



July 24 & 25, 2023, Emmett, Idaho

Pursuant to a recess taken on July 18, 2023, the Board of Commissioners of Gem County, Idaho, met in regular session this 24th day of July, 2023, at 8:30 a.m.

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| Present: | Bill Butticci | Chairman |
| | Kirk Wille | Commissioner |
| | Mark Rekow | Commissioner |
| | Laure McCann | Deputy Clerk |

Whereupon the following proceedings were had, to-wit:

July 24, 2023

REVIEW AND APPROVAL OF AGENDA: The Commissioners reviewed the agenda. A motion was made by Commissioner Wille to approve the agenda for July 24 and 25 as presented. It was seconded by Commissioner Rekow and carried unanimously.

PROSECUTING ATTORNEY MATTERS: Deputy Prosecutor Tahja Jensen met with the Commissioners to discuss legal matters. She reviewed items that were addressed at the Hospital Board meeting. She expressed concern regarding the way the hospital board is communicating. Commissioner Wille is concerned about their financial situation. Deputy Prosecutor Tahja Jensen is working on Memorandums of Understanding (MOU), one for the Landfill and another for the Sheriff's Posse. Tahja also discussed The Board of Guardian's open board positions.

DEVELOPMENT SERVICES: Development Services Director Jennifer Kharrl discussed the Christmas Tree Farm Minor Subdivision request for 4545 Harvest Lane. She has no concerns regarding this application. Road and Bridge Supervisor Neal Capps has no concerns.

A motion was made by Commissioner Wille to approve the proposed minor subdivision for our property at 4545 Harvest Lane with the addition of a note on the plat concerning the required building envelope as shown. It was seconded by Commissioner Rekow and carried unanimously.

Jennifer also stated that other prospective projects for Grocery Outlet and Valor Health are not progressing.

OLA FIRE UPDATE: Emergency Manager Jeff Ulmer gave an update on the Ola Fire. A total 806 acres have burned with 68% containment. A perimeter was established on Friday and efforts are now on suppressing the fire. No structures have been lost. An incident command post was set up at the Rangers station in High Valley. Road and Bridge Supervisor Neal Capps stated that the road is still closed because a cement truck is broken down with mechanical issues. The road will remain closed to address other concerns. Commissioner Butticci expressed his concern that we need to establish a cell tower for emergency communication. Also a helicopter pad is needed for emergency personnel to service the area. Jeff Ulmer will work with Life Flight to establish where access points are currently designated.

EXPENSE CLAIMS APPROVAL: The claims presented were reviewed. Commissioner Rekow made a motion to approve the claims as presented and as initialed on the individual claim forms. It was seconded by Commissioner Wille and carried unanimously.

PUBLIC WALK-IN: No members of the public were present.

FISCAL YEAR 2024 BUDGET DISCUSSION: Clerk Shelly Tilton and Deputy Clerk Leandra Rountree worked with the Commissioners on the Fiscal Year 2024 budget.

FAIRGROUNDS SEASONAL POSITION POLICY AND COMPENSATION/BUDGET: Commissioner Butticci discussed a seasonal position that has been hard to fill. An applicant applied and after accepting the position, refused because of low pay. The discussion revolved around the Gem County pay chart and the possibility of adjusting the lower ranges of the pay scale. The applicant will be asked to resubmit his application reflecting previous experience to see if he can be offered pay in the next quartile.

The Commissioners recessed at 12:00 p.m. for lunch to reconvene at 1:30 p.m.

ADMINISTRATIVE TIME: The Commissioners worked on administrative matters.

CHERRY HEIGHTS PRELIMINARY PLAT PUBLIC HEARING: While being recorded, the Commissioners held a public hearing to review the Cherry Heights Preliminary Plat application. This hearing was held in person and virtually via Zoom. Those present were

Development Services Director Jennifer Kharrl, Development Services Associate Planner Olivia Mocnik, Deputy Prosecuting Attorney Tahja Jensen, Road and Bridge Supervisor Neal Capps, Clerk Shelly Tilton, the applicant and several members of the public.

Commissioner Butticci reviewed the hearing process and read the notice of public hearing. Those wishing to testify were sworn in.

There were no conflicts or declarations pertaining to this meeting such as site reviews or other conversations outside of this hearing.

