

**BOARD OF ADA COUNTY COMMISSIONERS
MINUTES OF THE PUBLIC HEARING
WEDNESDAY, JULY 11, 2012
6:00 P.M.**

The Board of Ada County Commissioners (Board) met this date in the Ada County Public Hearing Room of the Ada County Courthouse Complex. Staff present: Richard Beck, Megan Johnson, Brent Danielson and Diana Sanders, Development Services; and Ax Yewer, Prosecuting Attorney’s Office. Minutes Recorder: Judy Morris.

I. IN THE MATTER OF CALL TO ORDER:

Commissioner Rick Yzaguirre called the meeting to order at 6:00 p.m.

II. IN THE MATTER OF ROLL CALL:

Commissioners Rick Yzaguirre, Sharon M. Ullman and David L. Case were present.

III. IN THE MATTER OF CHANGES TO THE AGENDA:

There were no changes to the agenda.

IV. IN THE MATTER OF UNFINISHED BUSINESS:

ACTION: S. ULLMAN MOVED TO REMOVE APPLICATION NOS. 201101223-ZOA ADA COUNTY AND 201101231-CU-V WHEELER FARMS INC. FROM THE TABLE FOR CONSIDERATION. D. CASE SECONDED.

DISCUSSION: D. CASE STATED THAT HE WAS NOT PRESENT AT THE PREVIOUS HEARINGS RELATING TO THE UNFINISHED BUSINESS ON THE AGENDA, BUT ADVISED THAT HE HAS REVIEWED THE AUDIO RECORDINGS FROM THE PRIOR HEARINGS AND THE RELATED DOCUMENTATION. HE ALSO DISCLOSED THAT HE HAD RECEIVED A CONTRIBUTION FROM MR. WHEELER, BUT NO EX PARTE COMMUNICATION OCCURRED RELATING TO THE APPLICATION BEFORE THE BOARD. S. ULLMAN EXPLAINED THAT ITEM NO. 1 IS UNRELATED TO THE TREASURER’S OFFICE AND REFERENCE TO THAT OFFICE ON THE AGENDA IS DUE TO AN INTERNAL ISSUE THAT IS BEING RESOLVED.

ACTION: S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

1. 201101223-ZOA ADA COUNTY - TREASURERS’ OFFICE : ROOSTER ZONING ORDINANCE TEXT AMENDMENT: A zoning ordinance text amendment to amend Ada County Code Title 5, Chapter 7, Section 2, and Title 8, Chapter 5, Section 3, Subsection 62. The request is being made to add a definition of domesticated animal, and to clarify that written verification is required for livestock being raised for an educational purpose. *(Tabled from 5/9/12)*

R. Yzaguirre stated the public hearing was left open and requested Staff provide an update.

R. Beck submitted, as Exhibit 21, email correspondence from Michelle, no last name provided, dated July 11, 2012. He then presented an updated Staff report.

S. Ullman asked R. Beck to explain under what circumstances an individual would be required to provide proof of participation in an educational program. He explained that educational verification would be requested in response to a code enforcement complaint.

R. Yzaguirre stated that roosters were not being identified as different from any other animal in the existing draft. He confirmed with Staff that roosters were treated as a dog, cat or any other animal that an enforcement issue was raised.

Don Howard stated his name and address for the record and presented testimony opposing the proposed ordinance. He objected to the broader language to include all domesticated animals and the educational requirement.

S. Ullman asked R. Beck to explain the need to have the requirement to prove an educational purpose in terms of enforcement of the animal nuisance. R. Beck stated that the educational purpose was the only option available to someone with less than one acre or in the appropriate zoning designation to have a rooster or other livestock on their property. S. Ullman stated the intent of the ordinance was to provide a means to address unruly animals rather than prevent someone from raising livestock and asked if the education language was required for enforcement. R. Beck advised that enforcement of the code with people on smaller lots has been challenging. S. Ullman and R. Beck discussed the educational requirement in the existing code.

Melt Esquibal stated his name and address for the record. He inquired under what jurisdiction the Board was acting and stated he believed the Board did not have the authorization to amend the ordinance.

Linda Diehl stated her name and address for the record and presented testimony in opposition of the proposed ordinance. She stated she purchased a half acre in the country several years ago specifically to be able to have livestock if desired. She stated she was unclear what educational purposes referred to.

