

**BOARD OF ADA COUNTY COMMISSIONERS
MINUTES OF THE PUBLIC HEARING
WEDNESDAY, MAY 8, 2013
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 Basham, Diana Sanders, Brent Danielson and Megan Leatherman, Development Services; and Nancy Werdel, Prosecuting Attorney's Office. Minutes Recorder: Judy Morris.

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- I. IN THE MATTER OF CALL TO ORDER:**
Commissioner David L. Case called the meeting to order at 6:00 p.m.
- II. IN THE MATTER OF ROLL CALL:**
Commissioners David L. Case, Jim Tibbs and Rick Yzaguirre 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:**
- **201200911-ZC: ADA COUNTY:** A zoning ordinance map amendment to revert the zoning of the subject property from the Community Commercial (C2) District and the Very High Residential (R2D) District back to the Rural-Urban Transition (RUT) District and the Estate Residential (R1) District; and the termination of Development Agreement 8454. The property is located at 8640 West State Street; Section 24, 4N, 1E. *(Tabled from 2/13/13)*

ACTION: R. YZAGUIRRE MOVED TO REMOVE APPLICATION NO. 201200911-ZC: ADA COUNTY FROM THE TABLE FOR CONSIDERATION. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

D. Case opened the public hearing.

R. Beck submitted Exhibit 32 into the record and presented the Staff report. R. Beck provided the Board three possible actions on the application.

Scott Noriyuki of Northside Management, on behalf of Applicant, stated his name and address for the record. He stated his ideal outcome would be to have the previous development agreement dissolved and the R20 and C2 zoning retained. He explained the desired development of the property. He said that they had a neighborhood meeting with positive comments and they anticipate having an additional meeting to discuss elevations and set-backs.

D. Case asked S. Noriyuki if the density was going to increase with the new plans. S. Noriyuki said the density was relatively the same. However, the plans are going vertical, up to three stories, to improve the architecture but retain more open space. D. Case then asked Staff what additional time would be added to the project if the zoning was reverted. R. Beck explained that Applicant has submitted a new application that has not yet been processed. He said that at this point, Applicant would need to submit a legal description along with any fees that are outstanding based on the additional acreage for the rezone.

S. Noriyuki explained that winding down the previous application and submitting a new application with the required documents is a complicated process. He said the market indicators are positive, motivating them to move forward with Phase 1, Lot 1, of the plan that is bisected by the proposed public right-of-way. He said their goal is to work with ACHD to design and construct the right-of-way prior to finalizing the preliminary and final plat so Applicant can move forward with a master site plan. He explained Applicant's desired timeline for the project.

R. Beck discussed the net density of the new application.

R. Yzaguirre inquired what the traffic impact would be for the new application with the commercial versus the old application. R. Beck stated a review and analysis has

not been completed at this time. S. Noriyuki responded that a traffic light was warranted and he does want to see a light installed. He stated that ITD is in agreement, however, they are still finishing the approvals. He said there is an understanding that ACHD will provide the equipment, ITD will provide the design and permits, and Applicant will provide the installation. He said that Bogart Road would also be improved per ACHD standard requirements. R. Yzaguirre then asked R. Beck to confirm Planning and Zoning's (P&Z) position and Staff's position. R. Beck stated that P&Z's recommendation is to keep the zoning designation in place and not terminate the development agreement. He said Staff originally recommended the zoning be reverted and the development agreement be terminated.

S. Noriyuki clarified that he is requesting denial of the reversion, not approval.

D. Case closed the public hearing.

R. Yzaguirre stated that he previously voted in favor of the original project. He said the issue at that time was the traffic and he believes Applicant intends to address that.

ACTION: R. YZAGUIRRE MOVED TO MAINTAIN THE ZONING AND TERMINATE THE DEVELOPMENT AGREEMENT.

DISCUSSION: D. CASE CONFIRMED THAT R. YZAGUIRRE WAS IN CONCURRENCE WITH THE PLANNING AND ZONING RECOMMENDATION. R. YZAGUIRRE AFFIRMED.

ACTION: J. TIBBS SECONDED.

