

Public Hearing
Appeal Hearing for Shadow Ridge at Stephens Ranch
January 9, 2007
Fremont County Courtroom, St. Anthony, Idaho

Present for the hearing were Commissioners Paul Romrell, Commissioner Don Trupp, and Commissioner Skip Hurt.

Also in attendance were County Attorney Karl Lewies, Planning & Building Administrator Jeff Patlovich, Clerk Abbie Mace, and Deputy Clerk Suzanne L. Bagley was present to take minutes.

Hearing Officer Trent Grant opened the meeting with introductions and explained the hearing process.

Trent Grant read the Public hearing notice of Appeal of a Class II Permit. Mr. Grant explained that this a denovo case.

Mr. Grant asked Clerk Mace if the notice had been properly posted and she stated yes. Mr. Hopkins and Mr. Homer both stated that they had no objection to the notice as it had been posted, and both councils waived any claims to the notice.

Commissioners were asked if they had any conflict of interest.

Commissioner Trupp stated no.

Commissioner Hurt stated no.

Commissioner Romrell stated that he ran cattle on the ranch from the mid 1980's to the late 1990's and has no financial interest or conflict in this matter. He asked if anyone had any objection to him. No one had any objections.

Planning & Building Administrator Jeff Patlovich made statements as to the information received by the board of County Commissioners. Mr. Patlovich next explained his score sheet and the score of the Planning & Zoning Board of a +4. Mr. Patlovich referred to a letter from Idaho Department of Fish & Game that came in after the hearing was closed. Mr. Patlovich state that Attorney Mr. Lewies allowed the letter into the Planning & Zoning record. A letter was also received from the Forrest Service & the large scale development study preformed by Forsgren & Associates.

Commissioner Hurt asked for a more detailed location and the nature of the location on the proposed subdivision.

Mr. Jeff Patlovich explained the acreage and the location in more detail.

Hearing Officer Trent Grant turned the time over to counsel for the appellant of the developer, Charles Homer.

Mr. Mike Vickers who is being represented by Attorney Charles Homer will be allowed two hours to present information. Mr. Homer introduced the following experts to speak

on behalf of the developer: Mr. Ray Finch Mr. Charles Brockway, Hamilton Smith and Mr. Tom Campbell, Chris Park from Schiess & Associates.

Mr. Homer explained the reason for their appeal. He stated that after the public hearing was closed comment was received in a letter from the Department of Fish & Game with recommended conditions. They felt that the conditions of the Planning & Zoning Board were almost word for word from the letter that was received from the Fish & Game.

Mr. Homer stated that even though they did appeal the decision of the Planning & Building they will demonstrate that they have complied with all the decisions. In reviewing the conditions refer to tab 12 # 9 on wildlife, and the question they have is what is required from the developers. This was asked after approval of maps. #11 questioned what they want to comply. Mr. Homer stated that the materials received from his office were read and studied. He wants it clear in the record that they have met the burden of proof .

Mr. Homer introduced the order of the expert's testimony as follows:

Water Quality-Charles Brockway from Brockway Engineering submitted two reports on water quality. Mr. Brockway concluded that there is adequate water for the project and also prepared a report on erosion control and felt that this is one of the reasons they felt that they have gone above and beyond the requirements.

Wetlands- Mr. Ray Finch did a wetlands delineation study and made a written report. A letter from the core of engineers and the State of Idaho stating that there are no wetlands in danger and they feel that they have complied with the requirements.

Fire Protection- Mr. Homer stated that they have gone above and beyond to prove that there is adequate water. Mr. Finch will give a more detailed report.

Mr. Finch explained water to fight fires. It was also proposed restrictive covenants to address fire protection. Convents are not required to address fire protection, but they stated that they have done this. He also stated they have met with Representatives from the North Fremont fire District to address any concerns that the Fire District might have.

Minutes from the Planning & Building Meeting are enclosed in the packet. North Fremont Fire District Representative Mr. Dean states there are no problems.

Mr. Homer stated that there will be a \$7,500.00 contribution to the fire district it will be used in help build a satellite fire station near the project.

Mr. Homer stated the main concerns with the project seem to be wildfire protection and the condition of the Fish Creek road.

Wildlife Protection is a concern and they have tried to address, and feel that they have gone above and beyond the requirements of the code. Mr. Homer stated that they were surprised that the Planning & Zoning had put so many terms and conditions, where the development is not in any critical wildlife habitat area as defined by Fremont County Development Code.

They have commissioned a study by Mr. Campbell addressing wildlife and have tried to address these concerns. He stated exhibit B of the restrictive covenants is a wildlife protection plan.

He also made comments about the creeks as a natural resource. They have provided set backs from the creeks greater than the code requires. Mr. Finch will show a map of these set backs in his presentation.

