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MEMBERS PRESENT: Steve Ethington, J.B., Fred Nussbaumer, Don Wilkerson, Jim Hutchins, and J.B.

MEMBERS ABSENT WITH PRIOR NOTICE: Brent Jensen.

OTHERS PRESENT: Brad Hawkins-Clark- Planning Director, Maureen Hill – Zoning Analyst, Leandra Rountree -Administrative Assistant, David Hargraves - Prosecuting Attorney.

Chairman Ethington opened the public hearing at 7:00 p.m. and welcomed everyone, then explained the public hearing process.

Item One - (CONTINUED DISCUSSION) PROPOSED AMENDMENTS TO GEM COUNTY CODE, TITLE 12, SUBDIVISION ORDINANCE.

Chairman Ethington-We had five things from the last meeting we wanted to discuss. We need to expedite this and get it to the Commissioners to get through this Moratorium. We certainly can have a discussion on the questions we had from our last discussion. Extend the Moratorium, impact fees, one time splits, cluster subdivisions, and to simplify the minor subdivision process are the main topics we had questioned. I think trying to simplify the minor subdivision process is the one we want to address. With that in mind Brad, what did you and David come up with?

Brad Hawkins -Clark-David and I did meet. Primarily the goal of talking broadly on your concerns on the minor subdivision that was expressed at the May 8 hearing. What I just handed out is probably more of my thoughts. The first section is big picture options. You can retain the option to define land divisions as subdivisions. If you do this, Idaho Statute dictates several parameters. Draft number two is currently written as it defines every land division as a subdivision. My interpretation from the public, is this is one of the two main concerns about the amount of time it takes for the approval process. If you call it a subdivision, the approval process dictates that you and the Board only have to see it, not hold a hearing. Even if you don't hold hearings, it does take time. The other items on the sheet I passed around are all elements the Idaho Statute requires if you call it a subdivision. There are some benefits to calling it a subdivision, like triggering the use of sanitary restrictions and review of water systems. There is a lot more authority given to us as a jurisdiction if it is called a subdivision. Or, you can retain the definition of the subdivision but reduce some the requirements. Or, you can define splits of four or less as something else, like land division. If it were defined as a land division then the Commission and the Board would not review it and there would be a survey instead of the plat requirements but there may be some question of authority to require certain types of mitigation though if you do that.

Chairman Ethington-What do you mean by that?

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Brad Hawkins-Clark- Well, David may need to speak to this from the legal standpoint. It is very clear that if you call it a subdivision under the Idaho Code that you can require mitigation, for example if you feel the subdivision will impact the schools or roads you can require the mitigation. If it is not called a subdivision then there is a question to the mitigation but if you adopt an impact fee ordinance then we would require impact fees at the time of the building permit.

Jim Hutchins-It takes quite some time to implement and study impact fees. But it is my understanding that development fees can be done at County level.

Brad Hawkins -Clark- Yes, that is my understanding also.

David Poole-We really don't know how long that process will take to get those impact fees implemented.

David Hargraves-At least a year.

Don Wilkerson- Mrs. Merrill did say that at the last hearing that if you hire a consultant to do it then you will be looking at a year.

David Poole-Can the development fees be used if it is not a subdivision?

Brad Hawkins -Clark-I raised the question and it is definitely more questionable if its not defined as a subdivision to use development fees.

J.B.-It seems to be the input from the public seems to be negative over the minor subdivision. I would be in favor of doing a land division to make things simpler for the public. I asked last meeting if the assessors allowed splits during this moratorium. Do we have an answer for that?

David Hargraves-The moratorium did not prevent the filing of deeds.

J.B.-Some splits are being allowed during the moratorium correct?

David Hargraves- The Subdivision Ordinance was still in effect when the moratorium was put in place, so deeds were accepted by the assessor's and clerk's office.

J.B.- I don't understand, at one of the last meetings someone said that the assessor's office was allowing minor splits that were per code. They were not going through the Planning and Zoning, all I want to know is if they were allowed, yes or no?