R. Yzaguirre explained that educational purposes included programs such as 4-H, agricultural programs, etc.

L. Diehl stated that she wanted the ability to raise animals for whatever purpose she desires.

Elizabeth Krause stated her name and address for the record. She asked how many noise complaints have been received in the past two months. R. Beck responded that complaints go directly to the Ada County Sheriff's office to be handled by the code enforcement officers, so Staff does not have that information. She presented testimony opposing the ordinance and the educational requirements.

Mary Ann Lawford stated her name and address for the record and presented testimony in opposition of the proposed ordinance. She expressed her concerns that the ordinance is being amended based on the complaint of one person rather than an overriding need in the community.

D. Case asked R. Beck to explain the grandfather rights included in the proposed ordinance. R. Beck explained the sections that govern uses that existed either prior to the optional zoning ordinance or approved under a previously adopted plan. He stated that there is a 2000 ordinance that provides the existing criteria. He stated that if someone has already established an educational purpose there may be a potential for not being required to provide documentation. He said as far as the types and number of animals and location no changes are being made.

S. Ullman suggested that the ordinance be amended to require compliance with CC&Rs, remove the one acre lot size restriction, possibly exempting multi-family housing, and remove the educational requirement altogether. She also suggested keeping the proposed definition of domesticated animal and add the suggested language regarding domesticated animal nuisance.

Christy Tarbet stated her name and address for the record and said that she supported the suggestions made by S. Ullman. She advised the Board that she had prepared a written statement to read to the Board prior to hearing S. Ullman's suggestions. She proceeded to read her statement opposing the ordinance and the educational requirements.

S. Ullman responded to the testimony presented. She explained that the first complaint was received several years earlier and Staff has been working on an ordinance since that time. She advised that the Board has been conducting public hearings in an attempt to obtain and incorporate language from constituents in order to draft an ordinance to protect everyone's interests.

Alexa Phillips stated her name and address for the record and presented testimony opposing the education requirement of the ordinance.

Deborah Tackman stated her name and address for the record and presented testimony opposing the proposed ordinance. She expressed her concerns with the definition of domesticated animals and the educational requirements. She suggested that each situation should be dealt with individually.

Frank Gamma stated his name and address for the record and presented testimony opposing the proposed ordinance. He stated that he had to get rid of his rooster because of one complaint.

Lori Gautier stated her name and address for the record. She stated she was opposed to the ordinance for the reasons addressed in previous testimony. She said that she supported S. Ullman's suggested changes to the ordinance.

R. Beck submitted additional exhibits into the record expressing opposition to the ordinance.

S. Ullman asked Staff to explain the process going forward amending the ordinance to incorporate her suggestions and possibly receive written comments prior to passing the ordinance. She also suggested the Board adopt such amended ordinance and review it after several months to see if it has caused any of the anticipated problems.

R. Yzaguirre closed the public hearing but left it open for the purpose of receiving written comments on the revised ordinance.

R. Beck stated that modifying the zoning ordinance any further would constitute substantial change and would require it to be retransmitted to the jurisdictions or agencies that may have an interest in the changes.

ACTION: S. ULLMAN MOVED WITH REGARD TO APPLICATION NO. 201101223-ZOA ADA COUNTY, TO AMEND THE CURRENT PROPOSED ORDINANCE TO REQUIRE COMPLIANCE WITH CC&R'S; REMOVE THE EDUCATION REQUIREMENT; REMOVE THE LOT SIZE REQUIREMENT; AND MAINTAIN THE ADDITIONAL DEFINITION OF DOMESTICATED ANIMAL AND NUISANCE DOMESTICATED ANIMAL. D. CASE SECONDED. S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

2. 201101231-CU-V WHEELER FARMS INC: TED WHEELER: Application to install a freestanding wind tower and request a variance for the building setback and the DBA. The property contains 75.590 acres and is located at 8385 S. Eagle Rd., Section 8 2N 1E. *(Tabled from 5/9/12)*

R. Yzaguirre stated the hearing was left open and requested an update from Staff.

M. Johnson submitted additional exhibits into the record and presented the Staff report.

Craig Kulchak, representing Applicant, stated his name and address for the record and presented testimony addressing the Staff report. He provided a letter from a neighbor stating that she would enter into a non-revocable easement that would prevent building a structure within the fall zone area. He discussed the noise emission levels and stated Applicant was requesting the allowable level be increased to the current decibel limit.

D. Case asked Staff to explain where the noise level was measured. M. Johnson explained the noise level was measured from each property line. D. Case inquired if the recommendation for denial was based on the application being submitted under the old ordinance. M. Johnson explained that if the manufacturer's specifications did meet the 45 decibels, as measured from the property line, that it would meet the county requirements.

