

August 11 meeting

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GEM COUNTY PLANNING AND ZONING PUBLIC HEARING

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Date: August 11, 2008

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Time: 7:00pm - 8:35pm

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Place: Gem County Courthouse

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MEMBERS PRESENT:

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David Poole, Don Wilkerson, Debbie Rouwenhorst, Dale

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Reynolds, and Will Maupin.

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OTHERS PRESENT:

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Brad Hawkins-Clark - Planning Director/Administrator.

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August 11 meeting

24 This transcript is a summary of the meeting, not verbatim.

25 Transcription from recording done by Amanda Shaw.

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ITEMS REFERENCE PAGE

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CONSENT AGENDA:

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PUBLIC HEARING:

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Item No. 2 - (Continued) Special Use Permit

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Item No. 3 - Preliminary Subdivision Plat (View Acres)

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PROCEEDINGS

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Gem County, City of Emmett, August 11, 2008

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CONSENT AGENDA:

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Item No. 1A David Minor Subdivision

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MR. DAVID POOLE: The first item on the agenda is the David

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Minor Subdivision review. Any comments want to be made from the

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Commissioners on this?

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MR. DON WILKERSON: I'd like to have Item 1 removed from

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the Consent Agenda and moved down to the items removed from Consent Agenda.

13

MR. DAVID POOLE: Do we have a second to that motion?

14

MRS. DEBBIE ROUWENHORST: I second it.

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MR. DAVID POOLE: Been moved and seconded, discussion? If

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not, all those in favor signify by saying I. Opposed same sign.

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Motion carries.

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19 (Motion carries unanimously.)

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21 CONSENT AGENDA:

22 Item No. 2 - Approval of the Minutes of July 14, 2008

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24 MR. DAVID POOLE: Now we've got the approval of the July 14

25 minutes. Anybody got comments or corrections?

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1 MRS. DEBBIE ROUWENHORST: We didn't get the full minutes.

2 MR. BRAD HAWKINS-CLARK: Did you not receive the full copy?

3 MRS. DEBBIE ROUWENHORST: No.

4 MR. BRAD HAWKINS-CLARK: Okay. Sorry. That should be

5 taken off then. If you didn't receive the full version of the

6 minutes, then we'll just move that to your next meeting.

7

8 ITEMS MOVED FROM THE CONSENT AGENDA:

9 Item No. 1A - David Minor Subdivision

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11 MR. DAVID POOLE: Let's go to the items that were moved

12 from the Consent Agenda. Questions, Don.

13 MR. DON WILKERSON: I have two questions. It says, in

14 conditions of approval, there's to be an irrigation easement.

15 Also, by reading the Reed Ditch letter, do you know where

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16 they're getting their current water from, Brad? I couldn't see
17 in any of the letters where they're actually getting their water
18 from.

19 MR. BRAD HAWKINS-CLARK: From the south boundary.

20 MR. DON WILKERSON: My other question is because it's
21 approximately 320 feet from the road, do they need a turn-out
22 for the Fire Department? It says up to between 150 to 500 feet,
23 it says here "turn-out", for serving one residence. Do you know
24 if there's a difference in serving two residences?

25 MR. BRAD HAWKINS-CLARK: There isn't. The Fire Department

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1 would require similar conditions if it's one or two. The
2 developer is not required to build a driveway unless it serves
3 three homes. So whenever they come in for a building permit on
4 whichever lot is first, lot 1 or lot 2, then the builder is
5 going to have to address that and the Fire Department would have
6 to come to where the building permit is being issued and check
7 that out.

8 MR. DON WILKERSON: So it would be covered prior to the
9 building permit. That's all that I have.

10 MR. DAVID POOLE: Any questions? If not, let's make a
11 determination on this.

12 MRS. DEBBIE ROUWENHORST: I make a motion that we send this
13 to the Board of County Commissioners with the facts and findings

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14 that the staff has made. Also, there was a concern that it be
15 one driveway and not two driveway's because of ingress/egress.

16 MR. DAVID POOLE: So we're going to recommend approval with
17 those stipulations. Is there a second to that motion?

18 MR. DALE REYNOLDS: I second it.

19 MR. DAVID POOLE: Discussion on the motion? If not, all
20 those in favor signify by saying I. Opposed same sign. Motion
21 carries for recommendation to the Board of Commissioners.

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23 (Motion carries unanimously.)

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2 PUBLIC HEARING:

3 Item No. 1 - (Continued) Rezone #RZ-08-002 & Development

4 Agreement - Galan Merrill

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6 MR. DAVID POOLE: In our public hearing portion, we have a
7 rezone for Merrill and it was continued from the last meeting.

8 We have certain areas that are reopening the public hearing for
9 discussion. Do you have any comments before we start, Brad?

10 MR. BRAD HAWKINS-CLARK: I'll just point out, Chairman,
11 that staff did submit a memo dated August 5th that noted six

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12 items for the Planning and Zoning Commission that related back
13 to the July 14th hearing. One of the main issues related to the
14 question from legal counsel about the R-2. Do you want some
15 comments on that now?

16 MR. DAVID POOLE: Sooner or later we're going to need the
17 lead in so it might as well come from you. We do have a letter
18 here but --

19 MR. BRAD HAWKINS-CLARK: What was on your desk this evening
20 was one letter from the Prosecuting Attorney's office and an
21 e-mail from Joanne Butler. I apologize you didn't get these
22 earlier. We just received these today. The Prosecuting
23 Attorney did speak with Miss. Butler and their conversation was
24 about a week ago, I believe. He asked for some input on how she
25 felt the development agreement could be used or not used in

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1 order to appropriately get a gravel-type permit, associated with
2 the subdivision. Her e-mail there is they're arguing that State
3 Code and Gem County's Development Agreement Code could be used
4 to allow for a gravel extraction. The only reason this is
5 really up for discussion is because the gravel, at some point,
6 is anticipated to leave the property. So she sent back and said
7 she believes these are the codes that, I believe, support that.

