

**Fremont County Planning
& Zoning Commission
Minutes
July 16, 2007
6:00 pm
County Annex Building**

The Fremont County Planning & Zoning Commission met for regular session on July 16, 2007 in the County Annex Building. **Members in attendance were:** Evan Worrell (Chairman), Ron Kynaston, John Nedrow, Vance Derricott, Kirk Mackert (Vice Chairman), and Steve Pinther, Cindy Miller, Glen Pond

Staff and others present: Jeff Patlovich (P&Z Administrator), Lisa Benson (Planner I), Letta Laux (P&Z Secretary), Owen McLaughlin (District 7 Health Dept).

The chairman called the meeting to order at 5:59 pm

I. Welcome

2. Minutes

Mr. Worrell asked if everyone looked over the minutes for June 18, 2007. All had looked them over.

Mr. Nedrow wanted some clarifications on second paragraph, page 3, last sentence. Stated that there seems to be a word missing.

Mr. Patlovich stated that the sentence should say that there will be a public hearing as the next step in a Class II Permit.

Mr. Nedrow agreed. He stated that on page 5, the last sentence of Mr. Byrem's statement should read Island Park Reservoir instead of Henry's Lake.

Mr. Patlovich agreed.

Mr. Pinther questioned why some of the minutes were highlighted on page 9.

Mrs. Bensen stated that she highlighted it to show that the statement was read from papers that were given to the members.

Mr. Pinther questioned if it was part of public record.

Mr. Patlovich said that it a part of the staff report which was automatically part of public record. Everyone was given a copy of this in their packet.

Mr. Pinther stated that he would be interested in seeing what was read by Mr. Patlovich from the FCDC.

Mr. Patlovich suggested approving the minutes with the addition of the FCDC inserted from the staff report.

Mr. Pinther agreed that they should pass it with the addition of what was read from the FCDC.

Mr. Patlovich said the staff report is part of public record.

MR. NEDROW MOVED TO ADOPT THE MINUTES FOR THE REGULARLY SCHEDULED HEARING ON JUNE 18, 2007 AS WITH THE CORRECTIONS NOTED SECONDED BY MR. KYNASTON. MOTION PASSED.

3. Variance – Monte Smith

Mr. Worrell next item is public hearing on Monte Smith – Variance.
Mr. Patlovich, please report.

Mr. Patlovich Stated this is an application to allow a SFD in a floodplain of the Fall River Subdivision. Read from page 2, item C of the FCDC, and explained the floodplain zone definitions. The dilemma is that there are 2 lots within the subdivision that are non-build able. The subdivision was approved in the year 2000. It is a newer plat. There is no option that would allow building in the floodplain. Page 3 state law doesn't allow you to build in a place that is in the floodplain. This ordinance says that you can not build in a place that is prohibited. The plat shows that it is in a floodplain. The floodplain ordinance had previously allowed building in a floodplain only after certain specific rules and conditions have been met, it also allows flood insurance to be purchased. This ordinance, in place since 1992, states that no building can be done in a floodplain. Discussions had taken place in 2000 knowing that there were issues with the floodplain and vegetation on these lots and county approved the plat. There are drawings showing how these lots are non-build able because of location of the stream corridor and the floodplain.

Mr. Pond stated that the developer knew that these 2 lots were un-developable.

Mr. Patlovich stated that he did not believe that to be true. They knew they were in the floodplain. Except for this provision, this is not in the floodplain ordinance, but is found in chapter VII. Based on the floodplain ordinance chapter which is a model ordinance

from FEMA, the developers had agreed in 2000 that this is in a floodplain, but agreed to meet those requirements for building in a floodplain.

Mrs. Miller questioned if the setbacks requirements had been clearly shown in the site plans and the final subdivision plat.

Mr. Patlovich said that it had not been done.

Mrs. Miller stated if it had been on there, the buyers would have been able to see. So the buyers had no knowledge of that requirement.

Mr. Patlovich stated that they still would have been willing to build in the floodplain but were unaware of this provision. They believed that the only requirements were in the floodplain chapter and not in the body of the document.

Mr. Pinther questioned if the commission that approved the plat did so knowing that it was in the floodplain, and if by allowing it, was it with the intent that they were going to be following the floodplain regulations.

Mr. Patlovich stated yes that is correct it was clear from reading the minutes.

Mr. Pinther stated that the commission approved this in error and did so contradicting the code causing a dilemma.

Mr. Mackert stated that he was on the commission at that time but that they didn't know that section existed.

Mr. Patlovich stated that yes they didn't know that it existed, and did not ever take this section into consideration. They just thought it fell under the floodplain chapter, and just thought they could do as was done in other floodplains.

Mr. Mackert stated that the commission had said that they could build on it, except for that portion of it, which has taken place in other floodplains.

Mr. Patlovich except in Fremont County.

Mr. Mackert stated that it had been allowed in other floodplains, because that had not been applied or administered in the past. An important piece has been left out.

Mr. Patlovich agreed.

Mr. Derricott questioned if building has been done in the floodplain and this close to the river.

Mr. Patlovich stated that he did not know.

Mr. Pinther stated yes with regular setbacks of 50ft.

Mr. Patlovich stated that the setback is for 30 ft from the stream corridor.

