

WHAT: MEETING MINUTES

WHEN: May 17, 2018

TIME: 4:00 P.M.

WHERE: District Courtroom Judicial Building

BOARD MEMBERS PRESENT: Berkeley Orton, Wayne Schenk, Lloyd Smith, Randy Gillette, Dacx Duffin

Berkeley-This is the Minidoka Planning and Zoning commission, 1st off let's have a roll call of who is here.

(all state their name individually)- Randy Gillette, Dacx Duffin, Berkeley Orton, Wayne Schenk, Lloyd Smith

Berkeley-Ok thank you, and we have a quorum. So 1st off, just a quick review of our procedures. And that is the items are presented then we will have a few comments from Brett, hear testimony from the presenter and when that is done we will have comment for those in favor, those neutral, those against. Then we will give the presenter the opportunity to speak again. And we ask any questions we have, we then close for deliberation and after we close for deliberation we can no longer take comment from the audience unless we open up for public comment. We will make our final decisions.

The 1st item is to approve our minutes from the last meeting.

Lloyd-I move so we approve

Randy-Second

Berkeley- all in favor say I

All- I

Berkeley- any opposed?

Alright, 1st item on the agenda is the Sweet Mountain subdivision special use.

Brett-I want to introduce the Sweet Mountain special use from the last hearing that was recommended to move forward that we overlooked. We had to table the special use in the preliminary hearing to review the final and we overlooked specifying the decision on the special use application along with the recommendation of the commissioners. We need to make a decision on the special use permit in conjunction with this subdivision that has already been submitted to be reviewed by the commissioners.

Lance- Do you all recall this testimony and so forth? If you do recall you can entertain a motion to approve that because you did already approve the subdivision. So, it will be up to the board if you would like to discuss further special use permit or you could entertain a motion to see if you are at that point or not.

Berkeley- so we specifically did not mention anything about this special use.

Lance- We didn't approve the special use, you approved the subdivision but not the special use permit. It was discussed simultaneously.

Lloyd- We have met several times on that now.

Berkeley-does anyone feel like we have to open discussion on this?

So basically, just for the record we need to make a motion to approve

Dacx- I'll make a motion to approve the special use permit for Diane Griswold Sweet mountain subdivision located at 765 W 400 S in Heyburn

Wayne- Second

Berkeley- all in favor say I

All- I

Berkeley- any opposed?

Alright, 2nd item on the agenda is Croft Acres subdivision lot 8 replat

(Dacx removes himself from quorum since related to applicant of Croft Acres replat)

Brett- this subdivision is an amendment of replat of the croft acres east subdivision on lot 8. Proposing to split lot 8 into 3, 1-acre parcels. This is located at approximately 500 W 300 S. So, the north boundary is 300 S, West boundary is 500 W (pointing to plot map) at the intersection. We are here to review the replat of lot 8 of this subdivision. We have received a full application, we will turn our attention over to Lance Stevenson County prosecutor

Lance- so, in regards to the review of a plat or vacation of a plat. You remember once something is subdivided the code really tightens it saying you can't change this unless a lot of people are aware and that way people can't jump in and out of subdivisions. However, the code also realizes that its sometimes necessary to change subdivisions or replats or so forth like that. So, it allows to do that too. If no one opposed the plat no land owner that has an interest in this plat opposes it than it can be heard and this board can look at it and replat if they so desire if they meet all the requirements and so forth. If it is opposed by any current land owner than this board can hear it as long as there is 2/3 of the property holders in the subdivision consent to the vacation or replat. If there is not 2/3 vote than this board can't even hear it. So, code is very strict that way. It says you may not precede in hearing or determine if there is not a 2/3 vote or if its opposed. So, if it's not opposed than you can hear it. So that brings up the question. If the presenter starts the presentation and someone opposes during the presentation, then that's where you would end your determination on that. Unless there is a 2/3 vote to proceed. Does that make sense to everyone? So, there are 8 lots. I don't know who owns them 2/3 vote would be 5. So, Mr. chairman I would suggest, prior to hearing testimony, ask the public if there is anyone in opposition of this hearing. If there isn't, I would proceed.

Berkeley- Is there anyone here present who is opposed? (One raises hand) You are a property owner in the subdivision? (yes)

Lloyd- Lot 6, do you now own the lot or is it James Ray?

Mario-James Ray still owns and is building for us.

Paul- 283 E. 350 N. Rupert. I'm a little confused. This title that Mr. Stevenson is referring to is dealing mainly with vacations. We are not vacating a plat. I've dealt with similar things in both Cassia and Minidoka County before where we did not do vacations. Like in the Centennial and re-aligned lot lines, some lots bigger some smaller. We just amended the plat

Lance- it says though plats and vacations

Paul- But if you look at the title all its saying is its specific to vacations. And the reason for it is to protect the public. But what I'm saying is we are just amending the plat. This is more for vacating a plat, we are not vacating anything. We are creating a small subdivision within a subdivision.