8 Dick's letter, on the last paragraph, states that he's
9 basically undecided. He has not had a chance to look at her

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10 e-mail in detail as to why the development agreement could be
11 used. So what you do have is a pretty firm opinion from the
12 Prosecuting Attorneys office that the special use permit is just
13 for the A-2 zone, which is what the property is zoned today. If
14 it's ever zoned to R-2, they do not feel that gravel extraction
15 is an allowable use in the R zone. That is, I think, fairly
16 clear in that middle paragraph on his letter. That does leave
17 some room for discussion tonight about the development agreement
18 and the use of the development agreement based on public input
19 and based on the applicant input. Whether the Commission wants
20 to go that route, I think that's your call. Unfortunately, you
21 do not have attorney presentation here tonight nor do you have a
22 conclusive recommendation in the letter.

23 One option, of course, is to send it to the Board of County
24 Commissioners with your comments on that and how you feel it
25 should go and allow them to take that recommendation or you

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1 could discuss it and leave it for more information. You might,
2 I think, receive a little more input tonight from the applicant
3 to guide you on that.

4 MR. WILL MAUPIN: Brad, without clarification from counsel
5 on the special use permit and it's liability, we're really
6 talking about, with the Ordinance the way it is, we're defining
7 accessory use under the development agreement.

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8 MR. BRAD HAWKINS-CLARK: I think that does seem to be the
9 direction that's being put out there. I think that it's
10 important for the Commission to decide first whether you do
11 indeed support gravel extraction on the property regardless of
12 how it works and how the legalities of it play out. I think
13 that needs to be on the record that you think that is a viable
14 use of property and then talk about is it a special use permit
15 or a development agreement or a combination of those.

16 MR. DAVID POOLE: Questions for staff?

17 MR. DON WILKERSON: So, being we just received the letter
18 from the applicants attorney, if we make a decision tonight,
19 we're pretty well saying that hopefully by the time the Board of
20 County Commissioners look at this they'll have a ruling from our
21 attorney.

22 MR. DAVID POOLE: Any further questions for staff? If not,
23 would the applicant like to open some discussion here?

24 MRS. NANCY MERRILL: In this kind of situation, you look at
25 which comes first; the chicken or the egg. So as chicken

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1 farmers, we've kind of grappled with that all our lives. My
2 husband came up with a really good answer a while back and he
3 tells me it's the rooster. In this case, it's probably going to
4 be something that's up for debate.

5 I visited with several other cities and your staff has been

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6 really good in trying to work with this and trying to figure out
7 how do we do a quality subdivision as we want to do with lakes
8 and ponds without extracting gravel in an R-2 zone because it's
9 a residential area. So one of the things that we came up with
10 last minute tonight and of course Joanne Butler talks about this
11 development agreement and how it is a negotiated agreement with
12 the County and the applicant, it goes beyond the code and would
13 allow for site specific conditions of approval. So the best
14 thing to do would be how do we do this without setting a
15 precedence for other applicants to come forward and how do we
16 make it nice and clean?

17 One of the ways that we could do it is to move the
18 applications in tonights hearings one in front of the other,
19 which would be the special use permit. If you feel so inclined,
20 you can approve that on an A-2 zone instead of in an R-2 zone.
21 We could put a condition on it that it would not to exceed 5
22 years, which is what the following application is going to tell
23 you on that. We could, in the second application for the
24 rezone, refer back to the already approved special use permit in
25 the same hearing we are at tonight and you reference that in

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1 your rezone motion. You acknowledge that you have just approved
2 a gravel extraction operation in an A-2 zone, which would now
3 make it a nonconforming use. However, that application will be

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4 allowed to be a non-conforming use for the 5 year limitation,
5 which is put on special use permit and it would be for this
6 rezone application only. Now you have two opportunities for two
7 separate motions.

8 The reason you can do a non-conforming use on this is
9 because we do it all the time. We take an existing home and an
10 applicant comes and wants to change the use to a business. So
11 we say you can stay in your home until you get your permit for
12 your business. Then your home has got to be change to meet the
13 code of which it now complies. It would be the same thing with
14 if we had the chicken farm still running and we came to you and
15 said we would like to rezone to an R-2, which would be a
16 non-conforming use. At the point you would approve that use,
17 yet you would allow us to continue on and phase out the
18 business. So non-conforming uses are something that happen
19 around the Country all the time. It would allow this business
20 to be tied together without a lot of confusion.

21 The other option is to simply follow the direction of the
22 attorneys and look for the way to tie it to the development
23 agreement using the site specific conditions and pull it into
24 the development agreement.

25 So those are the things we talked about. We also went

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1 through the changes in the conditions of approval and I think my

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2 comments are in there. I don't know if that helps.

3 MR. DAVID POOLE: Questions for Nancy?

4 MRS. DEBBIE ROUWENHORST: On the one comment that you had
5 under Exhibit 3, that you weren't quite sure what I was talking
6 about when I was referring to assignment of the property --

7 MRS. NANCY MERRILL: I did find what you were talking
8 about. When we sell the property to somebody else you want to
9 know about it.

10 MRS. DEBBIE ROUWENHORST: Where I got it from was the Ada
11 County Development Agreement. I gave Brad a copy of it just to
12 show that within 30 days if you do assign it to someone else,
13 that you notify the County.

14 MR. DAVID POOLE: Okay. You have any questions about her
15 comment about the direction that we might travel on trying to
16 make this thing work?

17 MR. WILL MAUPIN: This comment is for Brad. I'm looking at
18 the non-conforming use. It says a use of the premises, which
19 does not conform to the regulations of this title but which is
20 in existence at the effective date of October 10, 1978. The use
21 isn't there. So how do we address that? Am I reading more into
22 that?

23 MR. BRAD HAWKINS-CLARK: Well, yes and no. That's in the
24 definition sections.

25 MR. WILL MAUPIN: That is in the definition section.

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1 MR. BRAD HAWKINS-CLARK: Point number 1, the definitions
2 probably need to be updated to refer to it's not just what was
3 there in 1978. For example, in '95 Gem County had a pretty
4 substantial code amendment, which allowed some new things and
5 prohibited some things. So you could have done something in
6 1994 under our code that changed it in 1995 and that would still
7 be non-conforming. So the date thing is a little misleading.

8 The second point is that I think it is important to know if
9 the County is aware of the creation of a non-conforming use,
10 there are definitely strong arguments from attorneys that say
11 that's really different. I mean, I understand where Mrs.
12 Merrill is going but if you know you're going to be creating a
13 non-conforming use, there may be shakier grounds then if they
14 started the use 3 or 4 years ago and then came along and then
15 it's rezoned. I think that the attorneys would have something
16 to do with that.