Mr. Smith - North Fork Road, UT. Stated they were aware of the floodplain but were told that they needed to stay 50 ft back from the high water mark of the river. The floodplain was not ignored, and the P&Z people and the commission approved the setback and building site including power and water after looking it over and acknowledging the floodplain. They had been assured by the county before they bought the property that building would be allowed. They received assurances from the county throughout the entire processes up until after they bought the building permit. The county still has their money. They were told that a Zone A floodplain is a subjective line drawn on a map, and were ok because they have an eight foot drop from where they are building down to the river and they are 60 ft. back from the river. They were surprised to receive a letter showing that they were not able to build due to setback restrictions. The builders, county employees, surveyors, and other people living in floodplain areas were also surprised at the news. They were told that they could apply for a variance. They were building in an approved subdivision. They paid for the file and copy of the development code. He stated that the file is slanted negatively and that they did not know if they would even be able to get a fair hearing except for this public statement. Stated things within the file have been changed since the meeting last month. Stated things have been moved around and taken out to make it negative. Stated they are not applying for a variance for a building permit in floodplain. Stated they are asking for a variance from floodplain setback. Missing from the file are the pages of property values, and property rights, the names of all the people who have built in floodplains, the elevation certificate, and the letter from the county denying the permit with the tables showing that they have complied with all the requirements. There is only a place to sign to reject the application and not to approve it. Read from memo within the variance. Read sections A-E. Stated that section F is misleading and in error. This paragraph F is the reason for denial. Stated that this does not come from chapter 3 as stated, but rather comes from chapter 7 regarding floodplains. Stated the rest of Chapter III should have been noted. Read from Chapter 11. Stated they comply with all requirements in Chapter III. Stated they will not increase flood levels, will not pose a threat to public safety, and will not cause extraordinary public expense. Stated that Chapter 7 should not be noted, and by putting it in says that they cannot get a variance and the reason is because they need a variance. States it doesn't make any sense. Stated they have complied with all the requirements to get an approval. Stated that the commission is not to approve a variance for building in a floodplain, but are to approve a variance for a setback requirement that will allow them to build 50 feet from the high water mark. Stated the issue should not be tabled. Stated they had failed to submit a letter releasing the county of any liability as per required in chapter XI. They are turning one in tonight relieving the county of any liability in the event of flood damage.

Mr. Worrell questions?

Mr. Mackert questioned how long he had been working with the county. You thought that everything was thought to be ok until recently when you received this letter on May 1st?

Mr. Smith stated that is correct. Stated that the department was great to work with, and that the staff had bent over backwards to try and help them.

Bob Fisher, St. Anthony – Developer. From the beginning it has been noted that there was floodplain and a 50 ft. setback written on the plat. This was approved by the P&Z and the floodplain was recognized then. FEMA states that their goal is to not stop the building in the floodplain but to guide the building safety standards. FEMA does allow building in floodplain as does this body. Other properties in the same class of floodplains as these lots have been approved for building. Stated the locations of other floodplains previously developed in the area. Stated there has been ongoing approval of building on these types of floodplains without variance. Stated there is no reason for the commission to deny this one given the fact that FEMA does not try to stop building on these floodplains.

Denise Knight – Huntsville, UT – Land Owner stated that their lot is a platted, recorded residential subdivision approved by the county with recorded covenants covering the construction of a single-family home. The lot has been approved and taxed by the county as a building lot. The floodplain has never moved. Stated that the County has already studied the property and approved its use as a building lot where a building permit can and should be issued. Stated the copy of the covenants which is applicable law has been removed from the file since the last meeting. Also removed was the copy of the tax bill which shows the property was taxed as a building lot. Stated that the County has not withdrawn their approval of the subdivision, and they should not be made to suffer and lose all value in their property due to changes in county policy. Stated this is the exact type of situation that the variance was created for. Stated that their building permit payment was accepted, a permit number was issued. Stated they had been talking with the staff before the land was purchased in regards to what must be done because it was a floodplain. Stated she was told by the staff that they had overlooked this until the permit was reviewed. Stated that they believed the requirement was for the 50ft setback and nothing else. Said they were given a pre-construction checklist in August 2006 and that Fall River is not listed as an area requiring a 30ft setback from the stream corridor. Stated the checklist today still does not list Fall River, and believes people are being misled as to the building requirements. Stated the addition of the Fall River lots to the category that requires a 30 ft setback is recent. Stated that she has talked to FEMA and USGS trying to find out what the risk or impact of a flood is. Stated no records of flood levels reaching at or above where their lot is since records began being taken. Stated that USGS says that the river is highly regulated and that flooding is extremely unlikely. Stated that while talking about floodplain in this context, Zone A is adopted as part of the code as being part of the stream corridor, and it is a subjective FEMA designation of an area in which no survey has been done. It is a best guess designation. Stated the policy made at the comprehensive plan concerns the recognition of property rights, and is applicable law which was not included in their file. Stated land owners must accept

responsibility for the consequences of their actions. Believes the county must also accept responsibility. Believes they have made every effort to work with the County and they deserve a set back variance. The County should take responsibility for its errors, and make the situation right. Request that this variance not be tabled.

Mr. Richard Ward – Huntsville, UT – Stated that there are several items that have been removed from the original file. Stated there is no reference to the original notifications that were sent out in June, no record of the meeting in June, and no reference to the postponement of that meeting. Stated there are sections that list the requirements for applying for a variance. Believes the sub paragraph (F) was omitted which references Chapters X & XI which say that additional findings are required. All approval of variance shall be as followed in Chapter III. Stated Chapter III and XI sub sections. Stated in section R there are additional requirements to be met in order to be granted a variance. Stated that staff analysis relied heavily on Chapter VII.F.1 as a basis for recommending a denial. Stated the staff’s reason is due to the fact that section 1 appears to preclude any development in a floodplain overlay zone district. Stated the staff failed to notice paragraph 3. Stated it is highly illogical that the Fremont County Code prohibits all building within the floodplain when the Code has several provisions for doing so. There would be no need for them if there was to be no building in the flood zone. Stated omitted from their file was part of the comprehensive plan, Policy#8 which recognizes the County’s commitment to preserving personal property rights. Referenced – appendix E. Stated all of the information that has been omitted is highly pertinent to the commission in making their decision. Stated the County code provides provision for development within a floodplain overlay zoning district and also has provisions for granting variances. Requested approval for variance tonight.

