

**Fremont County Planning  
& Zoning Commission  
Minutes  
January, 8 2007  
6:00 pm  
County Courthouse**

The Fremont County Planning & Zoning Commission met in regular session on January 8, 2007, in the County Courthouse. **Members in attendance were:** Evan Worrell (Chairman), Ron Kynaston, John Nedrow, Vance Derricott, Glen Pond, Kirk Mackert (Vice Chairman), Cindy Miller, Steve Pinther and Cindy Roberson

**Staff and others present:** Jeff Patlovich (P&Z Administrator), Molly Knox (P&Z Secretary), Owen McLaughlin (District 7 Health Dept.), Joshua Chase (Planner II), Lisa Benson (Planner I), Keith Richey (Fremont County Emergency Management Coordinator), Drake Munson (Developer), Steve Mortensen (Developer), Val Christensen (Developer), Bart Lynn (Simplot Representative), Doug & Jill Bobb (Developers), Gene Kantack (Developer),

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

**I. Minutes**

December 4, 2006

**CINDY ROBERSON MOVED TO ADOPT THE MINUTES FOR THE REGULARLY SCHEDULED HEARING ON DECEMBER 4, 2006 AS WITH THE CORRECTIONS NOTED. SECONDED BY CINDY MILLER. MOTION PASSED.**

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| 1. Preliminary Plat Continued – Rivers Edge on the Henry’s Fork – Drake Munson |
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Mr. Worrell said the next item on the agenda is the Preliminary Plat continuance on the Rivers Edge on the Henry’s Fork.

Mr. Patlovich stated that the Facts Findings and Conclusions of Law and Order were written up to support your denial of the project, they are here for your approval.

Mr. Worrell questioned if there was a motion to accept.

Mr. Pond I make a motion to accept the Facts Findings and Conclusions or Order and Law.

Mr. Derricott I second the motion.

Mr. Worrell we have a motion that has been made and seconded, all in favor, motion carries.

## ***2. Final Plat – The Reserve at Fall River – Drake Munson***

Mr. Worrell said the next item is the Final Plat for The Reserve at Fall River, Drake Munson is the Developer.

Mr. Patlovich stated that this is a subdivision that was approved by you in 2005. It is a six (6) lot subdivision that all lots front on the Fall River with two private roads. The plat has 2006 on it and it needs to be changed to 2007 before signatures are given for the Munson's information.

Mr. Worrell asked the board if there were any questions.

Mr. Mackert questioned the issue of variance that was denied of the cul-de-sac.

Mr. Patlovich stated that the issue has been resolved, but it is unknown as to how that was completed.

Mr. Nedrow questioned the fact that only one board member was there at that time to hear the project and needed to know how to vote.

Mr. Patlovich responded that is okay to vote as it is a duty of yours in this position to pass the plat.

Mr. Derricott questioned location of property.

Mr. Munson described location of property to the Commission.

Mr. Mackert asked Mr. Munson to go over the cul-de-sac issue.

Mr. Munson responded that Karen asked for us to apply for a variance and it was denied but they attached as a condition of approval to have the driveways put into the lots.

Mr. Derricott questioned Mr. Patlovich if we have a Compliance Officer yet to follow up on these issues.

Mr. Patlovich responded that yes and her name is Lisa Benson and she is seated in the audience next to Joshua. Stated that it would be one of the three in the Planning staff to do so.

Mr. Pond I make a motion to accept the Final Plat for the Reserve on Fall River.

Mr. Kynaston I second the motion.

Mr. Worrell a motion has been made and has been seconded, all in favor, motion carries. Mr. Steve Pinther did not vote due to not on board at time of Public Hearing.

### 3. Final Plat – Old Cherry Butte Ranch – Gene Kantack

Mr. Worrell next on the agenda is the Final Plat for Old Cherry Butte Ranch, Gene Kantack is the Developer.

Mr. Patlovich stated that this is a 9 lot residential subdivision that has two private roads on 63 acres. This project was approved some time ago and was put on hold due to the location and no one could get to the ground last winter. If you recall I walked the property with Mr. Kantack. There is a slight change in road design due to placing the road around the hilly area and not cutting into the hillside as much. I would recommend that you approve the project.

Mr. Worrell asked if the board had any questions.

Mrs. Miller questioned if anything had been done.

Mr. Patlovich responded that the road has been cut in.

Mrs. Miller stated that when you first told us of the project you said that you were going to use most material from the site. Have you started using that, or has that changed?

Mr. Kantack stated that a pioneer road has been put in for survey reasons. No native materials have been used yet and we are confident that road can be built with onsite materials.

Mrs. Miller questioned if it is the same as bringing it in from elsewhere or is it different material?

Mr. Kantack stated that the material is native and we have done it before on previous developments. Weldon has approved the roads of the last development and they have held up very well.

Mrs. Roberson questioned if Weldon Reynolds had seen the roads with the changes?

Mr. Kantack replied that yes he has and the material is good and due to it is native it will do well there.

Mr. Derricott stated that I have been there and the gravel source is good material and is hard as a rock and should be good material.

Mr. Kantack replied that it has set up very well. With the changes we have been able to save some trees and use some attractive existing rock outcrops.

Mrs. Roberson questioned of there being runoff problems?

Mr. Kantack responded no I do not think so.