17 MR. WILL MAUPIN: I liked the thought process they were
18 going through. It defines what conditions would be for the
19 extraction. It kind of defines a timeline and I like it better
20 than trying to tie it to the development agreement in excessive
21 use, which is another pretty loosely written definition. I'm
22 not certain that we're not setting a precedence by what you just
23 said, making a known nonconforming situation.

24 MRS. NANCY MERRILL: I think that conundrum comes with the

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25 fact that in order to do one, you've got to do the other. How

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1 do we tie them together? I really appreciate the Commission

2 trying to come up with a way to do this.

3 MR. DAVID POOLE: I think the conundrum comes from the fact

4 that you're going to be selling gravel off-site. Otherwise,

5 this would be a non-issue.

6 MRS. NANCY MERRILL: And that is true. So the question is

7 if you don't sell it off-site, what are you going to do with it?

8 MR. DAVID POOLE: Well, use it in the development.

9 MRS. NANCY MERRILL: That is the issue. You're going to

10 use everything you can possibly use on site.

11 MR. DAVID POOLE: But your ponds may only be 3 feet deep.

12 My point is if you're going to remove that much gravel to get

13 you're depth in water, you're going to have more gravel.

14 MRS. NANCY MERRILL: You're right. If we used everything

15 on-site that we can possibly use, we're still going to have

16 access gravel. So if you don't sell it off-site you're going to

17 end up with a big stockpile. If you can't sell it, you're going

18 to have a big pile and a mound of gravel. So now we've got an

19 eyesore.

20 In most subdivisions, they take the gravel off and they

21 sell it as they go. They use what they need and they sell the

22 rest off. That is a very common way of development and that's

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23 what we're trying to do. This is not a big gravel extraction
24 operation that's going to be holes in the ground forever out
25 there. It is 100% tied to this development with the development

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1 agreement and with a lot of restrictions on it. That's why the
2 development agreement is so good and it's so above the rezone
3 because it's going to tell the neighbors exactly what's going to
4 happen and how it's going to happen.

5 MR. DON WILKERSON: I know you're trying to sell it but
6 have you looked at maybe going for a special use permit under an
7 A-2, do your gravel extraction, then come back for a rezone?

8 MRS. NANCY MERRILL: That is a possibility. However, we
9 have people that want to buy the farm that want to know what
10 they can do with it. We also told the neighbors, when we came
11 in for a special use permit, that we would tie it to a concept
12 plan with the uses that are on it so they have some assurance if
13 we get the special use permit and we sell the lands as an A-2,
14 then the neighbors have no assurance as of what's going to
15 happen on it. So that's kind of the reason we tied it to that.

16 MR. DAVID POOLE: Well we can make the special use permit
17 non-transferable and that resolves that issue. The whole
18 concept of trying to put it together, I understand that and
19 that's the only point where I see the development agreement
20 could work. My concern is, and I'm not certain whether it's

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21 required or not, is that gravel extraction business's come under
22 state regulation, DEQ, and EPA and it still should. So there's
23 somebody out there that has more knowledge about dealing with
24 this than probably our own local, not to say they don't, but
25 these people specialize in that. So if that could happen, then

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1 the neighbors know that dust abatement and all those things are
2 taken care of because if you just do a development agreement and
3 don't have to do the balance of that, there could be a monster
4 there.

5 MRS. NANCY MERRILL: That's exactly right. That's why we
6 suggested, at one point, including the reclamation plan from the
7 State of Idaho, the Idaho Water Resources, the EPA, and those
8 are all complied with. There's a whole slew of requirements and
9 permits that have to be done in order to do that. That should
10 all be tied with the development agreement. In the site
11 specific conditions of approval and recommendations those are
12 there.

13 MR. DAVID POOLE: And I know we're setting a precedence but
14 at the same time, with the development agreement, those are
15 specific to each particular development. So it's setting a
16 precedence every time you use one. So I think we could probably
17 use that vehicle providing that our legals feel it's acceptable.
18 So I think the only way that we can proceed here is to go that

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19 direction and make that a provision and our legal advisors

20 counsel can hammer that out. That's just my opinion.

21 MR. DON WILKERSON: I have one more question. On H, the

22 land use concept concerning boats, the staff recommended that

23 any boats be non-motorized and you're recommending that they be

24 inboard type. In your statement here it says the A-2 zone

25 allows for boat houses and docks. It doesn't unless it's a

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1 special use permit, by our matrix. So where you're going for an

2 R-2 zone, I really don't know if we'd want motorized boats out

3 there. I'd like to throw out a suggestion that any motorized

4 boats be a motor that's battery powered to knock the noise down.

5 I hope you're not looking at water skiing out there.

6 In your presentation last month, you showed several

7 subdivisions over in Eagle area, one with two rivers and I know

8 you live in that area. There's ponds over there. Do they allow

9 boats in those ponds?

10 MRS. NANCY MERRILL: Number one, the motor crafts we're

11 asking for to be limited to inboard motors, which is 60

12 decibels. Those are motors underneath the water. 60 decibels

13 is 5 feet away, talking to me. So they're extremely quiet and

14 yes we do anticipate that people will be able to water ski on

15 those lakes. Water ski communities are huge issues out here.

16 They are big sellers.

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17 MR. DON WILKERSON: My other questions to that is how do
18 you plan on policing that?

19 MRS. NANCY MERRILL: I talked to Brad about that and I
20 think the way that we do that is at the time of permitting, when
21 they permit the boats, they have to show the decibel of the
22 engine on that permit. I think if they are required through
23 their covenants and restrictions to do that, then that would be
24 one of the ways they could do that.

25 MR. DON WILKERSON: But like you said, it would be open to

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1 the public. Are you going to have a member of the Home Owner
2 Association out there checking to make sure --

3 MRS. NANCY MERRILL: I'll tell you, if there's any of the
4 Home Owner Association presence like we've got, they'll be out
5 there.

6 MR. DON WILKERSON: I have one other question. The letter
7 that came from the School District, by the way I read it you
8 came in agreement just to set aside a 10 acre parcel. There's
9 no donation or anything like that. Is that the way it's
10 written?

