

**Fremont County Planning
& Zoning Commission
Minutes
March 19, 2007
6:00 pm
County Annex Building**

The Fremont County Planning & Zoning Commission met in regular session on March 19, 2007, in the County Annex Building. Members in attendance were: Evan Worrell (Chairman), Ron Kynaston, John Nedrow, Vance Derricott, Glen Pond, Kirk Mackert (Vice Chairman), Cindy Miller, Steve Pinther, Kip Martindale 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, Keith Richey (Fremont County Emergency Management Coordinator)

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

I. Minutes

February 12, 2007

CINDY ROBERSON MOVED TO ADOPT THE MINUTES FOR THE REGULARLY SCHEDULED HEARING ON FEBRUARY 12, 2007 AS WITH THE CORRECTIONS NOTED. SECONDED BY JOHN NEDROW. MOTION PASSED.

1. Final Plat – Louise Hobbs Subdivision – Rick Byrem

Mr. Worrell stated that the next item on the agenda is the final plat for Louise Hobbs Subdivision.

Mr. Patlovich stated that everything is the same as it was and it is ready for your approval.

Mr. Worrell questioned if the board had any questions for Jeff or Mr. Byrem.

Mr. Derricott motioned for approval

Mr. Kynaston 2nd motion

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

2. Sketch Plan – Thunder Mountain RV Resort – Steven and Stanley Sandgren

Mr. Worrell stated that next is the Sketch for Thunder Mountain RV Resort, Steven and Stanley Sandgren. Jeff will you please report?

Mr. Patlovich reported that of this being an RV subdivision not a RV park due to these lots are being sold. However, in the FCDC RV's are not dwellings. So the chart in the code that gives the density does not apply. They are allowed 2.14 RV's per acre, so the chart does not apply. Another thing that needs brought up is they have proposed a private well for domestic use, fire and landscape, but the permit from the state is not here to verify that. Again this is just a sketch, for you to look at and give feedback.

Mr. Worrell asked if the board had any questions for Jeff?

Mr. Pinther questioned if this was less then a half acre per lot, and the code does not specify.

Mr. Patlovich read from Chapter XIV.HH on Single Family Dwellings, is says RV's are not Single Family Dwellings. It is here and you need to be aware of it.

Mr. Sandgren stated it is a condominium style RV lots for sale, it is very similar to what the Sand Hills Resort has currently. Based on a 6 or 7 month use and it will be a very nice use of the property and a nice project for the town. We are going to speak to the Department of Water Resources concerning a well.

Mrs. Roberson questioned the distance from the actual sands.

Mr. Sandgren responded 1 mile.

Mrs. Roberson questioned if the sand would be accessed directly with their four wheelers?

Mr. Sandgren responded that they were working on having direct access but at this time they do not. If they cannot get direct access then they would work on easements.

Mr. Pinther questioned the distance of the project from the road.

Mr. Sandgren responded that he was unsure of the distance back off of the road.

Mr. Patlovich stated that it is a driveway not a road. So the road standards will not apply.

Mr. Sandgren stated that it will have a 60 foot wide road through there good all weather road with wide access.

Mr. Pinther stated that it exceeds the distance requirements.

Mr. Patlovich stated that it is a driveway not a road. Therefore it does not exceed due to there are no requirements. I bring this up now so that you can tell them what you want them to come up with.

Mr. Mackert questioned if there was an easement proposed where the road is?

Mr. Sandgren responded that no they would own the property that the road would be on, and that it would be taken care of so that the county did not have to maintain it.

Mr. Pond questioned the width for the fire department needs to be able to access.

Mr. Sandgren stated that with drainage swells and such the road surface would be about 40 feet.

Mr. Pond stated that they needed to check with the Fire Department.

Mr. Nedrow questioned who gets to decide which it is a driveway or a road?

Mr. Patlovich stated that was a good question to ask. You can tell them that it has to be built to Appendix B standards. You can tell them that you want them to come back with that information at the next stage. You decide what you want them to do as far as the roads.

Mr. Pinther stated that there would be 59 lots and in any other development they would have to have two ways in and out.

Mr. Patlovich stated that he and Josh had been over it and that it was what it was, it does not require what subdivision developments require.

Mr. Pinther stated that due the definitions it is an RV park with all of the subdivision rules go out the window.

Mrs. Miller questioned if a bridge or a culvert would be placed.

Mr. Sandgren responded that it would be a concrete bridge.

Mrs. Miller questioned is a Resource Management Easement had been signed and recorded due to it is Ag land surrounding the area.

Mr. Sandgren responded that no one had not been as of yet, he has not purchased the property yet.

Mr. Patlovich stated that if that is wanted as part of the Sketch Plan we could do that, but it is wide open as to when it is required.

Mr. Derricott questioned amount of water being used approximately 125 gallons per unit which figures to 7,500 gallons. That would be quite a sewer system. Have you discussed that with District Seven Health yet, on what they require?

Mr. Sandgren stated that he had spoken to Owen, and travel trailer parks with sewer and water hookups would use up to 125 gallons a day, per trailer space.

Mr. Derricott asked what the meant for septic tanks.

Mr. Sandgren stated that he had spoken to the guy in charge of that and he said that they would have to set up a system of septic tanks to be able to handle that.

Mr. McLaughlin, District Seven Health Department, stated that 125 gallons per space per day is what is required. Stated that he had not seen the plan that is being proposed.

Mr. Mackert stated that a store is being proposed on the property site as well.

Mr. Sandgren stated that it would be for the residents of the area, and for the people using the spaces.

Mr. Mackert responded that then no one else cold use it then.

Mr. Sandgren responded that if someone came into the park, they would let them use the store.

