

**Fremont County Planning
& Zoning Commission
Minutes
October 15, 2007
6:00 pm
County Annex Building**

The Fremont County Planning & Zoning Commission met in a regular session on October 15, 2007. They met in the County Annex Building. **Members in attendance were:** Kirk Mackert (Chairman), John Nedrow (Vice-Chairman), Ron Kynaston, Tom Atchley, Steve Pinther, Cindy Miller, Glen Pond, Joette Lookabaough, and Vance Derricott.

Staff and others present: Jeff Patlovich (P&Z Administrator), Letta Laux (P&Z Secretary), Josh Gardner (Deputy Prosecuting Attorney), Karl Lewies (Prosecuting Attorney).

1. Welcome

The chairman called the meeting to order at 6:00pm

Mr. Mackert stated they will postpone approval of the minutes at another meeting, as it was not printed on the agenda. Also, the sketch plan for Dan Creel has been postponed, and the appeal for David Parke has been withdrawn.

2. Final Plat – Rick Schoenberg Subdivision – Rick Byrem, Surveyor

Mr. Patlovich read from report regarding the subdivision. Stated their appeal has been made to the Commissioners who have overturned the P&Z's recommendation to deny because of the question of whether or not this was productive farm land, and is ready for the P&Z to approve.

Mr. Mackert clarified that the P&Z denied it because of the productive farm land status.

Mr. Lewies stated the P&Z had scored the land as being productive based on the site assessment from the LESA evaluation, but realized later on the soil evaluation showed it was not productive soil.

Mr. Nedrow stated the Commissioners approved the application with conditions, and asked what those conditions were.

Mr. Patlovich they are the standard conditions listed in the packet.

Mr. Byrem stated the property owner changed the name to the Fall River Ranch Subdivision and has been approved through GIS.

Mr. Mackert asked if there were any other questions.

Mr. POND MOTIONED TO APPROVE THE FINAL PLAT FOR FALL RIVER RANCH SUBDIVISION. MR. PINTHER SECONDED.

Mr. Nedrow stated he still has a problem with the LESA, and the P&Z should have the right to evaluate whether the land is productive or not.

Mr. Derricott stated he agrees with MR. Nedrow regarding the LESA.

Mr. Pinther stated they have been misinterpreting that, and they should interpret it the way the county attorney, and the Commissioners do.

VOTE TAKEN: THOSE IN FAVOR, MR. KYNASTON, MR. MACKERT, MR. ATCHLEY, MR. POND, MR. PINTHER, AND MRS. MILLER, THOSE OPPOSED: MR. NEDROW, AND MR. DERRICOT. MOTION PASSED.

3. Final Plat – Legacy Cove – Kirk Jacobs, Developer – Rick Byrem, Surveyor

Mr. Patlovich read from report, and stated it meets all requirements for a final, and is ready for a vote to be taken.

MR. POND MOTIONED TO APPROVE THE FINAL PLAT FOR LEGACY COVE. MR. ATCHLEY SECONDED. VOTE TAKEN: ALL IN FAVOR. MOTION APPROVED.

Mr. Mackert introduced the new P&Z member Joette Lookabaugh.

4. Public Hearing – Falls Crossing – Stephen Loosli, Developer – Keller & Associates, Engineering

Mr. Mackert asked if there was any member that would have a conflict with this issue. No one had a conflict.

Mr. Patlovich referred to several handouts, and read from report in the packet. Stated they have added the road for lots 12 and 13 as requested. The only issue he has is the road that connects to the subdivision as shown on the map only has a 30ft easement and the code requires a 60ft easement. The applicant cannot acquire the 60ft easement but can build a county compliant road which is a 24 ft. graveled road within that 30ft. The P&Z needs to decide if that would comply. The

Commissioners have allowed a similar situation to pass before, and gave history of that case.

Mr. Mackert asked Mr. Patlovich if these roads are considered “substandard.”

Mr. Patlovich stated only the 30ft are considered substandard.

Mr. Mackert stated for clarification that the P&Z had not approved the case mentioned by Mr. Patlovich, it was the County Commissioners who gave approval.

Mr. Pinther questioned the access and the length of the roads on the map, if the neighboring property owner would allow any more room, and if there was buffering required.

Mr. Patlovich stated the applicant addressed that in the submittal and felt the building envelopes provided adequate buffering.

Mr. Pinther questioned if the roads were going to service a future subdivision?

Mr. Patlovich referred to the map and stated the road would provide access to the BLM property.