David Hargraves- All I am saying is that deeds are still being recorded.

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Chairman Ethington-The recorder's office has their own laws and statutes they have to follow. The moratorium did not affect them.

J.B.- During the moratorium certain minor splits have been allowed without coming to us.

David Poole-They work under a different agenda and different laws. They are recording the splits but whether or not they are buildable is what we are working on here.

Chairman Ethington- The way I understand it is if they have a building permit coming to them on a legal lot, they never had to come before us. They are waiting for us to address the issue of changing the process.

Don Wilkerson-When people come to get a building permit, if they did not meet the Ordinance in effect at the time of the split there would not be a building permit.

David Hargraves- I think the bottom line is we don't know the effect that will have.

Don Wilkerson-I understand if they do not meet the zoning requirements at the time of the split they may not get a building permit.

J.B.-I would like to see the definition of land division included some way or another. Splits that are allowed currently will still be allowed.

Brad Hawkins-Clark-Basically, you can take these definitions and still call it a subdivision, but simplify the process by doing this. Section 2-2, the definition section of the ordinance, there could be a fifth exemption. This would be fairly substantial, in our current draft there are four exemptions to the subdivision definition for example the property boundary adjustment and public dedication of some right of ways. The division of land into parcels less than, or configured differently from, a quarter-quarter section of land, for purposes of development other than agriculture which is 40 acres you would potentially be exempting 40 acre division from the subdivision ordinance. If it is for purposes of development, the definition now is 5 acres. You have 160 acres today and you propose to create four 40-acre parcels, it is a land division but it is quarter- quarter sections so it would not fall under the subdivision ordinance.

David Poole- They would have less impact. There are certain areas in this County where we have impact issues. Certain areas in this County something like that might work. If it does not cause an impact then it would not be a subdivision.

Don Wilkerson-If I had 160 acres, I could do a minor subdivision without having to do a subdivision?

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Brad Hawkins-Clark-Correct, that number could be anything. Anything under four parcels the Idaho Statute gives the local jurisdiction the authority to define it. Using the quarter- quarter section is sort of a breaking point in setting up land divisions. There are arguments either way. The question is what is the County and community getting from requiring the subdivision process. The next option is to delete the concept plan that would be required up front. The applicant would have to come to our office and show their plan before they apply for the subdivision. That could save some time and money. There are a lot of things in the concept plan that should be retained. Another consideration is for the Director to determine which elements of a concept plan are required and which agencies will receive applications. An applicant may request that an incomplete application be accepted, by submitting a letter stating which items are missing and giving a detailed explanation and rationale for the incomplete submission. The Director must determine that the information is not necessary to establish conformance with the required findings. If so, he/she may deem the application complete, vested under ordinance, and allow to be processed. This is a paragraph that provides more flexibility. That is the challenge with all these ordinances. You can't box them into one category. You are saying the staff has the ability to tell someone they are exempt from having to submit to certain agencies. It may streamline the process.

Chairman Ethington-Would the administrator be the sole person to decide that? Would that eventually come to the Board?

Brad Hawkins Clark- The way it is written, no.

J.B.-That application is to come before us and the administrator would still have to defend why he thought it was exempt from those items. That might be a safeguard that the Board can override and send it back to the administrator if we decide. We could kick it back and require a complete application.

Brad Hawkins-Clark-Yes, there are a lot of different ways you could take that. You could allow for the waiver to be made and then appealed.

David Poole-You need to give the applicant a chance to appeal.

J.B.-Actually it is just the other way. He would appeal our decision not the administrator's necessarily. I think it expedites things and it saves some steps that are not necessary.

Don Wilkerson-Item on page 19 of the proposed ordinance that deals with minor subdivisions reads upon issuance of the administrators approval will be placed on the next regular meeting of the Commission to review the application. It would only be before us as a regular meeting instead of a public hearing. We either deny or approve then it goes on to the Board of County Commissioners.