Rudy Theriault – Idaho Falls, ID stated this is a common sense issue. The original plot and plan was approved by the county commission and was approved as a residential lot. He and other land owners are being taxed as residents. Appraised at \$90,000, tax bill \$1,473. Doesn’t understand why as residents they aren’t allowed have a building permit. Stated if the original approval of the lots were a mistake, then the commission has to live with it, and they cannot be denied permission to build on their own lots if discretion is used and the county released from any liability.

Mr. Pinther questioned which lot is Mr. Theriault’s and if it is only half the lot that is in the floodplain.

Mr. Theriault stated his lot is #6, affirmed that half is in the floodplain and that he wants to put his home in the floodplain.

Mr. Worrell questioned Mr. McLaughlin

Mr. McLaughlin stated he had issued permits for septic systems on lots #3 & #4. Stated they met requirements for septic systems placed 200 feet from the river, 50 feet from

canal. Stated they don't have to take floodplain into consideration. They met those conditions. Stated he had not looked at lot #6.

Mr. Derricott questioned if there is room for replacement if they should fail.

Mr. McLaughin stated he is allowed to give 10% of variance. It could be within 100 feet.

Mr. Derricott questioned soil types asked for clarification to the question.

Mr. McLaughlin sandy loams.

Mr. Pinther questioned if it was acceptable for sewer even though it is in the flood elevation level and if that affected their standards.

Mr. McLaughlin stated their regulations don't look at floodplains.

Mr. Worrell stated that the public hearing is closed. The board will discuss the verdict.

Mr. Pinther questioned Jeff as to which sections he is basing his recommendations on.

Mr. Patlovich read from section F on page 2 of the staff report. The issue here is the 100 year floodplain. Stated there is no dispute as to the floodplain being on the property. Stated the question is Table VII-1 which states minimum stream corridor setbacks. Stated for the record the Fall River has been listed in the FCDC since 1992. Stated the requirement is 30 feet from the outer edge of a stream corridor, which is the case here. Stated the stream corridor includes the floodplain. The discussion is with the stream corridor not the river setback. Read from sections F1 item C explaining stream corridor. Stated this law has been in the books since 1992 whether it has been applied or not. No dispute that it has not been applied until this point. The CC&R's are not applicable law and we do not recognize them. FEMA Chapter XI is there so that you can build in the floodplain under certain circumstances. However, Fremont County, since it's original ordinance says that you still cannot build there. But the dilemma is that a provision in Chapter 1 also states the "most restrictive provision in the code applies." Stated he does not hold the authority to change the law and is displeased with the comments that he has twisted the law. Stated the law is the law and it hasn't been applied in the past. Stated even if they were given the 30 foot setback variance it does nothing for them. Stated they would need some kind of relief to building in the floodplain which is not provided for them as a variance.

Mr. Pinther questioned Mr. Patlovich if all of this is based on the seven words "the stream corridor includes the 100 foot floodplain"?

Mr. Patlovich answered that it included that statement and also a statement from item C that says it may not be developed. Stated the Commission have the power to grant the variance and allow these people to get there permits tomorrow. Stated if they do then

they need to take care of their administrative documentation rewriting this. Stated the variance law is from the 30 feet setback. Stated they are asking for something that is more attuned to a use variance, which is not allowed by Idaho Code.

Mrs. Miller stated that this is a problem because situations come up that need to be dealt with on an individual bases. But the law is the law and they have to administer it. Stated the possibility of a rewrite and the law to be changed, and although inconvenient, there could be a later day when this could be acceptable to them.

Mr. Pinther stated that he feels that they qualify for a variance. Asks Mr. Patlovich to explain how they cannot apply the variance.

Mr. Patlovich reads from FCDC copied on page 3 of the staff report, quoting what a variance is. Stated the law in the books says you've got a 30 foot setback from the stream corridor defined as including the 100 year floodplain.

Mr. Pinther stated that it does say the placement of structure on lots.

Mr. Patlovich stated that in VII-F it states that stream corridors may not be developed. It is a prohibition of use. It is a major problem for Fremont County to have this language and not have applied it.

Mr. Mackert questioned the 2 maps within the packet. Questioned that there could be a discrepancy in the maps where the floodplain is.

Mr. Patlovich stated the difficulty with the plat maps at this scale that the GIS department did is the dotted line that is hard to follow. Stated he asked the GIS department to overlay this plat map onto the floodplain map. The mappings they use from FEMA are these hard copied panels; surveyor did the best he could to plot in the floodplain.

Mr. Mackert stated the FEMA maps are the ones they base their decisions on. There is a discrepancy between the maps. Questioned if they were considering granting an easement on the setback, it has been testified that it has already been setback 60 feet, so why do they need one.

Mr. Patlovich stated it was 60 feet from the high water mark which is the wrong standard in this stream corridor definition.

Mr. Pinther questioned Mr. Patlovich's stating that he reads the state law to read they can make a variance to allow placement of a structure on a lot.

Mr. Patlovich stated the prohibition elsewhere in the code that says development is prohibited.

Mr. Nedrow questioned what the landowners can do if this is denied.

Mr. Patlovich stated that the Board will hold a new hearing just like any other appeal.

Mr. Pond questioned if they need legal council to be present.

Mr. Pinther questioned if as a variance they have to be appealed or viewed by the County Commissioners.

Mr. Patlovich no they have to appeal it. Stated it is not a recommendation.

Mr. Pinther stated we would deny them, and they would have to appeal. We have had no testimony against it.

Mr. Pond stated that even if there is no testimony against it, there is no changing what the code says.

Mr. Mackert stated that we have allowed building permits over the years within the floodplains, and we are changing the way we have been applying the code for how many years?

Mr. Patlovich fifteen years.

Mr. Mackert stated that the code has been applied in one way and they have permitted buildings in approved developments in floodplains. Stated it is potentially unfair to these landowners when other permits have been granted for the same thing without the application of this.

