

**Fremont County Planning  
& Zoning Commission  
Minutes  
June 25, 2007  
6:00 pm  
County Annex Building**

The Fremont County Planning & Zoning Commission met in regular session on June 25, 2007 in the County Annex Building. **Members in attendance were:** Evan Worrell (Chairman), Ron Kynaston, Vance Derricott, Cindy Miller, Kirk Mackert (Vice Chairman), and Steve Pinther

**Staff and others present:** Jeff Patlovich (P&Z Administrator), Molly Knox (P&Z Administrative Assistant), Owen McLaughlin (District 7 Health Dept.), Keith Richey (Fremont County Emergency Management Coordinator)

The chairman called the meeting to order at 6:02 pm

**I. Minutes**

May 21, 2007

Mrs. Miller motioned to table to next meeting so that they have a chance to review.

Mr. Pinther seconded motion

Mr. Worrell motion carries to table.

<b>1. Sketch Plan – Wayne Maupin – Commercial Storage Building</b>
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Mr. Worrell the first item on the agenda is the sketch plan for Wayne Maupin on a commercial storage building, Jeff will you report.

Mr. Patlovich stated where the property is located and described project.

Mr. Worrell asked for Mr. Maupin to speak.

Mr. Maupin stated that he needed more room to store materials in this new building which would be next to his existing buildings.

Mr. Worrell questioned storage for business.

Mr. Patlovich stated that you can do that to avoid to come back for future meetings.

Mr. Maupin yes it is for the business and there is a possibility of another future building.

Mrs. Miller questioned the weed control on the property to Jeff.

Mr. Patlovich responded it is required by county code.

Mr. Pond motioned to approve the project to go onto Public Hearing

Mrs. Miller seconded the motion.

Mr. Worrell all in favor motion carries. Steve removed himself from project.

## 2. Sketch Plan – Mike Dolezal – Commercial Storage Warehouses

Mr. Worrell next is the sketch for Mike Dolezal Commercial Storage warehouses.

Mr. Patlovich stated two storage buildings in the impact area of City of St. Anthony, explained that it is not as in depth as previous meetings. It is pretty straight forward.

Mr. Dolezal explained that FairPoint rents his current building and that they need more room he acquired one of the two new buildings is a building that is from Wyoming, the other is new.

Mr. Worrell asked if there were any more questions.

Mr. Mackert questioned if there was any water or sewer on the property?

Mr. Dolezal responded no.

Mrs. Miller questioned if there is any water on the property

Mr. Dolezal responded no

Mrs. Miller asked if there was a fire you would rely solely on the Fire Department?

Mr. Pond motioned to allow the project to continue to the public hearing.

Mr. Derricott seconded the motion.

Worrell all in favor. Motion carries.

## 3. Public Hearing – Cold Water Canyon – Jim Hirrlinger – North Fork PM

Mr. Worrell next item is the Cold Water Canyon Public Hearing. Have proper notices been provided? Are there any conflicts of interest?

No conflicts declared.

Mr. Patlovich stated yes notices given and reported. Public Hearing of 80 acre parcel into 20 lots, 19 sfd lots and one being an open space lot at the bottom of Conant Creek. The roadway system they are putting in is to Appendix B standards. According to the currently adopted critical wildlife maps this is not in a critical wildlife habitat area. The bottom of Conant Creek is in a floodplain and has wetlands in it but unit is protected by the wildlife easement which is lot 20. Sometime this week we should be receiving updated maps from Fish and Game. This is not a mapped wildlife habitat area. 12 lots +15% slope or greater, lot 12 driveway thru 15-30% slope. Discussed the need of a Geotech, which they have provided. Lots 3-11 the individual buyer responsible for geo tech on lots. Stated we had the letter from Fremont Madison Irrigation as well as one from Idaho Fish and Game expressing their concerns.

Mr. Pinther stated that he felt that the building envelope should be moved back to what they were.

Mr. Patlovich stated that they are allowed to move them around as much as they want until the final plat stage.

Mr. Pinther stated that he felt that the building envelopes should be moved back from the ridge more and if this was the time to request that.

Mr. Patlovich stated that if you felt that way then yes you could ask now or at a later date.

Mr. Worrell Opened to public hearing.

Mr. Hirrlinger 15 East Main Rexburg – concerning the building envelopes, we are not made to do them but we did it to preserve what is out there. We established the ridgeline to preserve that corridor. We feel that we have done all that we can kept 19 acres of 80 to be open space. Only lot 3 and lot 7 will need to be moved while still maintained the county setbacks by county code, far exceed the setbacks from creeks, roads and everything that is in law and code. Land to south has been developed already. Sat in neighbors homes and took suggestions from surrounding owners so it will not effect them. We took in their input concerning dark skies amongst other items. Explained “dark skies” down lights or shielded to be able to see the light. Trying to make good development. set standard higher for future.