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David Poole-I think by incorporating the fifth exemption and that section of the Director making the decision on the concept plan we might streamline the minor subdivision process and avoid the larger ones that are not going to impact the system. A combination of those two could work. We have problems in parts of the County that is the most populated; I don't know how you can single out areas. I don't know if that is possible.

J.B.-Instead of singling out the area for the most stringent perhaps we should single out the areas that are less stringent. I think we received a letter from Ola and it should be addressed. Maybe they should have their own committee in the County to deal with local things. Some areas may need to be looked at differently. Maybe Sweet and Ola should become their own entities.

Brad Hawkins -Clark-Right now the ordinance requires all subdivisions including minors to file preliminary sewer, water supply, storm water collection and disposal, streets, and any other elements deemed necessary during the pre-application conference. A Civil Engineer licensed in the state of Idaho shall prepare preliminary construction plans. The current Ordinance reads that some elements may be waived or additional items added by the Gem County engineer at the pre-application conference. What we have heard is that some of the requirements to hire a licensed engineer if it is two parcels and the septic systems are in place there may be some instances where a written statement would be enough from certain agencies. I think you can keep the verbage in there, but add this as another point. Have the construction plans, some may be necessary, some may not be. There may be a waiver and if there is not we can require a written statement from an agency that the applicant has adequate ability to serve the project.

Don Wilkerson-Looking at the old minor subdivision requirements, is the preliminary plat the construction plans you are referring to?

Brad Hawkins -Clark-No.

Don Wilkerson-Are you saying you would still require a plat on a minor subdivision? What is the difference between the preliminary construction plans and the plat?

Brad Hawkins -Clark-Yes, the plat is just a sheet of paper, showing wells and power lines on the face. The construction drawings would show the detail of the sub surface, streets for example.

Don Wilkerson-On a minor plat there are no streets. New dedication maybe.

Brad Hawkins -Clark-Yes, but this would include any existing irrigation pipes. There is a difference between plat and plan. The current ordinance requires that lots must have existing frontage on a public or private street. It precludes the use of easements to get access to your lots. The lots you create in a minor must have frontage on an existing public or private

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street. Rather than putting a forty-foot easement 600 feet back to a parcel you would have your driveway as access.

David Poole- What about a flag lot situation?

Brad Hawkins-Clark- If you can meet the deeded flag lot requirements then it would work.

Don Wilkerson- The key factor is existing public or private roads so you won't be building new roads in a minor subdivision.

Brad Hawkins-Clark- That is there for your discussion tonight. Finally, my last thought and I don't know if this is a good idea, but by removing noticing requirements it would cut cost and time. If you have only one person living within 300 feet of you, would you still go through the noticing process? On the other hand that one property owner has the right to hear it. If you want to reduce the noticing requirements for the very large lots, it is possible to do it under the State Statutes.

J.B.- I like his additions, including removing the noticing on 20 plus acre lot size. It is a matter of question where we put this in the draft.

Chairman Ethington- Is there anything from the Commission you would like to add or take away that has not been mentioned? I have not had a chance to read the letter from the people in Ola.

David Poole- Read a letter into the record from the Ola community. I think it makes good sense to use the existing roads because you are not creating more infrastructures. I think there are several of these bullets off of the worksheet that make good sense. Giving our administrator more flexibility, rather than create a monster lets move forward and make a few exceptions to cover the exception areas.

Chairman Ethington- Brad, you have an option here to still call it a subdivision, but reduce the requirements for a minor subdivision. So, could you still call it a subdivision, but make a clause that says that anything divided for ag purposes only forty acres or more that would have a building permit available?

Brad Hawkins-Clark- Yes I think so, the biggest difference is timing. If you don't call it a subdivision, you allow the option for it to be administrative.

J.B.- Do you have the option not keep it administrative?

Brad Hawkins-Clark- Sure.

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Don Wilkerson-It would still be retained as a subdivision but you would make the decisions and once that is approved you would bring it on to us at a regular meeting. Current laws would apply. Would it be a minor subdivision instead of a division?

Brad Hawkins-Clark-There are very few laws in the Idaho Code that pertain to the minor subdivision, because the Code defines a subdivision as five lots or more. So you are creating these rules at the local level.