Mr. Steven Loosli -702 N 3000 E Chester, Id Stated to clarify that it is a 16 lot subdivision, and explained the map. The 16th lot is a remnant lot, and there are only 15 useable lots. Lots 1-11 are approximately 10 acres, and lots 12-15 are approximately 5 acres each. The new frontage road originates on Hwy. 20 at the gravel pit. The road alignment is being kept against the railroad right-of-way. One of the additions to the packet is the acknowledgement from the railroad that they have approved the use of the crossing. One question in the staff report was if they needed to have a cul-de-sac. The Code says no if it serves less than 4 lots (Appendix B) but they would be willing to add on if they requested it. They did provide a cul-de-sac accessing lots 13 and 14 as shown on the plat. The road 3300 E has been renumbered to 3180 E. For 53 ft. from the county right-of-way to his fence line there is a 30ft right of way, with his neighbor. He offered to negotiate with the neighbor, and is asking to be able to use this as an access point. He discussed the “gun-barrel” rule (30ft. right-of-way would suffice if no other way to add to it could be found), and how it had been applied in the past. The 60ft right-away is for snow removal purposes, and brought a picture of the property road to explain how he can still move the snow away from the road. Referred to minutes where the Commissioners had approved the “gun-barrel” rule in the past.

Mr. Mackert questioned what the width of that road will be.

Mr. Loosli stated it would be 24ft. paved road with drainage.

Mr. Pinther questioned if there was a county-access permit issued for that road?

Mr. Loosli stated there is not a permit issued for such things. They have not provided draft CC&R's yet, but they will be extensive. There will be a HOA to take care of the road maintenance, and the community irrigation system, and to review the architecture of the homes. Referred to page 16 in the staff report and discussed neighboring subdivisions. Referred to the Performance Standard worksheet, and stated there are no wetlands on this property and the administrator gave him a score of -1 which should be 0. In regard to buffering: they have built in a 20-ft fully landscaped buffer retaining the natural landscape as well as adding native plants. There are positive points available for these buffers, and should be given. Also, there will be a year-round 250,000 gallon fire-fighting storage pond for fire-protection capable of producing 2,000 gallon per-minute pressure located on lot 9. They should be given points for that.

Mr. Mackert stated the fire pond is not shown on the plat, and questioned its location.

Mr. Lewies questioned how the administrator scored the fire-protection.

Mr. Patlovich stated he gave them a score of 0 because the pond was not shown on the map.

Mr. Mackert asked what the water table depth is, and what happens in the winter.

Mr. Loosli stated it is deep and lined, and will not evaporate in the winter as there will likely be an ice cap.

Mr. Mackert questioned what they will do if there is not enough water after a year for fire protection, and he wants to be sure there is a plan and the safety issue is taken care of.

Mr. Loosli stated there is a compliance officer to be sure it is taken care of.

Mrs. Miller asked about the CC&R's and the game-friendly fences. Stated there is a concern with how to keep livestock in with wild-life friendly fencing.

Mr. Loosli stated they have enough irrigation rights to supply irrigated grazing ground for livestock, or gardens, etc..., and the wild-life friendly fencing would be around the perimeter of the subdivision, but the owners would be responsible for their own fencing to keep their horses etc. in.

Mr. Pinther stated he liked the building envelopes, and asked if they would be moved closed to the river.

Mr. Loosli stated it can not be moved as it is in the floodplain.

Mr. Pinther stated this is an exceptional case with the road issue, and questioned if he could have snow storage areas on lot 15 to allow for snow storage.

Mr. Mackert stated that would help for a bottle-neck for an emergency vehicle flow. Questioned the irrigation systems, and if it would run down the existing road easements?

Mr. Loosli stated yes, with a variable pressure line to keep the PSI up and it will be buried and run to each lot. It will be deeded to the HOA to maintain.

Mr. Nedrow questioned if the pump for that would be in the Fall River.

Mr. Loosli stated yes and it will be updated and covered with a brick hut.

Mrs. Miller questioned where there is room for the septic tanks on the 4 river lots.

Mr. Loosli stated the lots are 5 acres and they have plenty of space.

Mr. Mackert asked if there were any other questions.
Public Hearing opened.

Mr. Clen Atchle- 4054 E 1300 N Ashton, ID stated he owns the land to the east of Mr. Loosli's subdivision. The only issue he has is with the access road and explained that it is more of a bottle-neck than it appears on the map. He is planning on turning the ground into irrigated grazing ground, and will need to have cattle-guards which will not work in the winter and they will have to gate it. Because of this issue and the availability of emergency vehicles to access this subdivision, he feels the road should be held to the development code's standards.

Mrs. Miller questioned where the cattle-guards would be.

Mr. Clen Atchley stated the cattle guards would be on each end of the 30ft road, and he owns that ground.