Mr. Pond questioned if letter read from Fish and Game?

Mr. Hirrlinger replied that he had not read this one but he has read other letters on other applications and was told that this is the stock letter that they submit.

Mr. Pond asked if there were any objections to what they were suggesting?

Mr. Hirrlinger responded the one because we are not having any livestock on our property. Felt it did not apply to us.

Mr. Pond what about paragraph 3

Mr. Hirrlinger responded that he felt that they took care of that with the ridgeline.

Mr. Pond questioned if that was within the setbacks.

Mr. Hirrlinger stated that they are within the 50 feet of the county setbacks.

Mr. Worrell questioned if you could see houses from creek if in the creek.

Mr. Hirrlinger stated that he had no idea.

Mr. Martindale commented that yes you would.

Mr. Hirrlinger stated that yes from the Loosli side you would be able to see some of the houses.

Mr. Mackert questioned if you moved envelopes back up to the ridgeline wouldn't that protect a possible spring runoff.

Mr. Hirrlinger responded the code is 20000 sq ft. the house could have a 1500 sq. ft. footprint. More importantly is not after the home is built but while the house is being built with the silt runoff and things. We would require silt fences, geo tech and basis covered.

Mr. Mackert questioned if it was required to have some type of retaining fence.

Mr. Patlovich responded the federal law does, but we do not and we do not regulate that.

Mr. Hirrlinger stated that we have placed that in our covenants and we have tried to exceed what is required.

Mr. Mackert mentioned that you mentioned that you are going to require the lots along canyon to put their septic systems and drain fields in front. Will you put that as a plat note too?

Mr. Hirrlinger stated that they will all have pumps and would like to see septic on lot lines in front away from the canyon.

Mr. Derricott stated that at a Fremont Growth meeting they defined open space different then what you have it here. Stated his concern of open space. Clustering was brought up in letter from fish and game, is this something you would consider?

Mr. Hirrlinger stated that we have tried to do this all appropriately by using 3-4 acre lots.

Mr. Derricott asked fellow board members of clustering and open space.

Mrs. Miller questioned clustering and if it was looked at.

Mr. Hirrlinger responded no not at all.

Mr. Pinther questioned of if there was to be a homeowner assoc. and if he would stay on as a member and pay fees until all the lots were sold?

Mr. Hirrlinger responded yes, we will be until we sell all lots.

Mr. Pinther questioned the building envelopes again and stated that he noticed that most were in vegetation areas and if he was protecting the vegetation.

Mr. Hirrlinger stated that most is sagebrush, some are aspens. (approached to show brush and vegetation on property on map). Some will be removed but most vegetation is on the canyon wall. Stated that they would be taking out some vegetation to put the road in and then seed blankets and other items.

Mr. Pinther questioned if in the CC&R's there was going to be anything to protect the Aspens and such.

Mr. Hirrlinger responded that there will be to protect plants that are native to area. Present to design group on what is planned.

Mr. Martindale questioned Mr. Hirrlinger if he acknowledged that there is a 94.7 acre USDA/NRCS/ CRP contract that exists.

Mr. Hirrlinger responded yes it was turned in with the application.

Mr. Martindale questioned if he was aware of our LESA that is referred to on page 13 of the Fremont County Code. And read from it. Stated that it has been used and does apply and feels that it is 1-40 acres. Being one home per 40 acres.

Mr. Pond questioned if looked at Fremont Madison Irrigation letter.

Mr. Hirrlinger stated that he did not receive it and that it was not in his packet.

Mr. Mackert questioned if he could give him a copy of it.

Mrs. Knox stated that it was in there and showed it to him.

Mr. Hirrlinger stated that we don't have water storage, the stuff that is there is on the Loosli property.

Mr. Pinther stated that it is assigned to your property.

Mr. Martindale questioned the roads?

Mr. Hirrlinger stated that the road is on the other side of the canyon. There are power-lines to the east and the north. With USDA and irrigation dist we will comply with what they ask us to do.

Mr. Pinther questioned what he was going to do with the 81 acres? How are you going to water it?

Mr. Zollinger, attorney for Mr. Hirrlinger - stated that it is the policy of the Fremont Madison Irrigation District that the water will attach. Legally storage water does not attach, in the State of Idaho it is transferable. Surface water rights are attached but storage will transfer. To free Fremont Madison will not be held liable for delivering water. That is all that is required to comply with the law. It's a matter of policy not law.