Robert Schlechter stated his name and address for the record. He said he believed he was the closest property to the wind turbine and stated that he was in favor of the application.

Stephanie Welebir stated her name and address for the record and presented testimony opposing the application. She expressed her concerns with the wind turbine and the visual impact of the tower. She asked what the penalty for exceeding the maximum decibel level would be.

S. Ullman inquired if S. Welebir would be comfortable with the turbine if it did not exceed the 45 decibels. S. Welebir responded that she believed that would be acceptable.

S. Ullman requested Staff explain the enforcement mechanism. M. Johnson advised the Board that if code enforcement received noise complaints, the Applicant or property owner would be required to get an acoustical study done by a professional to prove they are not exceeding the maximum noise levels. She explained the steps that would be required if the noise levels exceeded 45 decibels, including possibly removing the wind turbine.

Ted Wheeler stated his name and address for the record and responded to S. Welebir's testimony. He presented testimony supporting his application and discussed his agreement with Idaho Power for the energy generated by his wind turbine.

C. Kulchak re-approached the podium and presented additional testimony supporting the project.

R. Yzaguirre closed the public hearing.

D. Case discussed the project and his understanding that had the application been filed under the new ordinance, it would meet the allowable noise levels. S. Ullman asked Staff to advise what findings the Board would need to make in order to grant the variance. M. Johnson provided the specific findings required.

S. Ullman discussed the project and proposed additional conditions of approval. She suggested the decibel level be limited to 45 as required in the existing ordinance and that the wind turbine be removed if it repeatedly violates that provision. She requested a requirement be included that the permanent easement be put in place and recorded. She also wanted confirmation that no building may be occupied within the fall zone and all criteria of the existing ordinance would need to be complied with.

ACTION: S. ULLMAN MOVED TO APPROVE APPLICATION NO. 201101231-CU-V WHEELER FARMS INC. AND TABLE IT TO THE JULY 25, 2012, DEVELOPMENT SERVICES MEETING FOR THE ADOPTION OF REVISED FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT WOULD GRANT APPROVAL, BUT INCORPORATE ALL OF THE CONDITIONS JUST SPECIFIED. D. CASE SECONDED. S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

V. IN THE MATTER OF NEW BUSINESS:

- 1. 201200664-SEW ANDERSON WESLEY B : BLACKHAWK COURT SEWER EXTENSION:** A proposed sanitary sewer extension project, located in a portion of the southwest community. Section 26, T. 3N., R. 1E

R. Yzaguirre opened the public hearing.

B. Danielson presented the Staff report.

Jim Pardy, city of Boise, stated his name and address for the record. He advised the Board that the city had been contacted by Central District Health (CDH) regarding the property at 10521 Blackhawk Court to determine if the location of sewer was

reasonably accessible. He discussed the sewer location and stated it does meet the city sewer extension policy. He explained that because the sewer was so close, that CDH denied a permit to rebuild the septic system, requiring the owner to connect to the central sewer.

S. Ullman and J. Pardy discussed the property sizes and whether the subject property has space to add another drain field. J. Pardy said he did not have information regarding the drain field.

J. Pardy stated that only one resident of five were in favor of the project, but not willing to connect at this time. J. Pardy explained the circumstances in which a property owner would be required to connect, if the project was approved.

S. Ullman inquired how a denial by the Board would impact the project. J. Pardy stated that he would have to discuss it further with the Public Works Director. He suggested that CDH may have to come up with another solution. They discussed the possibility of CDH allowing a second drain field for the owner if the application were denied. J. Pardy discussed the city's concerns relating to the investment already made in the area.

D. Case discussed the concerns raised if a property owner connected to the central sewer that they would be consenting to any future annexing into the city.

Daniel Rowe stated his name and address for the record. He presented testimony confirming that the surrounding property owners objected to the project and hoped that CDH would issue the necessary permit for the owner to rebuild the septic.

Derrell Anderton stated his name and address for the record and presented testimony supporting D. Rowe's testimony.

DeAnne Mittleider stated her name and address and presented testimony opposing the application.

Lance Moon stated his name and address for the record. He advised the Board that he is the property owner being forced to hook up to the central sewer. He stated that he has already had a test hole dug and tested for a new drain field. He explained that the drain field would be less expensive and that he preferred not to have sewer at this time.

