

## **BANNOCK COUNTY PLANNING AND DEVELOPMENT COUNCIL**

**APPROVED** MEETING MINUTES | March 14, 2024

**BANNOCK COUNTY STAFF PRESENT:** Hal Jensen, Planning Director; Tristan Bourquin, Assistant Director; James Bagley, Zoning Planner, Alisse Foster, Subdivision Planner; Marj Williams, Management Assistant.

Stewart Ward calls the meeting to order at 5:17 pm.

### **A. ROLL CALL AND DISCLOSURE OF CONFLICTS OF INTEREST:**

Present Council Members: Chuck Heisler, Barbara Hill (via Zoom), Edward Ulrich, Stewart Ward.

Excused/Absent Council Members: Tam Maynard.

### **B. PRELIMINARY BUSINESS:**

AGENDA CLARIFICATION AND APPROVAL - None.

Ulrich makes a motion to approve the Agenda as written. Heisler seconds. Motion passes unanimously by acclamation.

### **C. APPROVAL OF MINUTES:**

Ulrich makes a motion to approve minutes for October 18, 2023. Heisler seconds. Hill abstains due to being absent. Motion passes unanimously by acclamation.

Hill makes a motion to approve November 15, 2023. Ulrich seconds. Motion passes unanimously by acclamation.

Hill makes a motion to open the Public Hearing. Ulrich seconds. Motion passes unanimously by acclamation.

### **D. PUBLIC HEARING ITEMS:**

4. CONCEPT PLAN APPROVAL - WE THE PEOPLE SUBDIVISION – Jose Nava, 1290 Mountainwest Dr, Pocatello, on behalf of Noel Olson, proposes a 3-lot subdivision with a total of approximately 94.86 acres. The development proposes connection to individual water and septic. The two building lots will be 4.98 acres with one open space lot of 84.9 acres. There is a shared access easement on the common lot line between the two lots. There is a 15' easement along the frontage for utilities, and a 20' transmission line. The open space is due to the area being prime agricultural ground.

Alisse Foster, Subdivision Planner, presents the Staff Report. She notes the total acreage would only allow for two developable parcels due to ag zoning. There is currently a home on the property. There is a possible canal on the northeast corner covered in open space.

Ward asks if highway district maintenance is the same as county maintenance. Foster confirms that they are a jurisdiction that would fall under that.

Ward invites public testimony.

Public testimony in favor: Joshua Ellis, 722 Lucy, Chubbuck, ID, encourages approval due to the farm land in the area turning to residences. He believes 5-acre parcels are more appropriate.

Public testimony neutral: None.

Public testimony opposed: David Bloxham, 2955 E. Woodland Rd, Downey, ID, is concerned with new wells affecting the already curtailed water supply. He notes that he had to have 40 acres to put his house on. He is not against development but is concerned that there will be over development. The water curtailment is starting to be on both surface and ground water.

Ward invites the Applicant up for rebuttal.

Nava reiterates that there are 84.9 acres restricted from urban development in open space. He notes that the existing house has a well and they are only adding another lot with another well.

Heisler asks why the property was divided into two 5-acre lots and one 84-acre open space lot. Foster says it is in prime agricultural soils which require 90% of the land to be dedicated open space, which leaves only 10 acres to develop. If the property were not prime ag land, it would still have to have 50% dedicated to open space due to being in a wildlife habitat area. The Applicant has 90 acres which gives the ability for two development rights, density of one dwelling to 40 acres.

Ward asks if Malad Highway, classified as a major collector, needs any additional dedicated right-of-way. Kiel Burmester, Public Works, says it would just need the utility easement and that's why they went with the shared approach.

Ward proceeds on to discussion and review of the findings.

