

Public Hearing  
For Rivers Edge on the Henry's Fork  
May 8, 2007  
9:00 a.m.  
Fremont County Annex Building – Meeting Room

Present were Commissioners Paul Romrell, Donald Trupp and Skip Hurt.

Also in attendance were Prosecuting Attorney Karl Lewies, Clerk Abbie Mace, and Deputy Suzanne Bagley was present to take minutes.

Hearing Officer Trent Grant gave introductions and instruction to the audience regarding the hearing, parking, and cell phones.

Trent Grant read the purpose of the hearing and asked Clerk Mace if proper notice was advertised.

Clerk Mace stated that it was.

Mr. Grant asked Planning & Building Administrator Jeff Patlovich if the property was properly posted.

Mr. Patlovich stated that it was.

Commissioners were asked if any of them had a conflict of interest. Commissioners indicated no.

County Attorney stated five minutes for public comment. Hearing Officer Trent Grant asked the public to keep to the issues and how it complies or not complies with the Fremont County Development Code.

The County Record was submitted as exhibit #1  
The Appellant of Memorandum was submitted as exhibit #2

**Planning & Building Administrator Jeff Patlovich** presented his report. Mr. Patlovich gave the location and proposed nature of the development. He would like to enter into the record the following:

- LESA Score sheet (exhibit #3)
- Fremont County Comprehensive Plan and the Development Code (exhibit #4)
- Fremont County Transportation Plan (exhibit #5).

He scored the project on the LESA evaluation at a 47 that is below the numbers as to whether it is productive crop land and the Planning & Zoning Board they came up with a score of 67. The numbers did not go over the threshold to continue on with the second page or part of the LESA and he feels that the Planning & Zoning Board was incorrect in their scoring and his score was well below the threshold. He referred to tab #3 of the county record the score sheet that will describe the wetlands issue. This was something

that he and the Planning & Zoning Commission did not have, and that the Board of Commissioners did have before them today. He indicated the subdivision will have private roads and private septic systems.

Commissioners Hurt asked about the 20 point scoring difference on the LESA, and asked if it was productive crop land or not.

Mr. Patlovich stated that it was found to be productive crop land by the Planning & Zoning Board. He stated that he feels that it should have passed.

**Mr. Lary Larson Attorney for the Developer Henry's Fork LLC and also Western Rivers LLC, Drake & Laura Munson.** Mr. Larson reviewed their information submitted in exhibit #2. Mr. Larson will talk about the way the Planning & Zoning Commission scored this. They will describe the site and how the LESA is scored.

**Drake Munson** 4201 South Achilles Drive, Salt Lake City, Utah. Mr. Munson distributed a power point handout (exhibit 6). He referred to an aerial Soils Map (exhibit #7). Rivers Edge Residential Concept Map (exhibit #8), and the Preliminary Plat (exhibit #9). He introduced the property and surrounding are land use.

Mr. Larson reviewed the LESA score and the purpose of this score. He talked about the values of the economy for productive crop land. He referred to tab 6 of exhibit 2 and submitted the Administrators LESA Score sheet as exhibit #11 and Site Assessment exhibit #12. He talked about the score and reviewed the differences in the score given by the administrator and the Planning & Zoning Commission. He talked the site assessment component of a system that uses a simple scoring process to anticipate the impact of land use conflicts on crop production. He feels that the score that was given was correct. They support the analysis that was given by Mr. Patlovich.

Mr. Munson talked on the features of the development, and would like to get into the heart of the development and the vision of the property and a very nice development and a benefit to the Fremont County and the resident of Ashton. He talked about the emphasis of open spaces. He referred to exhibit #13 Wetlands and Slope Aerial Map. He reviewed the set backs and building envelops. He talked about a trail system that would connect to the park. This trail system would be available to the public. There would also be limited fencing and limited horses on property lots. He talked about the enhancement of existing man made ponds and water features and new vegetation that would be planted. He talked about the stream corridor and flood plain protection. There was emphasis on native vegetation retention and protection. He talked about wildfire protection, and wildlife protection. He stated there will be CC & R's. All utilities will be underground and referred to lighting requirements in the subdivision.