Mr. Worrell stated that it has been approved before.

Mr. Pinther stated that we are here to weigh the evidence and the facts to determine the intent and to do the job. Stated Chapter XI shows intent for building in a floodplain.

Mrs. Miller stated that this needs to be done case by case.

Mr. Pinther stated it would be prudent for the developer to get an amendment to the code for future problems. Stated the evidence is obvious and they should apologize to the landowners.

Mr. Mackert stated that we need clarification. Questioned if they are outside of the 50 foot setback, do they even need a variance?

Mr. Pond questioned how you get around the fact that they cannot build in the corridor whether he is 60 feet or not.

Mr. Mackert questioned how others have gotten around it.

Mr. Pond stated they can't answer for how it was done in the past.

Mr. Mackert stated they are looking at history to determine how that applied.

Mr. Pinther stated we are allowing a variance to place the structure anywhere that meets the setbacks on that lot. Stated that it meets all the criteria for a variance.

Mr. Nedrow questioned if this is the state law.

Mr. Pinther stated it is state law which Jeff says it doesn't meet it. Stated he thinks it does.

Mr. Pond questioned how do you get around section C?

Mr. Pinther stated that we are making a variance. Stated it says that it cannot be developed, so we are making a variance that says...

Group talking

Mr. Pinther stated this does not allow placement of structure on lots, and we would be allowing a variance that says they can.

Mr. Pinther stated that we are allowing a variance to place a structure on a lot. As long as 50 feet back then he should be able to.

Mr. Pond stated the code says they cannot be developed.

MR. PINTHER MADE MOTION TO ALLOW THE LANDOWNER TO PLACE STRUCTURE ON THE LOT AS LONG AS IT IS 50 FEET BACK FROM THE HIGH WATER MARK OF THE STREAM. MR. KYNASTON SECONDED IT.

Mr. Derricott stated that it needs to go to the county commissioners and legal council.

Mr. Mackert questioned if the motion stated that it would have to be back 50 feet from the high water mark?

Mr. Pinther stated it is a requirement from the average annual high water mark.

Mr. Mackert questioned if it was the stream corridor or the floodplain.

Mrs. Miller questioned the size of the lot.

Mr. Mackert stated not sure if there is enough room to build from 50 feet back.

Mr. Patlovich stated he thought that it was testified to be 60 feet back from high water mark.

Mr. Pinther stated he couldn't put a sewage system in from 200 feet back.

Mr. Worrell there is a motion to build 50 ft from the high water mark. Yes: Pinther. No: Pond, Nedrow, Miller, Derricott. Motion failed.

Mr. Worrell stated that they have a right to appeal to the county commission.

Group discussion.

4. Sketch Plan – Hebdon Storage Units

Mr. Worrell stated the next item on the agenda is a sketch plan for Hebdon storage units and asked Mr. Patlovich to report.

Mr. Patlovich gives report on a proposal for mini warehouse facility in the South Fremont zoning district. It is a two phase plan. First phase is 26,200 ft. Second phase is 29,600 ft. for a total of 55,800 feet. This requires a large scale development study, and doesn't matter if they scale it down. Total project either way needs to go through a large study development process.

Mr. Danny Hebdon – Rexburg – 2 phases starting off with 50 units measuring 12X28 and than a later addition of 48 10X20 units, ending with 216 units.

Mr. Worrell questioned if it would be made from wood or cinder block.

Mr. Hebdon stated wood with metal siding.

Mr. Mackert questioned if there would be fencing.

Mr. Hebdon stated there will be fencing. They do have setbacks but overall, it's pretty basic.

Mrs. Miller questioned if they would place gravel or blacktop around buildings.

Mr. Hebdon yes it will graveled.

Mrs. Miller questioned if they are planning a water system for fire protection.

Mr. Hebdon answered yes for fire protection and occasional cleaning out of the units.

Mr. Mackert questioned if an office will be there or any employees present.

Mr. Hebdon stated no there would not be an on site office or employees.

Mr. Pinther questioned if it would be lit at night.

Mr. Hebdon answered it will be on a timer for nighttime lights.

Mr. Pinther questioned if the residents would be bothered by the lights.

Mr. Hebdon stated that were not doing any pole lightening.

Mr. Pinther asked if area behind is agricultural.

Mr. Hebdon stated plan to clean up that area.

Mr. Pinther stated it just depends on what the neighbors say.

Mr. Hebdon stated there won't be any trouble.

MR. DERRICOTT MADE MOTION TO INCLUDE A LARGE SCALE DEVELOPMENT STUDY AND A PUBLIC HEARING. MRS. MILLER SECONDED. MOTION CARRIES.

Mr. Mackert questioned Jeff if it is possible that the 5000 ft is an error.

Mr. Patlovich stated it is the same as the debate with the stream corridor issue with an inherent conflict. Stated they can change it when they do their revision of the code. It is not a typo.

5. Sketch Plan – Vern Harris

Mr. Worrell stated the next item on the agenda is Vern Harris. Mr. Patlovich to report.

Mr. Patlovich stated they have a request from the Island Park Zoning district to subdivide 9.78 acres the lot sizes range from 2.37 to 2.66 acres. Average density is 2.44 with each lot having their own septic system and individual wells. Stated needs minor adjustments to the road and road easements. Stated concern as it is located next to the Mack's Inn sewer system. If subdivision were to go through as proposed now, the spray capacity from the sewer treatment plant would have to be reduced when it is already close to being at capacity. Stated they need to discuss the possible 300ft easement from habitable structures and 500ft from the wells which renders one of the lots un-buildable. Stated he does not want to create a situation where a lot becomes un-buildable like in the Fall River Subdivision. Stated section VIII.CC, Central Water supply states that the lots with the average density as proposed would require a central sewer system. Stated to move

forward they need direction from the commission as to what they need to comply with these sections from the code and the overspray easement areas.