1. The proposed tentative plan is in conformance with the Bannock County Comprehensive Plan because it helps with sustainable growth, which is one of the responsibilities outlined in the Comprehensive Plan. One of the objectives, 1.4, is to provide diverse rural housing options. This concept meets that objective. This plan is in conformance with the ordinances of Idaho Code because the density is one dwelling per 45 acres, which is over the required one dwelling per 40, as required in the agricultural zone. It meets the 90% open space requirement, as outlined in the Subdivision ordinance.
2. The proposed roads and bridges are designed and constructed according to Section 402 of the Subdivision ordinance. A design deviation was not requested. The concept meets Section 402 because Old Malad Highway is a major collector road, requiring one access, and the concept proposes a shared approach. Since no new roads are being proposed, road standards don't apply.
3. The proposed partitioning of land does not prohibit the extension of dedicated streets or roads. Since there are no streets or roads to extend, and this is connecting to a major collector road, this concept does not prohibit any extensions.
4. The proposed partitioning will not conflict with legally established easements or access within or adjacent to the proposed land partition. The only current easement is the powerline easement which has already been addressed as part of this concept. All easements will be required to be researched as a condition of this approval.
5. The blocks of lots are located and laid out to properly relate to adjoining or nearby lot and parcel lines, utilities, streets, and other existing or planned facilities. The block in the concept has the lots clustered where buildable areas are most likely. The lots and parcel lines are laid out appropriately in conjunction with road location as well as terrain.
6. The proposed property is physically suitable for the type of proposed density of the development, and does conform to existing zone standards. The proposed property is suitable for this type of development because the density is one dwelling per 45 acres, which is over the required one dwelling per 40, as outlined in the agricultural zone. It meets the 90% open space requirement, as outlined in the Subdivision ordinance.

Ulrich makes a motion, based on the record and discussion this evening, to approve the request for the We The People Estates concept plan, as described in the application materials, as supplemented with additional information attached in the staff report, according to testimony received, and to adopt the proposed findings and order for signature by the Chair or Vice-Chair with the following conditions:

1. Fire suppression requirements shall be resolved with the local fire jurisdiction before the preliminary plat application. Written requirements should be included in the application. Location of any fire suppression must be depicted on all subsequent plats.

2. Depict all current and proposed easements and rights of way located within the subdivision on all subsequent plats to include measurements and instrument numbers when available.
3. All current structures must meet setback requirements of Bannock County Zoning Ordinance 316 to the proposed lot lines. Structures and setback measurements shall be depicted on preliminary plat only.
4. Subdivision shall have a single access built to county standards to a county maintained road.
5. A note shall be placed on the plat stating that all lots shall access from the shared access easement.
6. Access shall be reviewed and approved by Downey-Swan Lake Highway District before the preliminary plat application. Written approval included in the application.
7. Include proposed stormwater detention/retention methods and measures adequate for controlling post development stormwater runoff on the preliminary plat and construction plans.
8. All subsequent plats shall state open space is a separate lot and deed restricted against further development but may be used for farming, timbering, wildlife preservation or conservation per Bannock County Planning and Development Council.

Heisler seconds the motion.

Roll call. Heisler – yes. Hill – yes. Ulrich – yes. Ward – yes. Motion to approve passes 4-0.

5. CONCEPT PLAN APPROVAL: ELLIS ESTATES SUBDIVISION – Applicant, Joshua Ellis, 722 Lucy, Chubbuck, ID, proposes a 6-lot subdivision with a total of approximately 9.5 acres. The development proposes connection to individual well and septic. Per the Staff recommendations, they do have a mailbox but it hasn't been located yet due to weather. The bus stop will be out front on Lovell Lane. The road is built to County standards and will be turned over to the County. The standard for right of way went from 50 to 60 feet while they were building, but easements were already in place with Idaho Power that wouldn't allow them to increase to 60'.

Ward asks if all improvements are completed. Ellis confirms that everything is in except for the stop sign and street sign for Lovell Lane, and the mailbox needs to be installed when snow permits. Ward asks if the design deviations were requested and approved at that time as well. Ellis confirms.

Alisse Foster, Subdivision Planner, presents the Staff Report and notes that the design deviations on the previous concept road have been black topped and majority has been constructed. The deviations included a 50' right-of-way and the cul-de-sac being placed at 700'. This has gone through a minor land division and is being further subdivided.

Ward asks if the previously approved design deviations need to be put as conditions. Foster says it should be looked at as a new subdivision. Ward asks about Condition 13 stating that the open space is a separate lot and deed restricted. Foster says it is within lots and the Separate Lot definition is how it was previously interpreted and Council can change the wording to say open space is within the individual lots and deed restricted.