Don Wilkerson-We could still call it a subdivision?

Brad Hawkins-Clark- Yes, then you would still have some of these abilities to implement.

Chairman Ethington- So, minor subdivisions will have the same regulations under the State Statutes?

Brad Hawkins-Clark-Most of those are how they are drawn, the thickness of the mylar the naming, the surveyors have to follow a lot more rules when it comes to plat. If you call it a record of Survey there are less rules and regulations. Most of the things you are concerned about in terms of access, landscaping, size of lots, wells, etc. are the reasons you are here to add those.

David Poole-If you take the minor subdivision matrix where we have some requirements we can expand the "if required" area. Still leaving that in just giving the opportunity for the administrator to review that and if it is not needed it doesn't need to be done. Under the matrix we could still leave those things in there. There are several items we could be leaving room to streamline the situation. If we do that it gives the ability and control to the administrator.

Don Wilkerson-I think we should look at the big picture option on the worksheet and retain the definition of a subdivision. Even though it is a minor subdivision, there still should be some control and oversight. It still goes to the Board of County Commissioners. Under the new process we would see it and send it off to the Board. I like what Brad put together. Dave mentioned about Sweet/Ola and even Letha, the Comprehensive Plan says those areas will be looked at differently. Currently the minor subdivision ordinance should apply to the whole County. I think we should proceed with this.

Chairman Ethington-I agree with Don. I think it is critical to retain the definition of subdivision. We will still have a chance to see the direct impact they will have on the community. I agree with the other considerations on the worksheet. The division of land option I can understand that in Ola.

David Poole-In the event that is happening we can address the direct impact fees.

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Chairman Ethington-I like the idea that there is a little bit of room for each application to be different. The minor does not have the same requirements as a regular one. I think it a great idea to give the administrator the chance to decide what the applications will consist of as they come in. That also makes sense to me. I do agree with having the impact agency draft a letter. I don't agree with changing the noticing requirement, I feel it should be the same for everyone so they have a chance to reply to the application.

Jim Hutchins-I think everything still should be called a subdivision. On the larger parcels, on quarter –quarter sections, it is pretty cut and dry and I feel it should be allowed. You have a large area especially for agriculture. If you get into 40 acres it is definitely agriculture. Retain the subdivision part of it to come before this board so we know what is going on what impact it will have on the different areas. The rest below the canal slope areas are different. I feel the neighbors should have the opportunity to voice their opinion. I want to retain the subdivision part of it. We in the County have a problem with wastewater and drain water coming off of the ag land going through historical drains and people are trying to shut those off. It is causing problems for farmers and neighbors with the backing up of the water. In a subdivision plat those issues can be addressed. I think we need to keep the plat and subdivision going.

Fred Nussbaumer-You are the first director we have had in the County, is that right?

Brad Hawkins-Clark-For that term, yes.

Fred Nussbaumer- At the present time you are split between the City and the County. How much more of your time will be dedicated to this if we adopt it? This will put a lot of weight on your office to make major decisions.

Brad Hawkins-Clark-If you look at the current ordinance, there are a lot of responsibilities, you are a volunteer position. On the other side it comes back on you. How many times a month do you want to meet and how late do you want to go? We have added another full time person that was not there before. It is basic management to streamline the process.

Fred Nussbaumer-Your office would be able to handle it?

Brad Hawkins-Clark-It all depends on what level it comes in. Today a minor subdivision requires some similar preparation, but I don't see that this adds to it. We were doing a lot of research. This proposed ordinance takes away a lot of research and adds it on to the subdivision process.

Don Wilkerson-How many minor subdivisions have you seen go through the past year?

Brad Hawkins-Clark-I would guess five.

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J.B.-Does Ada County or Canyon County allow for an administrative split?

Brad Hawkins -Clark-Ada County does allow an administrative split on an original parcel.

J.B.-It would all come before this board if we were to do that, right?

Brad Hawkins -Clark-If you chose the other option, you are no longer required by the State to send it to the Board.