Mr. Mackert stated that then that opened up other issues with roads and safety if it is being opened to the public. If you are going to have it for private residences then how are you going to police it?

Mr. Sandgren stated that they would post a sign.

Mrs. Roberson questioned if they had decided build the road to county specs, if that included the bridge?

Mr. Sandgren responded that the bridge would be made of pre cast concrete and he is unaware of what the county would require.

Mr. Sandgren questioned how the Sand Hills Resort was addressed, they are trying to do the same as they have done.

Mr. Mackert stated that we are looking at your project, and what the current code says.

Mrs. Miller stated her concern for the bridge being to county specs for fire safety. Questioned Jeff on the land use compatibility activity level in the area, with the 59 lots on the land that is currently Ag land.

Mr. Patlovich stated that there are things that can be asked and things that can be addressed, it is up for you to decide if you want to see those items addressed at the Public Hearing level.

Mr. Derricott motioned to have these individuals address the issues of the, bridge drawings being complete, what is required on the sewer systems, and the well with the Department of Water Resources and on the road, if they do accept the public entering into their store, or if they are going to police it and not allow the public to enter which would determine how we address the road issue, as well as RV access, solid waste transfer. If you could get us those things for you to present it for public hearing.

Mrs. Roberson seconded motion.

Mr. Worrell stated that we have a motion that has been seconded, all in favor with the exception of Mr. Steve Pinther who was against. Motion carries.

3. Appeal – Appeal of Lot Split and LESA – Keith Cutler

Mr. Worrell the next item on the agenda is the appeal for the Lot Split and LESA of Keith Cutler. Jeff will you report?

Mr. Patlovich stated that I have a hard time with this because I recommend it for denial due to it is Ag land. They want to build a home and shop where one burnt down last year but the ground is considered productive thru the LESA system.

Mr. Worrell stated what it was that the building used to be, which was a dairy and that the amount of gravel that had been brought in for a surface would have destroyed the ability to have a crop on the land.

Mr. Patlovich stated that if it were a home they could rebuild it within 12 months with no issues but because it is not they have to go through this process.

Mr. Nedrow stated that he had driven out there and seen the property and that there were already three homes on the property. Or so it seemed.

Mr. Cutler 2743 E 200 N stated that there are not one of them is on a different property which Mr. Dan Davis owns it and it is right next to their property. The ground has not been farmed since the late 60's. The ground is not productive they hauled gravel on it for a road surface and an area to stack hay on.

Mr. Roberson asked if there were any concerns for fresh ground water.

Mr. Culter stated that they had no concerns and they had a well right next to it for years and have had no issues.

Mr. Worrell questioned if the double wide that is there would remain or be removed once the new house and shop were built?

Mr. Cutler stated that the double wide would be removed once the house was built.

Mr. Pond questioned if the barn existed or if they had built it since they have owned the property.

Mr. Cutler responded that the barn was there.

Mr. Worrell opened the hearing to public comment. Asked Owen if there were any issues.

Mr. McLaughlin stated that it would be fine and that he had no issues.

Mr. Worrell stated that if there were no other public comment then the public hearing was closed and now the board is to discuss.

Mrs. Roberson stated that since the ground had been destroyed it is not productive farm ground. As for what the commissioners had spoken to us about this is one of those properties that we need to let go forward.

Mr. Nedrow questioned if the reason for the split was a change in ownership?

Mr. Cutler responded that yes if they are able to split the ground then his son would be building a larger home for his growing family.

Mr. Pinther stated that he was not a farmer but when he drove out there he could tell that things could not be farmed on this property.

Mr. Mackert stated that there has been gravel brought in through the years, it was for building up a business. With the LESA we are taking it back 60 years and I feel that it is an unfair application.

Mr. Worrell stated that on page thirteen in the LESA is says if the land has not been farmed in the last ten years then LESA does not apply.

Mrs. Miller stated that she motioned to approve the Appeal to table it for 30 days for Jeff to write up his findings.

Mr. Pond I second the motion.

Mr. Worrell stated that a motion had been made and seconded, all in favor, motion carries.

4. Public Hearing – Rich Schroenberg, Developer – Rick Byrem, Surveyor

Mr. Worrell stated that the next item is the Public Hearing for Rich Schroenberg, Rick Byrem is the Representative. Jeff have the proper notices been provided? Would you report?

Mr. Patlovich stated that yes they had and that this is for 4 lots on 20 acres off of 1200 North. Stated that the limits for the road are okay by the County Code and that it was misread by himself and that the road length is okay.

Mr. Worrell questioned if the board had questions for Jeff.

Mr. Martindale questioned the soil types of 138 and 139 are.

Mr. Patlovich stated that he couldn't answer that due to it does not come up on the table used.

Mr. Martindale stated that he is concerned with the site assessment scoring.

Mr. Patlovich stated that the County Assessor records show that it is not Ag land in our systems in the west, north, or east.

Mr. Martindale stated that he had done his own site assessment and came up with a 17 or 18.

Mr. Worrell asked Mr. Byrem to come up and discuss.

Mr. Byrem stated that this is the same as last month and there are no changes. I cannot speak to the LESA because to me if it is productive cropland there should be crops. I understand that it is based on soils.

Mrs. Roberson asked if there had been cows on the property?

Mr. Byrem stated that there are fences on the property.

Mr. Pinther asked if the fences were livestock maintained?

Mr. Byrem stated he did not know.

Mr. Martindale stated that it was and that they let the fence down in the fall.

Mr. Mackert questioned what percentage of the property was forested?

Mr. Byrem responded 60%.

Mr. Worrell stated that it was now open to public hearing. Barry Ruby signed on the wrong item. So there is no one signed up to discuss. Asked Owen to discuss.