Development Services Director, Jennifer Kharrl asked to have the packet of information added into the record which included Notice of Hearing, the application, Planning & Zoning recommendation, Staff Report, Planning & Zoning Commission minutes, Developer letter dated July 17, Agency letters from Road and Bridge, Treasurer, Emmett Irrigation, Black Canyon Irrigation, Keller Associates and Idaho Department of Water Resources, 7 letters of concern from the public and 152 duplicate letters sent in following a neighborhood meeting that the applicant held (being all the same only one copy was provided).

A motion was made by Commissioner Rekow to enter the information into the record as presented by Ms. Kharrl. It was seconded by Commissioner Wille and carried unanimously.

Jennifer reviewed the application that includes 37 buildable lots that are at least 1 acre in size. She stated that a rezone allowing the smaller lots was approved in 2018 with a robust Development Agreement. She discussed the details of the agreement and stated that all of the conditions have been met for the required findings as well as the Development Agreement. The Gem County Planning and Zoning Commission has recommended approval of the subdivision with two additional conditions that include testing for previous orchard spraying and Wills Road mitigation.

Road and Bridge Supervisor, Neal Capps stated that they are addressing obstacles and concerns such as Wills Road rebuild which would cost over \$700,000, the canal in the area and right of way obstructions. The need for acquisition of property along Wills Road was discussed.

Stephanie Hopkins spoke on behalf of the application. She discussed the property location, discussing other subdivisions in the south east area of the county as well as schools and services closely available to residents of the proposed subdivision. She stated that a traffic study and irrigation plans have been completed. She presented the preliminary plat, discussing lot sizes within the subdivision and talked about internal and external roads. She said there are 3 points of access proposed, increasing connectivity in the area and alleviating stress on some existing roads. The property is bordered by Black Canyon Canal on the south. Stephanie reviewed typical similar home elevations that will be consistent with neighboring homes. She stated the project supports several comprehensive plan policies and goals.

Commissioner Wille asked about water supply. Stephanie said that they have looked at Idaho Department of Water Resources' (IDWR's) website to determine current information and will ensure wells meet standards. Studies haven't been completed at this time.

Engineer Joe Pachner stated that irrigation water will be taken from Black Canyon Canal only, and that individual wells would be for domestic use. He discussed IDWR studies that have been done that are favorable.

Commissioner Wille asked about the NP study to accommodate the septic. Joe discussed the slope of the site; standard drain fields won't be allowed so they will use advanced treatment that will reduce the load on the aquifer below. Once the preliminary plat is approved the NP study will be completed. Commissioner Wille confirmed that there would be engineered septic; Joe responded that there would be.

Betty Williamson has a lot of concerns. She said people in the area don't want this development to happen; they are concerned about their water, water pressure, and sewer system. She said the Commissioners are there to do what the public wants and what is good for the county. People like the rural area and don't want to see all of the houses coming in. She wonders if all of the development is going in why city services aren't run out there to take care of the water and sewer concerns. She said that Valor Health is going in that area and getting city services for their facility. She is concerned that water levels are going to go down and wells will go dry. She wonders who is going to pay for the wells to be redone. She wondered where run off is going to go and is concerned that properties close to the road will make it difficult to widen the road. She said some neighboring properties have their septic systems running right

along the road; taking people's land to rebuild the road would cause people to have to relocate their septic systems. She wondered who will have to pay to fix everything afterward. She said that Sales Yard Road is just as narrow as Wills Road.

Ken Williamson discussed a petition from many people in the area as well as many letters of concern. He feels that people feel like their input doesn't do any good. He discussed concerns with water levels and water runoff. He feels the houses and the septic systems are being built on unstable sand. He discussed orchard spraying previously done in the area. He feels people don't want to come down the hill and see housing developments. He said there are so many things that are still being studied and unknown, he feels that the studies should be complete at this point. He feels that city water and sewer should be put out there to protect water and sewer and keep the septic systems from contaminating last chance ditch.

Paul Jacobson lives with his family on the corner in the area, they moved here to have quite living. His concern is traffic. He feels that walks will be difficult with so much traffic and no sidewalks. He said that Betty and Ken addressed his other concerns.