DISCUSSION: R. BECK ADVISED THE BOARD THAT P&Z'S RECOMMENDATION WAS TO RETAIN THE ZONING AND KEEP THE DEVELOPMENT AGREEMENT. HE SAID IF THE BOARD DESIRED TO SPLIT THE DECISION, STAFF WOULD NEED TO REVISE THE PROPOSED ORDER. R. YZAGUIRRE EXPLAINED THAT HE WANTED TO ACCOMPLISH WHAT P&Z RECOMMENDED. THE BOARD REQUESTED M. LEATHERMAN EXPLAIN THE RECOMMENDATION OF P&Z WITH REGARD TO THE DEVELOPMENT AGREEMENT. M. LEATHERMAN EXPLAINED THAT P&Z RECOMMENDED KEEPING THE DEVELOPMENT AGREEMENT IN PLACE. D. CASE ASKED S. NORIYUKI TO EXPLAIN HIS DESIRED OUTCOME. R. YZAGUIRRE INQUIRED IF S. NORIYUKI COULD AMEND THE CURRENT AGREEMENT RATHER THAN HAVE IT TERMINATED. S. NORIYUKI STATED HE WOULD PROCEED AS THE COUNTY DESIRED.

ACTION: R. YZAGUIRRE WITHDREW HIS ORIGINAL MOTION. HE THEN MOVED TO KEEP THE CURRENT ZONING AND DEVELOPMENT AGREEMENT NO. 8454 IN PLACE. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

V. IN THE MATTER OF NEW BUSINESS:

- 1. IN THE MATTER OF THE APPEAL OF HILLTOP STATION LLC FOR BEER/WINE LICENSE FOR ON-PREMISE CONSUMPTION:** An appeal from decision to deny an application for on-premise wine/beer license consumption at Hilltop Station, based on lack of written consent from at least 75% of resident owners within 1,000 feet of premises.

D. Case opened the public hearing.

Applicant, Eric McCullough, stated his name and address for the record. He said he is one of the owners of Hilltop Station. He explained that they bought the restaurant in October of 2012 and have been repairing, cleaning and preparing the establishment

for re-opening. He said 25%-35% of restaurant income generally comes from sales of beer and wine. He explained that if they are unable to sell beer and wine by the glass, they will need to review their business plan and determine if moving forward is an option. He said they have had positive comments from the public looking forward to the restaurant's re-opening.

Terry Pickens, attorney for Applicant, stated her name and address for the record. She presented testimony explaining the circumstances surrounding the initial denial and the appeal. She explained that the Hilltop Station held a beer and wine license for decades. She said the concerns raised did not relate to the actual sale of beer and wine, but to hours of operation and other unrelated issues. She said that the Board had the option to impose restrictions, if necessary, to address the concerns of the one neighbor that is withholding his approval.

Paul B. Cox stated his name and address for the record and presented testimony supporting the application. He said Hilltop Station is a convenience to the residents in the area.

Paul D. Cox stated his name and address for the record and presented testimony supporting the application. He suggested the code be revised from receiving 75% of the support of the surrounding neighbors to adapt to this and similar situations.

Troy Knutson stated his name and address for the record and presented testimony in support of the application.

Kristen Cox stated her name and address for the record and presented testimony in support of the application. She stated that the sale of beer and wine was not an issue in the past and she didn't believe Applicant should be denied a license.

Bob Kohnke stated his name and address for the record and presented testimony in support of the application. He said Hilltop Station has always been a meeting place for family and friends. He suggested that the law be reviewed to address the requirement of 75% support from neighbors when there are only two. He stated that the current owners are hardworking and diligent and have invested a lot of time and money to reopen the restaurant.

Jerry Whitehead stated his name and address for the record. He said he was exercising his legal right to oppose the application and stated that he would discuss his issues with Applicant, if Applicant desired. He said Hilltop Station has been closed several times and had been closed for a couple years before being purchased by Applicant.

J. Tibbs inquired what specific issues J. Whitehead has with the sale of beer and wine at the restaurant. J. Whitehead responded he did have specific issues, but believed this was not the time or place to discuss those. He said he was willing to meet with E. McCullough and his attorney. He invited the Commissioners to tour the area.