He stated that the Fish & Game letter suggested that this is a major wildlife corridor, but this is not indicated in the Fremont County Code. Mr. Homer stated he will present a letter from the Stephen's Family stating that historically this has not been a wildlife corridor. They have taken a portion of the lots as more open spaces to address the concerns of Fish & Game.

He stated that items 8, 9, 10, and 11 of the Planning & Zonings conditions have been addressed.

Forsgren and Associates have completed large scale development study. They have been up front with what they want. Mr. Homer feels there has been a lot misinformation. He summarized the study which is included in the packet presented today. The study was done to evaluate the impact on the county.

Mr. Homer stated that Idaho Code requires ordinances on impact fees before they can be required. Fremont County does not have these ordinances in place. He feels the county can't legally impose fees to the development.

Mr. Homer stated that they are voluntarily donating \$75,000.00 toward the building of a fire station.

The Study by Forsgren and Associates indicated the developer's portion to improve Fish Creek Road would be \$85,000.00. The developer has agreed to donate that amount to be used to improve Fish Creek Road.

The Forsgren Study is not an analysis of the safety of Fish Creek Road. The road currently has a failed status for road condition. Fish Creek road is a failed road not a safety issue. There are several things that can be done to improve the road.

Fish Creek does have adequate service by the Forsgren Study. Fremont County Development Code article 7 JJ states safe all weather access to subdivisions are required. Mr. Homer stated the County does not have "safe" defined in the codes. Mr. Park from Schiess & Associates will give his definition on what is deemed safe.

Mr. Homer referred to a study done by Rudd and Company to indicate tax base increase to the county; that the development will pay its share of the tax burden.

Mr. Homer stated that they have tried to lessen the burden to the county by indicating to the potential buyers through the protective covenants in tab 19 page 9 of the developers packet. They are letting the public and potential lot buyers know up front of the road issues of Fish Creek Road.

They believe this is a first class project and they would like the commissioners to approve this project.

Mr. Grant asked for a 10 minute break.

Ray Finch from Mountain View Surveying licensed in the State of Idaho presented the project maps to identify wetlands and slopes of the property. Mr. Finch stated that they are proposing 179 lots and there are two phases. The North section phase 1 has 100 lots with community well and individual septic. The phase 2 will have 79 lots with individual wells and septic. There is wildlife easements included and the wetlands will have a bridge. These permits have been granted from the corp of engineers and there are approximately 33 acres of open space. He indicated roads for emergency access on the map. These will be gated and will only be used in the event of an emergency. In phase two there is a road and they have been granted the easement also only for emergencies.

The utilities will be underground. They have conducted 8 septic test sites on the property. Owen McLaughlin from District Seven has given his approval for the individual septic systems.

There will be a turn lane off Fish Creek Road in addition they will have four detention ponds to catch runoff to work as a filter into fish creek. They have a drainage study done and will install a 10,000 gallon water storage tank for fire fighting.

They will clear down timber and have a 30 ft defensible space around buildings for fire suppression, and they will have a central water system for phase 1 with 6 to 8 hydrants with pumping capacity of 100 gallons per minute, also sumps at Fish creek to draw from the creek. They will clear the canopy to 14 ft around homes for fire truck access.

The original plan had 100 ft set backs from Fish creek and now they will have 150 ft setbacks to create a 35 acre wildlife easement through the development along Fish creek. Lots 1, 5, and 48 are now additional open space. Robinson Creek setbacks are at 300 ft to 400 ft. With the improvements there will not be any chemicals allowed or removal of vegetation allowed. There will be 18% of the property protected by open space or easements.

Commissioner Romrell asked about vegetation removed from lots. He did not see anything about timber removal. What is plan to remove the timber?

Mr. Finch stated that the developers will remove dead fall before the sale of lots.

Mr. Homer stated that it is defined in the covenants to not allow the removal of vegetation on the protected areas, no restrictions of removing trees on the lots.

Commissioner Romrell asked if this would be a commercial logging operation and are they going to have the roads safe.

Mr. Homer stated that this is not a commercial logging.

Mr. Finch stated that they will use the 40 ft corridor for roads to remove the timber.

Commissioner Romrell states his concern with the dense timber on the lots.

Mike Vickers stated that they will block up firewood to be used for widows, and the slash will be hauled away by a contractor.

Commissioner Romrell had a question about the 10,000 gallon tank; will it be protected from frost and how will the fire department hook up to it.

Mr. Finch stated that it will be protected from frost.

Commissioner Hurt asked about the water not in a pressurized system.

Mr. Finch stated that they will utilize the pumps on the trucks.

Commissioner Hurt asked about the hydrants and are they connected to the 10,000 gallon tank.

Mr. Finch stated that they are not connected to the tank, but to the community well and will pump at 100 gallons per minute.

Commissioner Hurt was concerned with the need to make available to hook directly to the trucks.

Mr. Finch stated the fire department will use a local water source for the trucks.

