



## BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of Dave Spencer

File #201500097 A, Dave Spencer

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

#### FINDINGS OF FACT

If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

A. The Board finds that the record is comprised of:

1. Exhibits to the Staff Report.
2. Exhibit A to the Findings of Fact, Conclusions of Law and Order.
3. All other information contained in Ada County Development Services File for Project No. 201500097 A.

B. As to procedural items, the Board finds the following:

1. Submission of File #201500097 A occurred on April 3, 2015 and Development Services scheduled it for public hearing before the Board of Ada County Commissioners on June 3, 2015.
2. On April 13, 2015, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached as exhibits to the staff report.
3. On May 1, 2015, property owners within 1000 feet of the site were notified of the hearing by mail. Legal notice of the Commission's hearing was published in The Idaho Statesman on May 19, 2015. Notices of the public hearing were posted on the property on or before May 24, 2015 and a certification sign posting was submitted to the director on or before May 27, 2015.

C. As to the project description, the Board finds based on the application materials found in the file for File #201500097 A the following:

1. PROPOSED USES: A private road to serve single-family dwelling(s)

2. PROPOSED STRUCTURES: If approved, the private road would make the property buildable and eligible for building permits
3. PROPOSED SITE IMPROVEMENTS: No site improvements are proposed.
4. OTHER: None

D. Based on the materials found in the file for File #201500097 A, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: S1611212275<sup>1</sup>; Section 11, T2N, R 3E (property seeking an eventual building permit, if road is approved)
2. OWNERSHIP: Phillip and Allyn Krueger, (currently vacant property seeking an eventual building permit, if road is approved). The proposed private road is on property owned by the Krueger's and Andy Isaac and Keela Pollock.
3. SITE CHARACTERISTICS

Property size: 3.29 acres, (property seeking an eventual building permit, if road is approved)

Existing structures: None

Existing vegetation: This is an existing road and there is no vegetation within the proposed roadway. The surrounding area is sagebrush and grasses.

Slope: The site of the proposed private road is relatively flat with no areas exceeding 15% slope.

Irrigation: The subject property currently has a valid water right.

Drainage: In general, area drains south

Other Opportunities and/or Constraints: The entire area is within the Wildland Urban Fire Interface Overlay District

E. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the current land use and zoning:

The property seeking a building permit is zoned R1 and is vacant. The Isaac/Pollock property is zoned RP and has a single-family dwelling.

F. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the surrounding land use and zoning:

North: The properties to the north are located in the Rural Preservation (RP) District and the use is vacant.

South: The properties to the south are located in the Estate Residential (R1) District and the use is single-family residential and vacant

East: The properties to the east are located in the RP District and the use is single-family residential

West: The properties to the west are in the R1 and RP District and the use is single-family residential and vacant

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<sup>1</sup> See discussion described on Pages 3-4 of the staff report attached related to this parcel number.

G. Based on the officially adopted Ada County land use maps and materials found in the file for File #201500097 A, the Board finds the following concerning services:

Access Street and Designation: The private road would intersect with Sandy Point Lane, a local road

Fire Protection: The property is not within a fire district

Sewage Disposal: Septic

Water Service: Well

Irrigation District: The property is not within an irrigation district

Drainage District: The property is not within an irrigation district

H. As to the applicable law, the Board finds the following:

1. The Board finds **Article 8-7-7 of the Ada County Code** is applicable as the subject application is an appeal of the Director's decision to approve File #201500097 PR as described in the appellant's detailed letter.

*The Board finds that the appeal application complies with the requirements of the Ada County Code Section 8-7-7 because the appeal was submitted on April 3, 2015, which was within 15 days of the Director's decision for File #201500097 PR that occurred on March 19, 2015. The appellant qualifies as an affected party per Idaho Code 67-6521 (1)(a) because the appellant is a user of the proposed private road. The Director scheduled the application to be heard by the Board on June 3, 2015.*

2. *The Board finds that the Findings of Fact and Conclusions of Law of the Director dated March 19, 2015, which approved File #201500097 PR, attached as Exhibits 13 and 14 comply with Ada County Code with the following revisions:*

- *Section 8-4D-5A: Based on new evidence in the form of a letter from ACHD dated April 14, 2015, ACHD has stated that the maintained portion of the public ROW ends at the pavement but that based on Instrument #7532588, the public ROW extends to Stagecoach Lane and is classified as unopened ROW. Ada County will acknowledge the point of intersection at the end of the unopened public ROW, thereby, removing the requirement for variance for a private road off of a private road for Stagecoach Lane. Additionally, based on the new evidence, the applicant will be conditioned to work with ACHD on obtaining access through the unopened ROW.*
- *Section 8-4D-5B: Based on new evidence in the form of a letter from ACHD dated April 14, 2015, Ada County will acknowledge the point of intersection at the end of the unopened public ROW, thereby, removing the requirement for variance for a private road off of a private road for Stagecoach Lane.*
- *Section 8-4D-5C: Based on new evidence in the form of a letter from ACHD dated April 14, 2015, ACHD has clarified the public portion of Sandy Point Lane and has stated that the maintained portion of the road ends at the existing pavement and the remainder of the road, up to Stagecoach Lane, is considered as unopened public ROW per Instrument #7532588.*

## **CONCLUSIONS OF LAW**

If any of these Conclusions of Law are deemed to be Findings of Fact they are incorporated into the Findings of Fact section.

