

FREMONT COUNTY PUBLIC HEARING
Draper Appeal of Class II Residential Lodging Permit for Richard Horner

Date: 3/10/11

Time: 3:00pm

Location: Annex

Attended by: Commissioners Skip Hurt, Lee Miller, Jordon Stoddard

Also attended by: Clerk Abbie Mace, Deputy Clerk Cathy Conger, Hearing Officer Blake Hall, Planning and Building Administrator Stephen Loosli

Commissioner Hurt called the hearing to order at 3:05 p.m. and welcomed the public.

Commissioner Hurt introduced those in attendance.

Hearing Officer Blake Hall

Hearing Officer Hall welcomed everyone. The purpose of the hearing is to provide for public comment. Hearing Officer Hall asked Clerk Abbie Mace if proper notice had been given and she stated that it had.

Hearing Officer Hall asked if any of the commissioners have a conflict of interest. Commissioner Miller responded no; Commissioner Stoddard responded no; Commissioner Hurt responded no.

He gave a guideline of how the hearing will proceed. He explained that the public comments will be kept to five minutes each. He will give a signal as they get down to one minute. This is the time and place for the hearing as advertised. Hearing Officer Hall read through the sign in sheet for those in attendance.

Planning and Building Administrator Stephen Loosli gave the staff presentation. Mr. Loosli outlined the information that has been given to the commissioners, the applicant and the appellant. This Planning & Zoning permit has been suspended due to the appeal action.

Hearing Officer Hall submitted Administrator's Binder as Exhibit 1 at 3:09 pm.

Hearing Officer Hall explained that opening comments would be given by the appellant and the applicant and would be limited to 25 minutes each.

Opening Comments:

Dede Draper (3618 Highway 32, Ashton, ID)

We have submitted our case thoroughly in the binder. They were given a cease and desist order. The incompatibly is the same as it has been. There were three errors on the previous hearing with scoring of -9 instead of a -15 as it should have been. Over President's Day weekend the barn was rented to a large group of snowmobile users.

(Submitted Exhibit 2) A sewer system is designed for a certain amount and if that is over run it will go into the soil. The sewer structure is for agriculture use. They have increased this already large building to an even bigger commercial building. They believe that this should be grandfathered in because it has been there so long. The use is vastly different than what it was originally planned for. She has two yurts but they have never rented them out. They were put there so that they did not need to build onto their house. There are at least four families that own this structure. There are people hanging off the desks and it is family reunion after family reunion.

Development of other property uses should not interfere with other agricultural purposes. They have never recorded an easement. They have recently recorded an easement however it is provisional on this hearing. This lodge is development of other uses. At one meeting the commissioners found that there is inconsistent land uses. The application fails to comply. No development should put light on other property lines. The proposed height is not compatible with other neighboring uses. This has nothing to do with the age of the structure. The prior scoring on this is a -1. Applicant structure is larger than neighboring structures. The purpose of the development code is for compatible uses. Activity level compatibly should be a minus 2. The BOCC stated that it is likely that the activity level and noise level would be higher than the neighboring livestock use. John Grube offered into evidence that the North Fremont Fire District no longer opposes the application. There is still not appropriate firefighting equipment.

The purpose is to provide opportunities for businesses that are compatible with current uses. The units are to be subordinate to neighboring dwellings. The intent for this building was to have it as a bed and breakfast. Access requirements are explained as independent and approved access should not include shared driveways. There is no consent for shared driveway use. The Sharps do not have access without going through that road of which they have the easement on.

Hearing Officer Hall questioned if the noise and light would have the same impact if only the families of the four owners used it. Ms. Draper stated that without changes to light fixtures it would.

Hearing Officer Hall questioned if the height is compatible with a single family dwelling. Ms. Draper stated that it is allowed but it is not compatible.

Hearing Officer Hall questioned if part of her concern is that they will rent to more than thirty. Ms. Draper stated that it is and this is based on the internet advertising for 60 or more.

Hearing Officer Hall questioned how close her house is to her property line. Ms. Draper showed a map that has a grid to show the dimensions of her property and buildings. They have kept parts of their land for wildlife habitat, and pasture. Fall River Lodge is approximately 30 feet from her property line.