Peter Dill has watched the project and seen unhappy neighbors and voters. He stated that the neighborhood meeting was unsatisfactory. He said this projected has many unanswered questions. In a development of this nature that affects people's livelihoods and way of life it is contrary to the new comprehensive plan and has significant risks to water quality and capacity. He feels that adding an access road on the slope is concerning. He asked the Commissioners to put this application on hold until questions are answers. He said it is imperative to have an engineer address the water concerns before the plan is approved. The sandy hillside presents many concerns and unknowns. He said there are special things being done to accommodate septic, but feels they should be done before it goes forward. He doesn't think the Commissioners want their name on a development that so many people are unhappy with. He feels the request is premature because of the unanswered questions and contrary to the Gem County comprehensive plan.

Mike Darling agrees with the previous testimony. He said this development looks premature and not well thought out. He feels there are too many unanswered questions and things that still need to be looked into. He feels there is a lot between the lines that hasn't been figured out. Even the county feels it will take 5 years to engineer and prepare to widen the roads. The developer will walk away with millions of dollars while

everyone else is paying to make the changes. He doesn't feel it should have been rezoned and should have been left with 5 acre minimums. He thinks the Commissioners need to hold the application until answers are provided. He stated that the community doesn't want this, it is not responsible growth.

Stephanie Hopkins and Joe Pachner stated that they appreciate the comments and that a lot of work has been done between the meetings. Stephanie discussed studies and engineer systems for septic that will be worked on prior to submittal for final plat. A ground study for potential contaminants from orchard spraying is something that has to be completed prior to submitting the final plat. Joe discussed preliminary engineering and a geotechnical evaluation of the site to verify the viability of the soil to handle septic and meet the current standards. When they do the final, Test pits will be done on every lot to ensure the soils are suitable for the drain bed. The same is true for the drainage. Final analysis will include submitting plans to the county engineer for review and approval prior to construction. He discussed road concerns and traffic and that the developer will pay for a portion of Wills road improvement.

Commissioner Wille asked if they have looked into the water supply. Joe said most of the water used is for irrigation. They would propose a pressure irrigation system from the Black Canyon Irrigation District to supply the irrigation water and private wells would be used for domestic supply. Commissioner Wille asked more specifically about community wells. Joe said community wells make sense for larger developments, individual wells make more sense for this size of development putting the burden on each homeowner to maintain their own wells. The cost and means don't make sense for this size of development. Commissioner Wille asked if the city has been asked about the possibility of connecting city services. He said there is a commercial project looking to bring city services across Highway 16 and having another project might make it more feasible.

Stephanie wasn't aware of the other commercial project and their desire for city services.

Commissioner Rekow asked about the current comprehensive plan and if they have considered a 2-acre minimum. Stephanie stated this was started under the previous comprehensive plan. She said with current zoning allowing for 1 acre lots that is the applicant's desire.

Jennifer addressed some of the concerns. The previous comp plan had the city of area impact ending at Sales Yard Road she doesn't believe the law allows for that to change. She said the

new comp plan moves the area of impact up to Cherry Lane. She doesn't know if the city will agree to extend services. She pointed out that if this does receive approval it could be conditional. If conditions aren't met the application wouldn't be able to move forward. She discussed run off. She discussed impact fees that would help to pay for sheriff, ems and road services.

Commissioner Butticci discussed water quality. Jennifer said that Keller didn't have concerns about water quality but stated that it sounds like much more engineering will be done.

Road Supervisor Neal Capps discussed the parameters of Wills road; the distance of change would be 1400 feet of road.

Commissioner Wille asked if the cost estimate to improve Wills road includes obtaining property. Neal said that it did not include the cost of property acquisition.

Commissioner Rekow asked if Neal had concerns with other roads besides Wills Road. Neal said he looked at Sales Yard and the possibility of piping the drainage ditch, along with other solutions. The roads are narrow but still meet county requirements. Long term will need changes but currently would support the traffic.

Commissioner Wille asked about the phases relating to road work; asking it that would be completed prior to construction of homes. Stephanie said that a condition would be appropriate to address timing. Jennifer said, if the board moves forward with a development agreement, it can be specific as to when improvements will be completed but would be done prior to the final plat being recorded and any building started.

Commissioner Rekow asked about ingress/egress. Neal said it would be elevated, there are no issues at this point.

