



CANYON COUNTY PLANNING & ZONING COMMISSION
MINUTES OF REGULAR MEETING HELD
Thursday, February 1, 2024
6:30 P.M.

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

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

Staff Members Present: Jay Gibbons, Assistant Director of Development Services
Carl Anderson, Planning Supervisor
Dan Lister, Principal Planner
Amber Lewter, Hearing Specialist

Chairman Sturgill called the meeting to order at 6:31 p.m.

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

Item 1A:

Case No. CU2023-0002-APL – Jimenez – Approval of revised FCO's.

MOTION: Commissioner Nevill moved to approve & sign the revised Findings of Facts, Conclusions of Law and Order. Motion seconded by Commissioner Sheets. Voice vote, motion carried.

Item 2A:

Case No. CR2022-0033 – Kelley: The applicants, Shawn & Rae Lynn Kelley, are requesting a conditional rezone of parcel R38194010A from an "A" (Agricultural) zone to a "CR-R-1" (Conditional Rezone – Single Family Residential). The request includes a development agreement limiting development to three (3) buildable lots. The 4.12-acre parcel is located at 24720 Harvey Road, Caldwell, also referenced as a portion of the NW¼ of Section 35, T5N, R3W, B-M Canyon County, Idaho.

Planner Dan Lister reviewed the Staff report for the record.

Commissioner Williamson asked how far City services are from the subject property. Planner Dan Lister advised they are over a mile away. Commissioner Williamson asked if the ditch is an open lateral. Planner Dan Lister confirmed that is correct. Commissioner Williamson confirmed all the lots are will take access from the existing private lane.

Commissioner Nevill asked why there isn't a road user's agreement if the road is a private lane. Planner Dan Lister explained it is only servicing one house at this time and there is a condition that a road users' agreement will be established before final plat.

Commissioner Sheets asked if there is an existing utility easement on Harvey Rd. Planner Dan Lister stated

he didn't see an existing easement.

Chairman Sturgill affirmed the witnesses to testify.

Testimony:

Shawn Kelley (Representative) – IN FAVOR – 24720 Harvey Rd, Caldwell, ID 83607

Mr. Kelley stated the reason for the road location is because that is what Highway District 4 required. Mr. Kelley addressed the reason why Black Canyon Irrigation could not find the irrigation rights is because it was tied into Drakes Subdivisions irrigation pump, Black Canyon Irrigation will split the 3 lots off and there will be annual fees off of the irrigation pump.

Commissioner Williamson asked if there will be a water users' agreement. Mr. Kelley stated according to Black Canyon Irrigation the three lots will go into the irrigation rotation and pay an annual fee. Commissioner Williamson asked if Mr. Kelley plans on keeping the extra surface water rights or giving them back to the ditch company. Mr. Kelley stated that Black Canyon Irrigation said he gets 1 inch per year and whatever isn't used stays in the canal and goes down, he isn't sure what is done with it after that.

Commissioner Nevill confirmed with Mr. Kelley that he is in agreeance with the conditions of approval.

Commissioner Villafana asked if the perimeter of the subdivision will be fenced. Mr. Kelley stated he doesn't have any plans to do so at this time.

Commissioner Williamson referenced exhibit 4E page 2, the letter from Black Canyon Irrigation stating that fencing will be required along the lateral and then they later stated that fencing is recommended. Mr. Kelley advised he is going to leave fencing up to the property owners.

MOTION: Commissioner Williamson moved to close public testimony on Case CR2022-0033, seconded by Commissioner Villafana, voice vote, motion carried.

DELIBERATION:

MOTION: Commissioner Williamson moved to approve Case CR2022-0033 based on the Findings of Fact and Conclusions of Law and conditions of approval and forward the recommendation to the Board of County Commissioners. Seconded by Commissioner Mathews.

Discussion on the Motion:

Commissioner Dorsey asked for clarification on the irrigation users' agreement as well as the fencing requirement along the lateral. Planner Dan Lister stated the conditions state if you have the water rights you need to use them or prove at the time of plat why you can't use them. The letter from Black Canyon Irrigation shows they are working on that part. At the plat stage other conditions can be made. Planner Dan Lister explained Black Canyon used to require fencing but there was a change in policy, and now they recommend fencing.

Roll call vote: 7 in favor, 0 opposed, motion passed.

Item 2B:

Case No. SD2022-0057 – Kimber Ridge Subdivision #3: The applicant, Jerry Uptmor, is requesting a

short plat, Kimber Ridge Subdivision #3, a two-lot subdivision. The 4.05-acre lot is zoned "R-R" (Rural Residential). The subject property is Lot 14, Block 1 of Kimber Ridge Subdivision #2, also referenced as Parcel R37886213, a portion of the NE¼ of Section 18, T5N, R3W, BM, Canyon County, Idaho.

Planner Dan Lister viewed the Staff report for the record.

Commissioner Sheets asked how long after the Final Plat was approved on June 1, 2022 did this application come in. Planner Dan Lister advised the application was submitted December 8, 2022.

Chairman Sturgill stated he requested the past minutes from when the original plat was approved.