There are seven suggestions from Fish & Game features that they will follow. See page three.

**Chuck Brockway**, Brockway Engineering, Twin Falls, Idaho, talked about the water quality and referred to a letter on his findings that has been submitted to the

commissioners (in exhibit #2). He talked about soil on the southern end and what great soil it is and is very suitable for drain systems. On the North end there is shallow soil. There was one test pit that had lava rock, and may be used as a suitable drain field still. No evidence of high ground water. This could be easily maintained and the site can be suitable for the best environmentally sound system and advancement septic treatment systems will be used and there will be a top of the line system even though the State does not require it. He reviewed the overall impact on the nutrient load and looking at the land pre project and post project; stating they will be reduced. Water Supply will be individual wells with irrigation supply of ½ acre per lot. He talked about other irrigation forms and existing water rights. He talked about aquifer characteristics. He compared five wells in the area to identify soil types. Wells are okay they are between 50 to 60 feet deep. There will be no significant interference with the water in the area. Ground Water Quality there was not any data available for this area. He took samples from existing wells and from the springs on the property; he tested them for nutrients. He gave findings as to what he found. Those numbers are expected to get better over time. There was a presence of total coliform in the springs and well. These have been retested and they found the same results. There does not appear to be any source and they do not know if this is localized problem or not and this is usually a wide spread problem, but in this case it is not and does not anticipate a problem. New wells will be tested on can be retreated. This is a common problem.

Commissioner Hurt asked if the advanced septic systems will be used on all lots.

Mr. Brockway stated yes.

Commissioner Hurt asked about fire protection.

Mr. Munson said that they have the letter from the Fire District stating they approve of the proposed subdivision. He stated that the ponds can be used year round for fire protection.

Commissioner Hurt asked how deep the aquifer is.

Mr. Brockway stated the top is approximately 20 feet.

Commissioner Hurt asked how deep the wells will be.

Mr. Brockway stated 200 feet

Commissioner Romrell asked about coliform contamination, and asked if this would require a boil order.

Mr. Brockway stated that he did not know where the source came from and stated that this is common and the easiest to treat with ultraviolet light.

Commissioner Trupp asked about the nitrate and phosphorous from agriculture and what proof they had that that was the source.

Mr. Brockway stated that historically this has come from commercial fertilizer and by process of elimination and could not confirm where this came from.

Mr. Munson gave commissioners a brief summary and states that they are asking for 46 lots verses the 96 that they could have according to the comp plan. He stated there will be 9 riverfront lots. He addressed the proposal to move the county road.

**Sinclair Buckstaff Jr.** an Engineer with Nelson Engineering, Jackson, WY gave a background on his credentials. He talked about the realignment of Fisherman Drive for safety. He stated that road will never need to go from two to four lanes and the road has adequate shoulders. The current road alignment should be of concern to the commissioners because of limited sight distance, no guard rails, no posted speed limits and sharp curves. In his letter that was submitted it listed the standards for local and state agencies to follow. This is known as the green book or the bible to engineers. He suggested that there needs to be things done to improve the road and the same issues are there; if you wish to have any developments whether it is one house or 400 homes improvements to the road need to be made before any houses are allowed.

Commissioner Romrell asked about JJ and asked if the road was safe leading to the proposed development.

Mr. Buckstaff stated that it is not safe with 45 mph speed limit as it is now.

Commissioner Romrell stated that a one dwelling house does not come before the commission.

Mr. Buckstaff stated that it still should be considered.

Commissioner Hurt asked what would be deemed as a safe speed.

Mr. Buckstaff stated 30-35 mph

Commissioner Hurt asked if Fisherman's Drive asked meets County standards at this time

Mr. Buckstaff did not feel qualified at this time to make such a decision.