Mr. Mackert questioned that there was an easement already.

Mr. Patlovich stated no, for the continuation of the Mack's Inn sewer treatment plant spray farm the way it is constructed now, the county needs to have the 300ft easement as well as the 500 ft. easement which would render the 300ft deep lot un-buildable. Or they need to reduce the capacity of the size of the spray field, create our own easements on our own property to protect that operation.

Mr. Pinther questioned if they were using private property for disposal area.

Mr. Mackert stated it is a protection easement so it doesn't drift. Stated all land applications sites have that applied to them.

Mr. Pinther questioned that the county would have to reduce the sewage capacity.

Mr. Patlovich stated they would need the 300ft and the 500ft easement from the spray field to protect from overspray. Stated they could have a dilemma not too different from what we heard earlier tonight. Either they need to get the easements on this property as a condition of approval, or they are going to tell the county sewer system they have to reduce their capacity.

Mr. Pinther stated this is definitely a takings situation

Mr. Patlovich stated they are asking for the privilege to subdivide. They do not have an inherent property right to create a subdivision. Stated there is an existing use of the Mack's Inn sewer system that needs certain easements to be done so that a lot is not rendered un-buildable. Stated this is not a case of takings because the lot has not been built yet.

Mrs. Miller Stated once we do create that lot then it is a takings issue, and does not want that to happen.

Mr. Patlovich stated that he didn't want to create the same situation as the lots in the Fall River Subdivision. Past administrations, past commissions created those lots not understanding the definition of the stream corridors which took those lots. Does not want that situation here, nor does not want to tell the sewage plant their capacity is reduced.

Mr. Vern Harris – 2422 12th Ave. Nampa, ID – Stated that the property was purchased knowing that it private and that the spray field is there also. Cut back to 2.4 acres as per code. Asked that Tom Jewell explain.

Tom Jewell- 2462 Gooding St. Pocatello, ID – Stated that Mr. Harris purchased the property. Referenced a map. There is a corridor where the spray field between these properties and the holding pond. The sewer district has placed spickets within 60 ft off that back lot line. They have been spraying on private property. Stated the owner complained and since then, they have stopped spraying on that area. The next row sprays within 100 ft of these properties. Stated Karl Lewies wanted to buy 300 ft easement for the sewer district. Stated his opinion that the county should have bought the 300ft easements in 1980, or at least made a 300 foot easement for the spray field for each of the 10 acre lots. Stated Vern has provided a new sketch plan (five) each time they have been asked for new information. Property will not be given to the county but can be purchased. Stated there is the possibility of the county putting in a sewage system for the subdivision in exchange for the 300ft easement. DEQ requires that he needs the 300 feet from any inhabitable structure. The 2 lots are not willing to work with them but Mr. Harris is. We are looking for direction and instruction so that this can go smoothly. Marla was going to look into the cost of putting in sewage lines. Have not got a response that is why we offered individual septic systems.

Mr. Mackert questioned if lot 4 has the 300 foot easement, is there another 300 feet to the south that is not shown on the map?

Mr. Jewell stated no.

Mr. Pinther questioned if the County bought that would they have their 300 ft?

Mr. Jewell stated that is why Vern redrew it for the 6th time showing the 300ft.

Mr. Pinther questioned if the county expressed interest in it.

Mr. Mackert questioned what would happen if they take that 300ft and add additional spraying to that. Stated it could be a continual need for another 300ft buffer if the sewer company buys more lots or the easements to start land applications.

Mr. Jewell stated he needs 300 feet for a buffer.

Mr. Nedrow stated owner of Lot three could probably prevent that.

Mr. Pinther stated we can't consider the County's encroachment to affect our decision. The county needs legal council.

Mr. Patlovich stated that a property owner has no property right to subdivide, they have a privilege to subdivide. The county is asking for easements 300ft and 500ft on this property. Stated in this case they are asking for protections if they do these subdivisions which may render some lots un-buildable. Stated do not create un-buildable lots.

Mr. Jewell questioned if it is un-buildable.

Mr. Patlovich stated not until they subdivide.

Mr. Pinther questioned if we could table a sketch plan until they get legal advice.

Mr. Patlovich stated the other issue is because of the density requirement they must hook up to a public sewer system.

Mrs. Miller Stated there are a lot of issues.

Mr. Patlovich stated has a right to legal information and they could table it until they get legal advice.

Mr. Pinther stated that it is legal, and this man has a right to know this information before he proceeds.

Mr. Kynaston questioned how far they are from the existing sewer.

Mr. Jewell stated that he didn't know exactly how close it is, but roughly 10 acres to the west.

Mr. Pinther stated that the purpose of the sketch plan is to identify problems. There are problems.

Mrs. Miller stated this is only one of the problems. Stated she sees a problem with the lot size. Stated the code says what size the lots need to be, and this doesn't follow that.

Mr. Jewell stated they have requested a variance.

Mr. Mackert stated he saw several issues that need to be addressed with water quality, sewage system, and the road issue. Stated there is no access to Lot #4.

Mr. Jewell that drive way plan would be re-written as part of Lot #4.

Mr. Pinther stated it reads private drive to Lot #4.

Mr. Patlovich stated private drive does not provide access.

Mr. Mackert stated that he has a plan to include that as Lot #4.

Mr. Jewell questioned if the extended cul-de-sac had to have ingress/egress.

Mr. Pinther stated that's only on 5 lots or more and questioned if they even needed a cul-de-sac.

Mr. Patlovich stated they needed to be able to turn around.

Mr. Worrell questioned what needed to be done.

Mr. Patlovich stated he has heard them say they want legal council on this. These issues, range in difficulty from the simple such as moving the road, to the complicated easement issues, and all need to be worked out before going to public hearing.

Mr. Mackert questioned if they should move it forward.

Mr. Harris stated belief they are aware of the issues.