Mr. Patlovich stated that it is way above the river and there should be no runoff issues.

Mrs. Miller I make a motion to approve the Final Plat of Old Cherry Butte.

Mr. Kynaston I second the motion.

Mr. Worrell we have a motion that has been seconded, all in favor, motion carries. Mr. Steve Pinther did not vote due to not present at time of Public Hearing.

#### 4. Sketch Plan – Bed & Breakfast – Doug & Jill Bobb

Mr. Worrell said the next item on the agenda is the Sketch Plan for a Bed and Breakfast, Doug and Jill Bobb are the Developers.

Mr. Patlovich stated that this is an existing Bed & Breakfast on the property and are looking to expand with two new structures, which will be included in the Bed & Breakfast. Gave directions to location.

Mrs. Miller questioned the point that Bed & Breakfasts are not specifically addressed in the current code.

Mr. Patlovich responded correct, they are typically originally for residential use and are under the building codes classified as hotels and motels.

Mr. Mackert questioned the density requirements of a situation like this with existing 4 cabins and then the possible two more.

Mr. Patlovich responded no only concerned with density calculations of subdivisions, we are only looking at the one residential structure.

Mr. Pond questioned use of existing well and septic, or adding more to the property.

Mr. Patlovich stated that that is a valid issue and you can say that it needs to be checked out with the District Seven Health Department.

Mrs. Jill Bobb and Mr. Doug Bobb 418 Knottingham, Twin Falls or PO Box 341 Ashton - We already have two wells and three septic tanks on the property that have been approved by the Health Department.

Mr. Mackert questioned of the existing four cabins there are no bathrooms in these? No septic for these "houses"?

Mrs. Bobb replied that there is a bathhouse that they all use on one of the septic systems.

Mr. Mackert questioned if this had been passed off by District Seven Health Department to function as a Bed & Breakfast.

Mrs. Bobb replied that yes it has been. The upper cabin where we want to add on to, has a septic system on it. If they will let us that is the system that we want to add the two new cabins onto.

Mr. Mackert stated that this is a question for Owen. Would the systems have to be reinspected to see if they can add these on.

Mr. McLaughlin said that he was not sure if the current septic system would hold any more or not. I think that the Health Department has a different definition of Bed and Breakfast then you do.

Mr. Patlovich stated that it did not matter what the Health Department required because they have to go through us and our requirements and then to them and the Health Department requirements.

Mr. Mackert stated that he was only asking to see what the real requirements for a Bed and breakfast are due to we have had this come up before.

Mr. Mackert questioned parking.

Mrs. Bobb explained the location of the property and the parking that is current would be sufficient.

Mr. Pond I make a motion to approve the Bobb Bed & Breakfast to continue onto Public Hearing.

Mr. Kynaston I second the motion

Mr. Worrell all in favor motion carries. Steve Pinther did not vote due to conflict of interest in knowing the developers.

#### 5. Public Hearing – JR Simplot

Mr. Worrell stated that next is public hearing for JR Simplot. Questioned Mr. Patlovich if the proper notices been provided

Mr. Patlovich responded yes, then described what the project was about and the location of the property.

Mr. Worrell questioned if the representative wanted to speak?

Mr. Bart Lynn stated that there was an old building that needed to be replaced and they want to build a new storage building that will hold dry fertilizer.

Mr. Pinther stated his concern of the Five County Detention Center and if this will affect them in any way.

Mr. Patlovich stated that he had spoken to the Administrator of the Detention Center and that they had no issues or concerns.

Mr. Lynn stated that this is not intended to increase or decrease the amount of fertilizer we store.

Mrs. Roberson questioned antennas on top of building

Mr. Lynn stated that there are no plans of having one on it. The old one has one on it but this new building is much shorter.

Mr. Worrell questioned if there were plans to tear down old building or leave it?

Mr. Lynn stated that eventually it will, but it is not yet to be determined.

Mr. Mackert questioned if there were any concerns with the fire department.

Mr. Lynn stated that we spoke to the fire department and they did not have any issues with it. We do not use nitrate so that is not an issue.

Mr. Worrell questioned if Keith Richey, Fremont County Emergency Management, had any issues with it?

Mr. Keith Richey stated no.

Mr. Worrell stated that the public hearing is now closed.

Mr. Derricott stated that he made a motion to approve JR Simplot for a Building Permit.

Mr. Pond seconded the motion.

Mr. Worrell stated that we have a motion that has been seconded, all in favor, motion carries.

#### 6. Variance – Rancho McCrea – Geri Douglas

Mr. Worrell the next item on the agenda is the Variance for Rancho McCrea – Geri Douglas. Are the representatives here?

Mr. Patlovich since the applicant or a representative is not present it is not to be heard.

Mrs. Miller I motion that we disregard the variance due they are not here to represent themselves and that they must reapply and pay new fees.

Mr. Kynaston I second the motion.

Mr. Worrell we have a motion that has been seconded, all in favor, motion carries.

#### 7. Appeal of LESA – Brent Singleton, Clen Atchley

Mr. Worrell stated that next on the agenda was the Appeal for Brent Singleton and Clen Atchley, he asked Mr. Patlovich to report.

Mr. Patlovich stated that this is an application of an appeal of a denial of a LESA which I scored.

Mr. Worrell asked does the bard have any conflicts of interest, would the representative like to come up?