Mr. Larry Larsen stated that the County should work with the developer to make the road safe. He stated the county is responsible legally for the issues on the road: public access to the river and scenic views. He referred to IC 67-6522 stating that the public does not have the right to these. The moving of the road allows best use of the property. He questioned if this is a road vacation or a road relocation and gave the definition of what it would take for this process.

Ms. Munson asked Mr. Buckstaff if the speed limit were lowered and guard rails were installed would the road be made safe.

Mr. Buckstaff stated that it could possibly be made safe if it were to have those changes made.

Laura Munson reviewed the score sheet with the board by each requirement, wetlands, open space use, stream corridors being protected by building envelopes. They reviewed the development code experts of policy 16, 17, 18, 19 and 21. Ms. Munson reviewed policies and stated that they are willing to move the road at their cost.

Commissioner Romrell asked about policy 19 does this include the road leading to the development.

Ms. Munson stated that she feels they comply.

Mr. Munson stated they would be willing to pay for some improvements to the existing road.

Commissioner Romrell said thank you

Lunch Break

Hearing Officer Trent Grant reviewed the process for public comment.

### **Public Comment-**

**Ben Peterson**, 403 N. 2700 E., St. Anthony, ID 83445 Mr. Peterson is an adjacent land owner he is concerned with water quality and quantity and also the increased traffic.

**Jeff Moss**, 2880 N. 55<sup>th</sup> West, Idaho Falls, ID 83402 Attorney Representing Mr. Frank Vandersloot. He stated that Mr. Vandersloot is the owner of 1600 acres to the east and the north. He stated that this does constitute productive crop land. He also stated that the LESA score was done right and is good fertile farm land. He referred to C2 of the LESA feels the wasteland should not be included in the calculations. On the relocation of the county road he feels it should not be permitted and read a quote from a similar case that was in litigation. He stated concerns with loss of scenic view. He stated the public has a right to prescriptive easement.

**Frank Vandersloot**, 2880 N. 55<sup>th</sup> West, Idaho Falls, ID. 83402 Mr. Vandersloot talked about concerns with moving the public road away from the river. He stated there is nothing in the code that allows the moving of the road for the benefit of the developer. How much is the view worth to the public and the county. He stated the public is going to the site for the view of the river. The public has a right to get from one place to

another. Feels that it the wrong thing to do and it will take away the view from everyone and it will set precedence. Use common sense in your decision.

**Richard Clayton**, P.O. Box 155, Swan Valley ID 83404 Mr. Clayton gave several examples of moving the road that still gives view of the Tetons. He discussed water issues for farming; he state this only has storage water on it.

**John Nolan**, 1000 Wheatstone Dr., Idaho Falls, ID 83404 Mr. Nolan addressed some of the concerns for wildlife having to cross barbed wire fences now. This development will create trails for wildlife. He stated there would still have the view of the Tetons with moving the road. He feels if you move the road it would help the fishery. He stated the developers have gone above and beyond what the code has asked and that the commissioners will follow the code.

**David Munson**, 282 Dove Ave., Rigby, ID 83442 Mr. Munson talked about this being a wonderful Country and discussed some of its needs. It appears that the road is the biggest problem and financial vs. public is the interest. Literally thousands will be driving the road. If there are large numbers traveling the road will not handle it, and if the road is going to be fixed by the land owner you are saving the public money and time and hopeful lives will not be lost due to a road that is better for everyone. Homeowner's homes and homeowner's property are a destination, not the road. He stated that this is a good development and will increase the values of the property owners and believes that this meets the code and should be allowed.

**Royce Klingler**, 1660 Highlands Road, Ashton, ID 83420 Mr. Klingler stated that he is in favor of the proposed development, and if the developer has met all the requirements and has gone above and beyond and has shown more that he has met the requirements. The Commissioners should have the Planning & Building Administrator Jeff Patlovich perform the LESA evaluation he is the most qualified to do this and this is why the commissioners hired him.