Ms. Draper submitted the following exhibits:

Rental agreement submitted as Exhibit 2 at 3:11 pm
Written presentation submitted as Exhibit 3 at 3:11 pm
Poster of Fall River Lodge & photo's submitted as Exhibit 4 at 3:11 pm
Testimony of Gerald Williams submitted as Exhibit 5 at 3:11 pm

Mark Harbaugh (3618 Highway 32, Ashton, ID)

We looked at property for 3 years before choosing this area. Our business goats have grazed over 30,000 acres. We have lost numerous goats to wild animals and we need guard dogs. We have established our own insectaria. We have been involved in releasing beetles. This property next door is the result of 3 illegal lot splits. The applicant wants a commercial lodge business. I know the applicants have portrayed themselves as going out of their way to appease us. Our fear is that the barn will fill the building with 60 or more people there. They received a permit for a single family dwelling and they increased the size considerably. They have drastically changed the environment that is designed for a different use. It is invasive and noisy. We are concerned about our property rights. It has become very apparent how incompatible it is with the agricultural area. They state that they don't rent to snowmobilers. It is like living in a fish bowl as our operation is in full view. We are afraid to leave our property at times because of the crowds at the barn. We use headlamps and headlights to check on our animals. It could appear that we are shining lights into the barn. They have repeatedly left lights on.

Hearing Officer Hall questioned if trespassing is a huge problem and if they have posted no trespassing signs. He also questioned if they have called the sheriff. Mr. Harbaugh responded that it is a problem and they have called the sheriff.

Hearing Officer Hall questioned if he had made a note as to the specific number of people that were renting it over President's Day weekend. Mr. Harbaugh responded that he did not count the number of people that were there but it was close to thirty people.

Mr. Harbaugh submitted the following exhibits:

Written testimony submitted as Exhibit 6 at 3:45 pm
Power point was submitted as Exhibit 7 at 3:45 pm

Marvin Smith (591 Park Ave., Idaho Falls, ID)

Permits have already been issued in this area and they have filed the appropriate easements. There is a letter from the Smith's which details the furniture making operation they had since 1996, which would be an industrial/commercial use. The rental agreement for applicants states no pets, no climbing fences, a curfew time, and snowmobile guidelines. The septic system was professionally engineered by Mr. Williams. We have an unrestricted granted easement for the right of way. There are no restrictions on it.

Mr. Smith submitted the following exhibits:

Deed was submitted as Exhibit 8 at 3:48 pm

Letter from North Fremont Fire District as Exhibit 9 at 3:48 pm

Hearing Officer Hall questioned how Fall River Lodge ensured enforcement to the contract. Mr. Smith stated that there is an on sight manager and he will enforce an immediate eviction. Additionally they will lose their security deposit.

Hearing Officer Hall questioned if those that are harmed, the neighbors, receive any monetary benefit. Mr. Smith stated that they do not unless they sue for nuisance.

Richard Horner (3848 S 4413 W, Rexburg, ID)

We have complied with the order to not rent out to short term renters. We have fulfilled all the requirements except for the sewer expansion. We have already paid for an engineered sewer system and District 7 Health has told us we could move forward. We have never had a problem with the sewer system. He explained the process of getting an engineered sewer system. We have put our retirements into this property, over a \$100,000. The recession has negatively affected our business. We have done all the due diligence to ensure that it was sound.

In October 2005 there was a lot split for a single family permit. Our offer for the property was conditional depending on lot split. The lot split was received December 21st. In January 2006 they talked to Jon Laux about permits. The new permits required decks that were not originally planned. In August 2006 they requested a Class II permit. Mr. Laux was instructed to red tag the building and later in 2006 he removed the red tag. The barn was commercially used prior to their purchase.

We have the sewer pumped every year and were told that we do not need it that often. The Fremont County Planning and Building staff have told him that they were being singled out and told to make an example of them.