MOTION: Commissioner Nevill moved to accept late exhibits 8a, 8b, and 8c for the past hearing minutes. Seconded by Commissioner Sheets. Voice vote, motion carried.

Chairman Sturgill affirmed the witnesses to testify.

Testimony:

Jerry Uptmor (Representative) – IN FAVOR – 27751 Gray Sage Rd, Caldwell, ID, 83607

Mr. Uptmor agreed with Staff's report and stood for questions.

Commissioner Nevill confirmed with Mr. Uptmor that he agrees with the conditions. Commissioner Nevill asked for Mr. Uptmor's thoughts on the fencing recommendation from Black Canyon Irrigation District. Mr. Uptmor stated if he gets the split he will be putting fencing on his lateral and will leave the option for the property owner on the split. Commissioner Nevill asked Mr. Uptmor's thoughts on the road user's maintenance agreement for the shared access. Mr. Uptmor stated he already put a driveway in and made it extra wide in anticipation of the split. Commissioner Nevill asked if the property is on a hill. Mr. Uptmor stated it is a slight hill to get to the top, basically a null.

Planner Dan Lister advised that hillside development is part of the platting process and it was already determined that the subject property doesn't slope over 15%.

Commissioner Sheets asked if there is an HOA. Mr. Uptmor stated there are CCNR's but there isn't an HOA. Commissioner Sheets asked if the plans conformed with the CC&R's. Mr. Uptmor confirmed that it does.

Commissioner Williamson asked why Mr. Uptmor wants to split the 4-acre lot. Mr. Uptmor stated that is the reason he bought the 4-acre lot instead of the other lots. He was originally looking at a smaller lot and the developer Dennis Jones convinced him to buy the 4-acres because it is zoned rural residential for a minimum of two acres. This appealed to Mr. Uptmor to help with some of the cost. Commissioner Williamson asked if it was the developer that suggested buying the 4-acres and then doing a split. Mr. Uptmor stated that is correct and that the developer has an additional 4-acre lot that he is doing the same thing with.

Commissioner Dorsey asked if the property has surface water rights. Mr. Uptmor stated it does not. Commissioner Dorsey asked what Mr. Uptmor's plan is for irrigation water rights or if he would be comfortable with additional conditions. Mr. Uptmor stated he would be comfortable with Planning and Zoning giving recommendations.

Commissioner Mathews stated he could purchase additional water rights through the Department of Water Resources.

Diana Hoffman – IN OPPOSITION – 27990 Gray Sage Rd, Caldwell, ID, 83607

Ms. Hoffman stated that traffic and speeding has increased from construction workers and the influx of residents. Notus Parma Highway District has posted a 20 mph sign and it continues to get ignored. Ms. Hoffman has put signs up asking to slow down, those get ignored. Ms. Hoffman believes having an additional well in the area will negatively impact the resource of water. Ms. Hoffman stated the switchback is a steep hill and is concerned for the Fire Department and EMT's needing to go to the property.

Commissioner Nevill asked if any of the concerns are with Mr. Uptmor or just the developer. Ms. Hoffman stated adding an additional home would contribute with the concerns she already has.

Marina Peters – IN OPPOSITION – 17134 Big Sage Ct, Caldwell, ID, 83607

Ms. Peters stated she is opposed to the subdivision for many reasons. When the land was sold prior to 2016 the potential buyers in Silver Sage Subdivision were told the subdivisions would not be connected, when the land was rezoned from ag to rural residential they were told it was one homeowner with a couple homes for his children. Then it turned into 14 homes. Now the once dead-end road has Kimber Ridge residents speeding down the road. Ms. Peters stated the schools are over capacity. Ms. Peters stated it takes the Fire Department about 30 minutes to get to the area and there were 5 fires last year.

Commissioner Williamson asked if the fires are in her subdivision or the Kimber Ridge Subdivision. Ms. Peters stated there was one in Kimber Ridge which was a brush fire.

Commissioner Nevill asked for clarification on the schools being over capacity. Ms. Peters stated she has two kids in Mill Creek and she believes they are over capacity 130%. Commissioner Nevill asked where the other four fires were. Ms. Peters stated two fires were off of Sand Hollow and the other one or two were in Butterfly Ridge. Commissioner Nevill asked how the fires occurred. Ms. Peters stated the one in Kimber Ridge was a brush fire during construction, the one on Butterfly Ridge was brush fire, one in Sand Hollow was a brush fire, and the last one was a home fire.

Jeffy Uptmor – REBUTTAL – 27751 Gray Sage Rd, Caldwell, ID, 83607

Mr. Uptmor stated the brush fire in Kimber Ridge was the well drillers who were drilling a well took the blow torch to clear out some tall grass and the wind caused the fire. The fire department came out and put it out. Mr. Uptmor stated the grade going up to the house is less than 15%. He put a large pad near his shop for the Fire Department to be able to turn around and it meets the Fire Departments requirements. Mr. Uptmor stated there isn't going to be a bunch of splits because with rural residential they have to be 2 acres. There are only three 4-acre lots in the subdivision, his, one that won't be split and one other. Mr. Uptmor stated the signs for traffic to slow down work. He sees people speeding and then slow down on that road.