Mr. Mackert stated that it is not a development yet.

Mr. Pinther stated the purpose of the sketch plan is to solve problems not to create them.

Mr. Patlovich stated Mr. Pinther was wrong, and the code says that the purpose of the sketch plan is to identify problems, and we have done that, and they need to address these problems before they come back.

Mr. Pinther questioned if need to have county attorney give his opinion.

Mr. Mackert stated we better not see it before these issues are resolved, and don't waste our time.

Mr. Patlovich stated again you have to do these things before it comes back.

Mr. Mackert stated Jeff knows these issues and he doesn't want to see them until they are taken care of.

Mr. Nedrow moved to allow them to move forward to a public hearing.

Mr. Patlovich stated they have the easement issue with the sewer treatment plant, the road issue, the public sewer line connection issue.

MR. WORRELL MOTIONED TO HAVE SKETCH PLAN MOVE FORWARD WITH THE INFORMATION REQUESTED. MOTIONED PASSED.

Mrs. Vick stated she is upset that Mr. Jewell told the public that she was unresponsive to their request. Stated that they had not called to follow up on the issue, and that she was told they had dropped the request.

Mr. Worrell motioned to break.

All in favor

6. Public Hearing – Maupin

Mr. Worrell called meeting back into session.

Next item is public hearing for Maupin.

Mr. Pinther stated he would sit this one out because he does business with the Maupins.

Mr. Worrell asked Jeff to report.

Mr. Patlovich stated this is for one warehouse building 4,000 sq. ft. utilizing existing well and sewage systems on the property. Stated there is no new road ways proposed, and this is a straight forward application, ready for public hearing and approval.

Mr. Nedrow questioned if this for a sketch plan.

Mr. Patlovich stated that it was done last month, and this was for public hearing.

Mr. Maupin – St. Anthony, ID - asked if there were any questions or comments.

Mrs. Miller questioned if there would be any new gravel buffering.

Mr. Maupin stated that yes he would it needs to be built it up and add gravel to be able to drive his vehicles on and meet up with the existing buildings.

Mr. Worrell questioned if just storage for wood.

Mr. Maupin stated that it is for storage of the product he builds.

Mr. Worrell asked if there were any more questions.

No one signed up on sheet.

No additional comments.

The Public Hearing closed

**MRS. MILLER MOTIONED TO APPROVE THE APPLICATION AS
SUBMITTED, SUBJECT TO THE CONDITIONS OF APPROVAL.
MOTION WAS SECONDED BY MR. KYNASTON.**

Mr. Worrell motion moved and seconded.

MOTION PASSED UNANIMOUSLY.

7. Public Hearing – Mike Dolezal

Mr. Worrell next item on agenda is Mike Dolezal warehouses and asked Mr. Patlovich to report.

Mr. Patlovich stated this is for a 2 warehouse building and associate storage yards just north of Simplot complex. Stated he had given background on the city's ordinance and what it requires. Recommending approval with two conditions based on the city's zoning ordinance.

Mrs. Miller questioned the staff concerns that are underlined.

Mr. Patlovich stated they wanted to bring it to attention that Dolezal's are proposing outside storage and maybe some outside fencing to screen it. Suggested they use the special provisions category 17.24.04B of the St Anthony City Code to allow it.

Mr. Mackert questioned if the City had looked at the application already.

Mr. Patlovich stated that it had been approved.

Mr. Pinther questioned if it was a city requirement. Stated the city was not even concerned about it.

Mr. Patlovich stated they were not. Stated that it is a specific provision we have adopted. Suggested a screened fence can address the problem.

Mrs. Miller questioned the requirements of the water on to the city system.

Mr. Patlovich stated it had gone before city council and they have approved it.

Mr. Mackert questioned if this was the same piece of ground that had been approved for offices before.

Mr. Patlovich it is not.

Mr. Worrell opened public hearing asked Mr. Dolezal up for questions.

Mr. Mike Dolezal – Chester, ID -

Mrs. Miller questioned why there is no water available for fire protection.

Mr. Dolezal stated that he is looking into a well or sharing a well with Standard Truss.

Mrs. Miller questioned if there would be gravel and fencing.

Mr. Dolezal stated that there would be fencing identical to Fremont Telecom building.

Mrs. Miller questioned lighting

Mr. Dolezal stated that it would be the identical as the lighting on the other building.

Mr. Worrell there is no additional comments.

The public hearing is closed.

MR POND MOTIONED TO APPROVE WITH THE CONDITIONS OF FENCING AND OFF STREET PARKING. MR. KYNASTON SECONDED.

Mr. Worrell stated all in favor.

Motion Carries.

8. Public Hearing – Seventh Heaven – Kaye Albinston

Mr. Worrell next item Seventh Heaven – Kaye Albinston.

Mr. Patlovich stated this is a proposal for a 9 lot subdivision with average density of 2.06 acres per lot located in the SF zoning district which calls for 2.50Acres. Talked with applicant about two options he has to remedy the problem. One option is to drop his lot from the subdivision, and/or applying for a variance from this average density requirement. Stated that there have been some illegal lot splits and this has been a way to help them make it legal. Stated he had made note that the applicant wanted to keep 3 water rights. Stated that was his only concern.

Mr. Kynaston questioned when they saw the plat.

Mr. Patlovich answered September 2005.

Mr. Mackert questioned when they would see the potential remedies for the lot size.

Mr. Patlovich stated that when LESA was approved an amendment was added that says you can table this for 90 days in order to give a person direction on how they could gain approval. Recommended they agree a variance would be something that the commission would look at, not approving or denying it in order to rectify the density issue. Then they

could come back and continue the public hearing on the plat and also bring in a variance application within the 3 months.

Mr. Pinther questioned if the LESA was retroactive.

Mr. Patlovich stated that this was an application for the preliminary plat that came in after the effective date. The sketch is an application by itself, the preliminary is an application by itself, and the final plat is an application by itself.