Mr. McLaughlin stated that he had driven by it and there should not be any issues with it being the size of the lots, but he had not been onsite.

Mr. Worrell stated that the public hearing was closed due to no one from road and bridge is here to speak.

Mr. Martindale stated that he disagreed with Mr. Byrem and that with his own site assessment of a 17. Question 1 was given a 5, #2 given a 5, #3 given a 2, and the rest was concurred with staff scoring.

Mr. Patlovich said that for the record that was a score of 17.

Mrs. Miller asked for knowledge of if signs were posted and mailings given.

Mr. Patlovich stated yes.

Mr. Pinther asked for Jeff to explain why his scores.

Mr. Patlovich explained that his records were from the County Assessors office and that they had it categorized in the way that it was scored.

Mr. Patlovich stated that the times that he had been on location but I do not dispute the point that Kip has of it being Ag land. But if there is better knowledge then mine then so be it.

Mr. Kynaston stated that it looks like we have a dispute between the County records and what Kip is stating.

Mr. Worrell questioned what it was classified as?

Mr. Patlovich stated that he did not have the records at hand.

Mr. Derricott stated that if we let this go then it would set precedence.

Mr. Patlovich stated that we do not know if that will happen.

Mr. Mackert stated that he thought that we needed to go with the information that we have.

Mr. Patlovich responded that he agreed.

Mrs. Roberson stated that we could make a motion to accept the rescoring and then to deny.

Mr. Martindale I make a motion to accept the rescoring of the 17 total site assessment, to deny the project and for Jeff redraft the findings.

Mr. Nedrow stated that he would like to table it for 60 days to see what the conditions are.

Mr. Patlovich stated that you couldn't do that, you are only allowed to table for 30 days for the staff to revise the staff report to support the Commission's decision.

Commission discussed the land surrounding it and what it visually is.

Mr. Pond 2nd motion.

Mr. Worrell stated that there was a motion to approve the rescoring and denial. Glen Pond, Cindy Miller, Kirk Mackert, Steve Pinther, John Nedrow, and Kip Martindale were opposed. Motion fails.

Mr. Patlovich stated that the way the code is written right now is you need to vote on what you want me to do.

Mr. Mackert stated that he is concerned with the ground to the north.

Mrs. Roberson stated that she still thinks that we need to make a motion on what Kip has stated on changing the scoring to 17, and denying the project and table for 30 days so that Jeff can rewrite his Findings of Fact and Conclusions of Law.

Mr. Patlovich stated that it is the Assessors words and tax categories for their use of describing land.

Mr. Martindale stated that the ground if listed as timberland it has been logged.

Mr. Patlovich questioned if it were a tree farm.

Mr. Martindale stated no.

Mrs. Roberson I make a motion on changing the scoring to 17, and denying the project and table for 30 days for Jeff to write up his facts.

Mrs. Miller seconded the motion.

Mr. Worrell we have a motion that was made and seconded, all in favor with the exception of Mr. Kynaston who was opposed. Motion passed.

5. Public Hearing – Development Code Amendment – Sarasquesta Family Trust, Kendall Adams, Representative

Mr. Worrell stated that next is the Public Hearing on a Development Code Amendment – Sarasquesta Family Trust, Kendal Adams is the Representative. Cindy Roberson has excused herself, declaring a conflict. Jeff will you please report?

Mr. Patlovich read from report. In my staff analysis I am concerned about the language and how particular items would be identified. As written I recommend denial.

Mr. Kendall Adams stated that he had provided some clarification of original given. In accordance to I.C. 67-6511 (b) the above applicant requests the Fremont County Planning and Zoning Commission to consider amending the Fremont County Development Code (FCDC) to permit protection of “Productive Crop Lands” (*Division 6 – Performance Standards for Residential Development*) be deed restriction. The deed restriction would *not* allow residential development in the area of a parcel that is being utilized as “Productive Crop Lands.” The areas that are not being utilized as “Productive Crop Lands” would be regarded as “Vacant Areas” with a parcel because of reasons (but not limited to) of size, location, soils, productive, or non-economical production and/or historical factors.

The “Vacant Areas” along with the deed restriction area of “Productive Crop Lands” will constitute a parcel. The “Vacant Areas” portions of the parcel would meet *average density, one dwelling unit per* Table VI.3. Residential Density Assignments by Land Type (FCDC) *site characteristics for:*

Wetlands, slopes over 30% - 25 acres

Stream corridors, slopes of 15-30% - 10 acres

Other areas – 2.5 acres

The Residential Density along with any bonus units allowed by code will be assigned to the remaining deed restriction area of “Productive Crop Lands” of the parcel at the time of final plat approval and will be deemed unusable for any portion of that parcel. The total assigned dwelling units may be transferred to other parcel or forfeited in perpetuity.

The FCDC LESA System would be Not Applicable to the “Vacant Areas.” The deed restriction area of “Productive Croplands” within the parcel will be designated in the Plat outlined in FCDC Chapter XII (B.). All other provisions of the FCDC would remain enforce.

The Vacant land would be land that is not being used for anything, its not being farmed, cant get water to it and the it can’t be utilized. What my client wants is to have the vacant land that is being used currently as farmland to be able to developed, separated from the other farmland and stand alone on its own density.

Mr. Pinther questioned what vacant land.

Mr. Adams responded such as where a corner of a pivot does not reach.

Mr. Pinther questioned if soils testing would be done.

Mr. Adams responded that no it would not have to have a LESA done on it because it would be vacant land. It could be due to economics.

Mr. Pinther stated that land that is farmed now and not next year can that be done to it?

Mr. Adams stated that in direct definition that could be true but that is not the intent.

Mr. Nedrow stated that there is no wording that would prevent that from happening.

Mr. Patlovich stated that was my issue.