Mr. Pond questioned if he has the right to fence that in because if he does that would be a huge issue.

Mr. Mackert asked if the road has been used for public or private access.

Mr. Clen Atchley stated it was only used for the Davis' when they lived there.

Mr. Pinther questioned the easement and if it was dated previously to Mr. Atchley purchasing the land.

Mr. Atchley discussed the old easement and stated he purchased the land in the early 80's.

Mr. Tom Atchley stated they need to know if he can gate it or not.

Mr. Lewies stated the general rule is the land-owner can gate their property, but the easement holder would have to have a key to be able to get through.

Mr. Patlovich stated if this 30 ft easement is a concern and there are questions, they should get the information before they make a decision. They could have a Cul-de-sac with one access point as another option.

Mr. Owen McLaughlin-Eastern Idaho Public Health Dist. Stated he has walked through the property and gave a report on the soil condition. They could install septic systems on these lots, and sees no problems.

Mrs. Marla Vic-Fremont County Public Works Director Stated the gravel road as it approaches the property seems to have a kink in the road and asked Mr. Loosli to explain that as well as the fire-fighting pond, and the distance needed from the pond to the homes.

Mr. Pinther stated there seems to be more than one kink in the road on these maps.

Mrs. Vic stated it would be good to fix the easement now.

Mr. Pinther questioned if she had a comment about the road in question.

Mrs. Vic stated it is narrower than what they like to see.

Mr. Patlovich stated to clarify for the record the code reads that the lack of response from the fire district means that there is no response.

Mr. Lewies made a public comment regarding Mr. Loosli's proposed development, and asked the P&Z to look at the land-use compatibility issues such as building heights, clustering, and colors of buildings. He wants to be sure the visual sensitivity issues are taken into account. The preliminary plat should show where the water pond is going to be located.

Mr. Patlovich stated that is why he gave Mr. Loosli a score of 0.

Mr. Pinther questioned where the code references land-use-compatibility.

Mr. Patlovich read from the code.

Mr. Pinther stated he agreed that 50ft would not be an issue, but since he has been a stickler in requiring two accesses in the past, he is concerned that they would be setting precedence for future decisions.

Mr. Lewies questioned Mr. Patlovich about the code requirement for the road access.

Mr. Patlovich read from code (appendix ii.3) where it requires two points of access, and the 60ft easement into a subdivision.

Mr. Lewies referred to the “gun-barrel rule”: if the developer has run into impossibility to get the 60ft easement, they can be excused from the 60ft standard right-away. Stated the P&Z needs to ask if he has he run into a true impossibility?

Mr. Pinther questioned if the “gun-barrel rule” is in the code, or if it is just an interpretation of the code.

Mr. Patlovich stated it is an interpretation made by the County Commissioners. He referred to the history of how the “gun-barrel rule” came to be, and stated they have to ask in this issue is it a matter of cost, or is it *physically* impossible.

Mr. Lewies stated you do not throw out the existing rule, but you can use the “gun-barrel rule” as an interpretation and apply it in the case of developing areas that have been around for 40-50 years where the road does not meet the width requirements, or run the risk of stopping development.

Mr. Pinther stated he disagrees as it appears the “gun-barrel rule” had modified the code without due process.

Mr. Lewies stated it went through the appeal process, and did go through plenty of due process.

Mrs. Judy Atchley stated she does not understand how they can make the decision without hearing from the fire-district especially with the road-problem.

Mr. Brent Burrell -Ashton Id Stated he lives east of the proposed development and questioned if the water in the aquifer has been discussed. He is concerned that the water is limited and the traffic issue on that road is also a concern.

Mr. Loosli stated the “kinked” road can be straightened without difficulty. Concerning the other issue regarding fire-fighting rules, the code does not give a definition of the requirements for a fire-fighting pond and it is an added benefit to the residents. Read from code regarding land-use compatibility (paragraph w). The land being developed does meet requirements for land-use compatibility, and he will work with the P&Z to address the visual sensitivity issues. Regarding the road on the south-east corner, it is an easement of record and that in this case Mr. Atchley serves him. He stated that Mr. Atchley will have to request written approval from him for the cattle-gate. He discussed the physical impossibility on his road vs. that which was allowed in the gun-barrel estates rule. The policy has been established to allow...The Commissioners have approved it three other times. Argued the access issue and stated it is a secondary issue and he could make it into a loop access, but would prefer not to. Regarding the water issue, the aquifer is 120 ft. down, and there have been tests done.

Mr. Mackert questioned the requirements for building heights, and colors etc...planned for the covenants.