Ward asks for more information on why the concept plan has come back to this point. Foster says when the Applicant submitted his minor land division, he had some shading on the four-parcel sketch plan for this subdivision to plat it in the future. Then the open space interpretation changed. The Applicant then asked if he could move forward based on the previous interpretation and presented an approval letter from the County with open space being within the lots. Commission has reviewed and stated that it meets the requirements.

Ward invites public testimony.

Public testimony in favor: None.

Public testimony neutral: None.

Public testimony opposed: None.

Ward invites the Applicant up for rebuttal. Ellis has nothing further to add.

Ward proceeds on to discussion and review of the findings.

1. The proposed tentative plan is in conformance with the Bannock County Comprehensive Plan because the plan states that the developer pays for development costs, which has occurred through road building, utilities, signs, and mailboxes. This concept also meets Objective 2.4: encourage parks, open spaces, and waterway development, specifically looking at open space; and Objective 1.5: ensure land-use policies do not violate private property rights. The concept is in conformance with county ordinances and Idaho Code because the open space requirements are met with 50% being dedicated within individual lots. The open space is permitted within individual lots because this application was submitted prior to the deadline for a change in interpretation.
2. The proposed roads and bridges are designed and constructed according to Section 402 of the Subdivision Ordinance. A design deviation was requested and was granted to equal or exceed these standards for its purpose. Under a minor land division the right-of-way was 50' using previous design standards. When moving from a minor land division to a subdivision, new design standards were adopted. The literal interpretation of the new standards would result in practical difficulty because it would create hardship when the developer constructed the road under previous standards. Requiring him to increase the right-of-way would result in additional conversations with utilities as well as additional road building, creating undue hardship.

3. That there are extraordinary site characteristics applicable to the property involved or to the intended use of the property which do not generally apply to other properties. Because the road is existing and improvements are installed, it would be an extraordinary site characteristic to increase the right-of-way. This development being caught between the change in design standards causes the property to be involved in a situation that does not generally apply to other properties.
4. The literal interpretation and enforcement of the regulation would deprive the Applicant of privileges enjoyed by the owners of other properties. Because this development was caught between the change in design standards, the applicant would be deprived of privileges enjoyed by other properties without this deviation. Changes to regulations should not cause the developer hardship.
5. The granting of the variance will not be detrimental to the public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity. The road met the standards at the time it was developed and is sufficient for traffic counts for the subdivision.
6. The proposed partitioning of land does not prohibit the extension of dedicated streets or roads. The adjacent properties are partitioned by a canal and are accessible through other means. The cul-de-sac of Lovell Lane provides the greatest access to developable property since the canal to the east prohibits extension of the roadway.
7. The proposed partitioning will not conflict with legally established easements within or adjacent to the proposed land partition. The adjacent properties are partitioned by a canal and are accessible through other means. The cul-de-sac of Lovell Lane provides the greatest access to developable property since the canal to the east prohibits extension of the roadway.
8. The blocks of lots are located and laid out to properly relate to adjoining or nearby lot or parcel lines, utilities, streets, and other existing or planned facilities. The lots are related properly to the existing canal and the road. At this time there are no existing or planned facilities to the north or south of this property.
9. The proposed property is physically suited for the type and proposed density of development and does conform to existing zone standards. This concept plan meets the density requirements of the residential suburban zoning district at one dwelling per acre. As an open space subdivision, 50% open space is depicted on the concept plan.