Mr. Worrell questioned if the land had water.

Mr. Zollinger stated that this property may have been the property that entitled them to purchase storage water rights.

Mr. Worrell questioned if there were water rights.

Mr. Zollinger responded that they are not sure if the property owners are selling it.

Mr. Hirrlinger stated that they included no water rights in our contract.

Mr. Martindale read that thru the Conant Creek Canal Co. there are no canals on this property.

Mr. Hirrlinger responded that there are no canals on this property.

Mr. Mackert read that there are water rights there, there is a delivery system and the water needs to be removed from the ground.

Mr. Martindale stated clarification from Fremont Madison Irrigation.

Mrs. Miller questioned wouldn't it be the responsibility of the developer, to get and present to us.

Mr. Zollinger stated that they are not requiring us to present it back to you they are simply stating that they have no objections.

Mr. Mackert responded that is what we are saying.

Mr. Martindale stated that I think that is what they are concerned about as well as surface water contaminations due to septic systems.

Mr. Zollinger stated that is so far beyond their rights. District Seven has the rights to determine.

Mr. Derricott commented no disrespect to you, but it says here that storage water is attached to there, do we believe you or them?

Mr. Zollinger stated that they are stating that they want to make you aware that it is our policy, we will make as a condition of our plat.

Mr. Mackert questioned if you were aware of it or no without the letter?

Mr. Zollinger stated that I suspect that we are going to find out that we did not buy the water and that it was not attached to the ground. It was owned by the property owners.

Mrs. Miller stated that whatever it is it is better for us all to find it out.

Mr. Mackert questioned if at an earlier date looked at the distance of the cul-de-sac?

Mr. Pinther stated it was 101 feet.

Mr. Patlovich stated that it can be 880.

Mr. Hirrlinger stated that I remember it was moved to 600 feet.

Mr. Mackert stated that it needs to be on the final plat.

Mr. Worrell any additional questions? Open to public comment.

Shirley Butler 924 hwy 32 read from letter Attached Exhibit A. Gave maps to P&Z commission concerning high nitrate in area and email from Willie Teuscher.

Mr. Pinther questioned depth of wells in the area?

Mrs. Butler responded 263 feet.

Mr. Pond asked to explain how the additional wells would contribute to the nitrates.

Mrs. Butler responded lack of flow of water.

Mr. Pond questioned if she thought if it would be adding any nitrates?

Mrs. Butler stated no but she is not a chemist or engineer. I do know that with the problems with their septic system one winter and not able to pump or use water and the nitrate levels were very high.

Mr. Martindale referred to nitrate problem area.

Mrs. Butler showed on maps where Drummond area was and this is a priority area 1.

Mr. Martindale stated that most of wells are monitored by state of federal annually due to nitrate problems.

Pat Sturm would like to talk of drainage into Conant Creek and questioned what. If storage water is attached to a piece of property it can not be moved. The ditch companies would not approve it. Also compatibility with farm areas. But in future when they decide that they do like it. Not felt that it is a good idea to have it in a farming area.

Mr. Pond questioned of snow issue, if 8 feet of snow where is it going to go? Where does it go now, or in the future?

Mrs. Strum stated that it goes down hill now and would have different dikes

Cathy Anderson 900 North which is south of Whitmore home. 8 feet of snow will go towards the creek not, mentioned earlier concerning development across 900 north, there are currently 5 homes on 900 n and to add 19 homes to our area that is huge. I feel that we are setting a precedence. Concerned of wells and water on property. 3 years ago well went dry that was shared with the Whitmore's. Ours is 200 feet deep and his is 400. we are bringing in drinking water. How to irrigate yards? Not enough for us all. Question of barns but no livestock, so questioned how many out buildings per lot. Also fencing, says it is encouraged, if fences then what, no more animals. Questioned school buses mail boxes.

Mr. Mackert questioned the level.

Mrs. Strum responded it was at 13.5 nitrate level. And 10 is the level.

Mr. Mackert responded thank you that is what my question was.

Mr. Pond questioned if known of domestic well only being able to irrigate a half acre?

Mrs. Strum responded yes but who is policing that?

Mr. Anderson 3754 e 900 n questioned fire protection, the closest water is Fall River, is that close enough? In Teton County they require onsite.



Mr. Patlovich stated that they are working with the North Fremont Fire District.

Mr. Martindale questioned how close do they live to Ashton?

Mr. Anderson responded 6 miles.

Mr. Martindale stated I ask so we have in relation to the nearest firehouse.

Mr. Worrell public hearing is closed.

Mr. Patlovich stated that you can either make your decision tonight, or have work session on it.