Mr. Clen Atchley stated that he was doing this as a holding while Brent is getting his finances in order. Brent's problem is he cannot get very good yields and cannot make a living off of this property.

Mr. Mackert asked what the question was of the soils types or of the yields?

Mr. Patlovich stated that it is based on barley production throughout the county. I oftentimes meet with people and they state that their property was hit by the flood. Which happened in 1976 and these soil assessments were done by the NRCS Office in 1986. This property has a certain soil type and you have to find that I did something wrong, not that you feel that this system is flawed.

Mr. Nedrow questioned the NRCS assigned the soils in 1986.

Mrs. Miller stated that she felt that he needed to hire a soils scientist to test the ground.

Mr. Pinther stated that there a quite a few developments around there.

Mr. Patlovich stated that if you measure out ½ mile it is a mix of residential and agricultural uses.

Mr. Mackert questioned if this parcel is right outside of the Wilford town site boundaries.

Mr. Patlovich responded yes.

Mr. Pinther stated that he also felt that 70-80% is high, the big thing is the soil type being the problem.

Mrs. Roberson stated that she agreed with Mrs. Miller.

Mr. Patlovich you are suggesting that he could hire his own soil scientist, but you have an application before you and you need to follow through with it accordingly.

Mrs. Miller responded, yes.

Mr. Pinther stated that a LESA can go both ways.

Mr. Worrell opened the hearing to public comment, if there are none close to public hearing.

Mr. Pond stated that he made a motion to deny the Appeal.

Mr. Kynaston stated that I would suggest that we disapprove this with the recommendation of getting a professional soil test.

Mr. Nedrow stated that the process is under review and revision and we can recommend that he attend the meetings to make the LESA work better. That is if he wants to wait.

Mrs. Miller I second the motion.

Mr. Worrell we have a motion that has been seconded, all in favor, motion carries.

## 8. Public Hearing – Bed & Breakfast – Center Court LLC

Mr. Worrell the next item on the agenda is the public hearing for Bed & Breakfast for Center Court LLC. Have the proper notices been provided. Mr. Patlovich said yes. Mr. Worrell asked if there are there any conflicts of interest? There were no conflicts stated.

Mr. Patlovich reported that this is a Class II permit application for a Bed & Breakfast facility located off of Highway 32 just before you drop into the Fall River. The property is 2.5 acres. The applicant purchased the property with an existing barn on it; he has applied for as a Class I permit to convert it to a single-family dwelling with the anticipation of converting to a Bed & Breakfast, which is a Class II permit. He has made it known to us quite some time ago. If you have driven past the site that is why there has been construction going on. If he is approved tonight to make it a Bed & Breakfast he will then have to apply for another building permit to convert it to a Bed & Breakfast in accordance to the Building Codes.

Mr. Worrell asked if there were any questions for Mr. Patlovich?

Mr. Mackert questioned that the initial permit was for a single-family dwelling?

Mr. Patlovich responded yes, and the building staff has known that the option was out there for the Bed & Breakfast or to stop at the dwelling stage. One of the issues of the neighbors is that they should have been notified along time ago. I do not feel so, they are working under one permit and when or if they decided to further this to the Bed & breakfast stage, which they have and it is now.

Mr. Mackert questioned why not start with that in the anticipation of being denied? Questioned do you know if there are different requirements?

Mr. Patlovich responded that yes there are, but he did not know the details.

Mr. Worrell asked the developer if he would like to give any additional statements.

Val Christensen 430 S. 3<sup>rd</sup> E, Rexburg, Idaho responded that that is how it is working out, no matter what happens it will be a single-family dwelling, but we would like to pursue the Bed & Breakfast.

Mr. Pinther questioned if he was aware that if you are denied you can be still have a single-family dwelling? Also a point was made by a person who is protesting this, is that they had no input on this.

Mr. Christensen responded yes, I am not going to tear it down. I do not want to cause anymore problems with my neighbors. The neighbor I think this is from stated that they wanted to talk to us concerning what was going on, I agreed to it. The next weekend I was there to work on the project there was an eight foot high fence going up around their property along with fast growing trees behind it. This obstructs my view of the Tetons.

Mr. Pinther stated that he understood.

Mr. Derricott questioned the height measurement of code.

Mr. Patlovich responded that this meets the height requirement of the code. The fire department has approved it as well. You have to remember that it is an existing structure, which is 55 feet at the peak. And falls within the code of height requirements.

Mr. Pinther stated that the fire department responded back that it was a house.

Mr. Patlovich responded that they must have misstated it, or misunderstood it, they have responded back saying that the structure height is okay.

Mr. Christensen stated that there have been complaints from the neighbors of us looking into their property. There is a garage between them and us, and barns. We cannot even see their backyard. All we can see is their goats.

Mr. Kynaston questioned how close the property line is the structure?

Mr. Christensen responded 35 feet but it was already there.

Mr. Mackert questioned Jeff if 35 feet to code with a commercial application?

Mr. Patlovich responded, yes.

Mrs. Roberson questioned how many people could be there at one time?

Mr. Christensen responded 16, I believe a governed number.

Mr. Patlovich agreed.

Mrs. Roberson stated so there could be that many cars in your yard?

Mr. Christensen responded that there would not be that many maybe 4 or 5.

Mr. Worrell questioned if there were any additional questions. There are none and so now we will open to Public Hearing for Public Comment.