Lance- but you are changing the original plat, correct?

Paul-we are recreating a 3-lot subdivision within the subdivision other than that we are not changing the original plat

Lance- but you are changing the original plat, right?

Paul- By replating the one lot.

Lance- in my interpretation its plats or vacations. If you change the original plat that would be when this code section kicks in

Paul-and another thing I would like to point out is we did amend the 1st set of restrictive covenants for croft acres east. 7 of the 8 property owners signed it and they are referencing's is in there to replating lot 8.

Lance- Mr. chairman if I can, Paul, were they provided with the amended plat?

Paul- they were shown the plat yes. They were told what we were doing. Yes.

Berkeley- maybe different counties have different codes. In cassia we amended a plat. What code is this?

Lance-Idaho code 50-13-19 and the other ones are labeled, plats and vacations. I was looking at the other ones for example Idaho code 50-13-11 plat recording so forth so its talking about plats just like it. Validating plats, existing plats, so forth like that.

Berkeley- do you have the signatures?

Paul-yes, in your book

Brett- I'm thinking the only one that is not there is their lot (pointing to Mario Rios). I'm having our office check the current ownership. So, I think there are 6 out of 8 signed. Even if James Ray's qualified or not they would still be at 5.

Paul- we had 7 out of the 8 with James Ray. It was such a hectic to get those signed. Some are signed on one document and others on another.

Berkeley- that lot that James Ray signed off was on February the 20th.

Brett- we are just verifying that's still the current owner.

Paul- and if you don't recognize those amendments, James Ray and TKO because the amendment allows the different septic systems.

Berkeley- so it appears to me with these signatures we have we have 2/3.

Lance- for the record, I believe that particular document talks about an amended plat. Am I not right?
Paul can you come back up and talk about the covenant. I looked at that document today and for the record on the 1st page it talks about an amended plat. So, when the person signed they were aware of the amended plat. And according to testimony, Paul has stated or Dalles who might have got the signatures, that they put forth the amended plat and they all reviewed it. Is that a yes?

Dalles- yes

Lance- so with that said, although one signature is in question, which would be 6 signatures, which would be James Ray, even with the 5 signatures the board here can hear the amended plat. Because of the consent.

Berkeley- looking at the preamble it does say; this made the 27th of October 2003 subsequently amended 2018 to include the replat of lot 8 exhibit B by the undersigned. Owners that... goes on but it does state so this is the document signed by all those property owners.

Wayne- I see not exhibit B

Berkeley- is exhibit B the plat?

Paul- yes, the 3 lots

Brett- A is the original

Lance- so I think this board can find, based on that document that those individuals consented amendment to the plat.

Brett- we just had the property information be brought down from our office. We want to share that with you, can you give this to Paul and Dalles. (Montana takes info to Paul and Dalles). It shows Rios as being current owner.

Berkeley- ok, with that we still have 5 signatures, 2/3.

Lance- I think you have to move to hear the case, entertain the motion to hear the case. 5 owners consented to amend plat. And then just do the regular hearing if that's truly the motion you want.

Wayne- (needs a few minutes looking at binder before entertaining motion) Are any of the other owners here besides the Rios? No, ok.

I'll make a motion that it appears 2/3 ownership is ok with replat, so I make a motion that we go ahead and proceed.

Randy- 2nd

Berkeley- all in favor say I

All-I

Berkeley- any opposed? Ok. So, we can go ahead and hear it, you want to talk for a second Brett?

Brett- back to the location 300 s 500 W road 3 lot subdivision, they have all the necessary information on the application. I invite Paul Aston to take stand.

Wayne- the other 7 lots are still going to be 3 acres, they are just waste ground in the back. Are we going to be replating them at some point too?

Brett- I'm not sure?

Wayne- I guess those lots haven't been sold or just not utilized, are we going to be doing this again 3 or 4 times down the road to replat.

Brett- I believe only this and one other lot aren't built on

Paul- there are 3 houses being built. 1 vacant, TKO has one

Brett- I believe just lots 7 and 8 are vacant.

Berkeley- but if they were to re-do that they would have to have 2/3 approval of the property owners.

Wayne- I'm just saying that it's an eyesore out there that needs to be developed and there is no way to develop if its locked like it is here.

Brett- Just to bring that up, this property owner that is applying for this 3-lot subdivision only has the opportunity to apply for this certain lot because that is where they have ownership, that would have to be individual owners to replat theirs as well.

Wayne- so for planning and zoning, in order for that to be developed there you've landlocked it in to where it can't be developed. They would take this road access off?

Brett- any other lots that would be re-plated in the future would have to put an easement to get to the properties. They would have to have an approved access.