Mr. Worrell questioned if the Loosli amendment had been appealed.

Mrs. Miller stated that Mr. Pinther was correct and that this was retroactive. Questioned if the LESA was active law now.

Mr. Patlovich stated yes it is active now.

Mr. Worrell questioned when the LESA noticed was in the paper.

Mr. Patlovich stated it may have been a small notice and 28 days for appeals has passed.

Mr. Pinther stated this is a sketch plan and is one phase. Also, that there is no relation to the preliminary plat. And that is why this falls under the Loosli provisions.

Mr. Patlovich stated that there is a very close relationship but they have different application types and a separate fee for each.

Mr. Mackert questioned why it made it to this point if it doesn't meet the requirements.

Mr. Patlovich stated he wasn't there for the sketch plan when the calculations were done.

Mr. Mackert stated that he thought the density issue would have been absolved.

Mr. Patlovich stated that when the sketch was done, the calculations should have been made. Stated we had them bring 2 of the 3 pieces that had been taken out of the original parent which were illegal divisions. Stated we required them to bring them back in because a one-time lot division is ok which changed the numbers of the acres as well as the number of lots which changed the calculations of the average density.

Mr. Mackert questioned why they are looking at it before it's resolved. Stated they now have 90 days to resolve it. Stated it was poor planning and should have been resolved before it came to them.

Mr. Patlovich stated this is what they have come in with. Stated they didn't catch it until after the public hearing notices were sent out.

Mrs. Miller questioned if the old LESA had been applied to this property.

Mr. Mackert stated that we are using the new LESA to grant them 90 days to absolve the density and he doesn't agree with this.

Mr. Steve Albiston – Idaho Falls, ID stated that there are some issues with the process that they are doing. Stated they brought in lot 1 and then added in lot 2. By adding up the total acreage minus those two lots and divided by the total number of lots, put them over the average density.

Mike Bishoff – Shelley, ID – Benton Eng. The original sketch plan did meet the criteria for the acreage. Stated previous P & Z administrator issued building permits that allowed illegal splits. Stated they would like to get this done without going another 90 days. Wells have been addressed, and gone through all the processes.

Mrs. Miller questioned in regards to the preliminary plat if lots 1 & 2 were taken out would this still look the same and would lot 6 be open space.

Mr. Albiston stated that lot 8 would open and there would be accessed from county road.

Mr. Derricott questioned what would be done with lot 8

Mr. Albiston it is a common area.

Mr. Derricott questioned if he was ever going to build on it. Asked if there were already buildings placed on those lots.

Mr. Albiston said they were previously split lots bought by people and doesn't understand how they can be brought back into this project.

Mr. Patlovich stated there are 3 owners: Lots 7 and 2 was sold off from the original and then Lot 1 was split off. Then they were all brought back into to correct into a legal subdivision instead of illegal lot splits.

Mr. Mackert questioned when all the splits were done.

Mr. Albiston Lot 2 was last year and Lot 7 was in 1992.

Mr. Mackert stated Lot 1 was the original.

Mr. Albiston stated that it was his sister who sold it off years ago.

Mrs. Miller stated that part of the reasons the 2.5 acres density is for the septic reasons.

Mr. Albiston stated that they have newer septic systems that guarantee that they are good for a half acre.

Mr. Derricott stated they have a 50% failure rate.

Mr. Mackert stated that this is only 1 split not 3.

Mr. Patlovich stated there are 3 splits and they brought 2 back in.

Mr. Mackert stated one is the original, and not considered. Then one is 15 years ago possibly predating the Code.

Mr. Patlovich stated again that it was after the effective date of the code in 1992.

Mr. Pinther questioned if they are going to achieve the density after bringing the lots back in.

Mr. Patlovich stated no, they would be off by less than 2/10th of an acre

Mr. Albiston stated that it is only in 6/100th of an acre that they are off in density. Looking all around there is strange surveying. They are not going to meet the 2.5 density.

Mr. Pinther questioned if by increasing the size of Lot 8, they could achieve density.

Mr. Albiston stated the only way out of it is to drop Lot 1 and 2 out of this new subdivision and have the division by 2 less lots.

Mr. Patlovich states that there is a procedure which is a variance that could be applied for. Do not want to have a future problem.

Mr. Mackert questioned on the original sketch plan what was approved.

Mr. Albiston stated Lots 9,8,6,5,4,3.

Mr. Patlovich stated that bringing Lots 1, 2, and 7 back into the subdivision would correct the illegal lot splits.

Mr. Mackert questioned what was being fixed by being put into a development.

Mr. Patlovich stated that there were too many splits and if they remain illegal and a house burns down, they would not be able to rebuild it on that lot. They would not be granted a permit due to the illegal lot split.

Mr. Mackert questioned if other illegal lot splits would be deemed un-buildable if needed to rebuild on.

Mr. Patlovich stated hypothetically, yes.

Mr. Mackert stated he knows there are other illegal lot splits, and if they apply it to one, they have to apply it to all.

Mr. Patlovich stated as we catch them, yes.

Mr. Pinther questioned Jeff's proposal to help these people.

Mr. Patlovich stated they should table it for 30 days to allow them to apply for a variance to take care of the 2.5 acre average density, and then they can approve it. The problem would be rectified.

Mr. Pinther the variance would be changing the 6/100ths.

Mr. Albiston stated that when this was calculated they came up with 6/100ths. Factoring out the road they will come with the 2.31 acres.

Mr. Patlovich stated that this is one case where you need to do a variance to correct past errors.

Mr. Pinther questioned if there was another solution.

Mr. Albiston stated that they could make fewer lots but it would drop their profit substantially.

Mr. Pinther questioned if this meets the requirements for a variance.

Mr. Patlovich stated they are looking to fix the illegal splits as well as subdivide the property.