11 MRS. NANCY MERRILL: That is the way it's written. When we
12 talk about that, they don't have a way to receive that and we
13 don't know if that's going to be a site that they want to have.
14 What we did talk about is making sure that everything's not

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15 developed in this area and then when the time comes, the school
16 can negotiate with the developers for that. There will be a 10
17 acre site that will not be platted or built on.

18 MR. DON WILKERSON: Okay. That's all. Thank you.

19 MR. DAVID POOLE: Comments from the public?

20 MR. BRAD HAWKINS-CLARK: I just want to state for the
21 record that what was just submitted is a letter from Ernie
22 Bankstein, 2645 West South Slope Road and Murray King, 2955 West
23 South Slope Road.

24 MR. DAVID POOLE: Okay.

25 MR. MARK BUTLER: I really wanted to be here to talk in

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1 favor of Nancy. I worked for Nancy for a few years for the City
2 of Eagle as a Planner. I found her desires for land planning to
3 be exceptional. There's a couple things she raised to my
4 attention. One was the conditional use permit. I was hoping
5 that you could approve the conditional use permit with the
6 condition of the development agreement that acknowledges that
7 was approved under the previous zoning and then it could
8 continue for a certain period of time. I think its valuable,
9 from a City perspective, to get land under contract, which is
10 what we do with the development agreement. Nancy told me about
11 the concept of maybe the Commission just approving the
12 conditional use permit and then somebody coming in later and

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13 asking for the rezone. I've worked for Cities for a long time
14 and as Planner and I think that if you can get a property under
15 contract now, which is what the development agreement is, and
16 see what your land use is going to be in the future, it's better
17 to get it now than to wait for what might come in the future.
18 So I was hoping you could approve the conditional use permit
19 with the condition in the development agreement acknowledging
20 that you have a non-conforming use, which is done throughout the
21 Country when somebody asks for a rezone. For instance, if
22 somebody's asking to rezone the commercial, as the City or
23 County, you don't go into the development agreement and say
24 knock your house down the day we adopt your zoning. Usually
25 there's a condition in the development agreement when somebody's

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1 asking for a rezone to deal with what could have been approved
2 there before or what was there before and you give them a
3 timeframe. Okay, you can't redevelop to your new development
4 until this is removed. I've seen that many times. You can't
5 develop the commercial until you knock your house down but
6 usually I don't see Cities or Counties taking away the rights
7 that were there before. Even with the rezone, they usually use
8 the development agreements as a tool to control what could have
9 been there or was there before.

10 The last item I wanted to mention was with regard to the

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11 policing mention of the boats. I would recommend that as the
12 County you review the CC&R's if you can and be sure the language
13 that Nancy is saying is going to be in there will be there so
14 that you'll understand that once there's some houses there and
15 somebody goes in there with a boat that's too noisy, they're
16 going to be the first ones out there to police that. So I just
17 offer that as a potential answer to whose going to police that.
18 The answer is the people that are going to be living there
19 should be using the Home Owner Association and not tapping on
20 County or City resources.

21 MR. DAVID POOLE: But unfortunately if it is under public
22 use, that's who they're going to call first. Any questions?
23 Further public input? Do you want to rebut.

24 MRS. NANCY MERRILL: Not unless you have questions.

25 MR. DAVID POOLE: Any questions? Thank you, Mrs. Merrill.

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1 MR. BRAD HAWKINS-CLARK: The two letters that were
2 submitted, it does appear that they are both in opposition to
3 both the rezone and the special use permit.

4 MR. DAVID POOLE: Okay. We'll close the public portion of
5 this hearing and bring it before the board. You guys have any
6 suggestions? You want to move to the special use portion of
7 this? You want to try to work around this using the development
8 agreement?

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9 MRS. DEBBIE ROUWENHORST: In the way that I think it looks
10 cleaner is going with the development agreement and tying the
11 gravel pit, the conceptual plan, and anything that we need to
12 really pinpoint this development with the development agreement
13 versus the special use permit with the gravel extraction.

14 MR. DAVID POOLE: How do you think that follows the
15 Prosecuting Attorney's guide here?

16 MRS. DEBBIE ROUWENHORST: Well, I think in the bottom he
17 said that he needed more time to study a development agreement.
18 I believe that if the two Attorney's have more time that they
19 would be able to work that out since development agreements are
20 used a lot in different Counties and this is our first one that
21 we have been working with.

22 MR. DAVID POOLE: Would you suggest a continuance or
23 tabling it?

24 MRS. DEBBIE ROUWENHORST: Well, as far as the development
25 agreement, is that something the Commission -- we write down

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1 every item that we need to be appropriate or is it something
2 that the Attorney's need to look at and pinpoint each one of the
3 issues?

4 MR. BRAD HAWKINS-CLARK: Commissioner, you received the
5 draft development agreement at your last hearing and then you
6 received the amended for this hearing based on your motion as of

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7 July 14th. The Attorney has already reviewed both the main body
8 of the development agreement and Exhibit 2 and Exhibit 3 that
9 you got tonight and didn't make any comments. I think if you
10 decided to move it on, it would go on just as you have it in the
11 packets. Is that what you're asking?

12 MRS. DEBBIE ROUWENHORST: Well, what we have does not
13 include the gravel extraction in that and that's what I'm asking
14 is --

15 MR. DAVID POOLE: Rather than do a special use permit, tie
16 that gravel extraction business to the development agreement.

17 MRS. DEBBIE ROUWENHORST: But we need specifics as a
18 timeline. I pulled up our codes and just with our gravel pits/
19 rock quarries, minerals must be removed from subject property
20 within 6 months that excavation begins. Is our current
21 Ordinance something that would be different from the development
22 agreement? That's what I need to know. Is that something that
23 the Attorney's need to work out or is this something that we
24 need to, as a Commission, pinpoint every item?

25 MR. BRAD HAWKINS-CLARK: Staff's recommendation is that the

□

23

1 Commission pinpoint and say what you want because the Attorney
2 is just there to give you direction in terms of the legalities
3 and not the content.

4 MR. DAVID POOLE: Maybe not the content but I think as far

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5 as wording and appropriately, I think that needs to be done by
6 the Attorney. I think we can give them the concept, the things
7 that we want in there, and then leave it to the Attorney's to
8 resolve that issue and see if that's possible that we can tie
9 this to a development agreement. We're not certain because at
10 this point, I don't have any certainty from our Prosecuting
11 Attorney that we can. If that's the direction that we'd like to
12 travel as opposed to a special use permit.