Mr. Pinther questioned if you are aware that we are in the process of redoing the plan why can't this wait?

Mr. Adams stated that there are properties out there currently the owners do not want to wait for the code to be rewritten for whatever reason, financial or otherwise.

Mr. Pinther stated that I feel that your intent is of importance but why again can it not wait.

Mr. Mackert stated concern of the access to the properties and if that would be an issue that would need to be addressed with this? I guess that you would assume that access would have to be up to county code.

Mr. Adams stated that yes, the rest would remain the same.

Mr. Patlovich stated that the issue of the ground being sat on for years. The issue of timing is a ten-year time line. But to say that we can look at property that is not economical to farm, I do not know how we would look at that. Is it between each individual person?

Mr. Worrell stated that the meeting is now open to public hearing

Mr. Scott Christensen Idaho Falls, I have already covered my thoughts on the amendment and it would be hard to apply. Also we are in the middle of the revision process and I feel we need to stay true to that process. My personal opinion is we should go through the process to deal with it. This needs more definition but the intent is a good one. Thank you.

Mr. Worrell asked if Mr. Adams had any rebuttals?

Mr. Adams responded no.

Mr. Worrell stated then public hearing is closed.

Mr. Pond I motion to deny the request of the text amendment.

Mr. Pinther I second the motion.

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

Mr. Patlovich stated that these go onto the Board of County Commissioners whether denied or not.

6. Public Hearing - Development Code Amendment – Associated Fremont Landowners Consortium – Stephen Loosli

Mr. Worrell stated that the next item is the Public Hearing for a Development Code Amendment from Associated Fremont Landowners Consortium – Stephen Loosli. Are there any board members who need to be excused? Have the proper notices been given? Then Jeff will you report.

Mr. Patlovich stated that yes the proper notices had been given and that the proposal is lengthy but the applicant will be allowed to discuss what is being asked. First this would change the LESA system to use soils that are of statewide importance only. The prime farmland information was not available in 1992 and that is why it is not in there. Second it would take the API that we used and multiply by the USDA. Stated the board could overturn your decision because they would have more information brought to them on the issue. Read from application.

Mr. Pinther asked if we have to take it in its entirety.

Mr. Patlovich stated that yes you do, but you could recommend to adopt paragraph O 12 and deny the rest of that would be fine. That is separate from the LESA and that can be done.

Mr. Pinther questioned if the LESA is an absolute, this would change it to a relative.

Mr. Patlovich responded that he didn't feel that it was either. This could fail however it failed and then they could come up with something else on it and it could come up with a positive score. If it were an absolute and it failed then it would be done. That is what they are trying to change.

Mr. Martindale asked as far as the open space, are they asking that anything that does not have a structure on it is in open space.

Mr. Patlovich stated that not necessarily in other jurisdictions that he had worked in if there is an historical structure it can be used as open space. This would be needed to be described in more detail. We are recommending approval of the whole thing, there will need to be some changes but that can be recommended to the board.

Mr. Martindale stated that it seems that they want grass between a house and garage to be open space.

Mr. Worrell asked Mr. Loosli to come up.

Mr. Loosli read Members of the commission, my name is Stephen Loosli and I represent a large group of landowners, including myself, in Fremont County who propose an amendment to the process of determining “Productive Croplands” and what may be done with them. We believe that the current process is both inequitable and deleterious. We are not here to argue a change in our community land ethic, but rather for reasonable and equitable treatment of all county landowners.

As quick background for the public here present, in Fremont County, land classified as Productive Croplands may be subdivided at a density of one dwelling to 40 acres. Land that is NOT Productive Croplands can usually be subdivided at a density of one dwelling to 2.5 acres. (There are exceptions near to waterways and on steep slopes.) Obviously, this is a significant economic difference.

The Land Evaluation Site Analysis (LESA) is used to determine if land should be classified as Productive Croplands.

The first test is the Land Evaluation (LE component) which uses data provided by the Natural Resources Conservation Service of the USDA to assign an Average Productivity Index (API) to the soil types found on a parcel of land. If the API score equals 55 or more on dry farms, or 75 and higher on irrigated land, that land is designated as Productive Croplands. If land is NOT designated Productive Croplands after this test, an applicant may pursue the 1:2.5 acre density ratio. Otherwise, the applicant may pursue an additional test.

The second test is the Site Analysis (SA component). This test of six scoring questions is applied to see if the surrounding area has significantly evolved away from productive agriculture. If the aggregate score of the SA component is 15 or more, the designation remains Productive Croplands and the land is held to the 1:40 acre density ratio. If, however, the SA component score is 14 or less, the land is NOT considered Productive Croplands and *should* qualify at a 1:2.5 acre density ratio.

As an absolute standard, the designation of Productive Croplands basically stops the applicant cold with a best case 1:40 acre density ratio.

LESA explicitly states that after a 10 year fallow period, it no longer applies to an applicant’s land, which would then qualify the site for a 1:2.5 acre density ratio.

Problems with LESA

1) There is some confusion in how exactly to apply LESA to an applicant’s land, including, but not limited to the gathering of appropriate soils data for the LE component, what is actually meant by the “site,” and the interpretation of the SA component in today’s reality (versus two decades ago). What should be a clear and reliable result has proven to be anything but.

2) The FCDC is both unclear and discordant on how LESA applies in the three regions of the county and on the importance of preserving croplands. There is no specific standard in the South Fremont Zoning District; “discouragement” in the North Fremont

Zoning District with a score range of -2/0 and an importance factor of 3; and a “minimization goal” in the Island Park Zoning District with a score range of -2/+2 and an importance factor of 4. If this element is so all-fire important, why doesn't it apply universally at the highest importance factor of 5?