Mr. Harbaugh, I am the owner of Fall River Ranch, which is 72 acres and was purchased as our retirement property. Read letter, which was submitted and is on file. Asked if there were any questions?

Ms. Draper opposed to barn becoming a Bed & Breakfast, I question the well capacity of this development. This is an agricultural rural area. Read from letter.

Mr. Pinther questioned when Ms. Draper purchased the property and when the neighbors purchased their property.

Ms. Draper stated that we bought the property 3 years ago.

Mr. Bennie Smith stated that we owned the property for 13 years and sold it to Center Court last year.

Ms. Draper asked the Commission to look at email that was submitted on August 2 from Mr. Horner to Mr. Patlovich.

Mr. Donald Harris PO Box 50130, Idaho Falls, Idaho – Attorney for Dede and Mark. We have asked numerous times Mr. Patlovich and the County Attorney to stop construction prior to having the Class II Hearing. It is clear and if you look at the email it has always been their intentions. If they had followed the Code this would have been done differently. The purpose of the Comprehensive Plan and Development Code is so that whatever is being reviewed complies with the purposes of the county. Also look at Policy 18, which is to protect agricultural and farm land and owners. What they do with their goats has a significant impact on the area. If you look at Chapter 3 Division 4 this project should have been stopped as soon as Planning & Building knew that the wrong permit had been obtained. No action was taken as requested by my clients and myself. The fact of two residents on one parcel also violates the Development Code.

Mr. Pond questioned how it violates the current code, right now as far as we know they are constructing a home there.

Mr. Harris responded under a Class I permit.

Mr. Pond stated that now they are asking for a Class II, correct.

Mr. Harris responded that yes, but the County knew of their intentions on August 2, 2006 which is a misrepresentation and they are under violation.

Mr. Pond stated that you also mentioned that they had to come to us for a building permit, they do not come to us.

Mr. Harris stated if I misspoke I apologize. I know how important it is to follow the codes and rules. I just want to do it right and follow the laws.

Mr. Atchley 4054 E. 1300 N., Ashton, Idaho - I come to you as a farmer, I own the ground surrounding the property. My concern is if the guests get upset if we are farming at night. I am not in favor of this due to I do not want my operations interfered with. Bed & Breakfasts are a up and coming thing in the county and they need to be addressed.

Mr. Worrell questioned if there were any other letters of calls?

Mr. Keith Richey stated his only concern was on the road access.

Mr. Worrell asked if there were any who wanted to rebuttal?

Mr. Stephen Zollinger – I am the attorney representing Center Court LLC. And the main complaint of the opposition is inappropriate behavior on the behalf of Center Court LLC. Always had the intention to do as they are presenting. No one has deviated from that. Neighbors have stated items of Bed & Breakfast versus single-family dwelling. No testimony has been presented that this has put stress on livestock. Once the construction is completed that will diminish. Ms. Draper brought into the fact of the water, which would be okayed by the state agencies. Your attorney has instructed you properly on not stopping the construction of the project. There have been no violations of your law or code. Mr. Harris stated that the applicant has intentionally tried to hide the fact that they wanted to make this into a Bed & Breakfast. They are converting a barn for residential purposes of three families. The staff report has no objections. The Code says that this is an appropriate use of the property. Neighbors also have yurts that they have individuals stay in them. As well as other neighbors who there are letters from who rent out their property. They have not violated your Code.

Mr. Pinther stated that you stated that there would be three families being there. Who will reside there?

Mr. Zollinger responded yes, there are three owners in Center Court LLC it will be used at various times, as a weekend retreat. They will have to decide on that if the Bed & Breakfast is turned down. This would be just as many people do in Island Park.

Mr. Pinther stated if they would have come to us before the remodel then there would have been public input.

Mr. Zollinger responded that initially this was to just be a single-family dwelling where no testimony is required.

Mr. Pinther stated that the existing structure is a barn and is agriculture use. Questioned if a Certificate of Occupancy has been given?

Mr. Zollinger responded no it would be categorized as a single-family dwelling. No Certificate of Occupancy has been given yet; due to we have not finished it.

Mr. Mackert asked can you answer if your clients have filled out a Resource Management Easement on this property.

Mr. Zollinger responded that I am unaware if they have or not.

Mr. Mackert stated that that needed to be done.

Mr. Zollinger responded that it would be it is not already.

Mr. Patlovich stated that he would check into it and yes if it has not been done then we will be sure that is done.

Mr. Mackert questioned of the double wide being part of this project or not?

Mr. Zollinger stated that we would ask for you to look at the double wide as an additional dwelling space in the project.

Mr. Harris stated his rebuttal of Mr. Zollinger's project. Stated that the letters of his to Mr. Lewies did not stop work progress there was never a red tag. In regards to the issues, Mr. Harbaugh specifically stated issues with the noise, and lights affecting his goats.

Mr. Pond can you explain where exactly they violated the law as they went along.

Mr. Harris they have acknowledged all along that they were going to be a Bed & Breakfast . They knew what they were going to be doing and did not disclose that information.

Ms. Draper reiterated the issue of the dates, applied for the Class 2 first and was instructed that they needed to do the sketch plan first.

Mark Harbaugh clearly made requests of building being put back to its original permitted design. Updating of plans. And beefed up work crew. What about parking? Advertising, damage to their yard of lost individuals wanting to find the project.