Commissioner Hurt talked about set backs and asked if the distances are in the covenants.

Mr. Finch stated that these were identified on the plat and there are monuments on the lots in the field.

Commissioner Hurt asked who would monitor this.

Mr. Finch said it would be done by the building inspector.

Commissioner Hurt asked about the turn lane proposed into the development.

Mr. Finch showed the additional asphalt turn lane on the map.

Commissioner Hurt asked if the turn lane is part of the \$85,000 for improvements to Fish Creek road.

Mr. Finch stated that the turn lane is in addition to the \$85,000.

Commissioner Romrell asked about set backs on Robinson Creek. It is a steep canyon in places and is concerned with buildings at the rim of the canyon.

Mr. Finch stated that the setbacks are 300 ft minimum from the creek bed and that they have 30 ft minimum setbacks at the top of the bench from the creek.

Commissioner Hurt asked about building envelopes.

Mr. Finch stated that they will have the standard required setbacks and that they will not be able to use chemicals within 50 ft from the setbacks to the creeks.

Chuck Brockway from Brockway Engineering in Twin Falls will address water issues and the general layout of lots. Water supply to homes and irrigation for open spaces referred to report is in the packet. Phase I will be central community well that will be reviewed by DEQ with possible booster stations with some on line storage to meet the

water demands. There will be 10 inch in diameter pipes approved by DEQ and owned by the homeowners association.

Phase II will have individual wells, because of the increased size of the lots.

Water usually averages 120 gallons per person per day with average 2.96 per person per house 64,000 gallons per day for the entire project for in house use, with an average 10% per consumed. Peak use is 74 gallons per minute. These are conservative figures because these are going to be primarily second homes.

Water rights in Phase I the developer has applied for a well permit. These wells will be at State standards. Phase II does not require permits the water rights will be used to irrigate the open spaces.

Fire provisions there are three main sources of water.

- 1) Sumps will be quick connects from Fish creek.
- 2) 10,000 gallon storage tank
- 3) Frost Free Hydrants

Mr. Brockway did an evaluation of the groundwater aquifer which is included in this report. The drilled test wells. The aquifer is referred to as the Huckleberry aquifer. He stated that the test well will support the development.

Static water levels are anywhere from 200 to 300 feet graduating to the southwest. He stated that there is approximately 6,700 acre ft discharge per year.

There was a well interference study done. Mr. Brockway is recommending a 500 ft set back from the community well. Samples were taken in the area and tested and the water samples were excellent. Water quality is excellent. DEQ will review all this and will have the final decision. Mr. Brockway stated that the water is suitable without adverse effects on the area. He identified how they will deal with run off water with buffer zones around the creeks, planting of vegetation and the detention ponds.

There were no questions for Mr. Brockway.

Tom Campbell a wildlife biologist from Biota was contacted to provide some natural resource information, due to the condition of approval from the Planning & Zoning Commission. Mr. Campbell stated that his reports are objective, scientific and professional.

Biota has worked with Idaho Department of Fish & Game, Forest Service and endangered species groups and used Forest Service Wildlife maps. Everything is in the report. Fish Creek and Robinson Creek have been addressed. They addressed vegetation cover on the property. There are 4 threatened species and one endangered species in the area, grizzly bears, eagles, Utes lady trusses, and an endangered snail and the Canadian lynx. There has not been any sign of the grizzlies on the property or eagles either, but the eagles have been seen in the area. Lynx does not have habitat nor does the Utes lady trusses. Wolves are in the area (2 to 3 packs).

Idaho Department of Fish and game provided a letter to Mr. Patlovich expressing concerns with migration of large game animals. His findings showed this is not a winter range, there are a few moose that could be there in the winter with calving occurring in the area. Migratory routes cannot be substantiated in the area. He referred to the Fremont County wildlife corridor maps and stated that the development is not in a wildlife corridor.

He gave 23 recommendations to the developer to protect wildlife which is identified in his report in the packet. Most notable is the stream corridors, with setbacks that exceed requirements. the developer has a requirement of no chemicals to be used in the corridors, with a blanket set back. Mr. Campbell talked about open space corridors (referred to tab 8 & 9 of packet) in addition to other open space areas throughout the property. To eliminate the narrowest portion of the development the developer has a minimum of 600 ft corridor proposed. There are also minimal fences on the property. Wet lands protection was a consideration. There has been some talk about bear management in the CC&R's and how to live compatible with wildlife. There was talk about access.

Commissioner Trupp asked who is going to police the interaction of wildlife and domestic pets.

Mr. Homer stated that on the CC&R states pets must be put on a lease.

Commissioner Hurt asked if there was a migration route and if there is a map?

Mr. Campbell stated that to his knowledge there is no map and there is no formal data stating this.

Commissioner Hurt asked about off road vehicle use and control of these vehicles.