D. Case inquired when the property owners would be required to pay for the extension. J. Pardy explained that the owners would not be required to connect until their septic system failed.

S. Ullman responded that the issue would be that if the sewer was extended through Blackhawk Court, the property owners would not have an option to rebuild their septic system if a failure occurred. They would be required to connect to the sewer system. She suggested that if the Board denied the project at this time, perhaps CDH would issue the new drain field permit.

D. Case inquired if the property owner had the option to build the new drain field under the existing CDH code. B. Danielson responded that typically if a source is available within 300 feet, CDH will require the owner to hook into sewer.

The Board and J. Pardy discussed the extension and CDH's requirements and reasons for denial of a permit.

B. Danielson addressed D. Case's prior question regarding a resident's requirement to connect to a municipal sewer system.

S. Ullman expressed her concerns regarding annexation.

R. Yzaguirre closed the public hearing.

ACTION: S. ULLMAN MOVED TO DENY APPLICATION NO. 201200664-SEW ANDERSON WESLEY B. D. CASE SECONDED.

DISCUSSION: D. CASE EXPRESSED HIS CONCERNS DENYING THE APPLICATION, BUT SUPPORTED THE DENIAL.

ACTION: S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

2. **04015-S-TE DEVONSHIRE SUBDIVISION TIME EXTENSION:** An application for a board granted time extension for Devonshire #5. The property contains approximately 26.4 acres and is located south of Lake Hazel Road and west of Five Mile Road at S. Misty Glen Ave. and S. Warwickshire Ave., Section 2, 2N, 1E

R. Yzaguirre opened the public hearing.

D. Sanders submitted an additional exhibit for the record and presented the Staff report.

D. Case inquired if any codes have changed that would affect the time extension or the overall plan of the subdivision. D. Sanders explained that the approval would fall under the code in effect at the time of the original application.

Shawn Brownlee, Applicant, stated his name and address for the record and presented testimony supporting the application.

R. Yzaguirre closed the public hearing.

ACTION: S. ULLMAN MOVED TO APPROVE APPLICATION NO. 04015-S-TE DEVONSHIRE SUBDIVISION TIME EXTENSION. D. CASE SECONDED. S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

3. **201100149-S FINAL PLAT LAKE HAZEL VILLAGE PARTNERS LLLP: RUNNING SPRINGS SUB:** Final plat for Running Springs Sub-Phase 1. Section 02, T. 2N., R. 1E

R. Yzaguirre opened the public hearing.

D. Sanders presented the Staff report.

R. Yzaguirre closed the public hearing.

ACTION: S. ULLMAN MOVED TO APPROVE APPLICATION NO. 201100149-S FINAL PLAT LAKE HAZEL VILLAGE PARTNERS LLLP: RUNNING SPRINGS SUB; AND AUTHORIZE THE CHAIRMAN TO SIGN AND STAMP THE FINAL PLAT ON BEHALF OF THE BOARD. D. CASE SECONDED. S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

4. **201200447 VAC SKYLINE VACATION:** Vacation of easements between lots 15 and 16, lots 17 and 18, lots 19 and 20 and lots 21 and 22, Block 18 Hazelwood Village #2. The applicant is proposing to combine the eight lots into four lots. Tax Parcel Number(s): S3525400510, S3525400520, S3525400530, S3525400540, S3525400550, S3525400560, S3525400570 and S3525400580. The property contains .55 acres and is located on the west side of W. Kuhnen Street, between Redshine Way and Napia Street in Section 03, T. 2N., R. 1E

R. Yzaguirre opened the public hearing.

D. Sanders submitted an additional exhibit into the record and presented the Staff report.

S. Ullman and D. Sanders discussed the lot sizes and the initial project.

Jim Money, representing Applicant, stated his name and address for the record and explained Applicant's request.

M. Perfect provided the history of the lots.

R. Yzaguirre closed the public hearing.

ACTION: S. ULLMAN MOVED TO APPROVE APPLICATION NO. 201200447 VAC SKYLINE VACATION. D. CASE SECONDED. S. ULLMAN, AYE, D. CASE, AYE, AND R. YZAGUIRRE, AYE. THE MOTION CARRIED UNANIMOUSLY.

V. **IN THE MATTER OF ADJOURNMENT:**

There being no further business to come before the Board on this date, the meeting was adjourned at 8:13 p.m.

Rick Yzaguirre, Chairman

ATTEST:

Christopher D. Rich, Ada County Clerk