Commissioner Wille asked if that includes the blind corner being corrected. Neal Caps said that would be corrected.

Commissioner Rekow stated that Keller estimated the road would be good for 0-6 years. He asked where we were in the time line. Neal said that we are at about the 3 year mark.

Commissioner Wille still has concerns about water. He is in favor of keeping the hearing open and gathering more information about water, septic and roads. Commissioner Rekow agrees with Commissioner Wille's concerns as well as the cost of Wills Road. He said it isn't in great shape as it stands today being narrow and dangerous he thinks and feels the cost could exceed what has been estimated. He has concerns with some of the surrounding roads as well.

Jennifer wondered if the information being sought could be a condition of approval and asked that their motion be very specific on what they are asking the applicant to provide.

Commissioner Butticci stated that he understands the applicants view on the community well. The Commissioners will look into the letter from IDWR about the common well. Commissioner Wille said there needs to be a complete cost analysis and time frame for road repair before entering into a development agreement. On water quantity, he hasn't seen anything that demonstrates that there won't be a reduction in the aquifer, he would like to see some analysis. For the applicant it may seem like a small subdivision and he stated this is not small for Gem County. Commissioner Rekow said road right of way and procurement should be included in the road estimate. Commissioner Rekow wondered if drain fields might interfere with right of way and unforeseen issues.

Jennifer said the water concerns can be a condition as in other rezones or plats. The road analysis will be tied to a development agreement between the developer and the Board. She thinks they can get what they need with conditions on a development agreement.

Deputy Prosecutor Tahja Jensen verified Jennifer is correct.

Jennifer stated that the development agreement could cover road and water concerns both.

Commissioner Butticci discussed water levels. Commissioner Rekow wants to see septic included.

Commissioner Rekow made a motion to close the public hearing. It was seconded by Commissioner Wille and carried unanimously.

A motion was made by Commissioner Wille to bring this matter back with a written findings and development agreement concerning the water levels study, septic study and road mitigation. It was seconded by Commissioner Rekow with discussion. Commissioner Rekow said the word comprehensive comes to mind for what they are looking for to be very detailed. The motion was amended to say comprehensive studies. The motion was seconded by Commissioner Rekow and carried unanimously.

CHERRY HEIGHTS #2 REZONE: While being recorded, the Commissioners held a public hearing to review the Cherry Heights Rezone application. This hearing was held in person and virtually via Zoom. Those present were Development Services Director Jennifer Kharrl, Development Services Associate Planner Olivia Mocnik, Deputy Prosecuting Attorney Tahja Jensen, Road

and Bridge Supervisor Neal Capps, Clerk Shelly Tilton, the applicant and several members of the public.

Commissioner Butticci read the notice of public hearing. The Gem County Planning and Zoning has recommended denial of the rezone. Those wishing to testify were sworn in.

There were no conflicts or declarations pertaining to this meeting such as site reviews or other conversations outside of this hearing.

Development Services Director, Jennifer Kharrl asked to have the packet of information added into the record which included Notice of Hearing, the application, Planning & Zoning recommendation for denial, Staff Report, Planning & Zoning Commission minutes, Developer road mitigation letter dated July 17th, Agency letters from Road and Bridge, and Last Chance Ditch Company, 7 letters of concern from the public and 152 duplicate letters sent in following a neighborhood meeting that the applicant held (being all the same only one copy was provided).

A motion was made by Commissioner Rekow to enter the information into the record as presented by Ms. Kharrl. It was seconded by Commissioner Wille and carried unanimously.

Jennifer reviewed the application. She discussed the details of the agreement. This application could result in approximately 19 additional parcels, it was submitted under the 2007 comprehensive plan. Staff recommended approval to Planning and Zoning based on the 5 findings being met, with the assumption that the Wills road mitigation would be covered with the Preliminary Plat application. Planning and Zoning recommended denial of the rezone based on finding number 5 of the code, stating that the condition of Wills Road and the additional cost incurred doesn't support that the finding can be met. There has since been an agreement on Wills Road mitigation and staff feels that finding number 5 can be met.

Road and Bridge Supervisor Neal Capps doesn't have anything more to add other than the letter with road conditions that was submitted and previously discussed.