Heisler makes a motion, based on the record and the discussion this evening, to approve the request for the Ellis Estates Subdivision concept plan, as described in the application materials, as supplemented with additional information attached in the staff report, and according to testimony received, and to adopt the proposed findings and order for signature by the Chair or Vice-Chair with the following conditions:

1. Fire suppression requirements shall be resolved with the local fire jurisdiction before the preliminary plat application, and written requirements included in the

- application. Location of any fire suppression must be depicted on all subsequent plats.
2. All lots must access from the interior road and be noted on all subsequent plats.
  3. Interior subdivision roads shall have a 50-foot right-of-way.
  4. A cul-de-sac may be placed up to 700 feet from Hawthorne Road.
  5. Provide location of central mailbox on the preliminary plat.
  6. Provide location of school bus stop on preliminary plat.
  7. Label proposed road with a lot number and provide total acreage of the road on all subsequent plats.
  8. Depict all current and proposed easements and rights of way located within the subdivision on all subsequent plats to include measurements and instrument numbers, if available.
  9. All structures must meet setback requirements of Bannock County Zoning Ordinance 337, or meet approved variance requirements to the proposed lot lines. Structures and setback measurements shall be depicted on preliminary plat only.
  10. All structures and/or debris must be removed from open space before final plat.
  11. The proposed road names shall be placed on all subsequent plats.
  12. Include the proposed stormwater detention/retention methods and measures adequate for controlling post development stormwater runoff on the preliminary plat and construction plans.
  13. All subsequent plats shall state open space is contained within individual lots and deed restricted against further development, but may be used for farming, timbering, wildlife preservation, or conservation, per Bannock County Planning and Development Council.
  14. Landscape of roadside swales will be at the cost of the developer as part of the construction plans.
  15. All proposed landscape plans to include location and type of landscaping material will be submitted with the preliminary plat and construction plans.
  16. All subsequent plats shall state the lots are located in a nitrate priority area.

Hill seconds the motion.

Roll call. Heisler – yes. Ulrich – yes. Ward – yes. Hill – yes. Motion to approve passes 4-0.

6. VARIANCE FROM 337 TABLE OF BUILDING BULK AND PLACEMENT STANDARDS - Joshua Ellis, 722 Lucy, Chubbuck, ID, requests a variance from the 30' right-of-way setback requirement (the applicant proposes a 15' setback) for a single-family dwelling. The variance is for the Applicant's personal home. He had originally intended to bend the road which would have given the Applicant a 70' setback, but this is no longer possible with the newly planned cul-de-sac.

Ward asks if the house had already been started when the cul-de-sac was planned. Ellis confirms. Ward asks if the cul-de-sac could have been pushed further to the east to get the setback. Ellis says this would have increased the depth and they were holding to the 700' variance. Utility easements were already in place. Pulling it forward to the west would have made it more difficult for any of the other houses because of the 40' driveway requirement.

Jim Bagley, Zoning Planner, presents the Staff Report and notes the Applicant has explored other options and is before the Council as a good faith effort to do the right thing through process.

Ward asks Kiel Burmester if the cul-de-sac could be rotated to the north but then realized this would conflict with the utility easement on the north side. Burmester says they looked at many different options but the variance for the setback is in the best interest of the Applicant and the County.

Ward asks the Applicant if the variance is only being requested on the one lot. Ellis confirms as everything else will meet County standards.

Ward invites public testimony.

Public testimony in favor: None.

Public testimony neutral: None.

Public testimony opposed: None.

Ward proceeds on to discussion and review of the findings.

1. The Applicant has shown there is not a reasonable alternative. The Applicant has worked with Road and Bridge, utilities, and Planning and Development and the only reasonable option is the variance because moving the right-of-way and utilities is not practical or economical.
2. The variance is not in conflict with the public interest. This situation is unique and because it is an unlikely situation, it would not negatively affect the public interest when considering future requests. Also, no opposition was presented.
3. The variance will not adversely affect adjacent property. Adjacent properties are not currently developed and would not be affected since this is a right-of-way variance and does not affect side or rear yard setbacks.
4. If the variance is not granted, the Applicant will suffer undue hardship caused by the physical characteristics of the site. The road is already built, the utilities are in place, the infrastructure is already there.



Heisler makes a motion, based on the record and the discussion this evening, to approve the request for Joshua Ellis for a variance from right-of-way setbacks in the residential suburban zone to reduce the right-of-way setbacks from 30' to 15' for one single-family dwelling, as supplemented with the additional information attached in the staff report, according to testimony received, and to adopt the proposed findings and order for signature by the Chair or Vice-Chair with the following conditions:

1. This variance applies only to Lot 2, Block 1, as depicted in Concept Plan SCP240001.

Ulrich seconds.