3) The current application of LESA encourages the wrong kind of growth. A parcel of land in this county located on a river corridor is fairly easy to develop because it easily passes the LESA test. However, a 40 acre patch of vigorous leafy spurge is nearly impossible to convert to a higher and better use. Speculative developers are inherently lazy – they will buy what can most readily and quickly be turned for a profit. Marginal properties scattered around the county can be developed, but logical properties near to existing development cannot. LESA actually PROMOTES patchwork development, increasing the county's burden for services, from roads to fire protection.

4) The current FCDC violates the Comprehensive Plan by NOT encouraging a pattern of development that concentrates activity on suitable sites. Except for the Island Park Zoning District, there are no positive points granted for suitable sites. Further, there are no provisions for, let alone a definition of open space as required by Policies 21 and 27. The patchwork process we now see from this bad policy puts a huge burden on the “limited capacity of public facilities and services” mentioned in those same policies.

5) I have prepared this example to illustrate my next point. Here we have 4 landowners on the south side of a county road, between intersections. Each owns an 80 acre parcel of nearly identical, non-irrigated land. Development pressure is coming from the west. Let's assume that the value of undeveloped 2.5 acre parcels is \$5,000 and the value of undeveloped 40 acre parcels is \$40,000.

a. Landowner 1, closest to the development pressure, has an LE score of 60 and an SA score of 14. Although he is actively farming his ground, he qualifies for a 1:2.5 acre density. This makes his land worth \$160,000.

b. Landowner 2, moving to the east, has an LE score of 60 and an SA score of 15. She has not used her land in 5 years for any purpose but horse pasture. Despite this, her land is classified as Productive Croplands and qualifies for 1:40 acre density. Her land is worth \$80,000.

c. Landowner 3, moving again to the east, has an identical score to Landowner 2 on both the LE and SA. However, he has not used his land in 10 years. Because of this, he qualifies for a 1:2.5 acre density. This makes his land worth \$160,000.

d. Landowner 4, moving to the east one last time, has an LE score of 54. Because his LE score is below 55, he doesn't need an SA score. Although he is actively farming his ground, he qualifies for a 1:2.5 acre density. His land is worth \$160,000.

6) If any of landowners 1, 3, and 4 were to actually develop their parcels, 2 could then proceed to develop her land or sell at fair market value because the SA score would probably change in her favor. But there is nothing landowner 2 can now do for herself. Thus, LESA is capricious and arbitrary. It doesn't fairly and equally deal with all landowners.

Imagine that landowner 2 is a recent widow on a fixed income who wants to sell and move closer to her kids. Who is going to buy her land when it has ½ of the economic

value of the neighbors? What exactly is the point of penalizing the widow, but rewarding landowner 3?

7) We believe that the current absolute standard of LESA constitutes a “government taking.”

a. From the “Idaho Regulatory Takings Act Guidelines” published by the Office of the Attorney General, September 2002. (3 of the 6 questions that indicate a “Taking”)

i. Does the regulation (LESA) have a significant impact on the landowner’s economic interest? In my earlier example, LESA cost the widow \$80,000.

ii. Does the regulation (LESA) deny a fundamental attribute of ownership? Amongst the bundle of rights associated with property ownership are the rights to mortgage, sell, and subdivide, all at fair market value. LESA randomly lowers fair market value for folks like the widow.

iii. Does the regulation (LESA) (a) serve the same purpose that would be served by directly prohibiting the use or action; and (b) does the condition imposed substantially advance that purpose? Yes it does. LESA states that land of quality soil must remain as it is. Oh, except if other development is nearby. Wait, except if you haven’t used it for 10 years. Etc.

8) It ought to be clear that LESA is inequitable. Rules of logic suggest that landowners along the north side of a road from one intersection to the next are of the same class and should be treated equally. But LESA doesn’t do this as I illustrated in my 4 neighbors example.

Our Proposal

1) I believe that our proposed amendment solves all of the problems I have just mentioned while still preserving the integrity of the process. It is more closely in compliance with the Comprehensive Plan than the existing policy.

2) I will go through each element quickly.

3) Insert amendment here

Conclusion

1) Some of the members of our organization wanted to strike LESA entirely from the books. We ultimately decided that our amendment constituted a good compromise that allowed for the fair and equitable consideration of all landowners in this county without adversely affecting the process.

2) I am certain there may be some objectors to our proposal tonight, probably due to a misunderstanding of how LESA now works and what the practical result of our amendment would be.

3) Would more parcels of land qualify for subdivision? Yes, but under the restrictions I previously mentioned. Our amendment provides powerful incentives to bring development close in next to existing development providing for a logical and sensible growth pattern; shorter roads, faster emergency response, more attractive countryside. We are not going to see any more development pressure than we already see. Look, development isn’t coming – it is already here. Those developers are looking for the land that can be quickly converted into subdivisions, no matter where they find it and at what distance from town. Look at the recently approved Stephens Fish Creek Ranch project in

Warm River. Agree or disagree, there are now 180 new home sites at the end of that road. Did LESA work there?

4) Why not wait for the new comprehensive plan process? This is an excellent question, but I can assure you of several things. First, the new comprehensive plan and its corresponding development code likely won't be ready for many months. Second, this particular plan cycle is really important – it is not just a revision, but an analysis and declaration of our goals as a county. It shouldn't be rushed. Third, we believe the principles in our amendment will likely survive into the new code, so it is a step in the right direction. Finally, every person in the room probably knows of some landowner who is financially strapped and can't sell his or her land due to this existing LESA. Good people are losing their life savings because of this bad policy. It is happening now. Ask me about a neighbor of mine in Chester on a fixed income and government assistance who has had her property for sale for two years – nobody will touch it. Prospective buyers call in to the county and are told that it is Productive Cropland at 1:40. The SA component isn't quite low enough and she needs the income from renting it, so, no hope on the 10 year fallow exception. The dollar difference between fair market value and farm value is \$1.3 million. \$1.3 MILLION!