**Beverly Thomas**, 1475 N. 3619 E., Ashton, ID 83420 Mrs. Thomas owns property directly across the river to the south. The development will take away her view and feels that she has some rights. She also was concerns with the road.

**Marla Vik**, 125 E. Main, St. Anthony, ID 83345 Ms. Vik stated she is the county engineer. She talked about the condition of the road. She stated there have not been any accidents reported on the current road. She stated design standards change with the low volume verses higher volume roads. Low volume roads are known to have fewer accidents. Typically each home has an average of 10 ADT. She feels we are less than 400 ADT now. She talked about geometric design and full reconstruction of a road. She entered into the record road Standard Highlights (exhibit 16) and Accident Report List (exhibit 17).

Commissioner Romrell asked if the current road would meet County standards today.

Marla Vik stated it would not, it needs improvements.

Commissioner Hurt asked if guard rails and lower speed would help the situation.

Marla Vik stated it would need a guard rail, and would also need to be widening.

Commissioner Romrell asked about the distance to the development.

Mr. Purcell stated it was 1/8 of a mile.

Commissioner Hurt recalled that there is a very tight S corner and asked if it would need to be improved and if grade is an issue.

Marla Vik stated that it would need to be improved and yes that grade is an issue.

Commissioner Hurt asked for an estimate on what it would cost to fix the road.

Marla Vik stated a few hundred thousand but less than one million.

**Clynt Cutler**, 2747 E. 200 N., St. Anthony, ID 83445 Mr. Cutler is in support and feels that they have complied with all the rules that apply.

**Debra Mickelsen**, 657 N. Yellowstone Hwy, Rigby, ID 83442 Ms. Mickelsen stated the road is an issue. She stated public safety is more important than views. Do you want to wait until someone dies to improve the road? We should thank them very much for wanting to protect and make the road better. She also stated the development will be built on the wasteland so it should be included in the LESA.

**David Anderson**, 3323 W. 5775 S., Taylorsville ,UT 84118 He stated he currently lives in a bad subdivision and states that this will be attractive and is impressed with the time and the amount of thought that has gone into this project.

Commissioner Romrell asked if the bad development was in Fremont County.

David Anderson replied no.

**Randy Hemmer**, 3777 Twift, Boise, ID 83703 He owns a lot where the subdivision would be. He would rather have 9 lots vs. 37 lots and would not like to see any of this happen, but that is the way development works.

**Stephen Loosli**, P.O. Box 780, Chester, ID 83421 He stated that he is frustrated with the LESA system and tried to sort it out and referred to the code. The land is not productive crop land determined by soil type, not whether it can grow a crop. He talked about the road and how many people will be actually affected and whether or not there has been a fatal accident. He stated Mr. Munson has the right to develop the property by code. He submitted for the record 35 signed affidavits that he is representing (exhibit 18).

**Diane Speth**, 1618 Grandview Lane, Ashton, ID 83420 She asked about the scoring and how to go about scoring agriculture land and it should be taken into consideration before it happens. She stated she lives close to the proposed development and wants the road to stay the way it is.

**Nola Purcell**, 3617 Fisherman's Drive, Ashton, ID 83420 She stated this is a road that has a lot of people that come to walk the peaceful road and take a Sunday drive. It is nice and quiet and the very favorite drive of the nursing home residents. Pulling out on US 20 is dangerous and when those houses come there will be lots of accidents.

**Don Purcell**, 3617 Fisherman's Drive, Ashton, ID 83420 Mr. Purcell talked about the safety of the road and Highway 20 is the farthest from the river and has been there since 1988 and is a beautiful place. He is worried about the septic systems.