Mr. Richard Horner stated that the whole reason for writing email we had two intentions single family dwelling and a Bed & Breakfast. If we have done any damage we would fix it. If they give us a list, we would fix it.

Mr. Jason Allen property 3641 E Hwy 32 – stated that he has been in the building industry 25 years Fremont County over 12 years and California the rest. Struggle with enforcement. The county has gone from a \$40.00 build what you want permit to a \$1800.00 building permit. Bought a barn and decided to make into a single family dwelling.

Mr. Worrell stated that the Public Hearing is now closed for the board to discuss.

Mrs. Miller stated that on the sketch plan it was stated that the manufactured home was to be the primary residence of the caregiver.

Mrs. Roberson questioned what is the Red Tag?

Mr. Patlovich stated that the Red Tag is a building code violation. A day or two after the applicant was notified of the issues they were in and paid for the changes with the new drawings.

Mr. Mackert asked was that after the fact of the letter being sent?

Mr. Patlovich responded yes, that is typical of us finding out about these things.

Mr. Mackert questioned if they were significant changes?

Mr. Patlovich responded no, just decks and stairs.

Mrs. Miller questioned if that is typical to change things as they go along.

Mr. Patlovich stated that the chances of a Building Inspector going out for an inspection and there not being corrections is not going to happen. Instead of Red Tagging them we let them correct their wrongs.

Mr. Pinther stated that most of it is but the question at hand is the Bed & Breakfast permit on its merit. One question of letting barn being converted to a Bed & Breakfast. I do challenge the scoring that Jeff has done. VII.W.2, 3 and 4 is height compatible with neighboring uses. Building bulk compatible with adjoining uses. I think all three should be negative scores. What they are proposing is not compatible. It would have been better to come before hand.

Mr. Patlovich stated that you do not have to go through the whole scoring sheet just the issues. Caution the Commission of the first on building height. Read from Code. Read letter from North Fremont Fire District stating that they would respond.

Mr. Mackert questioned if you were saying that they are compatible with the fire department or the surrounding uses? A Bed & Breakfast is not consistent with a goat Ranch.

Mr. Patlovich responded that he is reading from the Code, and it does not specify. Where do you start the first home? There would be no development in the county if you went by that.

Mr. Pond stated that I have to look at this regardless of if it was a barn there is going to be a home there. The question is that if the home can be a Bed & Breakfast.

Mr. Pinther discussed with Mr. Pond that it is not a home yet due to it does not have its Certificate of Occupancy. It could be anything; it is not a home yet. It is a barn.

Mr. Patlovich stated that your job here tonight is to determine if the Bed & Breakfast is appropriate for this location or not.

Mr. Pinther stated that I agree and I concede to Glen.

Mrs. Roberson stated that we should look at the scoring.

Mr. Pinther read if the structure fits in with its surroundings.

Mr. Kynaston responded as a barn yes, as a Bed & Breakfast, no.

Mr. Patlovich stated that the application before you is for a Bed & Breakfast.

Mr. Pinther stated that the question is if we should allow a three story Bed & Breakfast on this site.

Mr. Derricott stated that the fire department says that they will answer a call if needed. Now we have to decide if it is appropriate being next to a goat ranch.

Mr. Pinther I make a motion to change VII.W.2 to a -5.

Mr. Mackert I second the motion.

Mr. Worrell we have a motion that has been seconded Mr. Glen Pond and Mrs. Cindy Miller not in favor all others yes.

Mr. Pinther I make a motion to change VII.W.3 to a -5.

Mr. Derricott I second the motion.

Mr. Worrell we have a motion that has been seconded, all in favor, motion carries.

Mr. Pinther I make a motion to change VII.W.4 to a -2.

Mrs. Miller I second the motion.

Mr. Worrell we have a motion that has been seconded, all in favor, motion carries.

Mr. Pinther only other question is VII.I.1 why a 1.

Mr. Patlovich I gave them a 1 due to there is an attempt. We end up with a -14. You need to vote to deny it and for me to write up the denial for your approval to take place at the next meeting.

Mr. Pinther I make a motion for Mr. Patlovich to write up his Facts Findings and Conclusions of Law and Order of denial of the project for our approval at the next meeting.

Mr. Nedrow I second the motion.

Mr. Worrell we have a motion that has been seconded, all in favor, motion carries.

9. Public Hearing – JS Estates – Steve Mortensen

Mr. Worrell next item is JS Estates, Steve Mortensen Developer. Are there any conflicts of interest with the board?

Mr. Patlovich reported that this is a residential subdivision of 4 lots on about 5 acres each brought to you for sketch plan and variance that you approved in November. It is located near 300 North.

Mr. Worrell asked if the developer if he wanted to make a statement.

Mr. Mortensen stated that he would like to address the public after they comment.

Mr. Worrell I would like to open the meeting to Public Hearing.

Mrs. Gwen Hauffman 273 N. 2450 E. St. Anthony – lives across the road from the proposed development. Did not realize it had gone before the board before. There is a lot of productive farmland around the area. I am not against development be I am against changing Ag land. In the area that we are in there have been several wells that have gone dry, some more then once. I have concern if they are all drilling their own wells and where the waste will be going. I recommend the owners putting it up for sale as Ag land.