J.B.-I like the fact that the administrator could determine what comes before us as the applications come in. I would like to make sure we add the definition of land size to be gross. I think 20 acres is a big piece of land to require notification, if you are going to take it out, I would like you to put at least 40 acres to not require notification. I would like it at some level that it doesn't require notification. If someone is going to split 20 acres, I'm not sure notification is necessary. I think all the additions that Brad prepared are valid, but I prefer the administrative option.

Chairman Ethington- I think on these minor subdivisions as they come through, I don't see them being an overburden for us. Some will not be a public hearing, just review. The thing I question on the administrative split is the impact on the County. You don't have that much say. Without calling it a subdivision you will have those problems. I think a survey instead of a plat can cause some problems. Lets treat everybody and every application the same.

J.B.- The State law does not require County involvement in four splits or less, we are being more restrictive than the State. I'm not so concerned about us, but I think there are several issues that could be done administratively. It doesn't stop him from sending the application on to us, but it does save us from seeing the simple little ones.

Jim Hutchins-We have seen a lot of abuse on the administrative split. The abuse was there, we have all seen it. This is why I'm setting my heels down. Everyone should be on the same playing field.

Don Wilkerson-Brad, on page 18 in the proposed ordinance, it says the administrator will conduct no hearing unless the applicant or an affect person asks for it in writing. Are we talking about public hearing?

Brad Hawkins -Clark-The hearing would be at staff level. An affected person is one having an interest in real property that may be adversely affected by the issuance or denial of a subdivision permit. It is not just any person, but an affected person.

Don Wilkerson-Would an affected person be anyone within the 300 feet? You mentioned the hearing would be at your level, not our level?

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Brad Hawkins-Clark-Yes.

Don Wilkerson-Can somebody who has a question about the application request a public hearing before us without being an applicant?

Brad Hawkins-Clark-I don't believe they would be able to.

David Poole-In this notice, what is the time frame involved? How long are we talking?

Brad Hawkins-Clark-If you add up the maximums, it is about four months.

David Poole- I was just adding the numbers together and it can be a very long process.

David Hargraves-Those are the extreme maximums, they can be shortened.

J.B.-After the notice if no one comments, I think those should be done administratively. To expedite it and insist it comes before us when there is public input.

Brad Hawkins-Clark-That is the difference if you call it a public hearing or not. The only required notices are coming from the State for a public hearing before you or the Board and that is fifteen days. The time frames are not coming from State Statute.

Don Wilkerson-Do you have to notice a regular hearing, not a public hearing?

Brad Hawkins-Clark-No, the agendas have to be posted 48 hours prior to the meeting.

Don Wilkerson-If we have a minor subdivision come before us as a hearing we will just have to post the agenda 48 hours prior to the hearing. With the old process, a public hearing wasn't required by the Board for a minor so why are you worried about noticing a minor subdivision?

Brad Hawkins-Clark-The noticing is up front where the public is being informed about the proposal.

Brad Hawkins-Clark-If you go to the paragraph titled action it gets into the time frames.

Jim Hutchins-What about the 300 feet neighbors on minor subdivisions?

Brad Hawkins-Clark-They would not receive in the mail that it is on your agenda. They would only receive a notice in the very beginning. If someone objects, we hold a hearing at staff level. Then we would prepare a recommendation to you but it would not be a public hearing. They would be notified of the proposal but not of the meeting time.

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J.B.- Made a motion to adopt the definition of land divisions of four lots or less to not require Planning and Zoning or Board review, and have records of surveys instead of plats, and have the administrator decide what applications require certain types of mitigation.

Motion failed from lack of a second.

Don Wilkerson- Made a motion to forward this to the County Commissioners with a recommendation of approval as proposed with the following changes:

- ?? Retain the definition of subdivision but reduce the requirements for minor subdivisions.
- ?? Delete the concept plan for topography and give flexibility to the director to work with the applicant to determine which agencies will receive applications.
- ?? Remove the requirement for preliminary construction plans and require written statements of approval and adequacy of service from Southwest District Health Department, the appropriate Fire District, Gem County Sheriff, and the School District.
- ?? All lots must have direct frontage on an existing public or private street. This would preclude the use of easements for access.