They were told that they can rent tentatively. Except for a few months we have been renting on a Class I permit. We have never used it as a bed & breakfast. We have never lived in it. We do not rent to more than 30. Our water system is not deficient. The pump failed five years ago and it was replaced. We do not rent out to wild parties. We have had one party that was out of control and that was shut down. We have property managers next door and they can be there in 15 seconds. If the renters cause a problem they lose their deposit. County building inspectors have stated that it is one of the safest in the county due to the amount of exits. We are going to reduce to 30 – we have had around 40. It is three floors and 37 feet tall. We have bent over backwards to accommodate the neighbors. The cabin next door borders the Harbaugh property and has been rented by Harbaugh to more than it was capable of. The previous wood shop has had loud noise and numerous employees.

Hearing Officer Hall questioned if there were more than 30 beds in the building. Mr. Horner stated that there are 7 bedrooms and the loft is open. There is a queen bed in each of the rooms and 16 single beds in the loft.

Hearing Officer Hall questioned if he had ever rented to more than 30. He had indicated that they have not rented since the cease and desist. There is proof that they did. Mr. Horner stated that it was his understanding that he could rent for more than a month and he did so for a month at a discount but for more than the regular rate.

Hearing Officer Hall questioned what assurances are there that this permit would not be violated. Mr. Horner stated that he has already denied some requests for use and understood that they would use it for more than 3 days. He has not asked his onsite manager.

Hearing Officer Hall questioned if they have tried to modify the lights. Mr. Horner stated that the one light is on the top deck and is a 60 watt bulb, the flood lights are turned down, and the 10:00 pm curfew means outside lights are off.

Hearing Officer Hall questioned the wild parties. Mr. Horner stated that there was one and it was dealt with.

Hearing Officer Hall stated that the staff report disagrees with Planning & Zoning on compatible use. Mr. Horner stated that there are other cabins in the area as well as one right next to us that borders the Harbaugh property. The Harbaugh's use their property for commercial use besides the goats. The woodworking shop was much noisier than what they have.

Hearing Officer Hall questioned if they had rented prior to the cease and desist. Mr. Horner stated that there has been 48 renters over four years. It fills up from June to August and spotty before and after. On the 48 times it was rented it was usually 20 people and the highest has been 44.

Hearing Officer Hall questioned the current lease agreement which shows a capacity of 60. The most recent execution for this lease was on March 2011 and appears to be unlimited. Mr. Horner stated that this was changed and the form was never amended to reflect that change.

Hearing Officer Hall questioned them having more than 30 people if it is over 30 days. Mr. Horner stated that he was told by Planning & Building that this would be okay.

Written comments were submitted as Exhibit 10 at 4:00 pm.

Val Christensen (430 S 3rd E, Rexburg, ID)

Commissioner Hurt questioned who told him that they were to make an example of them. Mr. Christensen replied that Kurt Hibbert told him that and he said that he would stand by that statement. He stated that his bosses told him to do that.

PUBLIC COMMENT:

Marianne Christensen (430 S 3rd E, Rexburg, ID)

She has been up there on two occasions where she has been frightened by Mr. Harbaugh. One evening her and her friend were playing flashlight games when they saw him standing with a light in the window. Another occasion it happened to her aunt and she saw a man with binoculars. It was later identified as Mr. Harbaugh.

Rick Wadholm (2760 W 1000 N, Rexburg, ID)

He is one of the owners of the property and has been involved since the beginning. His personal experience with this project has been very positive. He has never seen any problems that have been presented. He reviewed the letter submitted by Mr. and Mrs. Bennie Smith of Fall River Furniture. This relationship was troublesome before we started the project.

Jeff Dufault (1605 Ashton Hill Loop, Ashton, ID)

He is representing Smart Growth. This property has been split 17 times. It is indicative of not enforcing standards. The impact on the land is negative. The traffic is in excess of what would be normal for agricultural use. They rent two to three times a year. The size and amount are very limited compared to this type of rental. This is much more like a hotel operation.

Letter from Jonathon Stiehl was submitted as Exhibit 11 at 4:41 pm

Hearing Officer Hall stated that these lot splits were approved prior to this commission. He questioned if anyone objected to these lot splits. Mr. Dufault stated that it was more a point of showing the slow drift that happens when you don't follow the law.