13 MR. WILL MAUPIN: I have one comment. Unfortunately, the
14 Merrill's are caught in a spot where this is one of the first
15 development agreements that have come across the Board and I'd
16 have to agree, without further direction from our counsel, I
17 don't see how we can go much further. I would agree that the
18 letter indicates a special use permit is probably not the
19 direction our counsel would like to go. So I guess what I'm
20 saying is I need further input from our counsel, give him time
21 to read through the provisions, and understand his direction
22 before I can send it on to the Board of Commissioners.

23 MR. DAVID POOLE: So you'd like some guidance on that
24 before you make that decision.

25 MR. WILL MAUPIN: I would.

□

24

1 MR. DON WILKERSON: I would like to see us look at it and
2 maybe proceed under the DA and I'd like to ask you to maybe take

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3 a vote of the Commission on do we want to proceed or do we want
4 to refer it back to counsel. I'd like to see us proceed. I
5 think we can proceed under a DA with conditions of approval for
6 the special use permit maybe with some additions and make a
7 recommendation to the Board of County Commissioners and
8 hopefully by that time our legal people have looked at it and
9 they can stop it at that point if they want. I think it takes a
10 consensus of this group if we want to proceed that way or we
11 want to continue it.

12 MR. DAVID POOLE: And I agree that we need to either decide
13 if we want legal counsel before we go any further or if we want
14 to suggest to legal counsel can we do it this way and suggest to
15 the County Commissioners and the legal counsel that if it's
16 possible, we'd like to go this way. I think that's the way we
17 need to word it and if it's legally possible.

18 MR. DON WILKERSON: I think we need to make a decision, at
19 this time, do we want to come up with a development agreement
20 that includes the gravel extraction and the rezone tonight? If
21 we do that, to me, the special use permit goes away.

22 MR. WILL MAUPIN: And I'm okay with that as long as counsel
23 has time to review it before it gets to the County Board.

24 MR. DON WILKERSON: Right. We can either stop it now and
25 give them another 30 days or however long to look at it or we

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1 can move the process along while they're looking at it.

2 MR. DALE REYNOLDS: I have a question for Brad. So the DA,
3 if it was to be approved and we pass it to the Commissioner's,
4 we wouldn't see that again; is that correct? The conditions
5 would be set.

6 MR. DAVID POOLE: We would be setting part of them. All
7 we're doing is recommending to the Board of County
8 Commissioners. They're going to add, subtract, multiply or
9 divide what they want. It starts here but somewhere we need to
10 give it a boot and keep things moving if that's at all possible
11 and if you're comfortable with that. I suggest we follow the
12 kind of the procedure we did last time and even if it is kind of
13 a consensual motion, to move along so that we don't lose
14 anything here.

15 MR. DON WILKERSON: I have one question for staff. In your
16 letter of August the 5th, you did give us some updates on
17 Exhibit 2 and Exhibit 3 but was there actually any change to the
18 actual boiler plate of the development agreement from what was
19 presented to us last month? We didn't get a new copy of that.

20 MR. BRAD HAWKINS-CLARK: That's a good point. You did not
21 receive that but there were, at the end of the motion from July
22 14th, Commissioner Rouwenhorst added on to the motion two points
23 for the main body. One of those was that there be an annual
24 review of the project. The other was relating to this bond
25 disclosure for a sale. So those did not actually get amended.

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1 So giving you a copy, I think, would just put the whole package
2 together and insert that in your motion.

3 MR. DON WILKERSON: Why don't we just look through the
4 development agreement and see if we have any discussion with it.
5 It sounds like what Brad mentioned, the two recommendations of
6 Debbie's may be included in the document that goes to the Board
7 of County Commissioners.

8 MR. DAVID POOLE: Okay. This development agreement though,
9 in that same point, we do need to make additions or wording for
10 this gravel extraction business.

11 MR. DON WILKERSON: Right but they can go forward and we
12 can make that motion here.

13 MR. DAVID POOLE: Are there any comments, Commissioners,
14 that you would like to make on the development agreement?

15 MR. DON WILKERSON: Maybe Debbie should address those two
16 items that she wanted to see added into it.

17 MRS. DEBBIE ROUWENHORST: On the development agreement, on
18 the boiler plate, the one comment I had made at the July 14th
19 meeting is that we add that there be an annual review. That
20 would be under 3.2, that the Development Services does look at
21 that every year. Then under Section 6, it was taken from the
22 Ada County Development Agreement, their boiler plate, that if a
23 developer transfers any portion of the property to a transferee,

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24 developer shall continue to be responsible for performing the
25 obligations under this agreement as to the transferred property

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1 until such time there is delivered to County a legal binding
2 instrument substantially in the form as attached here unto "an
3 assignment" whereby transferee agrees to perform all conditions
4 of approval and/or other obligations of this agreement
5 applicable to the transferred property as set forth in Idaho
6 Code 67-6511A. No fewer than 30 days prior than entering into
7 the assignment the developer shall submit to the director a
8 draft of assignment conditions of approval and other obligations
9 detailing the obligations to be assumed by transferee pursuant
10 to the assignment.

11 MR. DAVID POOLE: Questions, Commissioners?

12 MR. DON WILKERSON: Any changes that we want to discuss on
13 Exhibit 2? I think that there's where we want to address the
14 gravel pit.

15 MR. BRAD HAWKINS-CLARK: I just remind you that on Exhibit
16 A on the special use permit, it did have a list of conditions.

17 MR. DAVID POOLE: That we can move over to that area.
18 Okay. Good idea. Thank you.

19 MR. WILL MAUPIN: On Exhibit 2, paragraph 1, where it says
20 Titles 11 and 12, where it says Emmett County Code, shouldn't
21 that be Gem County?

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22 MR. DAVID POOLE: Yeah. It's not Emmett County.

23 MR. DON WILKERSON: I thought, at one time, we had in here

24 something about the gravel warp would end at the time of the

25 PUD.

□

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1 MR. BRAD HAWKINS-CLARK: I think that was written in the

2 staff report.

3 MRS. DEBBIE ROUWENHORST: It's under the new Exhibit 3.

4 MR. DON WILKERSON: Okay. Thank you.

5 I would like to see us add to condition of approval for

6 this gravel pit that this gravel pit excavation will cease upon

7 approval of the PUD or within 5 years.