Heisler – yes. Ulrich – yes. Ward – yes. Hill – yes. Motion to approve passes 4-0.

7. TRANSFER OF DEVELOPMENT RIGHTS – Jose Nava, 1290 Mountain West Dr., Pocatello, on behalf of Lynn Bastian, proposes the transfer of development rights from parcel RPR4265011800 to parcel RPR426501805. The first parcel is 80.7 and zoned agricultural. The second is 23.37 and is also agricultural. Nava clarified that they are transferring to a 7.3-acre lot and not the 23 acres. The proposed 7-acre parcel is being created through the assessor's office with parcel number RPR4265010807.

Ward asks if the 7-acre piece is being created as part of a minor land division. Nava says there are currently no development rights as it's an agricultural area. Ward asks if the survey and legal description will be recorded to create that 7-acre piece. Nava confirms.

Tristan Bourquin, Assistant Planning Director, presents the Staff Report and notes that it meets all of the requirements of the ordinance. This is a recommendation and not a decision and there will be another hearing with the Commissioners based on Council's recommendation.

Ward says there is no current deed, copy of the title report, or approval from any lien holders in the packet, and asks if this needs to be taken into account. Bourquin says they are submittal requirements and have all been submitted. They typically don't add deeds to the packet and the title report and approval of lien holders are irrelevant for conditions of approval. Ward asks why this is a public hearing. Bourquin says Idaho Code requires it to be.

Ward invites public testimony.

Public testimony in favor: Jacob Bastian supports but does not wish to testify.

Sarah Bastian supports but does not wish to testify.

Lynn Bastian, 16580 S. Marsh Valley Road, Arimo, ID. He notes that he isn't trying to make a subdivision, just outline some acreage for his son.

Christine Bastian, 16580 S. Marsh Valley, ID, Arimo, ID. She says this particular area of ground is wonky so there isn't a nice square patch of land to survey. They just want some land on the south side of Arimo Road for their son.

Public testimony neutral: None.

Public testimony opposed: None.

Ward proceeds on to discussion and review of the findings.

1. The transfer of development right is wholly voluntary. The Applicant has testified that it is voluntary and the application states the same.
2. The sending and receiving properties are within the agricultural zone. According to the County zoning map, these properties are zoned agricultural.
3. The receiving property does meet all of the requirements for the development. With the transfer, this property will meet the density requirements of one dwelling per 40 acres, have a lot size of at least one acre, and will be able to meet setback requirements with future development.
4. The sending property does qualify for a building permit. The parcel has a development right so it would qualify for a building permit.
5. The transfer of the right from the sending property would preserve prime farm ground. Over 50% of the sending property is considered prime agricultural soils. Transferring the right from the sending property will retain farm land, preserve open space on that parcel, and preserve land that is in a wildlife habitat area. The receiving parcel has access from a County maintained road, allowing for development in a more desirable location.

Ulrich makes a motion, based on the record and the discussion this evening, to recommend approval to the Board of County Commissioners for the request made by Jose Nava to transfer a development right, as described in the application of materials, as supplemented with the additional information attached in the staff report, according to testimony received, and to adopt the proposed findings and order for signature by the Chair or Vice-Chair.

Heisler seconds.

Heisler – yes. Ulrich – yes. Ward – yes. Hill – yes. Motion to approve passes 4-0.

Heisler moves to close the public hearing. Ulrich seconds.

Motion passes unanimously by acclamation.

## E. BUSINESS ITEMS:

CONDITIONAL USE PERMIT: GRAVEL PIT – Pursuant to the Board of County Commissioner’s reconsideration decision, Council will make reasoned findings on a previously heard conditional use permit. These findings will be made based on the record from the original public hearing and no new information can be presented during deliberation.

Tristan Bourquin, Assistant Planning Director, notes this CUP was heard and denied in August 2023. The Applicant appealed to the Commissioners and the denial decision was upheld but then after reconsideration remanded back to Council as a business item. Commission determined that the Council’s findings were conclusory and didn’t have enough information.