Barry Jones stated his name and address for the record and presented testimony in support of the application. He stated that he has known the Applicants for a long time and has witnessed their work and stated they are capable of making a success of the business. He said the restaurant would offer economic growth in the area. He said Applicants also intend to improve the landscaping.

Joe Stenkamp stated this name and address for the record and presented testimony in support of the application. He said he believes that the code doesn't apply to this application based on statistical analysis. He said Hilltop Station should be allowed to operate as a restaurant and convenience store.

Mark Naser stated his name and address for the record and reiterated the testimony of J. Stenkamp.

Robert Allen stated his name and address for the record. He explained the history of the restaurant and advised the Board that the septic system was not supportive of the restaurant. He stated he was not necessarily opposed to the application but would like to know more about the intended use and services of the restaurant.

Linda Johnson stated her name and address for the record and presented testimony in support of the application.

J. Whitehead re-approached the podium and stated he did support the restaurant and the sale of beer and wine in the store. He said he does not support the sale of beer and wine by the glass.

E. McCullough re-approached the podium to address the testimony given. He advised the Board that they have designed a new septic system and will be required to replace the existing septic system as they proceed. He said they intend on keeping the restaurant a family establishment and do not plan on having a bar. He said the beer and wine is an element and tool to make the restaurant succeed, not the focus of the business.

D. Case requested Applicant address questions in a letter received by Staff. He asked what the hours of operation will be. Applicant stated the business would be open as allowed by county code. D. Case stated that concerns raised in the letter included loud patio music. Applicant stated that they did not have any plans to move the existing patio, which is opposite of J. Whiteheads property. D. Case inquired if the sewer plans would eliminate the Spring run-off which comes through J. Whiteheads pasture. Applicant affirmed the plans would eliminate the run-off.

R. Yzaguirre inquired if E. McCullough was aware that the County had a noise ordinance. E. McCullough affirmed he was aware of the ordinance and would comply directly with that. He said they had not planned on having music on the patio, but they did not want to eliminate the ability to have it. He reiterated they would follow the noise ordinance.

J. Tibbs clarified that the only issue before the Board was whether or not to approve the license.

T. Pickins re-approached the podium to address the testimony given. She reiterated that Applicant intended to make the business a family establishment. She stated that this is the time and place to address any concerns. She said they are asking for the ability to serve a glass of wine or a bottle of beer with dinner.

D. Case closed the public hearing.

R. Yzaguirre stated that it is the Board's job to interpret the gray area in these matters. He said, based on the testimony, he feels there is overwhelming support to grant the license. He stated that he does appreciate Mr. Whitehead's concerns. He said that he knows E. McCullough and his reputation well enough that he believes he will be a good neighbor.

ACTION: R. YZAGUIRRE MOVED, BASED ON THE TESTIMONY PRESENTED, TO APPROVE THE APPEAL AND GRANT THE LICENSE FOR HILLTOP STATION LLC. J. TIBBS SECONDED.

DISCUSSION: J. TIBBS THANKED EVERYONE FOR COMING OUT TO TESTIFY. HE SAID THIS WAS A UNIQUE SITUATION. HE WISHED APPLICANT LUCK AND REMINDED ALL PARTIES TO BE GOOD NEIGHBORS. R. YZAGUIRRE ADVISED THE CHAIRMAN THAT LEGAL COUNSEL INSTRUCTED HIM TO AMEND HIS MOTION.

ACTION: R. YZAGUIRRE AMENDED HIS MOTION TO INCLUDE THAT THE BOARD WILL ISSUE A FINAL ORDER WHICH WILL INCLUDE A STATEMENT IN SUPPORT OF THE BOARD'S DECISION, TO BE FORTH COMING. J. TIBBS SECONDED.

DISCUSSION: D. CASE REMINDED THE PARTIES TO COMMUNICATE AND WORK WITH EACH OTHER.

ACTION: R. YZAGUIRRE, AYE, J. TIBBS, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

[The Board took a break at 7:13 p.m. They got back on the record at 7:22 p.m.]