Mr. Pinther questioned if she was located to the west of this property? If it was not left in Ag are there any restrictions you would like to see to make it more compatible?

Mrs. Huffman replied that if it were left as a 20-acre parcel and they wanted to do agricultural type things such as pasturing. I realize that there is Ag land that needs to be developed because it cannot be anything else.

Mr. Pinther stated that he respects her rights and that their proposed use is one home on five acres.

Mrs. Huffman stated that is it not true that 5 acre lots can be split again.

Mr. Derricott questioned how long has your home been there?

Mrs. Huffman responded that it was the original Abegglen home and was built in the 80's.

Mr. Pinther questioned the size of the parcel her home was on.

Mrs. Huffman responded that it was 2.5 acres with animals and barn. Mostly concerned with water in wells.

Brent Kerbs 240 N. 2500 E. St. Anthony ID. Neighbor next to property, farm the property adjoining. Stated that the sign was not posted on the January 2, 2007 it was posted on the 3<sup>rd</sup> after 9am which is after the deadline. Quoted letter sent by Jeff concerning LESA. Read from letter from Steve Mortensen commenting on the property not being productive

in last 60 years and that he has spoken to older people concerning that. On November 13<sup>th</sup> of 06 it states that it is productive Ag. Handed out property deeds on property and letter from Mrs. Brower, copies of returned checks when he leased the property, and photos. In 1976 the Teton Dam broke and all property owners including Mr. Rash the owner of the property at that time received money back from the government. He did not decide to use the money to put back the ground as it once was. He used it for other things. The current owner has no machinery to properly manage the ground and has made no effort to do so, there is a mortgage on the property. The undue hardship has been made by what they have done to themselves. I feel that the Variance should have never been granted without evidence.

Mr. Mike Davis 2495 E 300 N St. Anthony ID. Commend Brent of facts stated. I wish that the Commission had heard of the truth before granting the variance. Stated that there was farm ground surrounding the proposed site. We had day and night pasture. With proper management it can be productive farm ground. Without that you will not have a productive piece of property. I am concerned with sub-development in rural areas. Both my brother and myself have been harassed due to different farming issues. We ask that you respectfully turn this down due to it could be detrimental to the surrounding farmers.

Garrin Abegglen my property is in the northeast corner of the proposed subdivision. I would echo a lot of what has already been brought up. Bought our property in 1989, which was the original Davis farm. The house was already there and we have improved the property since we have been there. There were issues concerning sub water with our property, we have had to deal with that through the years and spend money on dirt to fill our crawlspace and yard. Living in the country you have to expect that. We have put in larger culverts so that water would flow through in a quicker manner to try to prevent some of that. After the flood some farmers put their money back into their farms, bringing in soil and laser leveling to make it productive farm ground. I agree that the current owners have not put in the time to make the ground productive. Another concern is the lots are large enough to draw people in but then they may not want to take care of it after a few years.

Mr. Pinther questioned Mr. Abegglen did you say that you have witnessed sub situations on the subject property? What is your property size?

Mr. Abegglen stated that when I first got there yes, there was water that would affect the septic systems; it is up to the irrigator to be responsible with their water. Even in drought years there still has been enough water for the farmers. We live on one acre.

Mrs. Abegglen 271 N 2500 E due the ways the water is under my home I am concerned with how the water will be affected around the area. I question if a geological study is required?

Dale Daw 2650 E. 300 N. stated concerns on putting in more subdivisions, we are constantly chewed out due to our trucks and machinery and the hours we work. I worry that getting more subdivisions will remove all of the farm ground. Why not start from

the city and work your way out. I don't think that it is right to tell one person the ground is productive and another that it is not.

Shane Potter 171 N 2500 E I farm to the south of the property being addressed. It is wet there and I worry if it will impact how we can water. We are farmers.

Mrs. Miller questioned from a neighbors point of view does it look as if it is productive farm ground?

Mr. Potter responded that it is pasture ground. And it is as tall as any pasture I have. I have never ran that piece of ground.

Mr. Pinther questioned the water situation.

Mr. Potter replied that it is subby level ground. I have been stuck on my own ground when I didn't think it was even wet.

Mr. Pinther stated it is not wetlands it is due to the farmers irrigating their ground.

Mr. Singleton 266 N. 2400 E. I farmed the ground around this ground since 1976 and lease the Melvin Harris ground. I rented Stone (proposed property) field in 1979. 1976 this ground was totaled when the government came in and paid it was \$800.00 an acre. I ran cattle on there in 79 and within the last 5 or 6 years. I had an arrangement with Mr. Mortensen to be able to run my cattle through there since I owned the ground on either side. I have seen water run through there in the last 30 years and I helped put the ditches back in after the flood. We do have a water problem there, and one thing after another with share holders in the canal and pumps that come into there. The overflows off of these pumps have nowhere to go. The photo of the cows in the "pasture" could be things that cows do not eat, foxtail etc. I have seen eleven pairs of cattle in there the past summer. I myself built a dirt dike to help with the water problems and it has helped and eliminated a lot of the water in the middle of the property.

Mrs. Miller questioned if you would agree that each piece of ground has to be treated equal.

Mr. Singleton responded yes they all need to be treated equal. I do not think that the Planning & Zoning Commission should be able to block development. Development effects the value of ground drastically. On behalf of Mr. Harris and myself we have no problem with this project.