Mr. Mackert questioned the illegal lot splits and what would happen in case one of the homes was to burn down. Stated they should approve the original and leave the 2 lots out.

Mr. Pond stated they should allow either of the 2 options, and let the owner decide. Let them come back for the variance or go with original plat.

Mrs. Miller questioned the 3 water rights on the property.

Mr. Albiston stated that it is with the canal company.

Mrs. Miller questioned if it was only his lot or others.

Mr. Albiston stated it would be available for anyone who needed it.

Mr. Miller stated that they received a letter from the Fremont Madison Irrigation canal company about concerns with the storage water.

Mr. Worrell questioned if it was Fall River irrigation.

Mr. Albiston stated that you could only water one acre.

Mr. Mackert stated only ½ acre.

Mr. Pinther stated it is the reason that all the people need to have their water rights.

Mr. Albiston stated he could make it available to all the people.

Mr. Bishoff stated that state law requires them to keep the water rights with the original property or to sell it back to the district.

Mr. Pinther stated his understanding that Mr. Albiston want's to keep the rights.

Mr. Bishoff stated the water rights have to stay with the ground itself. He could not retain them for himself.

Mrs. Miller stated that it would need to be in the CC&R's

Mr. Pinther questioned the length of the cul-de-sac.

Mr. Albiston stated that it was around 700 meters.

Mr. Pinther questioned since it was over 5 lots if it has to have 2 points of access.

Mr. Patlovich stated that it was 16 lots for the 2 points.

Mr. Worrell open hearing for public comment.

Larry Johnson- Island Park – Smart Growth – One development that is perfect. It is not in wetlands, and soil types are ideal for septic tanks. Ways to get around the density requirements could transfer development rights. This organization is in favor of.

Mr. Stephen Loosli- Chester, ID – LESA passed on the 11th of June and in paper of the 14th and 15th of June. They added paragraph O for this reason. Landowner who owns property that has been illegally split will not be covered. Makes a suggestion to apply for a variance to adjust the density. Stated he agrees with Smart Growth.

Mr. McLaughlin Public Health District- stated the area is ok but some will need special systems.

Mr. Pinther questioned what systems would be used on this.

Mr. McLaughlin stated some alternative systems could be used.

Mr. Pinther questioned if wanted to talk about the 50% failure rate.

Mr. McLaughlin stated that it is not true. Stated a company can have a failure rate of no more than 20%. If they don't meet the standard they are no longer to able to sell that produce.

Mr. Pinther questioned if they were bonded and if there was a 50% failure rate, would the company be liable?

Mr. McLaughlin stated company would not be able to sell it until it was up to code, they are bonded.

Mr. Pinther questioned if Marla Vik had any problems with the accesses.

Mrs. Vik stated that no, they would need to look at the drive ways when they permit them.

Mr. Worrell stated no additional comments.

Mr. Mackert stated that he didn't think they should get another 90 days to comply.

Mr. Derricott stated that they need to revise their lots and drop a lot and make the others bigger.

Mr. Mackert stated that the correct way to do it is to have them meet the requirements before they come to the P&Z. Believes that it is a good development. Questions if landowners don't want to accept the CC&R's can they be forced to?

Mr. Patlovich stated they are land owners who have signed.

Mr. Mackert stated there might not always be landowners who agreed.

Mr. Patlovich stated one of the duties of the county is to correct errors as well as a potential title defect within the county.

Mr. Mackert stated that there are property owners who are adjacent to developments but don't want to be part of them.

Mr. Patlovich stated that the property owners don't have to join in. But they need to see how to correct the defect in the title and need to protect their property.

Mr. Miller stated there is a Quit Claim deed here.

Mr. Patlovich stated that a Quit Claim deed doesn't mean anything.

Mr. Pinther stated that we need to correct an issue. Stated he doesn't worry too much about the 600th of an acre. Stated the best thing is to help these people proceed.

MR. POND MAKES A MOTION TO KEEP THIS OPEN ALLOWING THEM TO PRESENT A VARIANCE OR A DIFFERENT PLAN FOR THE 30 DAYS TO BE LOOKED AT AGAIN IN AUGUST. MR. PINTHER SECONDED.

Mrs. Miller questioned if they could look into other ways to cluster.

Mr. Patlovich stated that clustering will fundamentally change their plat requiring them to resubmit.

Mr. Worrell motion has been made to table for 30 days. All in favor.

Motion Carries

9. Public Hearing – Walters Produce

Table until August 20th as per applicant's request.

10. Administrator's Report

Mr. Patlovich asked to schedule a time to meet for the large scale development study, interviews on the Henry's Lake Ranch, the mini storage units, and preliminary discussions going over changes to the development code.

Mr. Pinther questioned if he was proposing amendments to the code.

Mr. Patlovich stated that basically they are going to rewrite the whole thing.

Mr. Kynaston questioned if they were getting the comp plan rough draft next week.

Mr. Pinther stated they haven't even seen the rough draft and questioned if they were going to start writing the code before they have an idea what the plan is?

Mr. Patlovich stated if he wants to drag it out then get a vote of the county commission. Stated they need to sit down and talk in generalities about why we need to update, for example, the telecommunication appendix.

Mr. Pinther stated that he doesn't have a problem with the telecommunication because he hasn't seen it. It is hard to write code before we have a plan.

Mrs. Miller stated we have a good idea what the plan is. It has been discussed.

Mr. Pond stated he doesn't have a problem having discussions about the changes for the large scale development.

Mrs. Miller questioned what date they would be considering.

Mr. Patlovich stated that he needed time to get notices out.

Mr. Mackert stated that he would like to have a copy of the new LESA amendment and give them a work session on it before the next session.

August 13th to schedule interviews for large-scale developments.

July 23rd work session on the comp plan with Joshua.

11. Adjourn

Mr. Worrell adjourned the meeting at 9:13pm.