Mr. Homer stated that these are listed in the CC&R's –Not to be used in the subdivision

Commissioner Hurt asked if they would be complying with the Forest Service and their requests.

No further questions

Chris Park from Schiess & Associates talked about safety at the Fish Creek Road. Mr. Park stated that safe is not defined in the Fremont County Development Code and is unclear when a road becomes unsafe. Road standards are to develop safety with speed. The road surface has failed. Roads are designed with curves, slopes, and then speed becomes a factor in this. The speed is currently at 40 mph to slow to 25 mph for curves. They feel that the road is deemed safe with additional vehicles from the development on the road.

Commissioner Hurt asked what the speed limits are now on the curves.

Chris Park stated it is 25 mph

Commissioner Hurt asked what the grade of the road is.

Chris Park stated that he did not know.

Mr. Homer reserved his remaining time for the rebuttal.

Mr. Tim Hopkins is an Attorney for the appellant Jim Verdone.

Mr. Hopkins referred the question asked by Commissioner Hurt as to the location of the proposed subdivision with an aerial photo map of the Stevens Ranch location. There is also a map referred to as the Natural Resource Inventory Map. Mr. Hopkins congratulated the developers on their effort to put in a good development. Mr. Hopkins praised the Fremont County Development Code and Comprehensive Plan. Mr. Hopkins stated his client is not opposed to the entire development but wants to see the property developed correctly, Mr. Hopkins represents Mr. Verdone who owns 156 acres to the west of the proposed subdivision, Also in attendance were other adjacent property owners Ms. Janss, Ms. Keefer and Mr. Garrett. Mr. Hopkins referred to his brief submitted to the commission and also the letter from Idaho Fish and Game as an exhibit of the brief. Mr. Hopkins stated why they have real concerns with Fish Creek Rd. He also stated that there could not be a development fee imposed on the Fish Creek Road. He stated that is correct but that the county could take their time to put the ordinance in place. Mr. Hopkins compared the size of the development to the City of Sugar City, Idaho. He stated the commissioners can require the developer to create a safe road. He feels the developer should step up and make the improvements needed to the Fish Creek Road. He asked the commissioners to consider this. He stated that Mr. Park's comments on safety of the road is a speed issue, he feels there needs to be a better test of safety. He stated Mr. Homer suggested that the people who buy lots sign a waiver to not hold the county liable for condition of the road. He feels the single most important issue of the neighbors with the development is Fish Creek road. He also stated that the developer should shoulder the cost to improve the road. That they ought to take care of the expenses and the safety of the road and that should not be a debate. The health and safety should be carried out in a responsible fashion and asked for serious consideration.

He also directed issues of wildlife corridors. He feels this is a critical wildlife habitat with elk migration. The Idaho Fish & Game letter he stated leaves nothing to doubt (referred pg 6 of brief). He states that the developer has made some changes to their development addressing wildlife. He stated there is not a guarantee of the easement and corridor in the proposal. He stated that Dr. Brockway addressed water and he doesn't argue that. He wants to make sure there is adequate water to fight fire and will need to have changes to the water rights. He stated that the water in Fish Creek is not adequate for fire fighting year round. He feels there needs to be more definition from the fire district on what is needed that the \$75,000 contribution is not adequate. He stated that the developer must demonstrate that they have met all aspects of the wetlands with their delineation. He stated they haven't done that. Finally the check list evaluation. He states that the developer barely gets by on the scoring. He stated that the road did not receive a score on the basis of the failure. Fire fighting water supply has not been shown to be there. Wetlands were neutral on the scoring. He stated that the development is done right and well.

He introduced the following speaker Mr. Jim Verdone, who is a licensed landscape architect, followed by Mr. Reed Armijo, then Ms. Janss, Mr. Jay Garrett, and Ms. Janet Keefer will be the last speaker.

No question from the commissioners

Mr. Jim Verdone owns 156 acres adjacent to the new proposed subdivision.

Mr. Verdone stated that they are frustrated by the hearing process. He takes issue with the point in the planning and zoning hearing that there are two sides to the issue, the developers and those that are against it. He stated there are many people in the middle where he is. He stated this is considered to be a high recreation area that will be impacted. He would like the commission to take the time and make sure that everything is done right. He commends the developer for the positive steps with the changes he has proposed. He likes the Fremont County Development Code. He stressed the need to follow the guidelines of the code. The need to protect the natural assets is important. Open space and wildlife protection is a positive step. He would like more definition in the covenants of the developer. He thinks that the Natural Resource map from the code is hard to interpret. It hasn't been supplemented with current information and feels there are wildlife corridors and habitat. He feels it is critical habitat for grizzly, because of the statements of Fish & Wildlife. He talked about the scoring of the project. He stated there was no public comment on it. He questioned the scoring on wildlife habitat. He stated that it scored a -1 by the planning and zoning board. He showed an elk migration route based on the information gathered by Fish & Game.