Mr. Loosli stated he wants to have a cap on the maximum square footage, and is in favor of modest colors, and a smaller pitch to keep the roof-lines down. He discussed other visual aspects of the subdivision.

Mr. Mackert closed the Public Hearing.

Mr. Patlovich read from the code (section II) regarding the fire-district response. Stated no response from the fire-district means that they have no comment.

Mr. Pinther questioned if this is in a visually-sensitive areas.

Mr. Mackert questioned if they want to look at the scoring sheets.

Mr. Patlovich discussed the scoring he gave regarding the wetlands issue, and that it was based on the first submittal. He originally gave a score of -1, but the problem has been fixed, and that score will change. The water supply narrative does not indicate where the pond is going to be located and it is not shown on the map, which is why there was a score of 0 given.

Mr. Mackert questioned why the road score was given a score of 1.

Mr. Patlovich stated that had to do with arterial roads only. There is no scoring on the issue with those two points of access or the compliance with 60ft.

Mr. Nedrow stated they should leave it alone.

Mr. Pinther stated Mr. Loosli said he would supply areas for snow removal on that road, and he is concerned that there is a need to allow more areas for snow storage.

Mr. Patlovich stated he would go over it extensively with the CC&R's.

Mr. Derricott stated Mr. Loosli stated he "suspected" often in his rebuttal, and would like to see covenants as to what they will require from the builders and does not want the view from the highway to the Tetons to be blocked by 2-3 story homes.

Mr. Atchley stated they cannot do that.

Mr. Mackert stated the pond has to be included in the final plat.

Mr. Atchley stated other subdivisions haven't even attempted to provide this kind of fire access.

**MR. PINTHER MOTIONED TO ACCEPT THE
PRELIMINARY PLAT FOR FALLS CROSSING WITH THE
CONDITIONS THAT LOT 9 IS TO INCLUDE THE FIRE**

POND AND LOT 15 IS TO INCLUDE A SNOW REMOVAL AREA. MR. ATCHLEY SECONDED.

Mr. Patlovich stated his concern that there is nothing in the code that gives them the justification to require areas for snow storage.

Mr. Pinther stated he was going off of section ii.3 from the code.

Mr. Patlovich stated that section of the code does not support what Mr. Pinther is saying regarding the snow storage.

VOTE WAS TAKEN: THOSE OPPOSED: MR. POND, MR. DERRICOTT. ALL OTHERS IN FAVOR. MOTION PASSED.

5. Administrators Report

Mr. Patlovich stated the item that was withdrawn tonight dealing with the floodplain issue was resolved by the board of County Commissioners. They heard an appeal given by Monte Smith for a variance allowing them to place the dwelling within the stream corridor. The Commissioners decided since the Smith's had relied on information given to them by the county over a long period of time to allow them to build as planned. For now, if someone can prove they have been working with the county, they will be treated the same way. However, for future applicants wanting to build in the restricted stream corridor they will be denied as per the code.

Mrs. Miller questioned what the difference between this and the Smith's is.

Mr. Patlovich stated you cannot build in the stream corridors which is the floodplain, any riparian vegetation, and any wetlands. The code says no one can build in these areas and there has to be a 30ft setback. The Smith's went for an appeal rather than a variance, so as not to put them back any farther into the winter.

Mr. Mackert stated it was a procedural issue that led to that.

Mr. Pinther stated there is a contradiction in the code regarding building in floodplains, and asked if they can clear that up.

Mr. Patlovich stated it will be addressed when they work through the comprehensive plan and the development code. There are a lot of other floodplains that are not on the rivers or the two lakes. He discussed various streams and the rules under chapter 11 for elevation. The rule of the stream corridor definition only applies to the three rivers and two lakes.

Mr. Pinther they could come in for a code amendment.

Mr. Mackert explained how the situation was.

Mr. Nedrow questioned how far away they are from the code rewrite finalization.

Mr. Patlovich stated he has done most of the review with a few exceptions, and he needs the P&Z to solidify the policies. Stated he is going to include in the code that if there is no comment from any public agency, then there is no comment, and that is the customary thing to do in zoning.

Mr. Nedrow questioned if they should address this now.

Mr. Patlovich stated it is being addressed now. The code finalization will depend on the public comment regarding the first draft of the policies. If the public is in agreement with the policies they have written so far, he can finish up the code. But he cannot until that is done. The issue regarding productive crop land is holding them up.

Mr. Mackert stated there is a meeting Monday, October 22, 2007 for the visually sensitive areas from USU.

6. Adjournment

**MRS MILLER MOTIONED TO ADJOURN. MR. ATCHLEY
SECONDED. ALL IN FAVOR. MOTION PASSED.**

Adjourned meeting at 7:47pm.