**William Brad Purcell**, 3611 Fisherman's Drive, Ashton, ID 83420 Mr. Purcell owns property adjacent to the development. He asked why Planning & Zoning said one thing and Planning & Building Administrator Jeff Patlovich said something else and why isn't anyone here today representing the Planning & Zoning Board. He stated Mr. Howell who has been farming this property is opposed to the development; that he was asked not to be here by Mr. Walker the property owner. He stated those in favor of the development are not Fremont County residents. He stated that the road cannot be moved without moving his house. He stated that there are many accidents on the bridge on US 20. There have been lots of accidents on the road because of the speed limits are not being followed. He asked what the road standards in Fremont County are. He figured that his roads are what County standard are. He stated the developer is for money, everyone else is here for the love of Fremont County.

**Gary Mintz**, 15010 Juniper CT., Golden CO. 80401 Mr. Mintz owns property at the eastern end of Fisherman's Drive. He is not opposed to the development and sees the vision. He is not objecting to moving the road. He enjoys the scenic beauty and fishing. There is a potential for 96 lots they are only proposing 46 lots. Riverfront property is a valuable asset. As for the road he ran the road this morning and it is pretty and a bit torturous and there are curves and there are economics in this development also. He feels that the developer has addressed this issue accordingly, and if they are going to do a good job.

**Paul Bowen**, 2893W. 6960 S., Rexburg, ID 83440 Mr. Bowen addressed his own selfishness and would like to put a boat on the river and never see a house, but that is not the way it should be. He feels that growth is going to come and so let's see it done right and it makes sense to move the road. If the road is not moved the developer will have to make more lots. Safety of the road is a concern. This creates more tax money to improve the road. He is for the development.

**Ryan Lerwill**, 132 N. 2162 W., Rexburg, ID 83440 He appreciates the commissioners and the job they do. He is very passionate about issues and talked about how screwed up Teton County is and all the mess that is up there. He stated everyone feels they are right

regardless of what side they are on. It is painful to see change. The answer is smart development. He sees progress in the county. He talked about Mr. Patlovich and his knowledge. He realizes that rules and regulations are a must. Mr. Patlovich was hired into this position and so either stand by him or fire him. He was glad to see that Attorney Karl Lewies stand by Jeff Patlovich on previous decisions. He feels this development has met the requirements.

**Shirley Wilkinson**, 1156 E. Rim Loop Road, Ashton ID 83420 Mrs. Wilkinson has three children and travels the road at least three times a day. Change is coming, but we need to prepare for it. She is concerned with setting of precedence on moving the road. Feels this is a rare stretch of road along the river. She stated this is currently the safest stretch of the road. The whole road needs to be addressed not just for this project.

Hearing Officer Trent Grant read the following letters into the record:

Letter one- Opposition- Dennis Aslet  
Letter Two – Opposition – Mary Fran Jeppesen  
Letter Three - Opposition - Kevin M Lee  
Letter Four- Safety – Jason Tolemen

Hearing Officer Trent Grant closed the public comment and explained how the rebuttal process.

Rebuttle Comment:

**Jeff Moss**, Representing Mr. Vanersloot commented on private easement law. This is a public easement which falls under different law. He stated the developers counsel feels they have met IC on vacating a county road. That has not been met. Vacating this road is not in the best public interest. Must be a safe all weather road. Developer expert stated it is not safe now. There are precious spots in the County and the view should be preserved. There is a smoke screen if they are talking about public safety and it should be considered. The public interest is safety, but if they can make the existing road safe with the same type of measures and not by moving the road into a different position.

**Frank Vandersloot** mentioned that thousands of people will go through the road maybe not today, but at some point. He talked about the developers maximize their investments. The community is interested in the road, but this is not the issue. If safety is an issue there are other ways that it can be done. Please pay attention to the bikers and the walkers and travel along the river and please take into consideration the spot.

**Mr. Clayton** talked about the letter that was received from the Lee's, he was the real estate agent involved in purchase. The purchase price was 1.5 million This property has been turned down for purchase by adjacent property owners.

**Mr. Stephen Loosli** talked about the direct issue of safety. There is a common belief that the road is not safe. If the County needs to move the road for safety; then why isn't okay

for the developer to pay to have the road move. Mr. Loosli stated that he attended a commissioners meeting where LESA was discussed. He stated the Planning & Zoning Board admitted on the record they have been wrong in administering the LESA.