Dave Burk (717 Whittier, Idaho Falls, ID)

I used to rent a home in this subdivision. We have been taking care of the snow plowing for this property. All the times that we have been there we have not seen any problems. He has had some problems with Mr. Harbaugh.

Damon Burke (Box 242, St. Anthony, ID)

He tries to be a helpful neighbor. Mr. Harbaugh has tried to take him to court for shooting a ground squirrel. He told him that he would drop the issue if he didn't take sides with those people. Mr. Harbaugh wants their privacy and at the angle it does restrict their privacy. He plows regularly and all the way to the front door and back out. There was one time when they have had over 20 cars in the lane and prevented him from getting to his house. This is a personal issue that Mark Harbaugh has.

Kyle Baldwin (957 N 3600 E, St. Anthony, ID)

He is affected the most by this. He is the caretaker of the Lodge. If there was anything that is a problem with this application he would be the first to object. They are able to screen the renters. He hears more noise from Mark Harbaugh and Dede Draper yelling and swearing at their dogs than he does from the renters. There is another neighbor

whose home is bigger than the barn. The neighboring cabin is also bigger than the barn. Septic is pumped every year. When there is a problem they call him. He has done all the work to try to accommodate Mr. Harbaugh. As soon as he was aware of the parking issue he made changes to the plowing schedule. This was fixed the very next morning. That was the first and only time that there was a problem.

Commissioner Hurt asked if he had lived there prior to the barn. Mr. Baldwin explained that he moved there in 2006.

Commissioner Hurt asked if he has ever had to go over to calm people down. Mr. Baldwin stated that he has not. His number is the one posted outside the barn and the neighbors have his number for complaints.

Kim Ragotzkie (580 Maple Leaf Circle, Ashton, ID)

She stated she was speaking as an individual not representing any group for this hearing. This is not compatible land use next to an agricultural operation. Some of the large groups that have been observed on the Harbaugh property are groups for noxious weed control and RC&D.

Curtis Loosli (Ashton/Idaho Falls, ID)

He has 160 acres across from the property in question. He is concerned about all of the return visits and the number of strange people coming to this area.

Hearing Officer Hall asked if he has any instances of trespassing or vandalism. Mr. Loosli stated that he has had trespassing by fishermen but no vandalism. He has observed the trespassing.

Jay Garrett (1650 Last Resort Lane, Ashton, ID)

He believes that the barn is not compatible with the area.

Submitted a letter from Bill Klyn as Exhibit 12 at 5:10 pm

David Grimes (3496 E 1000 N, Ashton, ID)

He has worked for the Harbaugh's for a number of years. The things that they are saying are true. He has had personal experience seeing this. The building is so close to the goats. The people are there to have fun but it is just not compatible. He has seen fire works on the grounds and in with the goats. They do like their privacy as anyone would. He has never had any problem with the owners of the barn either.

Garth Blanchard (1618 W Ashton Hill Loop, Ashton, ID)

He has no ownership interest in the barn or any interest in the conflict between the neighbors. He is asking the commissioners to apply the rules that we have agreed to live by. This property has repeatedly been scored negatively.

Submitted his written comments as Exhibit 17 5:17 pm

Doug Hillam (1342 N 3650 E, Ashton, ID)

The Planning & Zoning went through their scoring very clearly. Not once were the people ever mentioned. He was disappointed that there was not more consideration of the people on the other side of the barn.

Jan Neish (472 Idaho Street, Ashton, ID)

There is obvious incompatibility of buildings. It is a major impact on the area. As a barn it was fine but it is no longer used as a barn.

Submitted letter from Jason & Laura Allen as Exhibit 13 at 5:25 pm

Jay Price (2938 S 2810 W, Rexburg, ID)

He feels that they have taken every possible avenue to comply. He feels that this is a fight between neighbors. It was his daughter that held the party and they have made the preparations to ensure that it does not happen again. He has heard testimony about where the Harbaugh house is in relation to the barn. There is a great deal of space between their home and the barn. It boils down to incompatibility between neighbors.

Submitted picture of view from the deck as exhibit 14 at 5:29 pm

Val Christensen (430 S 3rd E, Rexburg, ID)

He pointed out that there is a building between the barn and their house. He is the one that took out the permits. He considers 400 goats as a commercial use. They are a step down from the wood working business that was there before. We are the ones who are continually harassed. He placed the goats right next to a human occupied building. The building is 37 feet high.