The county plan states that all developments will provide year round safe access. As proposed this road issue will not go away. He stated the road is safe now, but is concerned with the increased traffic of the development. He feels the citizens of Fremont County will have to subsidize the improvement of Fish Creek road in the future. He feels this development represents 70% of the development on Fish Creek road, with the developer only willing to pay 9% of the road improvements. He felt there are errors in the Forsgren study. That there is more land that can be developed. He feels that there is only another 200 acres of developable property on Fish Creek road not 1600 acres. He stated the road does not meet county standards and needs to be improved. That the developer should pay for the improvements before development proceeds. He stated that in the past the county has addressed this and gave an example of Mike Ferguson's development.

Commissioner Romrell asked how this development will injure Mr. Verdone personally.

Mr. Verdone stated road safety and traffic, he questioned if this is the best place for this kind of developers so far from services.

Commissioner Hurt asked if he has ever seen elk migration in his area.

Mr. Verdone stated not personally but has seen signs of the elk.

Commissioner Hurt asked Mr. Verdone what he thought was the most unsafe thing about Fish Creek road.

Mr. Verdone stated geometry of the road, the embankments, sight distances, it is identified in the Fremont County Transportation Plan; and that the pavement is gone.

Commissioner Hurt asked if it were to go from a paved road to a gravel road if it would get any better.

Mr. Verdone said no the geometry is still an issue.

Commissioner Romrell stated that he wanted to be sure he understood Mr. Verdone clearly that he was not opposed about the project, but more concerned with the road issue.

Mr. Verdone stated that is correct.

Commissioner Romrell asked Mr. Verdone if he was concerned about the proposed development.

Mr. Verdone stated yes, especially with the road. That it needs to be done correctly. The code stated the county can force the developer to improve the infrastructure.

Commissioner Hurt asked if the increase tax revenue would support the road improvements.

Mr. Verdone stated no, typically; only pays for operation and maintenance not capital improvements.

Reed Armijo Licensed PE from Jorgenson Engineering has taken the transportation plan and the Forsgren study as a guide to his study.

Mr. Armijo did a field review in the winter of the road. The safe all weather road is the question, with no real clear definition. Safety has a lot to do with the comfort of the driver and the geometry of the road, sight distance and topography along with width. He stated that the road is in a state of disrepair, and will need to be addressed in the next 6 to 7 years. The condition of the road will affect safety. The design of the road needs attention along with the slopes off the road. He stated that this road does have safety issues that need to be addressed. He referenced his memo submitted with Mr. Hopkins brief, for his recommendations on the road. How does the road meet up to County standards? Mr. Armijo stated that the road does not meet any of the standards.

Commissioner Romrell asked what Mr. Armijo thought the cost of road reconstruction may be.

Mr. Armijo stated that it would be \$750,000 with an additional 10% to 15% for design and clearing of the right of way to bring it close to \$1,000,000.

Commissioner Hurt asked do you see the possibility of this road being reconstructed in phases.

Mr. Armijo stated that he feels the best would be to do the whole road at once.

Commissioner Romrell also asked couldn't we consider phases to the substructure then pavement in the future.

Mr. Armijo stated that he would be a little scared to put it back into a gravel road.

Commissioner Hurt asked if a problem would be sight distance

Mr. Armijo stated that it would.

Commissioner Hurt asked if he realized it was Forest Service road.

Mr. Armijo stated yes.

Commissioner Hurt asked if they have turnouts if this would increase safety.

Mr. Armijo stated he feels that it would not but could be considered.

Commissioner Hurt asked if the current failed pavement is safer than gravel.

Mr. Armijo stated that from the pictures that he has seen. Yes.

Ms. Janss spoke personally of her concerns with the wildlife. She stated that she owns 10 acres adjacent to the proposed subdivision and she spends most of the year at her property. She submitted a packet of information to the commissioners. Ms. Janss stated that she drives the road and it is dangerous with the crumbling sides of the road. She is concerned with the snowmobiles on the road. She has gone off this road with winter use. Ms. Janss stated that the commissioners should consider the road and having it fixed; but is concerned with the effects this would have on Warm River.

Ms. Janss referred to information in her packet presented today of a map and exhibit 35 & 36 which show elk migration. She compliments the developer for the gesture of a wildlife corridor. She has not witnessed the migration herself. She also has a study of threatened species in the area. Data received came from the CDC and the Forest Service. She also referenced a letter from the Greater Yellowstone Coalition and an article from the nature conservancy. She stated that there is a law that requires a conservation agreement with the Fish & Game, which has not been made. Teton Regional Land Trust has had this property targeted for conservation. She objects to the density of this development. She stated that 96% of the water used will return through septic systems. Ms. Janss talks about the information to the streams from Robison and Fish Creek.