8 MR. DAVID POOLE: So that would be Item Number 17.

9 MR. BRAD HAWKINS-CLARK: Did you say upon approval of the

10 PUD or upon completion of the PUD?

11 MR. DON WILKERSON: It says here add a statement that any

12 gravel extraction shall terminate on approval of the PUD

13 application. That was on the comments from the Merrill's, I

14 believe.

15 MR. BRAD HAWKINS-CLARK: That was in their proposed

16 deletion. Right before that it says to delete.

17 MR. DON WILKERSON: Okay.

18 MR. BRAD HAWKINS-CLARK: Their argument at the last hearing

19 was that there may be a need for continuing some extraction

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20 after Phase 1 or Phase 2 has begun. I don't know if the
21 Commission agreed with that at the last meeting but that was
22 their concept.

23 MR. DON WILKERSON: Okay. I appreciate you bringing that
24 up.

25 MR. DALE REYNOLDS: I have a concern. I was wondering if

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1 we could add to the conditions of the development agreement that
2 a performance bond be issued to the County from the developer.
3 Then at the end of the 5 year term, if there's a big hole in the
4 ground out there, because I understand that the Merrill's can't
5 control whether or not the property sells, so if for some reason
6 it doesn't sell and things go bad, then the County can go back
7 out there and fill the holes in and clean the property up.

8 MR. DAVID POOLE: As far as the Department of Lands, is
9 there a bond required for that very same thing? It seems that
10 if it's already being taken care of through the State, then we
11 don't need to be redundant. So I think that's one thing we need
12 to know whether that's being managed by the State already
13 because I do think they need to bond and have a reclamation
14 plan.

15 MR. BRAD HAWKINS-CLARK: There's a reclamation plan. I do
16 not know whether or not they require a bond with that. I'm
17 sorry. I don't know that. The Merrill's say they do require a

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18 bond.

19 MR. DON WILKERSON: I'd like to go back and again address
20 the length of time they can do gravel excavation. Like you
21 said, we're not going to limit it. They could be taking gravel
22 out of there 20 years from now if you do it phased. Do we want
23 to leave that as an operation that's going to be out there for
24 that period of time?

25 MRS. DEBBIE ROUWENHORST: In the conditions of approval for

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1 the project, the 20 year was deleted and they put a 10 year
2 completion date on it. The PUD, they have up till 5 years.

3 MR. WILL MAUPIN: I have another question on Item 7,
4 Exhibit 2. There was discussion where we had 150 acres of water
5 surface, then 80 acres of water surface, and now there's
6 absolutely no designation of how much water surface we have. It
7 just talks about boats and decibels. Since we're talking about
8 gravel extraction, how much gravel's going out? We probably
9 ought to know how big the water surface is going to be.

10 MR. DAVID POOLE: Do you have any suggestion on how big you
11 think the hole needs to be?

12 MRS. NANCY MERRILL: The reason we did that was because of
13 the language from Mr. Wilkerson. He had said to limit it or
14 take it out or do something with it. We don't have a
15 preliminary plat or PUD, but that's when you will see how much

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16 will be taken out. I don't have an exact number.

17 MR. DAVID POOLE: Okay. You've got a total of 400.

18 MRS. NANCY MERRILL: We've got a total of 400 acres.

19 MR. DAVID POOLE: But, I mean, probably a concept of that
20 is do you want to cover half of it with water? No.

21 MRS. NANCY MERRILL: No.

22 MR. DAVID POOLE: Okay. So is it 20 percent, 30 percent?
23 20 percent is 80 acres. That would leave you 80 percent to
24 sell. It's just a concept is what I'm saying.

25 MR. WILL MAUPIN: I understand your reluctance to commit to

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1 any percentage at this point. I think that moving forward, that
2 needs to be an item that's outlined.

3 MR. DON WILKERSON: But won't it be controlled by us when
4 it comes before us with a PUD?

5 MR. DAVID POOLE: Well, I think with this development
6 agreement, if I understand right, is going to be able to give
7 them the ability to start extracting gravel.

8 MRS. NANCY MERRILL: We can't extract without a plan. So
9 we'd have to have a PUD and a plan. So you're going to see a
10 plan that comes through with where they're going to be and how
11 much it's going to be.

12 MR. DALE REYNOLDS: I make a motion that we refer for
13 approval to the County Commissioners to have this as a

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14 development agreement with the gravel extraction included in the
15 development agreement.

16 MR. DAVID POOLE: So it's a rezone with a development
17 agreement, right?

18 MR. DALE REYNOLDS: Exactly.

19 MR. DAVID POOLE: Anybody want to help him out with the
20 development agreement or you have it hammered out to where you
21 want it to be?

22 MR. DALE REYNOLDS: I think Mrs. Rouwenhorst has that all
23 listed out here.

24 MRS. DEBBIE ROUWENHORST: Going from the staff report on
25 the special use permit that is dated May 12th, 2008 and then it

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1 was postponed July 14th, 2008 SUP-08-001, taking from that,
2 there were site specific conditions of approval that need to be
3 added to the development agreement (1 through 16). I would like
4 to add that with our Ordinances that Gem County has, that
5 minerals, and these are the ones that are not being used for the
6 development, must be removed from the property within 6 months
7 of that time so they aren't just piled up and left there.

8 MR. DAVID POOLE: So 6 months from what time?

9 MRS. DEBBIE ROUWENHORST: They say from time of
10 commencement but they are going to be using it as they go. So
11 there shouldn't be gravel sitting there 6 months after the

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12 project is done; the PUD is finished. So that when the houses
13 are sold, the property, the gravel is used, 6 months after that
14 all the excess gravel needs to be removed.

15 MR. WILL MAUPIN: I'd like to clarify not to include houses
16 sold but infrastructure roads and lots complete.

17 MR. DAVID POOLE: Because it may be a while before the
18 houses are sold. Okay. You wanted to add to that your item
19 that you had a while ago as to the development agreement.
20 You're adding special use agreements to the development
21 agreement; right?

22 MRS. DEBBIE ROUWENHORST: Correct.

23 MR. DAVID POOLE: And then you had that item that you
24 wanted to add to the development agreement, those two items
25 about the boiler plate.

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1 MRS. DEBBIE ROUWENHORST: I already read that.