Applicant Stephanie Hopkins provided map of project location and property history, project location and adjacent developments, adjacent densities. This is phase 2 of the Cherry Heights Development, the applicant is looking for the rezone to be consistent with the first phase. She discussed the Comprehensive plan stating the project supports the plan. She

discussed county CIP funding that is available to be used to upgrade the road. She discussed impact fees stating the county would receive approximately \$250,000 with the number of proposed lots. Frontage on Wills Road was discussed. Stephanie said that in addition to the county road department's approximate \$700,000 for road update, Cherry Heights intends to provide a one-time contribution of \$127,000 for improvements to Wills Road along their frontage. The funds would be given to the county for the road department to do the improvements as was preferred by the road department through previous discussion. Typical home elevations were provided. Stephanie discussed findings, they are complying with the findings and she further discussed finding number 5. The Planning and Zoning Commission denied as additional homes would create demand on public services but the development will make improvements to local roadways and work with agencies to mitigate concerns to take care of Wills Road concerns. She feels requirements have been addressed and met.

Ken Williamson stated his concerns are the same as the previous hearing. He said nothing has been mentioned about the additional acreage toward Substation Road, he assumes those 200 acres will be included at some point also. He said they have worked hard on their property for years and it may now be destroyed. He appreciates the Commissioners listening to their concerns.

Betty Williamson said 5 acre lots wouldn't be so bad and would have less impact, but all of it down to 1 acre lots is a lot of homes. She said the canal road is walked by a lot of people; she said people speed on Wills and Sales Yard Roads. That many homes will significantly increase the traffic. She has asked the Sheriff's office to monitor the road. She said there aren't resources for schools, police and fire. She discussed an accident on the highway. She said it is too much growth.

Paul Jacobson is opposed and agrees with Betty Williamson.

Peter Dill said he has the same unanswered questions as before. He asked the Commissioners to review the long list of questions from the previous hearing as they apply here as well. He said the question is if the rezone is harmonious with the existing and intended character of the valley. He stated it is not. He said that the developer indicates that Orchard View and Tanglewood are similar to this, he disagrees and discussed the

age, lot size and topography. Adding traffic to Old Freezeout and Wills Road isn't feasible or a good idea. He has heard about people drag racing on the road. He said the situation already exists that people use that road when there is an accident on the highway. He asks that the county road department spend more time considering the roads. He asked the commissioners to respect the decision of the planning and zoning commission for roads and character of the valley. He said their purpose in signing the new comp plan was to recognize rural residential in this area. He asked them to not approve the rezone, to not allow a conditioned approval, but to say no altogether. He said the long list of unanswered questions is haunting and asked them not to compound a problem with more problems.

Michael Darling said he agrees with everything that Peter Dill has said emphasizing responsible growth, which would be to leave lots at 5 acres to keep from having dense developments. He said that was the original plan. He feels that the developers live elsewhere and come to the community to make money and the community has to bear the brunt of the cost including road improvements and septic relocation. He is also concerned about the impact to services including schools, law enforcement and EMS. He recognizes that there are impact fees collected, but they won't cover the greater demand. He said that frequently the sheriff's office has to ask for Emmett police to help them because they don't have enough deputies and it isn't the city officer's job to cover this as they are understaffed and busy. He also warned against thinking that expensive homes don't require much Sheriff support.

Spencer Kofed spoke in favor of the application saying that 1 to 2 acre lots are the best use of this land because it allows residents to still have space for animals. He discussed water, stating that much of the groundwater goes back into the aquifers and not much of the aquifer is used. He said it is so much easier to maintain your own well and septic rather than have a community system, which is an HOA nightmare. He said Wills Road will be upgraded and also have connectivity with the roads within the development. He summarized that this development is the right decision for this area to increase the tax base, improve roads and connectivity and to create money for the sheriffs and the school system.

Stephanie Hopkins spoke on behalf of the applicant. She said that this development, in this place makes sense. The developer is committed to working with the county to mitigate our concerns. The existing condition of Wills Road is poor and the improvements that would be made would be substantial. Also the impact fees collected would improve other roads in the area.