- 2. 201201115-DA-MSP-S-ZC: BRECKON LAND DESIGN:** A zoning ordinance map amendment to rezone approximately 45.34 acres from Southwest Community Residential (RSW) to Medium Density Residential (R6) and 11.52 acres from Southwest Community Residential (RSW) to Community Commercial District (C2) with a development agreement. The application includes 108 buildable lots and two phases of commercially zoned areas. A master site plan application was also submitted for a swimming pool on an open space lot. The property is located at 5859 South Maple Grove Road and West Sageberry Way; Section 35, 3N, 1E.

D. Case opened the public hearing.

M. Basham submitted Exhibit No. 48 into the record and presented the Staff report. She advised the Board that the County is working with Applicant's surveyor to revise the existing legal description. She said that if the Board chooses to approve the application after testimony is presented, they will need to table the signing of the final documents to the May 23, 2013, Development Services Meeting.

Applicant, Jon Breckon, stated his name and address for the record. He reiterated M. Basham's statements. He discussed the city's request to provide connectivity to the park and showed the Board where those points would be located.

D. Case closed the public hearing.

ACTION: R. YZAGUIRRE MOVED TO APPROVE APPLICATION NO. 201201115-DA-MSP-S-ZC: BRECKON LAND DESIGN, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED IN THE STAFF REPORT, AND TABLE IT TO THE MAY 23, 2013, DEVELOPMENT SERVICES MEETING FOR EXECUTION OF THE FINAL DOCUMENTS. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

- 3. 2000600071-S: FINAL PLAT - HAZELWOOD VILLAGE SUB NO. 6:** A Final Plat including twenty (20) residential lots and three (3) common lots. The property contains 4.48 acres, is located at the stubs of West Alfina Drive and West Talasi Avenue, generally southwest of the intersection of Lake Hazel Road and Five Mile Road; Section 03, 2N, 1E.

D. Case opened the public hearing.

M. Basham presented the Staff report.

D. Case closed the public hearing.

ACTION: J. TIBBS MOVED TO APPROVE APPLICATION NO. 2000600071-S: FINAL PLAT - HAZELWOOD VILLAGE SUB NO. 6; AND AUTHORIZE THE CHAIRMAN TO SIGN AND STAMP THE FINAL PLAT. R. YZAGUIRRE SECONDED. J. TIBBS, AYE, R. YZAGUIRRE, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

- 4. 20300197-ZOA: ADA COUNTY:** A zoning ordinance text amendment to identify height exceptions that can be secured with a conditional use permit along with the addition of a conditional use finding concerning political subdivisions.

D. Case opened the public hearing.

R. Beck presented the Staff report. He advised the Board that the amendment adjusts the text in section 8-4(a)-10, subsection D to clarify height limit exception applicability and to increase the legibility of the text; updates section 8-4(a)-10, subsection D to allow an applicant to request that the height of institutional uses in certain architectural features exceed the maximum height limitations as part of a conditional use permit; adds a required finding to section 8-4(b)-5 to ensure compliance with Idaho State Code which requires a decision making body to find that political subdivisions will be able to provide services to a conditional use; updates Section 8-7(a)-5, Subsection C to clarify how public hearing notices are measured; and Section 8-7(a)-5, subsection C to identify the minimum radius notice distances for height exceptions which is associated with excess height exceeding 100 feet.

D. Case closed the public hearing.

ACTION: R. YZAGUIRRE MOVED TO APPROVE APPLICATION NO. 20300197-ZOA: ADA COUNTY, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED IN THE STAFF REPORT. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

5. **200600131-DA-DM: SILVERPINE SUB:** A modification to the Development Agreement to remove the phasing plan and change the conditions of approval. The property is located on South Maple Grove Road just north of West Amity Road; Section 26, 3N, 1E.

D. Case opened the public hearing.

D. Sanders submitted Exhibit Nos. 8, 9 and 10 into the record and presented the Staff report. She advised the Board that if they choose to approve the application after testimony is presented, they will need to table the signing of the final documents to the May 23, 2013, Development Services Meeting.