2 MR. DAVID POOLE: Of course we need to add in here that as
3 long as the development agreement used in this manner is legal
4 as per our legal advisors because I don't think we should be
5 doing anything that's illegal here. Any other additions to this
6 particular development agreement motion that we're working on?
7 Is there a second?

8 MR. DON WILKERSON: I second.

9 MR. DAVID POOLE: Been moved and seconded. More

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10 discussion? If not, all those in favor to recommend this
11 forward to the County Commissioners signify by saying I.
12 Opposed same sign. Motion carries.

13

14 (Motion carries unanimously.)

15

16 PUBLIC HEARING:

17 Item No. 2 - (Continued) Special Use Permit #SUP-08-001

18 -Galan Merrill

19

20 MR. DAVID POOLE: Next item on our agenda is the
21 continuance of the special use permit. I'm not sure how to
22 handle that.

23 MRS. NANCY MERRILL: As applicant, I withdraw the special
24 use permit application.

25 MR. DAVID POOLE: No problem with that; right? She has the

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1 power to withdraw.

2 MR. BRAD HAWKINS-CLARK: Yes.

3 MRS. NANCY MERRILL: Does this motion include the changes
4 under the development agreement that we brought forward tonight?

5 MR. DON WILKERSON: To me, the only changes that we
6 approved is what was given to us by Brad and the underlined
7 statements for Exhibit 2 and 3.

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8 MRS. DEBBIE ROUWENHORST: Did we make that in the motion?

9 MR. DAVID POOLE: If not, add it to the motion because the
10 agreement here is the one that was presented to us by staff.
11 Thank you.

12 MR. WILL MAUPIN: Brad, I have one question. By
13 withdrawing the application for the special use permit, if
14 counsel has different ideas about how we should proceed, can we
15 just table that?

16 MR. BRAD HAWKINS-CLARK: Well certainly. Keeping the
17 application active, I think, the only way to do that is to table
18 it.

19 MR. DAVID POOLE: Okay. Do we have a motion to table?

20 MR. WILL MAUPIN: I motion to table that.

21 MR. DON WILKERSON: Second.

22 MR. DAVID POOLE: All those in favor signify by saying I.
23 Opposed same sign. Motion carries. I'm sorry but we didn't
24 accept your withdrawal.

25 (Motion carries unanimously.)

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2 PUBLIC HEARING:

3 Item No. 3 - Preliminary Subdivision Plat (View Acres)

4 #PP-08-004 - Fred Doriot

5

August 11 meeting

6 MR. DAVID POOLE: Okay. Now we'll move on to the
7 preliminary subdivision plat for View Acres. Did you want to go
8 over it again, Brad, before we start?

9 MR. BRAD HAWKINS-CLARK: It's up to you, Mr. Chairman.

10 MR. DAVID POOLE: Well, the applicants right here. Why
11 don't we let him go ahead while you're getting set up?

12 MR. FRED DORIOT: My name is Fred Doriot. I am the
13 applicant for 4505 County Line Road. I agree with everything in
14 here except the letter from the County Engineer. He says that
15 so long as the portions of the property is reclassified as a
16 hillside and the portions of property which possesses a slope of
17 10 percent or greater are permanently restricted from building.
18 I read through the code and I can't find this anywhere. If
19 Vivian Doriot wishes to sell this piece and she has to go
20 through the hydrology, the geology and everything, it's
21 estimated at close to \$15,000 before you can sell it. Now let's
22 say the person buys this property and he doesn't want to build
23 on the hill, why should she have to pay for that? If the person
24 buys this property and wants to build on the hill, he should be
25 able to pay for that study.

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1 MR. DON WILKERSON: But have you seen a note in here from
2 the staff that when you develop a subdivision, it's the
3 developer that provides the roads, the lots, etc.; not the

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4 builder. This is still a subdivision whether it's 2 lots or 200

5 and the developer is to provide the building lots.

6 MR. FRED DORIOT: Okay. If she sells that, that means

7 she's providing a building lot.

8 MR. DON WILKERSON: No. The building lot is ready to build

9 on.

10 MR. FRED DORIOT: All right. The only thing I would like

11 to eliminate is the word permanently. Let's say someone wants

12 to buy the property and build a house up on the hill, then they

13 say I won't buy it because I can't build.

14 MR. DON WILKERSON: It also says in here that if you don't

15 want to provide building envelope or whatever, then the studies

16 need to be done now and not later.

17 MR. DON WILKERSON: He's stating it's one way or the other

18 and there is a good reason for that. The whole piece of

19 property probably needs to be taken under consideration when you

20 do these building envelopes.

21 I'm not trying to argue the point, it's just that we should

22 follow through with, if it's reasonable, the recommendation from

23 the people that we pay.

24 MR. FRED DORIOT: I've been an architect for 35 years and

25 I've never heard of anything like that. Why should she spend

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1 the money to get the hydrology reports and studies and the

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2 person that buys it says I don't want to build on the hill?

3 Then she has waisted her money because somebody read something

4 in here from an engineer that says permanently.

5 MR. DON WILKERSON: It's not just strictly from the

6 Engineer. It's also from our requirements as the County.

7 MR. FRED DORIOT: Where does it say that? Where does it

8 say that it has to be done before that property is sold? It

9 says before a building permit is issued.

10 MR. DAVID POOLE: Do you see a problem with policing an

11 issue like that?

12 MR. BRAD HAWKINS-CLARK: I don't think it's so much of a

13 policing matter. It's the ordinance. I don't know any way

14 around it. Everything related to the timing is in the

15 Subdivision Ordinance, which the person subdividing land follows

16 the Subdivision Ordinance and a builder follows the Building

17 Code.

18 MR. DAVID POOLE: Well it's a point well taken. It's just

19 the Subdivision Ordinance, in this case, and our engineer

20 suggests we should follow that direction. At this point,

21 without legal advice for the next step, I would have to say well

22 I just have to wait and see what they say because I am not the

23 power to be here. I would want to continue it until I hear what

24 our Attorney has to say about it? Is there anything else you

25 want to discuss?

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1 MR. ROGER BENNIE: Roger Bennie, Tri-County Surveying. We
2 took some wording directly from Ada County, where the building
3 in that area was restricted until it met County approval. Our
4 County Engineer said no, it will be permanently done. He didn't
5 even want to go with Ada County and you know how Ada County is.