The motion received a second.

Jim Hutchins- Amended the previous motion to include the affected Irrigation District as an impact agency to be included in option of a written statement of approval and adequacy.

The motion received a second.

J.B. –Amended the previous motions to remove the noticing requirements on 40-acre splits.

Motion failed from lack of a second.

Vote: Unanimous.

Chairman Ethington-In the e-mail you sent us it stated that our priority is to address the comprehensive plan, impact fees, and development fees. I know the County Commissioners are working on road and transportation impact fees. I know this CAFO thing is still out and about. Is there anything they want to address with the CAFO that we already submitted?

Brad Hawkins-Clark-I don't, I have not talked to the Board Of County Commissioners about this.

David Poole-The priorities to keep the ball rolling are?

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Brad Hawkins-Clark-The comprehensive plan and we suggested in order to capture the written and verbal testimony, Maureen and our consultant Jennifer are preparing a list for you to review. We are hoping for a public meeting in June for you and the City Commission to make a decision.

Chairman Ethington- Can't the community of Sweet and Ola get together and work on the land use for that area?

Brad Hawkins-Clark-I agree it should be localized, but I don't feel it should hold up your process right now.

Don Wilkerson-Do they have to have a formal committee to do that?

David Poole-They have a committee.

Don Wilkerson-Has anyone from Letha approached you?

David Poole- This Wednesday there is a meeting in Sweet and there will be one next week in Letha.

Brad Hawkins-Clark-As a commission what would you like to see for the public meeting to make your decision? The direction we have been going to date. We want the Sweet/Ola and Letha areas to have more time. As much time as required to put that together we need to proceed with what we have in front of us.

J.B.-You have not established the next public meeting. I thought you were going to schedule that as early on the calendar as possible. How much time do you need to get it published?

Brad Hawkins-Clark-Fifteen days.

J.B. When is your staff going to be ready for it? What is the earliest you are ready to have it?

Brad Hawkins-Clark-The third week of June at the earliest. We will set the date.

Chairman Ethington- Do we have a big agenda for the July hearing?

Don Wilkerson- We have three items in June.

Chairman Ethington-If there is not a big agenda in July then we can hold the meeting at our regular public hearing.

Brad Hawkins-Clark-I think the July hearing is a good idea.

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Brad Hawkins -Clark-The Commissioners directed our department to do a notice for June 19th in Sweet or Ola and one on June 20th here in Emmett on the subdivision ordinance. The date and exact locations are to be determined.

Chairman Ethington-The staff foresees a tremendous amount of activity once the subdivision ordinance is approved. They suggested doing two public hearings in August, what do the commission members feel about that?

David Poole- I think we will have a better idea in July. I think two meetings will be okay only if needed.

J.B.-Is there a way to limit our agenda? The others would go to a second hearing or the next month.

Chairman Ethington- I think that is what the staff is saying, they see the normal five to six hearings doubled or tripled.

Don Wilkerson-Is the commission willing to do two public hearings a month?

J.B.- If it is needed I am willing.

David Poole-If it is needed, yes.

Chairman Ethington-My schedule is maxing out. If the applications start occurring more, I would rather see us starting an hour earlier and going an hour or two later instead of taking up to two days.

Jim Hutchins- That time of year is right in the middle of harvest and one night meeting would be better. If it is a must, I will do my best to attend both hearings.

J.B.- How large can this commission be? How can we expand it?

David Poole-Twelve.

Chairman Ethington-If you know someone that might be interested send them to the Commissioners. Sometimes, if you get too many on the commission it can get a little long with everyone's comments.

J.B.- Made motion to adjourn at 8:50 p.m.

Motion received a second.

Vote: Unanimous.

Chairman

Secretary

MINUTES
GEM COUNTY PLANNING AND ZONING COMMISSION
GEM COUNTY COURTHOUSE
May 22, 2006

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