1. The Board concludes that File #201500097 A complies with Section 8-7-7 of the Ada County Code.
2. The Board concludes that the Findings of Fact and Conclusions of Law of the Director dated March 19, 2015, which approved File #201500097 PR, attached as Exhibits 13 and 14, and as revised herein, comply with Ada County Code.

**ORDER**

Based upon the Findings of Fact and Conclusions of Law contained herein, the Board denies the appeal application found in File #201500097 A and upholds the decision of the Director to approve File #201500097 PR, subject to the conditions of approval attached as Exhibit A.

**DATED** this 3<sup>rd</sup> day of June, 2015.

**Board of Ada County Commissioners**

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By: Jim Tibbs, Commissioner

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By: Rick Yzaguirre, Commissioner

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By: David L. Case, Commissioner

ATTEST:

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Christopher D. Rich, Ada County Clerk

EXHIBIT A

**CONDITIONS OF APPROVAL FOR PRIVATE ROAD**

**REQUIRED ACTIONS. THE FOLLOWING LIST DETAILS THE TASKS THAT MUST BE COMPLETED BEFORE THE APPROVAL OF 201500097 PR WILL BE CONSIDERED FINAL. THE APPLICANT AND/OR OWNER HAVE ONE YEAR FROM THE WRITTEN DECISION TO COMPLETE THE REQUIRED ACTIONS AND TO OBTAIN A FINAL APPROVAL LETTER. THIS TENTATIVE APPROVAL SHALL BECOME VOID IF A VALID ZONING CERTIFICATE HAS NOT BEEN ISSUED BY THAT DATE.**

**Required Actions**

1. The applicant/owner shall fix the overlapping ownership issue with Parcel S1602344925, 9900 East Highway 21 currently owned by Andrew Isaac and Keela Pollock. Submit a revised drawing of the private road identifying all affected property owners and copies of the recorded deeds with the legal descriptions to verify that the ownership issues have been resolved.
2. Obtain a perpetual access easement with a legal description of the private road from the appropriate owner based on the ownership resolution. This easement shall be recorded in the Ada County Recorder's Office.
3. Record a maintenance agreement for the private road that details ongoing maintenance activities, maintenance responsibilities and financial responsibilities. The maintenance agreement shall be recorded in the Ada County Recorder's Office. Maintenance of the road shall include compliance with the vegetation controls required by the WUFI Overlay District.
4. Submit a revised drawing demonstrating turnouts every 700' in accordance with the WUFI Overlay District, if applicable.
5. Address the terminus of the private road by either:
  - a) Resolving the ownership issues of the proposed hammerhead turnaround. Submit a revised drawing of the private road identifying all affected property owners and copies of the recorded deeds with the legal descriptions to verify that the ownership issues have been resolved.
  - b) If the terminus remains at the hammerhead, obtain a perpetual access easement from the appropriate owner based on the ownership resolution. This easement shall be recorded in the Ada County Recorder's Office.or
  - c) If the terminus is moved, submit a revised drawing of the private road identifying all affected property owners and the appropriate perpetual access easements, if necessary, based on the configuration of the terminus and the ownership resolution.
6. Obtain approval of the private road name from the Ada County Assessor's Office.
7. Comply with ACHD requirements to obtain access through the unopened right-of-way.
8. Install a private road sign with the approved road name at the intersection of the road with the public right-of-way. Work with ACHD on the installation of the sign.
9. Schedule a final inspection with the Ada County Engineer once the sign is installed.
10. Once evidence has been submitted demonstrating all of the items above (1-9) have been satisfied the Director will issue a letter stating that the private road has received final approval.

## EXHIBIT A

### **Terms of Approval**

11. A zoning certificate and/or a building permit may not be issued until 15 days after the Director issued the written decision on the proposed development. In the event the decision of the Director is appealed, the building permit may not be issued until the appeal is resolved in favor of the proposed development. See Section 8-7-7 of the Ada County Code for more information on appeals.
12. No gates are approved with this private road application.
13. The travelway plus five feet (5') on each side of the travelway shall be cleared of all flammable vegetation in accordance with the WUFI Overlay District.
14. All drainage shall be retained on site.
15. The private road shall comply with the design and construction standards in Section 8-4D-4 of the Ada County Code or as otherwise approved by the County Engineer.
16. The applicant shall maintain adequate housekeeping and sanitation practices to prevent the creation of a public nuisance and to reduce noise and odor.
17. The property must be managed and maintained consistent with the standard regulations in Title 8, Chapter 4, Article A of the Ada County Code. Please note that this Article contains specific regulations regarding the accumulation of junk, atmospheric emissions, construction sites, hazardous material storage, outdoor public address systems, outdoor storage of chemicals and fertilizers, transmission line corridors, and utilities.