6 MR. DAVID POOLE: Now, Brad, are there comments from staff?

7 MR. BRAD HAWKINS-CLARK: I could go through to show you
8 more of the site. You've read the staff report and you've heard
9 their concerns. What direction would you like to go?

10 MR. DAVID POOLE: Do you want to see the slides?

11 MR. BRAD HAWKINS-CLARK: We'll just quickly go through so
12 you can know what you're making a recommendation on here. Just
13 as a reminder, as a standard subdivision, this is a
14 recommendation to the Board of County Commissioners.

15 (Mr. Hawkins-Clark showed and explained some site photos.)

16 MR. BRAD HAWKINS-CLARK: The proposed access would be
17 directly off of County Line Road. There is an existing access
18 that serves the Doriot's house that comes along farmers canal
19 and is a shared with a cross access easement with another
20 property owner to the west.

21 There's one change that I would point out. This plat shows
22 40 foot of right-of-way dedication along County Line Road. You
23 can see the 40 right there. I did not catch that the first time
24 but that only has to be 30. So there would be 10 feet of

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25 property that would go back into lots 1 and 2. So other than
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1 that one change to Exhibit B, we would add to change the map to
2 reflect a 30 foot as compared to a 40 foot. That would be the
3 only change that I have.

4 MR. DON WILKERSON: The building envelope that they show
5 here, is that the high side of the property?

6 MR. BRAD HAWKINS-CLARK: No, it's lower.

7 MR. DON WILKERSON: So there's a hump in it then. One
8 other item I didn't see in your staff report, have you looked at
9 anything like the shared driveway? They mentioned they can't
10 use that 40 foot easement there to access lot 2.

11 MR. BRAD HAWKINS-CLARK: I think that a shared driveway
12 would be possible. I, typically, don't require the shared
13 driveway on a local because your speed limits are reduced
14 compared to a collector or arterial. We don't have a spacing
15 requirement in the County Code to back that up.

16 MR. DON WILKERSON: Thank you.

17 MR. DAVID POOLE: Any other questions for Brad?

18 MR. WILL MAUPIN: I have just something I'd like to discuss
19 with you to get your input. This soils and hydrology issue on
20 these lots, would it be feasible to put a deed restriction on
21 those lots saying we can't build in the 10 percent zone unless
22 you provide soils and hydrology reports that are acceptable by

August 11 meeting

23 Gem County?

24 MR. BRAD HAWKINS-CLARK: Well, I think that's a viable

25 avenue for policing it, but what you just said still puts the

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1 onus on the buyer, which on other hillside subdivisions in Gem

2 County in the past, we have told the subdivider give us the

3 reports. So now you're saying no, don't give us the reports.

4 To me, that's not fair to the other subdividers that have

5 already come through the process and paid the money to do the

6 reports. The code says if you want to restrict it, you don't

7 have to do the reports even though it's a hillside subdivision,

8 but you have to restrict it. So the option is there. It's one

9 or the other. The concept of the Subdivision Ordinance is that

10 you're subdividing land, you create building lots. You address

11 every need within a building lot that the Subdivision Ordinance

12 asks for.

13 MR. WILL MAUPIN: But if you envelope the 5 acres to

14 designate the building lot on the plat and it's outside the 10

15 percent, then you've provided a building lot.

16 MR. BRAD HAWKINS-CLARK: That's right.

17 MR. WILL MAUPIN: And if you want to put a deed restriction

18 on the deed that says if you want to build in the 10 percent,

19 you have to provide, as the buyer, the hydrology.

20 MR. DAVID POOLE: So you're putting an envelope so you've

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21 got a building lot and then what you're doing, as the buyer, if
22 they want to go outside that envelope, they're going to have to
23 pay for it and their full aware of it. So again, I think that's
24 back to, probably because the way the Ordinance reads, I think
25 we should get some advice from our counsel on that before we

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1 make that determination.

2 MR. WILL MAUPIN: I make a motion that we continue file
3 number PP-08-004 until September the 8th so we can get legal
4 input on whether we can do a deed restriction and envelope the
5 lots or if the term "permanently restricted", noted in Keller
6 and Associates letter, is enforceable or not.

7 MR. DON WILKERSON: I'd like to add: Or that the Ordinance
8 will be followed as written.

9 MR. WILL MAUPIN: Okay.

10 MR. DAVID POOLE: Do we have a second to that motion?

11 MR. DALE REYNOLDS: I second it.

12 MR. DAVID POOLE: Discussion on the motion? If not, all
13 those in favor signify by saying I. Opposed same sign. Motion
14 carries.

15

16 (Motion carries unanimously.)

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18 REGULAR MEETING:

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19 Item No. 1 - Items from the Public

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21 (No Items from the public.)

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2 REGULAR MEETING:

3 Item No. 2 - Items from the Planning Director/Administrator

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5 MR. DAVID POOLE: Okay. Items from you, Brad.

6 MR. BRAD HAWKINS-CLARK: I guess I'll pass.

7

8 REGULAR MEETING:

9 Item No. 3 - Items from the Deputy Prosecuting Attorney.

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11 (Deputy Prosecuting Attorney not present.)

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13 REGULAR MEETING:

14 Item No. 4 - Items from the Planning and Zoning Commission

15

16 MR. DAVID POOLE: Items from the Zoning Commission.

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17 MR. DON WILKERSON: Do we want to consider not having a
18 meeting in December because the by laws says we don't have to
19 have a meeting every month. My suggestion is we leave it up to
20 the staff because they know what the work load is. The only
21 reason I'm bringing it up now is to give them time to make
22 adjustments.

23 MR. BRAD HAWKINS-CLARK: Right now it's looking pretty
24 good.

25 MR. DON WILKERSON: I just thought it would give us a

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1 break. So we'll leave it up to staff to make a decision if that
2 can happen.

3 MR. BRAD HAWKINS-CLARK: Just a reminder on the Zoning
4 Ordinance Amendment, thanks to Don, Dale, and Debbie for being
5 there. We've got another one on the 26th and we'll finish our
6 discussion. Terri will be here and probably wrap that up and go
7 for a public hearing.

8

9 REGULAR MEETING:

10 Item No. 5 - Adjourn

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12 MR. DON WILKERSON: I'd like to make a motion that we
13 adjourn.

14 MR. DAVID POOLE: Motion carries.

August 11 meeting

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