5) What about the proposed moratorium? I speak only for myself as I answer this question, not for my organization members. A moratorium can be an appropriate action taken by the Board of County Commissioners in the right circumstances. As an example, if the new development code - produced from the new comprehensive plan - were dramatically different from the code we now have, it would be appropriate to declare a moratorium to allow the processing of all applications on the docket in the old code, train the administration and P&Z commission in the new code, and then set a date to begin accepting applications in the new code. However, we don't have a single line of comprehensive plan yet, let alone any new development code. This is neither the right time nor place to discuss a moratorium.

6) Members of the commission, as I stated at the outset, we have no interest in turning this county into a free-for-all. We simply want all taxpaying landowners to be treated fairly and equitably when they bring applications to you. We want landowners to be able to sell their land for the highest possible price to willing buyers - buyers that don't fear they are buying a millstone. We want developers to be incented to preserve large swaths of open space and transfer or forfeit development rights. Simply stated, we want for that recent widow who owns a piece of land her right to sell it for every dollar she can get so that she can enjoy her well-deserved rest. I strongly encourage you to recommend this amendment to the Board of County Commissioners for immediate adoption into the development code. Thank you. I look forward to your questions now.

Mr. Worrell asked if there were any questions from the board for Mr. Loosli.

Mrs. Miller stated that you spoke about takings with the LESA and the present situation and as you have come up with this new amendment, would this eliminate the takings?

Mr. Loosli stated that he would not answer that it would eliminate it but it would solve existing problems that are in the LESA now. First it makes it a county wide policy, second it applies all applications to the same standards of open space and the transferring

of development rights. Right now there is a handful of applicants that are told at the door that they can't come in. Or more specifically if they want more than 1 per 40.

Mr. Mackert stated that in listening you are in supporting the vistas and open views.

Mr. Loosli hypothetically you could cluster on the boundaries and farm in the interior.

Mr. Worrell asked if there are any other questions?

Mr. Chase stated that the existing LESA does not include certain soil types.

Mr. Pinther questioned what impact it would have on the county.

Mr. Chase responded it is unknown.

Mr. Worrell it is now open to public comment.

Motion for break.

Mr. Worrell first name on list is Rick Byrem

Rick Byrem no longer resident of the county, I support Mr. Loosli's proposal, I feel that it is a very hard position to be in. I am approached by property owners who want to know what they can do with their land. It should be left up to the property owner of how they want to and what they want to do with their land. Changing LESA is a step in the right direction. I encourage you to approve this.

John Herrington, Box 313, Ashton, Id, I ask you to respectfully deny this application because it is poor nature to amend the code in the middle of the revision of the code. Due to standards. 7 q NF of Development code, land outside of un developed and support natural resources. The adoption of this amendment would. The LESA is in need of revisions and updates but not at this time. As it is it is piecemeal submittal.

Chan Atchley, 4077 E 1300 N, Ashton asked Jeff question due to confusion of discussions in the past of not making amendments during the revision process.

Mr. Patlovich stated that in this case he felt that this was a good resolution.

Chan Atchley stated that during the revision process these divert our revision process, I object that we divert our attempts of a revision of the code. Another key area in this amendment is open space and if I read it right then a 5000 sq ft house would have open space. That does make a difference. As we go through this revision process we need to not lax on the code. This whole thing mike and Adam Davis added to my comments.

Scott Christensen 162 N Woodruff Idaho Falls, couple things in addition to what has been said tonight. First the idea of updating LESA and making changes to it needs to be

done. The first paragraph of soils and statewide importance. Needs research on the part of the Board and the public. I feel that it needs to be researched before it is discussed. Where I live on 18th in Idaho Falls would be considered 60% open space if going by this. Most urban subdivisions in Idaho would have 50-60% open space if gone by this. #3 needs reworded, it is the developer's job to figure out how to make a development pass. Due to scarce resources the county has.

Royce Klingler 1660 Highlands Rd Ashton, I support the amendment that was brought to the board tonight. It protects private property rights. I sit on the fence on the more sensitive areas. If we allow some of these clustering's to happen then it will protect the more environmentally sensitive areas. If you spent time with the Idaho Fish and Game wildlife biologist then you would see the wish list of them. I am in favor of this and I feel that he did a great job.

Laura Pickard 4198 E 1300 N, Ashton, stated she farm in Fremont County and owner of property in Fremont County. I am not in favor of this proposed amendment. I believe that the site assessment is more important then the soils. The definition of the productive farm ground needs to be considered. 320 acres is too big and it needs to be in 40 acre increments. Dwellings, shoot for medium ground not the outlying. I feel LESA works because it is taking individual pieces.

Marvin Hill, Lamont Area, leases ground on 3500 acres. Support of Steven Loosli amendment. I do not like the LESA but it is a good band-aid. I love the wide open spaces. I am for property rights, and as it is now it takes away form property rights.

Chet Work 151 N. Ridge Ave. Idaho Falls, thank you to Mr. Loosli due to he has the County at heart but he needs to focus that energy to the code revisions. There are many unknowns and this is untimely.

Ryan Lerwill Rexburg own small portion of land in Fremont county and I am pro farmer, that property is in Teton Valley. I have heard my family wine and complain while the big money took over Teton Valley. I am for this due to it gives the farmer the right to sale and do as they want. I am a realtor and I have been a developer as well. I recommend you send this to the BOCC.