Kent Brown, on behalf of Applicant, stated his name and address for the record and presented testimony explaining the initial phasing of the project. He said the issue they had with the initial phase was crossing the creek as it could only be done between October and April. He said the purpose of the modification of the Development Agreement is to allow flexibility to follow the market.

Josh Stroh stated his name and address for the record. He inquired if there would be a park in the subdivision, how the water irrigation would be supplied to the subdivision and how access to Arabian Way would be obtained.

D. Sanders stated that a park was included in the preliminary plat. She explained that Applicant is working with ACHD to access Arabian Way.

K. Brown re-approached the podium to address J. Stroh's questions. He explained the first phase of construction was accepted by the New York Irrigation District. He said a pump system was designed at that time and Applicant was planning on using the same design and location with a separate delivery point. He said they are not making any changes to the proposed park.

D. Case closed the public hearing.

ACTION: J. TIBBS MOVED TO APPROVE APPLICATION NO. 200600131-DA-DM: SILVERPINE SUB, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED IN THE STAFF REPORT AND PUBLIC TESTIMONY.

DISCUSSION: D. SANDERS REMINDED THE BOARD THE DEVELOPMENT AGREEMENT NEEDED TO BE TABLED TO THE MAY 23, 2013, DEVELOPMENT SERVICES MEETING.

ACTION: J. TIBBS AMENDED HIS MOTION TO TABLE THE SIGNING OF THE DEVELOPMENT AGREEMENT TO THE MAY 23, 2013, DEVELOPMENT SERVICES MEETING. R. YZAGUIRRE SECONDED. J. TIBBS, AYE, R. YZAGUIRRE, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

- 6. 05001-S: FINAL PLAT – BRIDGEVIEW SUB NO. 5:** The Final Plat contains twenty three (23) residential lots and one (1) common lot. The property is 5.06 acres and is located at the stubs of South Tinker Avenue and West Mosser Drive, which is generally south of Amity Road and east of the New York Canal; Section 36, 3N, 1E.

D. Case opened the public hearing.

B. Danielson presented the Staff report.

D. Case closed the public hearing.

ACTION: R. YZAGUIRRE MOVED TO APPROVE APPLICATION NO. 05001-S: FINAL PLAT – BRIDGEVIEW SUB NO. 5; AND AUTHORIZE THE CHAIRMAN TO SIGN AND STAMP THE FINAL PLAT. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

- 7. 201300364-VAC: ROBERT & JULIA WHITING:** A request to vacate plat notes #8 and #16 on the Echanove Ranch Subdivision No. 1 final plat with respect to Lots 1-3, 5-10, Block 1 and Lots 1 and 2, Block 2 and also to vacate plat note #8 on the Echanove Ranch Subdivision No. 2 final plat with respect to Lots 11-13, Block 1. In addition, to strike out condition of approval #17b from File #99-29-PDR/99-21-PR. The property is located in Section 31, 5N, 2E.

D. Case opened the public hearing.

B. Danielson submitted Exhibit Nos. 23 and 24 into the record and presented the Staff report.

Applicant, Julia Whiting, stated her name and address for the record and thanked Staff for their assistance. She said they went to each of the neighbors and all but one signed a document supporting the application.

Harold Huston stated his name and address. He advised the Board that he owns property adjoining to Lot 2, Block 2. He said he supported the application with the exception of a possible two-story building on the southerly line of Lot 2, Block 2 as he believes that would lower the value of his property.

D. Case inquired what the building restrictions in the area were. B. Danielson stated that building restrictions were 2400 feet.

Applicant re-approached the podium. She stated she believed the CCR's restricted the size of a dwelling unit on a lot.

ACTION: R. YZAGUIRRE MOVED TO APPROVE APPLICATION NO. 201300364-VAC: ROBERT & JULIA WHITING, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED IN THE STAFF REPORT AND THE TESTIMONY PRESENTED. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

VI. IN THE MATTER OF ADJOURNMENT:

There being no further business to come before the Board on this date, the meeting was adjourned at 8:02 p.m.

David L. Case, Chairman

ATTEST:

Christopher D. Rich, Ada County Clerk