Wayne- but you see what I'm getting at? The fact that we have piece mail out there, 3 acre lots, 1 acre lots, undeveloped lots.

Brett- just in that area in general there are a category of 3 acre lots, 1 acre so the sizes do vary in that area pretty dramatically. I don't know if that pattern will go away depending on the subdivisions that are applying. But we can't force these property owners into replating. We need to focus on this, for this application we can only address this particular area.

Wayne- I know, but we need to see the whole picture and this is part of the whole picture. We need to address this.

Lloyd- Mr. Chairman if I may? I think what we have to deal with today is what's legal and what's absolutely available under the rules and regulations of ordinances state wise that are given to us to look at. And I think we need to revamp the comprehensive plan, so we can get it right the 1st time and not have to go back and have this out there, a lot of it.

Wayne- and there's probably a lot more coming too. And that's why I am bringing this up, so we are all aware. This is an example of why we need update comprehensive and planning zone maps.

Lloyd- we can use it as an example and use down the road so that later down the road, this doesn't come up.

Lance- Well Mr. Chairman, what you can do and what you should do is look at you points of evaluation and one of those points is: will this purpose be harmonious with and accordance to the general

projection or area. So, there is your point that you can argue and ask the applicants or anybody of how it is. I hear testimony of that. Before we jump into a conclusion.

Berkeley- Well let's go out here and hear testimony on this and precede forward with this particular property.

Paul- Paul Aston 383 E 350 N Rupert. In way of introduction this 8-lot subdivision was created 20 years ago. In the have to of manufactured homes and they were looking for every scrap of land to plot a manufactured home, and at that time the state required nutrient pathogen study dug for every subdivision. Which since then they have come to the conclusion that that was a bit over doing it, nutrient pathogen studies in this case said you need to put pressurized septic system lines in. The engineer came back with this recommendation. The engineer was taking the safe approach and saying well let's make sure it's the best and most expensive. So, they ended up with 3 lot subdivisions, and a few property owners did go through with the cost of putting pressurized septic systems. They are on ongoing maintenance issue, spreading fluid off over the whole bed instead of working like a traditional septic system does. The Health dept, the state decided that the standard traditional septic system if put in right way it is working, so they basically abandoned the requirement of nutrient pathogens. And so here, we have 3 acre lots in this subdivision and Mr. Schenk has a legitimate point. And I can almost promise you some point down the road someone is going to look at the big 3-acre lot, whether it's the present owner or a future one and say- yea, why can't I sell half of this off to my kids. So, yes, you might very well be back in here with them with another application. We actually approached the owner of lot 7 to see if he wanted to partner with us on this application and he chose not to. We thought it would be a better approach if we did both lot 7 and 8 at the same time. So, we acknowledge that we thought there was potential in doing better, but we only control 1 lot, that is why we have it potentially for division of only 3 lots. As our county grows, 3-acre lots doesn't make sense. You want people who want to build out in the county and this basically (the 8, 3-acre lots) took 24 acres of farmland out of protection. Maybe not the prime but they were farming it until they put the subdivision in and its laid vacant since then basically. So, to minimize that impact on agricultural lands let's not take more out of production than we have to for these residences but let's do it right. And basically, Scott Arnell has reviewed these and he is ok with their placement. All 3 lots will be accessed from 300 S, lots one and 2 will share a driveway and lot 3 will have its own driveway. That way it will move traffic away from the intersection. The highway district likes when we share and have less access to the county road as we can. This does create a problem that we are going to have but its an easy change, if you look at the 3rd page of the new plat. It shows the well at that point, it's an easy fix as we will just put the well envelope across the whole front of all the lots. Desert west will change that. As you notice, in the covenants that were signed and waiting for approval, it also did away with the requirement of the pressurized septic system. Mr. Rios house is legal and so is the house of TKO's, Scott Arnell must have approved these septic systems also. But in reality, if this is not approved they are in violation of the restrictive covenants. But we amended it to allow these adjustments on the septic's and wells. There will be 3 sets of covenants; the original, the amended that we tried to keep as simple as we could, and the 3rd one just for these 3 lots. Which this one for the 3 lots only requires a minimum of 1400 sq. ft, stone and stucco front etc. I'll be glad to answer any of your questions.

Wayne- I see you will use sand points again.

Paul- oh yea, irrigation. The original set up for the creation of an irrigation system that was never created. Daren is here, he could say that MID would have people get their water from Sand point wells.

It creates less nightmare for MID delivery, plus you don't have to worry about HOA to maintain a pressurized, or ditch. These 3 lots will have irrigation water provided by sand point wells where they each control their own irrigation.

Brett- I did visit with MID this week and they made that same statement.

Berkeley- is there a document required to change the point of diversion.