Mrs. Miller questioned jurisdiction other then District Seven Health Department on nitrates.

Mr. Patlovich stated that there is nothing in the code that says that site is suitable or not.

Mr. Derricott opened public hearing for Mr. McLaughlin.

Mr. Mackert Seconded motion.

Mr. McLaughlin stated it is suitable for individual septic systems.

Mr. Martindale questioned if any criteria that District Seven can enforce a community septic system for a subdivision this size.

Mr. McLaughlin responded no there is a book of rules for the whole state and as long as they can meet the requirements they can have individual systems.

Mr. Pinther questioned rock.

Mr. McLaughlin stated bedrock at 6 feet, would not keep a system from going onto that piece.

Mr. Derricott questioned central water system.

Mr. McLaughlin responded public drinking water is covered by DEQ. Stated that you can request DEQ to review area due to it is in a high area. A Nutrient Pathogen Study is for subdivisions.

Mr. Kynaston questioned how many gallons for a family is required?

Mr. McLaughlin responded 250 gallons a day for a 3 bedroom home due to goes off of bedrooms.

Danny Budge live in Kelly Wy. Most effected by subdivision because if they can see the rim they will see over my property. I have purchased Loosli property. Feel strong about personal property rights.

Mr. Pond questioned opposed or neutral.

Mr. Budge a lot of people knew it was for sale and we as well as they could have bought it. I don't want to see it but I believe in personal property rights. They have done a good job.

Andy Clark wanted to reiterate that a storm water professional looked at water and told us that there will not be a problem with the water as it is proposed.

Mr. Mackert questioned if there were erosion dams on the property currently.

Mr. Clark responded he didn't know.

Mr. Hirrlinger responded no

Mr. Clark reiterated.

Ken Hoffman working on this development, we are sure that we have exceeded what this boards expectations are and we would like to meet those.

Mr. Pond made a motion to close public hearing.

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

Mr. Martindale stated the need of legal clarification on Fremont Madison Irrigation and Conant Creek Canal Company, existing CRP contract, legal clarification of motion to table until legal council from our Prosecuting Attorney or another lawyer or the court system.

Mr. Patlovich stated that that needed to be to a date certain.

Mr. Martindale August 20<sup>th</sup>.

Mr. Derricott seconded the motion.

Mr. Pinther stated that he felt we would decide tonight, I feel that if needed then we could do it on the 20<sup>th</sup> if Mr. Martindale is willing to accept what the attorneys have to say concerning it all. If he is willing to wait and take what the attorney says. I am willing to table with recommendation of Mr. Martindale accepting the LESA.

Mr. Martindale stated that either from our Prosecuting Attorney or other if there is a conflict of interest.

Mr. Pinther stated that would be the legal opinion and it would not be discussed and further.

Mr. Martindale stated as it pertains to the LESA that was in place at the time of his application.

Mr. Pinther questioned if the legal opinion would be the end of the discussion for LESA.

Mr. Martindale responded as it pertains to the Fremont County Development Code.

Mr. Pond asked if we are going to table it to the 20<sup>th</sup> not the discussion of the LESA. That will never be decided.

Mr. Pinther stated that if tabled for legal advice, then we need assurance that it will be accepted.

Mrs. Miller stated that until a lawyer gives us direction. From a conversation with a lawyer friend of mine they stated that they can not believe that there is not a lawyer present.

Mr. Pond stated that certainly between now and the date that we table this to we can certainly go to Mr. Lewies to get that determination on LESA for us and we would have it in front of us.

Mr. Derricott questioned Mr. Patlovich of if legal council would be there on the 20<sup>th</sup>.

Mr. Patlovich responded that is what is being asked for.

Mr. Mackert stated concern of if there would any other items can or not be heard at the work meeting.

Mr. Patlovich responded that you can discuss whatever you want at that time.

Mr. Derricott questioned the nitrate issue?

Mr. Patlovich concerning the nitrate issue you can discuss it but we do not have a chemist.

Mr. Mackert asked for clarification of nitrate issue.

Mr. Patlovich stated that you cannot ask for new interjection of testimony.

Mr. Worrell a motion has been made and seconded to table the decision until the August 20<sup>th</sup> meeting in order to get legal council concerning the CRP contract and Fremont Madison Irrigation letter. All in favor with exception of Mr. Pond and Mr. Pinther, motion carries.

4. Discussion of New Comprehensive Plan Policies suggested by the public (work session)

\* remaining portion of the meeting was concerning Comprehensive Plan and minutes were typed by Joshua\*

6. Adjournment

Motioned to adjourn at pm

Seconded motion

adjourned the first portion of the meeting at 7:30 pm.