**Mr. Brad Purcell** talked about how Mr. Munson would not find much value in the property if the road is not moved according to Mr. Purcell. Safety of road, if developer is really concerned he would propose paying for the improvement to the entire road.

**Marla Vik** stated that she was very concerned about setting a precedence of moving prescriptive easement roads. She stated 90% of the county roads are prescriptive easement roads.

**Shirley Wilkinson** stated that here main concern will cause more safety issues should this road be allowed to be moved.

**Mr. James Walker** requested to present rebuttal testimony. He was not permitted because he did not present any testimony before rebuttal.

**Mr. Brockway** stated that primary responsibility as an engineer is to the public not to the client. They are to be objective and their primary concern is the public. He stated water supply is adequate and individual wastewater treatment (advanced system) are monitored annually. The site is suitable even if advanced systems are not used. It was asked what if the system breaks and it was stated that they must meet State requirements.

**Laura Munson** stated that they did not think they could do make improvements to the road from US Hwy 20, because they don't own it. They do want to propose larger lots because they care about open spaces. Weldon Reynolds the previous Road & Bridge Supervisor stated that the county has moved roads. She stated there is evidence of slid offs on the road that are not reported. She stated to the audience and clarified the statement that if this is not approved that they are not going to go away. They have invested lots and time and money and it will be developed. They want to do the right thing.

Commissioner Hurt asked her opinion of the safety from US Hwy 20 to the development.

Laura Munson stated that speed, guard rails are a big issue and they would be willing to work with the County, and they do not want to hurt the Henry's Fork and would be willing to work together and with the commissioners.

Drake Munson stated that the property is not a destination for the public. He stated it takes 32 seconded to travel the distance of the property. He proposed to provide a turnout for the public scenic view. He stated they have private property rights. He would not suggest making changes that are not safe. He stated they will work with county improve the road from US Hwy 20 to the property. Moving road will protect the river. There will be open trails to foot traffic. He asked commissioners to review the letter from the Henry's Fork Foundation and thanked commissioners for listening.

Commissioner Romrell asked if this turnout uses a lot.

Mr. Munson stated it does encroach, but will not lose a lot.

Mr. Lary Larson talked about productive crop land and how it was scored on the LESA site and how the waste land should be included in the calculation. He addressed the relocation of the road. He referred to Idaho Code on moving irrigation ditches as long as it doesn't impair others is allowable. The law allows movement of easements on private property. That policy applies to this property with regards to the road, as long as it doesn't hinder the maintenance of the road. Flooding the river doesn't give the public a right to oppose the building on private property.

Commissioner Romrell asked if this project complies with JJ – Roads of the Code.

Mr. Larson stated that yes based upon other using the road serving other lots.

Commissioner Romrell expressed his thanks to Hearing Officer Trent Grant.

Thanked everyone for the patience with this process.

Commissioner Romrell stated that they take this very seriously and use the law which is the Fremont County Comprehensive Plan and Development Code.

The public hearing was then closed. The commission set a work meeting for Friday, May 11, 2007 at 9:00 a.m. to review the information from the hearing.

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Paul Romrell, Chairman  
Fremont County Commission

Attest: \_\_\_\_\_  
Abbie Mace, Clerk

River's Edge Subdivision Appeal Hearing Exhibit List:

1. County Record
2. Appellant Memorandum
3. LESA System Score sheet
4. 2002 Fremont County Comprehensive Plan and Development Code
5. Fremont County Transportation Plan
6. PowerPoint handout from Developers
7. Aerial Photo of property (soils map)
8. Proposed development map
9. Preliminary Plat
10. None
11. LESA score sheet
12. Site Assessment map
13. Wetland and slope Aerial map
14. Road aerial
15. Large Copy of Score sheet (4 pages)
16. Road Standards highlighted from Marla Vik
17. Accident report list
18. Affidavits of 35 property owners Mr. Loosli represents