Paul- yea, we will have to assign a document with MID but we haven't done that yet. I can't remember the title but it says we will basically be taking the water from the high-water tables from the area to irrigate with. They still have to pay MID water assessments even though not getting it out of the canal or ditch. To the best of my knowledge, none of these lots are receiving surface water. I might be mistaken.

Berkeley- we will hear any other testimony in favor, any testimony in neutral, any testimony in apposed.

Mario-Mario Rios 308 S 500 W so we are opposed to it because we come from Parke Ave in Burley, we wanted out in the country. With this new subdivision, it feels like city life again. We have 2.5 acres in our lot and our neighbor has 3 acres. The reason he probably chose not to do that is he likes his land, he has plans for it and what not. My parents own 3 acres out in Burley as well, there is no areas in burley. I understand people are wanting to zone new areas, communities growing and what not. But for the country life that's why we came out here. This is a country road, outside of city limits. We don't want all of these surrounding neighbors, you don't see multiple homes on those 3 acre lots, its only one house.

Brett- this is part of the city of area impact, city of Heyburn was notified and we did not receive comment.

Berkeley- I entertain a motion to close for deliberation

Randy- I'll move that we close for deliberation

Wayne-Second

Berkeley- all in favor say I

All-I

Brett- Preliminary plat that would also be recommending commissioners for the final plat, but MID, SCHED, the Highway dept all of those entities will have to sign off on the final plat.

Darren- can I?

Lance- hang on, they are in deliberation and they have to open backup if you want to take stand

Berkeley- we have to open back up for comment. You want us to re-open?

Darren- I think I better, sorry

Randy- want to make a motion that we open the deliberation

Wayne- I second

Berkeley- all in favor say I

All- I

Darren-sorry. I'm Darren Wilson from the Minidoka Irrigation Dist 98 W 50 S. I just have one thing, Paul said there was no access to water and there is, there is also an open ditch and a main line that goes down there. It was put in for watering the subdivision along 500 rd. to the east, behind the properties. The people living on 500 that water, water from that ditch 10-11 lateral. I prefer the sand point but I want you to know there is adequate access for them to water out of the ditch.

Berkeley- ok, thank you. Close?

Lloyd- I want to make a motion to close for deliberation

Wayne- second

Berkeley- all in favor say I

All- I

Wayne- on exhibit a and exhibit b we need to have those attached.

Lance- they don't have to provide you covenants, remember you need to look at points of interest and points of evaluation. So, everyone was noticed, so that's the safety catch of all amended plats and vacated agents. Even ½ mile outside of this subdivision was noticed.

Berkeley- we are just depending on those covenants to give us the authority to proceed with the hearing.

Wayne- and concerning the gentleman's testimony to want to live out in the country, things are building up around you. That's happening all the time, this is not the 1st time planning and zoning has come across.

Randy- yea the covenant though is what you kind of look at when purchasing, the covenant addresses what to go by. That covenant means everything.

Lance- so legally there may be a civil suit, but this particular board does not get to be the ruler on the particular covenant. A judge does, I mean you could bring a civil suit on your neighbor for a covenant or breach of contract suit, but this board doesn't get to hear that.

Wayne- we are just saying how it affects the neighbors

Berkeley-many years ago I tried changing the covenants on a subdivision that we had done and we had to have signatures and we couldn't get them, we had a few people that didn't sign and the title company would not allow us to change them because of those signatures. How Randy said the covenants have a lot of strength.

Lloyd-again we are not here to change the law

Wayne – the only point of evaluation that I have reservations on is the fact that the documentation is not clearly developed on the change of covenants and they notified others legal through the mail and signatures, which should be sufficient unless they did not understand what they were signing. Considering that 2/3 has been signed and evidence, the points of evaluation of the replat would be in favor.

Berkeley- my comment on the points of evaluation, #2, be harmonious...I think some people like 3 acres and others like one acre, most people don't know what to do with more than one acre. People should have a right to have what they want. Other than that, I don't see anything in the points of evaluation and it's our responsibility that it meets criteria.

Wayne- I want to entertain a motion

Berkeley- we don't have to have this come back with all the signatures, that can all be handled by the county commissioners. Is this the amended plat?

Brett- yes

Berkeley- so I entertain a motion if we are ready to approve or deny

Wayne- seeing there are no other comments from the press of the board I make a motion that we approve the replat of lot 8 of croft acres east subdivision with the stipulation that the letters from the appropriate entities are to be turned in. And access and location of wells will be part of that approval.

Lloyd- second

Randy-according to these points here I second it

Berkeley- if all in favor say I

All- I

Berkeley- any opposed? I don't see anything else on the agenda, do we want to set another date for the next meeting?

Lloyd- the 11th is the next one.

Brett- June 21st is our next meeting

Lloyd- I motion to approve

Wayne- Second

Berkeley- all in favor say I

All- I