Mr. Pinther asked if the property has been used as a waste area for other farmers?

Mr. Singleton replied that we feel that we have addressed that last May. There will still be some but not as much as before.

Mr. Worrell questioned is there anyone else who wanted to comment?

Alan Packer my interest in this is I have been trying to get a piece of this property to build a house on. This property was not reclaimed as farm ground. I don't feel that there is any ground there that you could make a living off of. 20 acres is not going to make you a living farming. It would have to be along with something else.

Mr. Derricott stated that we have had testimony that there have been many wells go dry what would you do.

Mr. Packer stated that he would drill his well deeper.

Mr. Mortensen discussed that rebuttal on all that was said. That there would be 4 single-family dwelling lots on 20 acres at about 5 acres each, this is not a massive development.

Mr. Pinther questioned one home per lot and not being able to be split further.

Mr. Mortensen responded that we agreed to that and it can be put in our CC&R's.

Mr. Pinther stated that a plat note holds more then CC&R's and that he would want to see it addressed as plat notes.

Mr. Patlovich clarified the difference between CC&R's and Plat notes.

Mr. Pinther asked about easements to lots.

Mr. Mortensen yes there are easements and we have checked with the utility companies.

Mr. Pinther stated that a Resource Management Easement would have to be part of the plat notes for all property owners to sign.

Mr. Mortensen agreed with that.

Mr. Pinther questioned of wetlands on the property.

Mr. Mortensen stated that there are no natural wetlands on the property what is there is from irrigation from the surrounding farmers.

Mr. Mackert recommended covering all bases on junkyards, ATV tracks, etc. that all needs to be addressed.

Mr. Mortensen stated that Mr. Stone's initial intentions were to put a trailer court out there. We want to enhance the property and the area with our 5 acre ranchettes.

Mrs. Huffman reiterated that the sub water situation is very important to look at.

Mr. Shaun Hernandez – Butler Eng., Shelly, Idaho, representative of the Developer, stated that he has traced the ditches described and with a little help the problem of dumping water would be resolved.

Mr. Mackert questioned if property was within the 100-year floodplain.

Mr. Hernandez responded no, it is not.

Mr. Kerbs stated to answer the question concerning the mortgage, and brought up the facts of it is not undue hardship of the property that they requested the variance. I feel that there have been many items supporting the agricultural land.

Mr. Davis stated that I would like to clarify a few things there are homes within a mile not every 100 yards. The wells that did go dry are not due to the deepness of the wells. It is a can of worms.

Mr. Adam Davis 300 N. 2479 E, St. Anthony, Idaho, from hearing opinions on this everyone has gotten their point across. Sub is water that comes up when farmers irrigate. No matter if the ground is irrigated or not it will be there. Most people do not understand sub water. Farmers will still be blamed for it there is sub under their homes.

Mrs. Miller questioned if he resided in the area?

Mr. Davis responded that yes and described where and discussed the sewer problems with sub in the area.

Mr. Mike Davis stated that he had to raise everything up pipes, drain fields and redo everything.

Mr. Adam Davis stated that that is something that is going to need to be addressed.

Mr. Packer described what he would do to not have to deal with these things I would learn from their mistakes and build up the ground before building on it.

Mr. Mackert questioned if Owen had been there?

Mr. McLaughlin stated that he had not seen any test holes at this property but I have seen the Wilford area and they do have sub problems.

Mr. Abbeglen stated that it is still coming to the basic issue of if the ground is farm ground or not and if you can allow a subdivision to go in.

Mr. Worrell stated that the public hearing is closed and it is for the board to discuss.

Mrs. Roberson stated that I do not feel that we should have ever passed the variance in the first place.

Mr. Worrell commented that he ran across something and asked the Commission to go to the Development Code, page 10 under Variances, notice requirement shall be the same as a Class II permit. We never had any notices did we?

Mr. Patlovich stated that it was heard as an appeal of the LESA, which you heard and granted for them to subdivide at less than one per forty. And the Appeal notification is the same as an original permit, which is a Class I permit and requires no notification.

Mr. Mackert questioned if the LESA score was reevaluated?

Mr. Patlovich responded that the Commission did that and overturned the original LESA evaluation granting the appeal of my score. Just as the one earlier tonight, it is heard as an appeal with no public notice.

Mr. Worrell stated that on the past agenda it says Variance Mortensen Project.

Mr. Patlovich stated that it was processed as an appeal.

Mrs. Miller asked if it was posted in enough days, is that a legal issue?

Mr. Patlovich I would have to look, everyone showed to testify so there may be no point.

Mr. Pinther stated that it was the same night we did the Sketch Plan that we did the Variance.

Mr. Patlovich responded that I know that we had the same issue when we were processing it, wondering how to notice it due to it was an appeal and how do we get the notice out when it does not require notice?

Mr. Worrell read from the application Variance application.

Mr. Patlovich responded does it not also say Appeal?

Mr. Mackert stated that it reads Public Hearing – Variance – Mortensen Project

Mr. Patlovich responded that I have the thing right here that says Appeal 06-375AP, therefore it is an Appeal.

Mr. Worrell read from the application “describe the activity for the variance requesting: The variance is requested so that the land can be platted and developed.

Mr. Patlovich stated that I could make the point that it has already been heard and no one has made an issue of it that is over and that decision has never been appealed

Mrs. Roberson responded that I agree, we did vote on it, but I still feel that it should have never been approved or granted.