Commissioner Williamson asked with the five fires in a year make Mr. Uptmor consider other fire suppression measures. Mr. Uptmor stated it doesn't because there is so much space between each lot and the lot he has is three quarters surrounded by the irrigation ditch.

Planner Dan Lister reminded the Commission that this isn't a rezone request, it is a subdivision plat. The area is zoned rural residential. The lot has been approved by the Fire District.

Commissioner Nevill asked what they are able to consider and if they can consider 2-acre lots are smaller than the lots around. Planner Dan Lister advised they cannot because the area is zoned rural residential which allows 2-acre lots. The split will not have impact on any essential services because that was already determined at the re-zone. The findings for this case are if the split meets the minimum requirement and if there is any improvement the Commissioners want to recommend. Additional conversation transpired regarding the rezone and short plat.

Chairman Sturgill asked why the case was brought forward as a short plat instead of a modification to the plat Planning and Zoning approved. Planner Dan Lister explained those plats have already been decided upon and the change is to one lot within the plat. Additional conversation occurred in regards to the difference of the plat that was approved and the case before them.

Commissioner Villafana asked if the lot sizes were a concern previously and the average lot sizes are 3.3 acres, the request is 2-acres, when do we stop allowing re-plats. Planner Dan Lister explained it would have to meet the standards for the zone it is in or have to go through the process of rezoning. Commissioner Villafana asked why there wasn't a condition on the rezone for splitting the properties. Planner Dan Lister stated it was a full rezone and not a conditional rezone.

MOTION: Commissioner Williamson moved to close public testimony on Case SD2022-0057, seconded by Commissioner Mathews, voice vote, motion carried.

DELIBERATION:

Commissioner Dorsey stated he understands the codes and why staff recommended approval but he sits on a Planning and Zoning Commission and in the name is planning, he see's the frustration because by code it is allowed, but he feels this is a loophole.

Commissioner Nevill stated he believes they get to make land use decisions and that includes if smaller lots are appropriate for the zone due to traffic or school impacts, they are able to say no to the application. Chairman Sturgill stated he understands the frustration for the Commissioners but for the interest of driving towards a motion he suggested they review the criteria.

Commissioner Mathews stated his concern is if the original plat said that the lots could be subdivided and the Commission says they can't that is an arbitrary action on Planning and Zoning Commission.

Commissioner Williamson proposed a condition of approval that the applicant would need to reach out to the fire district and see if there needs to be any modifications.

Chairman Sturgill proposed they continue the case and ask for the original developer to come in and provide a revised plat showing all the subdivisions that are contemplated. Planning Supervisor Carl Anderson stated the application meets the zoning ordinance and is permitted under the current code. He suggested the Planning and Zoning Commission entertain the application before them and if there are conditions on the current application however for the previous application has already been approved.

MOTION: Commissioner Mathews moved to approve Case CR2022-0033 based on the Findings of Fact and Conclusions of Law and conditions of approval and forward the recommendation of approval to the Board of County Commissioners. Seconded by Commissioner Sheets.

Discussion on the Motion:

Commissioner Sheets stated he believes this is a loophole. To have a final plat approved and before the ink is dry an application comes in to start changing it, he believes the code needs to reflect something to that effect that a replat within a certain amount of time will not be considered by this body because they took evidence and made their decision based on a representation that lasted for five months. He doesn't like it but according to the code he doesn't have a reason to deny the case.

Commissioner Villafana agrees with Commissioner Sheets. The issue is the case meets the criteria, another split is allowed, and it is a loophole.

Commissioner Williamson agrees with the other Commissioners.

Roll call vote: 4 in favor, 2 opposed, 1 abstained, motion passed.

APPROVAL OF MINUTES:

MOTION: Commissioner Nevill moved to approve the minutes from January 4, 2024 with the approved revisions done via email, seconded by Commissioner Mathews. Voice vote, motion carried.

DIRECTOR, PLANNER, COMMISSION COMMENTS:

Commissioner Nevill believes if they cannot do anything about land use then they shouldn't have to hear the case.

Assistant Director of Development Services Jay Gibbons expressed gratitude for the Commissioners hard work. He understands the frustration in regards to timing for the previous case, the applicant had to go through the process and will continue to go through the process. Assistant Director of Development Services Jay Gibbons advised they are actively reviewing the current codes in regards to several items and amendments have been identified to move forward.

Planner Supervisor Carl Anderson provided future hearings that are scheduled.

Commissioner Dorsey thanked the Chairman for allowing him to abstain his vote in the previous case.

Planner Dan Lister stated staff tries to make the best staff reports so the Commissioners can make their decisions and asked if the Commissioners need more information to let them know.

ADJOURNMENT:

MOTION: Commissioner Williamson moved to adjourn, seconded by Commissioner Villafana. Voice vote, motion carried. Hearing adjourned at 8:33 PM.

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

Approved this 15th day of February, 2024



Robert Sturgill, Chairman

ATTEST



Amber Lewter – Hearing Specialist