Josh Leonard spoke on behalf of the applicants. He discussed the density of the project and number of lots in phase 2. The project was designed to comply with the comprehensive plan in place at the time of application. He said that people don't know what goes into a development when they say the developer will make a lot of money. He said that the plan is designed for connectivity. A reduction in the number of homes would result in reduced or at least different connectivity. The current plan allows them to contribute financially to the upgrade of Wills road. Their ability to do that would be affected by any changes. They would still participate, it would just affect their ability to help. The project is supported by the comprehensive plan at 19 lots, and would provide increased tax revenue and impact fees. If density is a sticking point they would ask the Commissioners to pause and let them come back with a revised plan with specific direction from the Commissioners. They don't want to have people raise questions without facts. He asked for Commissioners to be specific on what would be required for septic, water and road. For example; what needs to be tested on septic, would a water study include volume or quality, also to have a road participation agreement that specifies exact amounts and who is responsible for each part of the project, including who would be required to acquire property from landowners. Josh said there are already residential developments in this area. He said this is a large development in this area and that is taken into account. By allowing the higher density in this area farmland and agriculture is preserved elsewhere because residential will be here rather than spread out in other areas. Public services will be able to be concentrated to this area preserving larger tracts of agricultural land.

Joe Pachner spoke on behalf of the applicant. He discussed Wills Road not being part of the county's CIP program and that this development would improve the road that needs to be improved.

Neal discussed CIP and two other developments contributing \$408,000 to road impact fees. Commissioner Butticci pointed out that the impact fees don't come in until the lots are sold and that could be 11 years out.

Joshua Leonard said that the developer proposes to construct the road in advance and allow impact fees to repay the developer for their outlay of funding.

A motion was made by Commissioner Rekow to close the public hearing. It was seconded by Commissioner Wille and carried unanimously.

Commissioner Butticci stated that the road is a big issue on this application. He is in favor of additional information. He would like to take the matter under advisement and bring it back at a later time.

Jennifer suggested that it could be beneficial to review the 5 findings. Commissioner Butticci is in favor of supporting the zoning commission's findings. He accepts findings 1-4 with #5 being the concern. A letter addresses that with CIP funding.

Commissioner Rekow would make the same comments, he has read the packets a number of times and if he were to make a decision at this time he would uphold the Zoning Commission's recommendation of denial. He would like to take it under advisement.

Commissioner Wille agrees with Commissioner Rekow and wonders about the cost.

Commissioner Butticci agrees and would like to understand the numbers better.

Jennifer said that one development agreement could be for one phase or applied to both if that would cover the concerns.

Commissioner Rekow began a motion.

Deputy Prosecutor Tahja Jensen interjected stating that taking the matter under advisement suggests they have all of the information they need. If the Commissioners need more information they may want to direct staff and/or the applicant to obtain more information to bring back to them. If they are not making a decision a date certain would need to be set to continue discussion.

Commissioner Butticci stated that he has enough information but would like to take it under advisement to make a decision that is sound.

Jennifer clarified that by taking it under advisement the Commissioners are looking for written findings for denial.

Commissioner Butticci stated that is what he is looking for based upon the Zoning Commission's recommendation. Commissioner Wille doesn't feel that #5 is satisfied at this point.

Commissioner Rekow said his hang up is #5 at this point in time.

A motion was made by Commissioner Wille to take it under advisement and come back with written findings based on the Zoning Commission recommendation. It was seconded by Commissioner Rekow and carried unanimously.

The Board recessed at 9:05 p.m. to 8:30 a.m. on July 25, 2023.

JULY 25, 2023

ADMINISTRATIVE TIME: The Commissioners worked on administrative matters.

The Commissioners recessed at 12:00 p.m. for lunch to reconvene at 1:30 p.m.

Commission Butticci was absent from the meeting due to attendance at a Southwest District Health Department meeting.

SOLID WASTE FEE DISCUSSION AND IDENTIFICATION PROCESS FOR IN COUNTY AND OUT OF COUNTY RESIDENTS: Landfill Supervisor Martin Joyce and Assistant Landfill Supervisor Tim Adams discussed current fees and prospective fee increases for residents and non-residents using the Gem County Landfill. The process for identifying in county and out of county customers was also discussed.

ADMINISTRATIVE TIME: The Commissioners worked on administrative matters.

The Board recessed at 5:00 p.m. to 8:30 a.m. on August 1, 2023.

Approved: _____
Chairman

Attest: _____
Clerk