Submitted written comment as Exhibit 15 at 5:33 pm

Dan Whitmore (561 Maple Leaf, Ashton, ID)

He has worked with the Harbaugh's and is in support of them.

Kathy Sharp (554 Highland, Ashton, ID)

She has been a lodge employee since 2007. It is a very clean establishment with a very family oriented environment.

Katherine Baldwin (957 N 3600 E, Ashton, ID)

We talk with all the renters. They are families and church groups. The other rental is Tom Costello. She is his sole cleaner and his cabin is rented 5-10 times a year. It is always kept up. He has had renters that have been very rough and as a manager of the lodge we have not had those problems. From Tom's cabin she can see the yurts. Smart Growth has an ad for the yurt to be rented. She has seen people there all the time. She spends a great deal of time with the renters and encourages them to visit the area. She does not hear the tenants from the barn however hears the dogs all the time.

Submitted Smart Growth flyer as Exhibit 16 at 5:40 pm

Brody Harshbarger (4579 E 1000 N, Ashton, ID)

There needs to be some give and take on this issue. He has a similar problem with his neighbors. There are valid points on both ends. He is a big fan of agriculture but change is inevitable. This isn't an ideal situation but this is how it is. It is not feasible to just throw the money away. He enjoys the barn whereas before it was an eye sore.

Hearing Officer Blake Hall closed the public comment portion of the hearing.

Closing comments:

Marvin Smith (591 Park Ave., Idaho Falls, ID)

Compatibility is obviously the issue. They have complied and the prior use will dictate what is asked for. They came and tried to do it right and were given specific direction on what to do. The decks are a result of those directions. Safety levels would be the same if it were a family. There are alternative forms for that issue. There needs to be some consideration.

Commissioner Hurt asked if the goats were present when the original permit was issued. Mr. Smith stated that the goats were intermittent.

Richard Horner (3848 S 4413 W, Rexburg, ID)

No one is perfect but he knows that we can do better. He will personally sit down with them to compromise.

Dede Draper (3618 Highway 32, Ashton, ID)

They rented the barn for five weeks while they were still under the cease and desist. The yurts were a donation for Smart Growth Fund Raiser. The goats were there in 2004, spring of 2005. We were never consulted about mitigating their impact.

Mark Harbaugh (3618 Highway 32, Ashton, ID)

They state that they have adjusted their watering to accommodate me. He called the ditch rider who said that they had water rights but did not order water and was sucking the wells dry.

Written comments would have to have been submitted 5 days prior to the hearing at the County Clerk's Office.

The hearing was closed at 5:56 p.m. by Mr. Hall.

Commissioner Hurt stated that they have 60 days to make a determination.

Commissioner Hurt thanked everyone for the comments and their attendance.

There being no further business to come before the board, the hearing was adjourned.

Skip Hurt, Chairman
Fremont County Commission

Attest: _____
Abbie Mace, Clerk

Exhibit List

Draper Appeal of Class II Residential Lodging Permit for Richard Horner

Held March 10, 2011

- Exhibit #1 – Administrator’s binder
- Exhibit #2 – Rental agreement
- Exhibit #3 – Ms. Draper’s written presentation
- Exhibit #4 – Poster of Fall River Lodge & photo’s
- Exhibit #5 – Testimony of Gerald Williams
- Exhibit #6 – Mr. Harbaugh’s written testimony
- Exhibit #7 – Power point
- Exhibit #8 – Deed
- Exhibit #9 – Letter from North Fremont Fire District
- Exhibit #10 – Mr. Horner’s written testimony
- Exhibit #11 – Letter from Mr. Jonathon Stiehl
- Exhibit #12 – Letter from Bill Klyn
- Exhibit #13 – Letter from Jason & Laura Allen
- Exhibit #14 – Photo from deck of lodge submitted by Jay Price
- Exhibit #15 – Written testimony from Val Christensen
- Exhibit #16 – Smart Growth flyer submitted by Kathryn Baldwin
- Exhibit #17 – Written comment from Garth Blanchard