Ward proceeds on to discussion and review of the findings.

- A. A. The proposed use would adversely affect surrounding properties to a materially greater extent than would a permitted use in the district. The uses in the area are all residential and the property is zoned agricultural. The impact to the gravel pit would be greater than agricultural uses because of the increase in noise, commercial vehicle traffic, dust, and industrial lighting. The increase in dust comes with increase detrimental health effects. Pit reclamation does not include the refilling of the pit and would render the parcel unusable to other more compatible uses in the future. Single-family residences, farming operations, small and medium wind turbines, and academic schools are other permitted uses in the district, and none of those uses have the extensive impact that a gravel pit would.
- B. The proposed use would cause an undue disruption of travel or an extraordinary increase in the volume of traffic in the vicinity of the proposed use. The operation is proposed to be 7:00 AM to 7:00 PM. During operation, the heavy commercial vehicle traffic will significantly increase. During testimony, 200 additional trips per day was noted by one of the Applicant’s representative. The increase will be an undue disruption of normal traffic patterns. All other roads that feed traffic flow will be congested with heavy commercial traffic at the same times as school and work traffic. It would also impact the rural nature of the roads in the area as they are currently used by bikes, horses, and the like.
- C. The proposed use would damage the public health, safety, or general welfare within its vicinity, or be materially injurious to properties or improvements in the vicinity. The Applicant provided no evidence to the contrary, and there was significant testimony regarding detrimental health impacts. Leaving a pit in the area in the future would cause harm to properties in the area since that is depicted as an area of residential growth in the comprehensive plan. Leaving a pit in the area would cause harm to properties in the future since it is depicted as an area of residential growth in the Comprehensive Plan. The Applicant provided no evidence to the contrary, and there was significant testimony

regarding detrimental health impacts. It is Applicant's burden of proof to show there would be no harm to the public with a gravel pit in the area.

- D. The proposed use would not be consistent with the goals and policies of the Comprehensive Plan of the county. The future land use map designates this area as residential suburban. A new gravel pit would not fit within this future use. The gravel pit would not be consistent with policy 1.5.2: Ensure land use actions, decisions, and regulations align with the County's responsibility to protect public health, safety, and welfare. The hole left by the gravel pit after reclamation would not be usable for future land use as outlined in the future land use map.
- E. The proposed use would not be designed to be as compatible in terms of building height, bulk, scale, setbacks, open spaces, and landscaping with adjacent uses as is practical. A gravel pit would not be compatible to adjacent residential uses because of the increased industrial use caused by the pit, the increase in heavy commercial traffic, dust, light pollution, and industrial noises would not permit this proposal to apply practical design standards. The proposed use alters the physical state of the property and it could not be reclaimed to a useful property for residential uses.

Ulrich makes a motion, based on the record and the discussion this evening, to deny the request by John Wilkes on behalf of Staker Parson Companies dba Idaho Materials and Construction for a Conditional Use Permit, as described in the application of materials, as supplemented with the additional information attached in the staff report, according to testimony received, and to adopt the proposed findings and order for signature by the Chair or Vice-Chair.

Heisler seconds.

Heisler – yes. Ulrich – yes. Ward – yes. Hill – yes. Motion carries 4-0.

#### **F: ITEMS OF INTEREST:**

- a) Update on recommendations to Commissioners – None.
- b) Discussion of upcoming hearing items –
  - i. There is a Conditional Use Permit for a campground and a transfer of development rights. There is also a preliminary plat for South 5<sup>th</sup> and an extension request for Eastwood Estates.
- c) Announcements
  - i. Joint meeting with Commissioners – March 19th at 2:00pm. Afterwards guidelines will be developed for a Planned Unit Development application.

#### **G. CITIZEN COMMENTS:**

None.

**H: WORK SESSION:**

None.

Meeting is adjourned.

The public meeting was held in the Planning and Development Conference Room, 5500 S 5<sup>th</sup> Ave, Pocatello, ID 83204. Due to limited seating in the conference room, the meeting was also available via web-conference and telephone.

Respectfully Submitted,

*Marjorie Williams*

Marjorie Williams  
Management Assistant