Drake Munson, 3656 Fisherman's Drive, Ashton – originally from Rigby, love Fremont County and I support Mr. Loosli's code amendment for many reasons I feel that it is important to upgrade the code not change it. What we have is extremely flawed and that this would be an improvement of what we have. The only crop you

Brent Sthol box 505 Ashton I farm and live in Lamont I feel it is great to have the ability to speak our minds. I am in favor of this and own 3000 acres and lease 1200 acres. I own my farm and have spent a lifetime on it. I have an issue with LESA with personal property rights. If Teton county does not use LESA sue to the ground freezing I am right to the boarder why does it apply to me.

Mitch Allen 356 Fremont St. Ashton landowner and business owner in areas. I feel that it should be pressed forward. There are a lot of open spaces that can and should be developed. I am in real estate and there are individuals who want to have a smaller lot. The amendment is a great idea.

Jeff Jenkins 282 N 10th Street, 45 year old farmer with large land payments. We want to have the chance to keep going. I speak in favor that amendment. I feel like the County has their hands in my bank account because they can tell me what to do with my land. I feel that the environmental groups who have all the money in the world should stay out of it. They are not making money on it. We are. Something needs to happen soon not wait another year to have a revision

Steve Traffton, Hidden Estates, St. Anthony – as according to open space in Idaho Falls it all falls under this proposed amendment. The existing plan is and has room for change. It should be looked at when all is revised.

Tom Howell 4072 I came before the board for another item. You are all worried about the farmer but no one is talking to the farmers. We have to have the flexibility to sale some ground if needed. I support that.

Mr. Worrell asked if there are any who would like to rebut.

Mr. Loosli stated that he knew that there were many issues that would like to rebut on. There were many individuals who wondered why do this now. As was said earlier the whole comp plan could be done next week with the exception of this. This is not the wrong time and it is legally permitted in the code. We are seeing what works and what does not work. Open space is un developable space, not open space. Large lots are somewhat counterproductive. The LESA says that if you can hold out I strongly encourage you to pass this on to the BOCC.

Mr. Worrell asked if there were any other clarifications. If not then the public hearing is now closed and it is up to the commission to discuss.

Mr. Pinther stated that I feel that it is a good starting point. And as we spoke about it with the County Commissioners. I feel that we should analyze the effect that it will have. It did not address the change in the code is needed because of the comprehensive plan. You start with the plan then the code. Mixed feelings about this, good plan with a little tweaking would direct Fremont County in a good direction.

Mr. Patlovich you have to make a decision tonight on this due to how the code is written.

Mr. Pinther I feel it is a keeper but as we are doing the code. But you also said that we could do a part and recommend that to be changed.

Mr. Patlovich read Paragraph O.12 and said it deals with all applications that you do. It is not a LESA issue it is a Development Code issue.

Mr. Worrell it conflicts with our time issue. It does not jive with ours.

Mr. Patlovich stated that we can modify it but it has to be a date certain. Also look at the rest of chapter three if you want to do that.

Mrs. Miller read from the staff report and what they pointed out to read that and to look that over and understand it completely before we want to give it an okay. I make a motion to deny this at this time.

Mr. Nedrow I second the motion.

Mr. Pinther questioned if we are motioning on denying the whole thing? I make a motion to amend the motion on the table to have the BOCC consider paragraph O.

Mrs. Miller I second the motion.

Mr. Worrell we have an amended motion that has been seconded, all in favor of motion with the exception of Mrs. Cindy Roberson, Mr. Kip Martindale, Mr. Ron Kynaston and Mr. John Nedrow who were against. Motion passes.

Mr. Pond discussed that if we are to approve this tonight we can redo this when we redo this the comp plan.

Mr. Nedrow questioned that they both go to the Commissioners regardless of what we do tonight.

Mr. Patlovich responded yes.

Mr. Pond questioned if we sit on things for too long it will force us to do things and do the plan sooner.

Mr. Martindale disagrees with that and we should go on with our rewrite process with this not being a part of it.

Mr. Worrell, we have a motion which is to deny the Code text amendment with the exception of paragraph "O" all in favor, Mr. Glen Pond against, motion carries.

7. Sketch Plan – 7 Bar at Yellowstone – Large Scale Development determination

Mr. Worrell the next item on the agenda is the sketch plan for 7-Bar at Yellowstone, Jeff please report.

Mr. Patlovich reminded that this is sketch plan not public hearing. This is also large scale development. Your decision is to decide to go on to the Large scale development study. 1300 acres 1200 single family dwelling lots, 18 golf course, commercial space,

equestrian, community water system, either county sewer system or their own. Point out issues portions are covered by floodplains and wetlands, will need to be looked at by state agencies. Elk summer range and Grizzly bear area, visually sensitive area. The 20,000 sq. feet of commercial is not allowed and the golf course is not allowed in visually sensitive areas. There is only one point of access in and we have discussed that with the developer. They have not given us any density calculations.

Mr. Pinther questioned if the golf course could be done or not.

Mr. Patlovich stated that it is strictly prohibited and it cannot be given a variance. By state statute it is a use and a use variance cannot be given.

Mr. Mackert asked would it be an advantage to the developer to not spend their time and money on the Large Scale Development Study due to all of the issues that are up against him.

Mr. Barry Ruby 3443 Collard Lane in Colorado.

Mr. Pond questioned why leaving the golf course in when it is prohibited.

Mr. Ruby stated that the plans were already submitted and then the issue was brought up.

Mr. Pinther stated that you are way over the density requirements.

Mr. Ruby stated that he felt that they would be able to meet the density requirements.

Mr. Pinther stated that he liked the idea of a good development coming in. If you are going to proceed with this you are going to have to have many codes and requirements then more power to you.

Mr. Ruby stated that they understand that there are many things that could be done to upgrade current sewage systems. Also that we would be placing a membrane system in and the amount of land is sufficiently less. Our best case is to do a study and see what it would all cost. And to see if you would allow us to do that.

