is a large deviation from the standard. They are just barely past the director's decision (of 28 feet). In order for this to happen and the neighbors need to agree to those conditions. He said he thinks there needs to be a transaction and without that transaction, he didn't think this (application) could go forward.

Commissioner Nevill said in the end, a lot of what they heard was from folks who have lived there a long time and they don't see a problem with it (the lane) because they have lived with it. But, he said, the rules have changed in the County, for a lot of different reasons. In the end, he is going to agree with staff's recommendation for denial because there isn't any hardship. He could go out and get the easements as Commissioner Sheets indicated and then get the road to the proper, current width it is required to be and do whatever he wants. There isn't a hardship in his mind to doing that. Mr. Bustos just has to work it out.

Commissioner Williamson asked for clarification from Commissioner Sheets about the transaction statement. Is he thinking it is either a handshake agreement that the ground would be given or a purchase (agreement) for the easement along the road to get it up to the 28 feet?

Commissioner Sheets said he meant obtaining it however they do it. There is a myriad of ways to obtain those kinds of legal rights and whatever method happens is how it happens. They need the paper rights and people need to agree to it because it is an increased use on the servient estate.

Commissioner Mathews said he can see the benefits of doing this and how it would benefit all the neighbors because they all have an easement over the road as well. If that's the case, the way he would approach it, he would suggest all the neighbors should go to the one resisting neighbor and try to get the deal done. He didn't feel the County should be involved with approving a variance.

Commissioner Dorsey stated that he would vote against the motion to deny because it is an easement. They have a 24 foot easement (now) and the quality of road is going out to 20 feet which is what is needed to drive and function.

**MOTION:** Commissioner Nevill moved to deny Case ZV2023-0001 including the Findings of Facts, Conclusions of Law and Conditions of Approval. Motion seconded by Commissioner Mathews. Roll call vote: 4 in favor, 2 opposed, motion passed.

**APPROVAL OF MINUTES:**

**MOTION:** Commissioner Nevill moved to approve the minutes from 7/6/2023 with one minor change, seconded by Commissioner Dorsey. Voice vote, motion carried.

**DIRECTOR, PLANNER, COMMISSION COMMENTS:**

Tony Almeida, GIS Technician with Canyon County reviewed the County GIS mapping programs available to the public and the Commissioners. He said he maintains the map data layers as well as the legal descriptions, easements and the information for FEMA and the Engineering Department. They are the addressing administrators for the County and approve private and public road names and subdivisions. They also create the neighborhood notification listings as well as creating address points for emergency services dispatch.

There was additional discussion on:

- The ability to see plats online through the Assessor's website
- Finding out how much Agricultural land is available in the County
- How to find active land use cases and building permits in the County
- What data the heat map shows
- The ability to map the number of building permits approved that have not yet been built
- Expanded area case maps
- Maps of existing easements

Chairman Sturgill and Commissioner Mathews gave a quick summary of the EW Real Estate conditional use permit appeal in front of the Board of County Commissioners.

**ADJOURNMENT:**

**MOTION:** Commissioner Dorsey moved to adjourn, seconded by Commissioner Williamson. Voice vote motion carried. Hearing adjourned at 9:59 pm.

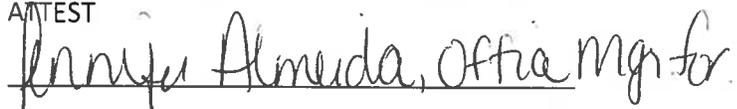
An audio recording is on file in the Development Services Departments' office.

Approved this 7<sup>th</sup> day of September, 2023.



Robert Sturgill, Chairman

ATTEST



Bonnie Puleo, Hearing Specialist