Ms. Janss reported there is important significance to the economy and may cause a threat to the economy. Subdivisions are not appropriate should they disturb what is there.

Warm River to Ashton is the most used river for recreation in the area. Ms. Janss would like a full analysis of the effects to Warm River & Henry's Fork before they

proceed. Mr. Janss also has expressed wildlife concerns and feels like this development is bad for natural resources.

She recommends:

- 1) A further wildlife study
- 2) The letter from Idaho Fish & Game weigh heavily in the decision of the commissioners

Other counties such as Blaine Counties plan does advocate Fish & Games information. This is a key moment for Fremont County to do this right and responsibly. Fremont County can be an example for other counties (referenced Chan Atchley's article in the Island Park New) to protect natural resources and values.

Commissioners had no questions.

Jay Garrett an adjacent property owner presented written information to the commission. He addressed concerns for fire safety. Mr. Garrett would like to see a professional mitigation plan for fire safety that he does not feel has been addressed. He is concerned about the Fire District's capacity that is dependant on volunteers.

He was concerned with phase II of the development not have centralized water, also with fire fighting water supplies. It appears that Fish Creek would not be adequate in the winter months; concerns with 10,000 gallon water tank being adequate; concerns with water rights being adequate; concerns with fire spreading to public lands. Density is a concern. Wildlife habitat concerns for fish and big game; concerned for fisherman and tubers on Warm River. He feels this development will increase costs to other taxpayers. He feels there should be more studies done on the effects. He has concerns with Fish Creek Road. He has personally witnessed on fatality on a snowmobile. Numerous snowmobilers park illegally in the winter. The road is not wide enough for the traffic.

Mr. Garrett stated that he is not opposed to the developers.

Mr. Garrett talked about the road conditions and the animals that are on the road.

Commissioners had no questions.

Janet Keefer who is an adjacent property owner and lives next to the proposed development spoke to commissioners about the responsibility to be gate keepers and that is the Fish Creek Road. The road will not be safe for the public, in the winter it narrows to one lane. She feels the traffic increase will be more than the average daily traffic on Highway 47 currently. The road will not be safe. She has lived in the area for 30 years. She has witnessed the elk, deer, and moose migration along with bears. She feels it is critical wildlife habitat. The subdivision is 40% of the size of the City of Ashton. The proposed subdivision is 40 miles from Ashton and offers no services. The Stevens ranch is critical wildlife. Ms Keefer gave commissioners a petition signed by 62 residents opposed to the development.

Commissioners had no questions.

Mr. Hopkins saves the remaining time for rebuttal.

Trent Grant reviewed the procedures of the public comment on the proposed development.

Public Comment

Jerry Funke P. O. Box 773 Ashton, an adjacent property owner had two concerns. He stated the Fremont County Development Code requires notification by certified mail; he feels proper notice was not given. He has personally witnessed the migration of wildlife. Mr. Funke is concerned about the fishery of Robison Creek and no one addressed the fishery and birds and migratory birds and many other animal and wildlife in the area.

As an agriculture producer his property is in the CRP program to enhance wildlife. He is concerned about the impact the subdivision will have on the ag business in the area; the noise and things that may change. And wildfires may be a concern.

Tim Bunsold P.O. Box 475 Ashton, who is a new fire commissioner with the North Fremont Fire District and an EMT stated that he has meet with Mr. Vickers about fire safety. Mr. Bunsold stated that 2003 fire code is being used. He would like the North Fremont Fire District and the County to talk about a joint building for fire and EMS services in the Warm River area.

Dennis Callaway 4476 Sawtelle Way, Island Park, made a comment to the fire protection and named some other subdivisions that would have to have a fire station in the area.

Chan Atchley 4977 East 1300 North, Ashton, talked about the wildlife and it was not until later that he appreciated it and would like to see it protected. Mr. Atchley would like to see this as a park and would like to see the habitat protected or one day the animals will be gone. He asked for protection of the wildlife, the roads, and fire protection. He thinks that the developer should pay for all the improvements. One thing that has not been mentioned is the County Landfill, and if it fills up, what will the County and Residents be expected to pay.

Troy Thurgood 81 East 3500 North, Rexburg stated that he is not a resident of the County but is going to have a major part in the aspect of infrastructure. Mr. Thurgood is an accountant for DePatco. They will be hired to do the infrastructure (build the roads) on the subdivision. This helps everyone. Mr. Thurgood commented on that DePatco could employ 80 families. This type development is good planned, organized, growth. He stated he can understand the concerns of the opposing party.

Scott Christensen 162 North Woodruff Ave, Idaho Falls, who works for the Greater Yellowstone Coalition, has wildlife concerns. He stated that reality is that Fremont County is going to grow but what they are asking is that there be choices for managing growth and as the County moves forward it is looked at very careful. No one is asking that there be no developments.