Mr. Pinther stated that this is an area of critical wildlife and grizzly areas, what are you going to do for waste transfer. This is in terrible snow country and solid waste in this area. As well as snow removal for the roads that you want in the development. This seems to be an uphill battle, do you want to continue knowing all of this?

Mr. Ruby stated we would like to try and if we decide to stop we will. Everything is solvable with money.

Mrs. Miller questioned if the elk summer range is solvable with money?

Mr. Ruby responded that an environmentalist would help us with that, yes it is.

Mr. Derricott questioned the snow removal, and where the lake water would be coming from?

Mr. Ruby stated that he knew nothing of the LESA and filling it out made a lot more sense to spend \$105.00 than thousands of dollars on an Engineer. Stated that we have a water lawyer who is going to handle that, the water is an issue. Spoke about solid waste.

Mr. Pinther stated again that this is a terrible uphill battle for you but it is good to see a good development wanting to come in the county.

Mr. Derricott stated that you are also going to affect the schools.

Mr. Ruby stated that we fully intend to pay our own way on all issues. We hope to become an asset to the community.

Mr. Mackert stated the he would like to see the sketch plan of the project that is being proposed because what we are looking at is not accurate.

Mr. Patlovich stated that months ago you had one come in with 20 lots and open space, they came back to public hearing with a completely different development. If they want to do this then why can't they.

Mr. Mackert stated his concern with not knowing the information when they are looking into the additional acreage for sewage.

Mr. Patlovich stated that they will have to come to us with that at the Large Scale Development stage.

Mr. Ruby respectfully stated that with much research there is nowhere except in the FCDC that a golf course is considered commercial.

Mr. Patlovich stated that the next thing to do is look at the list provided on things that needs to be discussed for the Large Scale Development Study and in addition you need to decide that this is a large scale development study and you need to decide if there are other items that you want studied. You need to interview some development firms that you would like to possibly do the study, choose one after presentations and begin the study.

Mr. Mackert stated that I do not want the developer to think that these are the only items that we feel need to be discussed.

Mr. Patlovich stated that they are aware that you as a commission can add to the list.

Mr. Nedrow moved to allow this project to go forward determining that this is a Large Scale Development and to decide on three firms at our April 2nd meeting, to give presentations at a future date.

Mr. Pinther I second the motion.

Mr. Worrell stated that there was a motion and it had been second, all in favor with the exception of Mr. Kirk Mackert and Mr. Vance Derricott who were opposed. Motion carries.

Mr. Patlovich stated that it would be placed on the agenda for the April 2nd meeting and it would be decided of which firms then.

*Jeff will call some firms to see if they are interested.

8. Request to impose a Interim Moratorium - Kip Martindale

Mr. Worrell next is the request to impose a Interim Moratorium – Kip Martindale representing.

Mr. Patlovich stated that this is not public hearing if it is passed it will go to the BOCC for a public hearing.

Mr. Martindale read from speech. Concerning Moratorium on file in Planning & Building Office

Mr. Worrell stated that it was for the commission to have discussion.

Mr. Pond questioned the imminent peril?

Mr. Martindale stated that the pace of development being brought into the county under a code that is soon to be changed is the imminent peril.

Mrs. Roberson stated that if we were allowed to do this it would allow us to finish the revision of the Comprehensive Plan and the Development Code.

Mr. Pinther stated that he agreed with Glen that there is no imminent peril. If there were proof of that to me then I would agree to it. We are Planning & Zoning and our job is to plan for the county. I feel that we are doing a good job as it is and that we can handle revising the Code along with having our meetings.

Mr. Nedrow stated that it is not just health but safety and general welfare. The fewer distractions that we have with the general work that we do. Doing both at once will distract us from what we need to be doing.

Mrs. Roberson stated that she could see someone being shot or dying from dealing with this.

Mr. Mackert stated that he felt like we need make big steps at finishing the code not the small steps that we have been making. What is in the best interest for the people of Fremont County. I hear frustrations tonight that people want things to change. What do they want us to do to control the whole of the county. I am leaning towards it. We can't meet once a week or twice a week to do all of this.

Mr. Derricott stated you all see what we are going through and we need to finish what we have and then start up again. I am in favor of it and hope to see this happen so that the code can be completed.

Mr. Pinther stated that there are changes that need to be made to the code, it is a good code but it needs to be better. The agendas will back up and that is okay, I feel we should move forward, if developers have to wait so be it.

Mrs. Miller stated that it is a difficult decision and we are spending so much time reading for projects each month, just think what we will face.

Mr. Patlovich stated that the last city that I worked for that had a moratorium, had a backlog that was 39 public hearings.

Mrs. Roberson stated so what, who cares, I would rather do it right then do it wrong and deal with the consequences.

Mr. Pond I make a motion to deny the request for a moratorium.

Mr. Pinther I second the denial.

Mr. Patlovich stated that this still goes on to the BOCC for an actual public hearing.

Mr. Nedrow I second Kips motion for the moratorium.

Mr. Pond and Mr. Pinther both with drawled their motions.

Mr. Worrell we have a motion that has been seconded all in favor but Mr. Steve Pinther, Mrs. Cindy Miller and Mr. Glen Pond who were in opposition, motion carries.

Moratorium to go before the BOCC for public hearing.

9. Administrator's Report

April 2nd work session at 6:00pm Annex Building

10. Adjournment-

Mr. Derricott I make the motion to adjourn.

Mr. Kynaston I second the motion.

Fremont County

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Planning & Zoning Minutes

3-19-07

Mr. Worrell we have a motion to adjourn that has been seconded. We adjourned at 10:08pm.