Mr. Mackert asked if it needed to be posted?

Mr. Patlovich responded that no an Appeal is noticed as the original application was noticed which was an administrative Class I for a LESA, there is no notice. To hold a public hearing without noticing is odd and will be changed in the Code. It makes no sense to have someone appeal something but have no notice.

Mr. Mackert stated that it says that the notice of a variance shall be the same as a Class II.

Mr. Patlovich responded that we are looking at an appeal.

Mr. Mackert responded that he was reading from the information that was place before us and it reads Variance.

Mr. Patlovich responded that it is over with and it has not been appealed from that decision a month ago.

Mr. Nedrow questioned what we do now?

Mr. Patlovich responded that you vote on the application that is before you.

Mrs. Roberson questioned that what you are saying is that you do not put out public notice for a hearing. The variance is over. And according to this, you should have put public notice out.

Mr. Patlovich responded by reading the notice of Appeal in the Code. Within the last few weeks we have written new applications that are separate Appeals and Variances applications. It makes no sense to have them together on the same application as they were before.

Mr. Mackert questioned who appealed what?

Mr. Patlovich responded that Mr. Mortensen appealed the score of the LESA.

Mr. Pinther stated that I agree it was passed, but it does say that it was a Variance.

Discussion of Commission Members Inaudible

Mrs. Roberson stated that I still think that we should deny it because it is productive crop ground.

Mrs. Miller responded that she had not been shown anything stating that it is productive ground. It is wasteland. It probably could be productive if you worked at it. He would rather develop it then farm it. That is his right.

Mr. Mackert questioned what Mrs. Roberson was saying is it is productive cropland. We are past that issue we have already decided that it is not.

Mrs. Miller stated that now we need to look at the preliminary plat and decide weather we approve it or deny it on the evidence and the testimony given. It will make an impact but how much of an impact and is it positive or negative. Are they meeting the requirements and through plat notes can we enforce those things.

Mr. Pinther stated that we are protecting the rights of all property owners. We have passed the variance it is done. We do need to decide on this that is before us.

Mrs. Roberson questioned what are you going to do next month when the next person comes in and says that they don't like their pasture, grant them a variance?

Mrs. Miller responded that it has to be looked at piece by piece they all need to be evaluated on their own merits.

Mrs. Roberson questioned what are you going to do with this water, it has to go somewhere? It is gong to be dumped on someone else. Is that going to be the next person with a variance?

Mr. Pinther stated that that is why he felt that the Resource Management Easement is important so that we can protect the rights of the surrounding farmers, and there wee a lot of valid concerns. We have to allow all parties their rights.

Mr. Roberson stated that you can put whatever you want on the plat but if people are cutting hay at 2am people are going to complain.

Mr. Pinther stated that he understood her concern but most of the people who spoke are on smaller parcels then the ones being proposed. The large landowner that owns land around it is not opposed to it.

Mrs. Roberson responded but didn't he also state that he might develop in the future?

Mrs. Miller stated that he (Mr. Mortensen) did say that who knows what the future may bring and maybe he will, can we penalize someone else because of what he may do in the future. I feel that the water will be resolved and the Canal Company will have to take the bull by the horns to find a solution to the problem.

Mr. Mackert stated that it happens all over Fremont County but there have been a lot of lot splits weather for family or other reasons, but it had created a lot of heartburn with a lot of home that have popped up. They did not come before us, they took the backdoor

approach. They are trying to do it right and come before us. If everyone is in agreement that the variance or appeal was done right then we need to address this project and put the other behind us. Does this development standing on its own merits of meeting the requirements that we are looking at. We need to address this project, there was one comment that was brought up at the beginning, was the posting done? Are we sure that is was done at the appropriate time? Within the seven days? It was posted, but was it at the right time.

Mr. Pond stated that that is a critical question.

Mr. Patlovich stated that what you could do is table it for up to 60 days for your own deliberations, which could include the record of posting, I would have to look I do not have it all in front of me. The worst case is to do the hearing all over again.

Mrs. Miller questioned if it was shy one day is that an issue?

Mr. Patlovich responded that it is technically procedural due process situation that we have to deal with. It would have to be addressed. I recommend that you table this because it is becoming an issue.

Mrs. Miller I make a motion that we table the JS Estates until February 12, 2007, until it is determined if the signs were posted at the appropriate time or not.

Mr. Kynaston I second the motion.

Mr. Worrell we have a motion that has been seconded, Mrs. Cindy Roberson against, all others in favor, motion carries.

#### 10. Administrators Report-

Evan noted that there needs to be a new chairman

Motion on floor to elect new chairperson

Cindy Miller nominate Evan Worrell

Cindy Roberson nominate Steve Pinther

Cindy Miller, I move nominations cease

Mr. Pinther stated that he cannot be chairman.

Ron Kynaston nominated Steve Pinther as vice chair.

Cindy Miller moved nominations cease.

All in favor motion carries on Evan Worrell being chairman.

Kirk Mackert will be in for 6 months then Steve Pinther will take over.

All in favor

11. Adjournment

Mr. Ron Kynaston made the motion to adjourn at 11:20 pm

Mr. Nedrow seconded the motion.

Mr. Worrell all in favor to adjourn, motion carries.