Mr. Christensen talked about the document on the Facts, Findings, and Conclusion of Law of the Planning & Zoning decision under heading "H" policy #16 maintain natural

assets of North Fremont area; not to take productive cropland out of production. Mr. Christensen talked about wildlife and the importance of keeping it there.

Wetlands and Fire Protection he does not feel it has been addressed correctly. Mr. Christensen stated that he feels 70 % of the wildlife in the Sandcreek area migrates from this area. He feels there is adequate data to support this.

Mr. Christensen stated there are wolves in the area. He referred to a letter on page 2 from Hamilton Smith on migration of wolves that have been killed in this area.

Grizzly Bears are in issue, the property sets between two habitat areas that are protected. There have been four collared bears on the property in the last two years.

He presented a handout on a takings of endangered species.

Mr. Christensen stated that this is a Forest Service Road and any improvements would require an environmental assessment.

Commissioner Romrell asked if he knew that there were collar Grizzly Bears in Island Park around the subdivisions.

Mr. Christensen stated yes.

Commissioner Romrell asked if there was a difference between this area and Island Park.

Mr. Christensen stated that he is not sure of the density in Island Park but that the encounters with human and grizzlies have required the grizzlies to be removed or be put down.

Adrienne Keller Ashton District Ranger P.O. Box 858, Ashton, stated that comment has been submitted in writing previously. Points she raised are with Grizzly Bears, food storage and loss of open spaces. The forest service does not assert themselves with development, and things that she comments on are those things that she can comment on.

If this is approved the Forest Service would like the commissioners to consider an urban interface fire mitigation plan. ATV's have not been addressed in the Fremont County Comprehensive Plan and have been a chronic problem in all subdivisions. There are problems with this on forest land also.

Fish Creek Road is a Forest Service Road she presented a copy of the agreement recorded on May 28, 1988 which states the county will maintain safe travel on the road.

She stated the road meets the needs of the forest service at this time. The improvements would be at the costs to the county. They would review what would be needed for an Environmental Assessment Study from the proposed plans.

Commissioner Romrell asked if we will ever see timber harvest in the next 6 years in the area.

Ms. Keller stated no logging activity but firewood harvesting is open in the area. There may be thinning contractors in the area.

Commissioner Hurt asked if we were to present improvement to the road what NEPA process would be needed.

Ms. Keller stated it would depend on what was proposed.

Vance Derricott P. O. Box 111, Macks Inn, stated that he is one of the 10 members on the Planning & Zoning Board. He stated that the Department of Fish & Game was not notified properly.

Mr. Patlovich stated that that statement was not correct.

Mr. Derricott has concerns with wildlife. He stated that 9% of the road is to be paid by the developer and the cost of the road would \$1,000,000 to \$2,000,000 for reconstruction, and should not be picked up by the tax payers.

Mr. Derricott stated that the cost of Landfills and the Fire House should not have to come from the taxpayers, but should have to come from the developer.

Steve Trafton Executive Director of the Henry's Fork Foundation 830 Hidden Estates Lane, St. Anthony, has three concerns: wildlife, water quantity, and water quality.

Mr. Trafton expressed concern with water quantity for fire fighting having junior water rights (1963). He read from an analysis of water flows quoting Dr. Van Kirk during fire season are not adequate on Fish Creek. He feels they don't have adequate water to fight fires. He also has concerns with eight species of fish in the area.

Water quality with 63.4% return of septic water to the groundwater is concerned with nutrient load on rivers. He feels the forest service and Idaho Fish & Game should be listed as wildlife resources and stated that this should be taken seriously.

Greg Stoddard 1991 East 183 North, Rexburg, who is a resident in Fremont County and also a business man who has been employed by Mr. Vickers stated he is a man of his word. He stated that Mr. Vickers does his developments correctly. Stonegate is a good example of development.

Mr. Stoddard stated that he loves to hunt and fish and he cares about animals. He stated we can protect the animals and live with them. Mr. Stoddard stated that there are programs and manuals that if they are set aside we can live in harmony. Mr. Stoddard stated that if done correctly it will benefit a lot of people.

Rob Cavallaro representing the Teton Regional Land Trust, P.O. Box 247, Driggs stated they are a conservation company who work with land owners.

The previous owner was looking into a conservation easement, but the deal fell through and they would like to pass along all the information they have on the property to the commission. They have field data and research with Idaho Fish & Game. They have concerns with the fishery in the creeks. They are concerned with soils in the area around the creeks that have extreme to critical erosion types. Species are a concern as well. Endangered and threatened. Two eagles nest in the area. Grizzly bear habitat concerns. He feels there will be conflicts with bears and human. There are several grouse in the area. Harquin ducks are a concern also; there are only 50 pair in the state with one pair nesting on Robison Creek. Big game movement has been shown right through the property as well. They are not in one way for or against the project.

Kip Martindale 664 North 4400 East, Ashton, came as a concerned citizen and would like to see the Fish Creek road agreement be terminated with the forest service. He feels that Fremont County should not tax the rest of the citizens for the improvements to the road.

Mr. Grant stated that is the conclusion of public comment and moved into the rebuttal portion of the hearing.

Mr. Homer presented a letter from the Stevens Family to the commissioners addressing the lack of elk migration historically on the property.

Rebuttal -

Mr. Hopkins stated that there is a difference of opinion, on wildlife migration and stated that there were personal testimonies of migration. Scott Christensen of the Greater Yellowstone Coalition repeated that they go through this area. Teton Regional Land Trust has data to support elk migration. Fire protection has inadequate water Mr. Trafton has concerns with water levels and Mr. Stoddard's comments on development being good if it is done correctly.

Mr. Verdone wants to make a couple of comments clarification to the comprehensive plan that needed safe access and addresses road standards in appendix B. Clarification on the cost of the road approximately \$950,000 to bring the road up to standards.

Ms. Janss stated that they would like the record to show that they want to make it clear that they are glad to have people move in, but they want it done right.

Mr. Homer introduced the order of their rebuttal speakers.

Mr. Brockway stated Mr. Hopkins and others were also concerned with water adequacies. There has been a misunderstanding for fire protection and they don't need a water right specifically for fire protection. In the event of a fire they can use any water that is available.

There is a pending application for a well for municipal use by the developer. They also addressed concerns with the low flows in Fish Creek in the winter. There will be two rock lined sumps below the natural flow. There would be adequate flow. The 10,000 gallon tank and cistern system would be available in the winter. Roads for the subdivision will provide access for wildlife. The waste water is a small amount of 64 acre ft per year and the effluent is filtered by soil and rock.

Commissioner Romrell stated that winter is not the time for many wildfires but more cabin fires occur.

Mr. Brockway stated that they have the option of dry hydrants.

Commissioner Hurt was confused about the 64 acres ft. of waste water.

Mr. Brockway stated that is the maximum about and will not likely ever occur.

Commissioner Hurt asked what depth did you hit water on the test wells.

Mr. Brockway stated that they hit water at 253 feet.

Commissioner Romrell asked where on the property was the test was done.

Mr. Brockway stated 1300 feet from Fish Creek and that it is marked on the map.

Tom Campbell rebutted his testimony and elaborated on previous comments made. Mr. Campbell stated that he was able to compare the maps given from Fremont County for Natural Resource Inventory.

He stated there are differences in the Hopkins wildlife corridor map exhibit and the Fremont County Wildlife Corridor map. There are differences he indicated on the map and also stated there has been some interpretation by Mr. Hopkins group. He clarified differences on grizzly bears, and on the elk migration is not listed on the County map.

He explained that the fall migration is in larger groups. It was stated that he tried to document the migration or lack of migration in the area from Idaho Fish & Game. They were not given preliminary information on this. He stated this is not a grizzly bear protected area. He reviewed the information submitted by Ms. Janss and it does not indicate any additional information.

He stated that the threatened and endangered list is the same list he used.

He did indicate that there are wolves in the area.

He explained the process of a wildlife takings compliance permitting process.

He also referenced a letter from the Stevens family that does not indicate migration; that has been admitted into the record.

Mr. Homer stated Mr. Hopkins states you should stop and change the law that governs development of subdivisions. Mr. Homer feels that the law should be based on the current code at the time of application.

Mr. Homer referred to the language of the covenants to the replacement of Fish Creek road would be subject to funding by the County and when the County deems it necessary to fix and will go on a priority list.

Mr. Homer stated that the development is not in a critical wildlife area; he stated Fremont County maps don't indicate it. Others feel we should address wildlife; we have don that, and protected 18% of the development for open space and setbacks.

Mr. Homer stated the question on enforcement, it will be part of the plat, once it is on the plat it is in the counties control and can't be changed; in addition the homeowners have laws in the CC&R.

Mr. Homer indicated there has been lots of debate on Fish Creek Road and safety; when a safe road is an undefined standard it is hard to address. He stated that we have

received testimony from two experts. Mr. Park stated with appropriate speed limits the road would be safe.

He questioned how to evaluate the testimony of Mr. Armijo; it is mostly on the cost to the developer, he only has one comment on safety. Mr. Homer feels they have shown that the road is safe and will continue to be safe. He referenced the Forsgren Study that the development does not put the road at risk. Question of what the developer should pay was based on the Forsgren study. He reminded the commission that other subdivisions in the area have not had to pay impact fees on their development.

Mr. Homer stated they volunteered to do more than was asked.

Mr. Grant stated that the hearing was closed.

The commissioners will have a work meeting on this matter, Thursday, January 11, 2006 at 8:00 a.m. in the commissioner's room.

Paul Romrell, Chairman
Fremont County Commission

Attest: _____
Abbie Mace, Clerk